

North Yorkshire County Council**Executive****15 October 2019****Major Highway Schemes A59 Kex Gill Diversion****Report of the Corporate Director – Business and Environmental Services****1.0 Purpose of Report**

- 1.1 The purpose of this report is to seek Members' confirmation of approval for the making of the Compulsory Purchase Order and Side Road Orders for the A59 Kex Gill Diversion Scheme (the Scheme).

2.0 Background

- 2.1 Members will recall that at your meeting on 24 July 2018 you agreed to adopt the proposed preferred alignment for the A59 Kex Gill. Members will be fully aware of the numerous road closures of the existing route in recent years owing to subsidence. Whilst short to medium term measures can be undertaken the County Council recognises that in the longer term there is a need to develop proposals for a permanent solution to ensure future resilience of the route.
- 2.2 Following your decision officers have been progressing with the preparation of the Scheme including the submission of the Outline Business Case to the Department for Transport (DfT), development of a planning application and finalising technical aspects of the design in consultation with key stakeholders. A meeting was held with DfT on 12 July 2019 at which they gave favourable feedback on the Outline Business Case. Work is progressing on the final business case for the DfT taking on board the comments received and with a submission to be made during November 2019.
- 2.3 Another key stage in any major road scheme is to secure the land required for the new route. Ideally the land required for the road will be secured through negotiation, however in order to ensure the scheme progresses officers also consider it necessary to follow statutory procedures for the making of a Compulsory Purchase Order (CPO) and Side Road Order (SRO) and seeking confirmation of these Orders. To make the CPO and SRO approval of the Executive is required.
- 2.4 The aim of the current scheme is to achieve the start of construction of the new road in Spring 2020. As such it is a tight timescale and it is proposed to make the CPO and SRO for the scheme before the end 2019 with a view to the Order being confirmed by March 2020 (if there are no objections and a Public Inquiry is not required). In considering whether to approve the making of a CPO and SRO for the Scheme the Executive should consider:
- (i) whether sufficient reasons exist to support the making of the CPO and SRO;
 - (ii) whether the interference with the rights of those with property interests sought to be purchased is necessary and proportionate and whether the inevitable deprivation of private property resulting from the CPO and impacts on means of access in the SRO is proportionate to the public benefit;
 - (iii) what statutory powers we are seeking to rely on in making the CPO and SRO.

Further information on all these points is set out in the remainder of this report.

- 2.5 Members are reminded that should they confirm approval the next stage will be to make, serve and advertise the Compulsory Purchase and Side Roads Orders in accordance with the statutory procedures. Any objections or representations to the CPO and/or SRO will be considered by the Secretary of State who may order a public local inquiry before making a decision on whether to confirm the Orders. In this case officers consider that there is a possibility that there could be a public inquiry.
- 2.6 It should be noted that whilst the County Council is seeking to engage with landowners in order to acquire the necessary land by agreement it is always considered prudent to progress with the CPO and SRO in case it is not possible to reach an agreement.
- 2.7 Whilst this report seeks authorisation to progress with the making of the CPO and SRO and to seek confirmation of the Orders, no action will be taken to implement the Orders until such a time that the County Council gets final confirmation of funding for the scheme from the Department for Transport.

3.0 STATEMENT OF REASONS FOR MAKING THE CPO

- 3.1 The Government circular on the preparation of CPOs (06 / 04) sets out details of what should be included in the Statement of Reasons for the making of a CPO. For clarity and ease of cross referencing this report will provide necessary information in the order suggested by the circular and is provided below.

3.2 Description of the Order land

- 3.2.1 The CPO seeks the purchase of Title and Rights for a total of approximately 33.22 hectares of land in the Parishes of Blubberhouses and Fewston. The majority of the land lies to the north of the existing A59 with some additional areas around the junctions of the A59 and Hall Lane and Shepherd Hill. See the Plan attached as Appendix A.

3.3 Enabling powers

- 3.3.1 The CPO and SRO for the A59 Kex Gill Diversion scheme are being made under the powers of the County Council as the Highway Authority as set out in the Highways Act 1980 and the Acquisition of Land Act 1981.

3.4 Purpose of seeking to acquire the land

- 3.4.1 The compulsory purchase of the land and the Side Road Order are to allow the construction and subsequent use of the A59 Kex Gill Diversion and other associated accommodation works.

3.5 Justification for Compulsory Purchase

- 3.5.1 The objectives of the A59 Kex Gill Diversion are to:
- Reduce the impact of future landslip related closures of the A59 at Kex Gill – The evidence demonstrates that the closure of the A59 at Kex Gill due to a landslip results in significant impacts on users in terms of the increase in journey time and the uncertainty over journey time reliability due to users required to use the diversion route. There is also an adverse impact on

communities and existing users along the diversion routes due to the additional traffic on this route and the associated problems it brings (i.e. congestion, air pollution etc.). Furthermore there remains a very real risk of injury or death to existing A59 users due to vehicles being caught in future landslips. A key outcome of the intervention is therefore to allow the A59 route to remain open and reduce the risk of vehicles being caught in a future landslip. As a result the A59 Kex Gill Diversion Scheme will improve the resilience of the route.

- Improve journey time reliability and journey times on the A59 between Skipton and Harrogate – Improving journey time reliability is also important. Currently, there are few overtaking opportunities along the route. As such, convoys form behind slow moving vehicles, due to the alignment of the route and the topography, which impact on user journey time reliability. The significant number of accidents along the route can also affect reliability. The high level of maintenance and monitoring of the route can also result in periods of road works, whilst inspections/remedial works are conducted, again affecting journey time reliability. In the event of a complete closure of the A59 due to a landslip (or other incident) the diversion route creates a much longer journey for users. It is therefore important that the intervention looks to address journey time reliability issues.
- Reduce road accident casualties – The analysis of accident data has demonstrated that there are a number of accident clusters along the A59 and there are sections of the route that have accident rates above the national average. A key factor of any option will be to aim to address these accident problems and provide a safer route.
- Reduce the volume of traffic using diversion routes in the event of a landslip at Kex Gill – Currently, in the event of a landslip at Kex Gill, the route is closed and users are required to follow a lengthy diversion route. This increase in traffic volumes on the diversion route can lead to increased congestion and adverse impacts associated with noise, air quality and severance for communities along these routes. It is a key aim of any intervention to reduce this impact.
- Minimise environmental impact of the A59 route on the built and natural environment – Land around the A59 at Kex Gill is of high nature conservation and landscape value, as a result it is designated a SAC, SPA, SSSI, AONB, NCA 21 and NCA 22. Any diversion route in this area could adversely affect the conservation objectives of these sites. To address this, the design and assessment of any options should seek to avoid / minimise these impacts as reasonably as possible.
- Reduce the impact of scheduled/unscheduled maintenance on the A59 users and communities on diversion routes – Maintenance works on the A59 at Kex Gill, requiring either a full closure or temporary traffic signal control, result in significant delays to users. Furthermore, when a full closure is in place, the resulting increase in traffic on diversion routes result in adverse impacts to existing users of these routes and the communities along them. Reducing the impact of scheduled/unscheduled maintenance is a key objective.
- Reduce the financial impact of scheduled/unscheduled maintenance on NYCC – The continued monitoring and maintenance of the A59 at Kex Gill results in a significant cost to NYCC. In addition, the remedial works needed following a landslip at Kex Gill present a significant cost risk to NYCC. It is therefore important that any intervention reduces the maintenance / monitoring cost to NYCC.

3.5.3 In accordance with Government guidance on CPO's the Statement of reasons must demonstrate 'a compelling case in the public interest'. The justification for the

scheme must also be balanced against the impact on the owners of the properties being compulsorily purchased. Consideration must be given to the human rights of those likely to be affected.

- 3.5.4 The areas of land subject to the CPO are shown on the Plan attached to this report (Appendix A). This includes land which the County Council is seeking to acquire 'Title' of and land which the County Council is seeking only 'Rights' for construction, access and future maintenance. The total area of land subject to the CPO is approximately 33.22 hectares from 25 different landowners.
- 3.5.5 Approximately 95% of this land is mainly agricultural land (arable), moorland, woodland and some common land. There are also factors in relation to the land which need to be considered and more detail on this is set out in paragraph 3.8 below.
- 3.5.6 The Human Rights Act 1998 incorporates the European Convention on Human Rights into domestic law. A number of articles are potentially engaged.
- 3.5.7 Article 6 provides for the right to a fair and public hearing by an independent and impartial tribunal in the determination of civil rights and obligations. The CPO process that allows for objections to an Order to be heard at a public inquiry, and the requirement for any Order to be subjected to confirmation by the Secretary of State, is considered to satisfy this requirement.
- 3.5.8 Article 8 provides for the right to respect for private and family life, with no interference by a public authority save in accordance with the law and as necessary in a democratic society in the furtherance of other legitimate interests. With most of the land take being agricultural there is less likelihood of this Article being engaged by the proposed Orders.
- 3.5.9 Article 14 prohibits any discrimination on the grounds of, inter alia, property and the proposed Order does not discriminate between different types of tenure.
- 3.5.10 Article 1 of the First Protocol is the article most obviously engaged by the proposal. It provides that no-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law. Clearly the effect of a CPO will be to deprive persons of their property, albeit with compensation as provided for by law and only when the Secretary of State has determined that it is in the public interest to do so.

3.6 Description of proposals for use of the land

- 3.6.1 Title for land included in the CPO is primarily for the construction of the A59 Kex Gill Diversion. Small areas of land are required for mitigation planting, accommodation works for 3rd party rights of access and access for future maintenance.
- 3.6.2 Rights for land included in the CPO are required for the construction and future maintenance of the route including highway bridges, drainage, earthworks and diversion and protection works for statutory undertakers' apparatus.

3.7 Statement of planning position

- 3.7.1 A planning application will be submitted at the end of October 2019 following detailed Environmental Impact Assessments being prepared. This is slightly unusual as it is

more common to seek to secure the planning permission at an earlier stage. In this case the application could not be submitted earlier as two years of environmental studies had to be concluded prior to submission. The Government circular 06/04 states that where planning permission has not yet been granted 'there should be no obvious reason why it might be withheld' in particular that it 'should be in accordance with the development plan for the area'. At this stage it is proposed to make the CPO and SRO while the planning application is going through the planning process. It is not envisaged at this stage that there is any reason why planning permission should not be granted.

3.8 Special considerations affecting the land

3.8.1 The A59 at Kex Gill passes through a rural and open landscape designated as the Nidderdale Area of Outstanding Natural Beauty (AONB). The surrounding landscape is highly valued for its recreational resource. The area lies within Natural England's National Character Area (NCA) 21: Yorkshire dales and NCA 22; Pennine Dales Fringe. Additionally a number of Sites of Importance for Nature Conservation (SINC) have been designated by the County Council and large parts of the area are designated as Sites of Special Scientific Interest (SSSI), Special Protected Area (SPA) and Special Area of Conservation (SAC). There are also two ancient woodlands to the east of the area. The consultants design team includes a number of environmental specialists who have helped to ensure that the final design selected minimises as far as is possible the impact on the local environment. There has been extensive consultation with statutory and non-statutory consultees to address any concerns around the environmental issues. Notwithstanding this there are two plots of land required for construction which are designated as part of the SAC amounting to 0.42 hectares and mitigation is proposed to offset these. Part of the existing A59 will be returned to a condition to match adjoining land and will be addressed as part of the planning process.

3.8.2 There is also an area of registered Common land which will form part of the acquisition. The area of Common land amounts to 10.598 hectares. Prior to confirmation of the CPO a special parliamentary procedure will have to be followed.

3.9 Plans to overcome obstacles prior to implementing the orders

3.9.1 It is not anticipated that there will be any significant obstacle that needs overcoming prior to implementing the orders except as already outlined above. The planning application for the scheme is expected to be determined prior to the Secretary of State's decision whether to confirm the CPO and a special parliamentary procedure will need to be followed in respect of the Common Land affected by the CPO.

3.10 Views of Government departments

3.10.1 The Department for Transport (DfT) has responded favourably to the Outline Business Case giving minor advice for inclusion in the Final Business Case which they will review in December 2019.

3.10.2 Other government departments and agencies (e.g. DEFRA, the Environment Agency and Natural England etc.) have been consulted as necessary and the County Council and its consultants have worked very closely to address any concerns raised. It is expected that this work will preclude any significant objection being raised to the scheme by these bodies.

4.0 Equalities

- 4.1 Consideration has been given to the potential for any equality impacts arising from the recommendation. It is the view of officers that the recommendation does not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010. A full Equalities Impact Assessment has been undertaken and is attached at Appendix B.

5.0 Finance

- 5.1 The financial implications and associated risks were reported to the Executive on the 24 July 2018 when you considered adopting the proposed preferred alignment. As design has progressed the estimated costs have been refined and the current scheme estimate is £43.7m excluding optimism bias. The Capital Plan includes £4.95m approved by Executive on 14 November 2017. Following review of the Outline Business Case the DfT has responded favourably and they have indicated that they will give their decision on the Final Business Case in December 2019 with final funding confirmation in 2020.
- 5.2 Should a Public Inquiry be called for the scheme then the programme of delivery will be extended by 12 months with associated additional costs in officer time, extra fees paid to the design consultant in preparing evidence and fees for Counsel.

6.0 Legal

- 6.1 The legal implications of CPO and SRO have been considered in some detail above. In making a CPO there has to be a compelling case in the public interest and in this case it is considered that this threshold has been met.
- 6.2 Members must be satisfied that the interference with individual rights that will arise as a result of the proposed action is necessary and proportionate to the public benefit sought to be achieved. Any compulsory purchase order requires submission to the Secretary of State for confirmation, a process that avails objectors of a fair and impartial hearing. If the Order is confirmed, the law provides that persons deprived of their property will be duly compensated.
- 6.3 If the Secretary of State decides to hold an Inquiry the process may be extended by a year or more. There will also be significant costs to attending the Inquiry, expert witnesses and Counsel in the region of £50,000 plus. There is also no guarantee that the order will be confirmed.

7.0 Summary

- 7.1 In order to meet the programme for start of construction of the A59 Kex Gill Diversion in Spring 2020, it is proposed to make the Compulsory Purchase Order and Side Road Order for the scheme in 2019 and to seek confirmation (subject to whether a Public Inquiry is required) in early 2020.
- 7.2 Members are recommended to consider the information set out in section 3 of this report and to confirm their approval for the making of the CPO and SRO for the A59 Kex Gill Diversion
- 7.3 To avoid the need for further reports to the Executive should it prove necessary to make minor alterations to the CPO or SRO it is further recommended that the

Corporate Director, BES and the Assistant Chief Executive (Legal and Democratic Services) be authorised to make minor modifications to the orders. Members should also note that in accordance with the County Council Property Procedure rules 'an approval given by the Executive to use compulsory powers shall be deemed to include the approvals necessary to acquire the property which is the subject of the Compulsory Purchase Order.' However, because the nature of any objections to the use of the power will not be known until consultation takes place on the made Orders, it is proposed to report back to the Executive when those objections are known, for a decision on whether to proceed with the confirmation process with the Secretary of State.

8.0 Recommendation

8.1 It is recommended that:

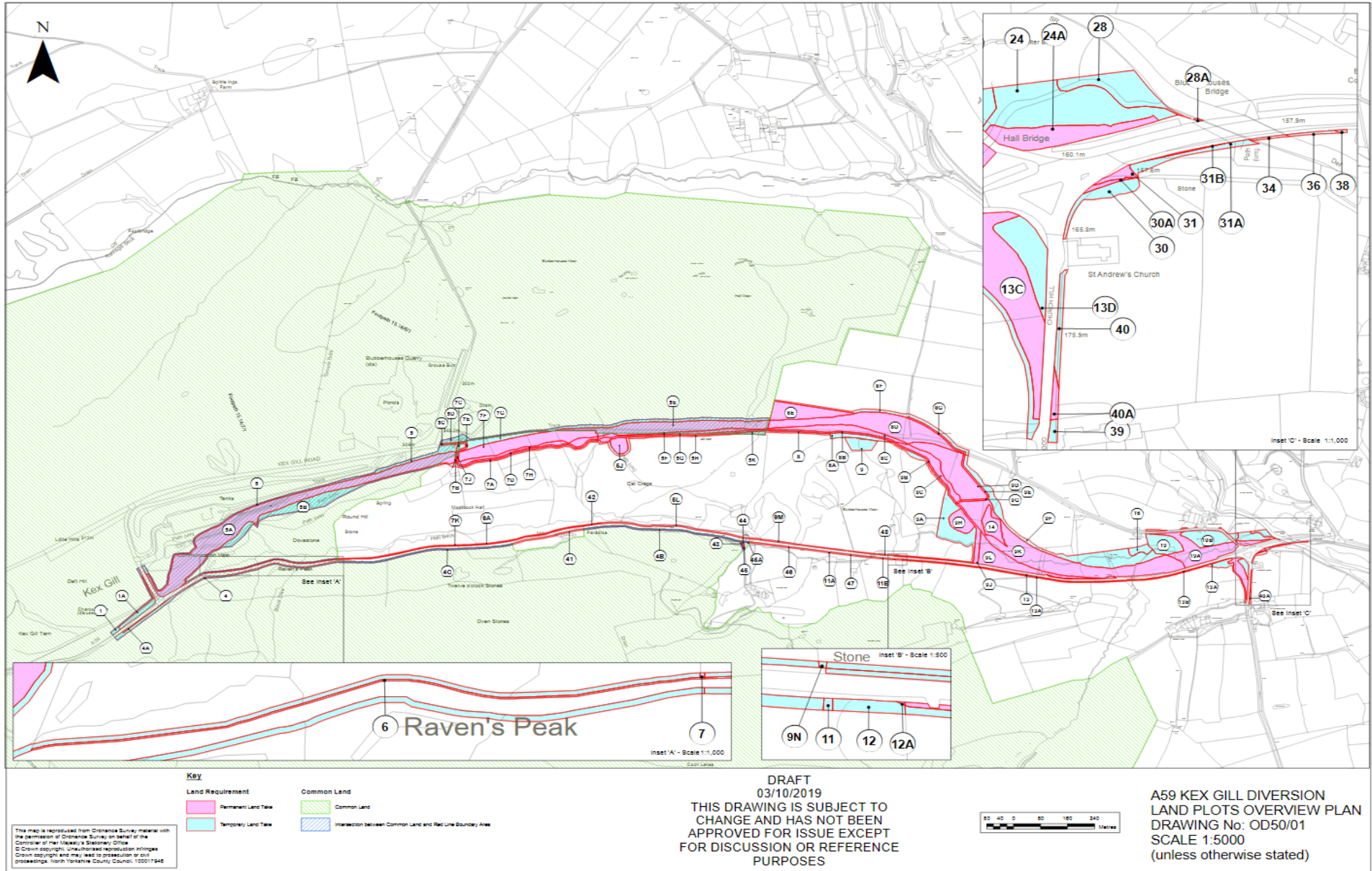
- (i) The Assistant Chief Executive (Legal and Democratic Services) be authorised to take all necessary steps to make the Compulsory Purchase Order and the Side Roads Order for the A59 Kex Gill Diversion Scheme which will involve the acquisition of the title to, or rights over, the land shown on the attached Plan (Appendix A) or any subsequent amendment to that Plan.
- (ii) The Corporate Director of Business and Environmental Services in consultation with the Assistant Chief Executive (Legal and Democratic Services) be authorised to make minor modifications to the CPO and SRO and their plans if required.
- (iii) A further report will be provided in due course, seeking a decision whether to submit the CPO and SRO to the Secretary of State for confirmation
- (iii) The Assistant Chief Executive (Legal and Democratic Services) in consultation with the Corporate Director of Business and Environmental Services be authorised to seek confirmation of the CPO and SRO and to take all necessary steps for this purpose including following any Special Parliamentary Procedure required;
- (iv) the Assistant Chief Executive (Legal and Democratic Services) to take all necessary steps in the event of a Public Inquiry
- (v) in the event the CPO and SRO are confirmed with or without modifications the Assistant Chief Executive (Legal and Democratic Services) be authorised to take all necessary steps to vest the land in the County Council

DAVID BOWE

Corporate Director – Business and Environmental Services

Author of Report: Ken Moody

Background Documents:



Equality impact assessment (EIA) form: evidencing paying due regard to protected characteristics

(Form updated April 2019)

A59 Kex Gill Diversion Scheme.

If you would like this information in another language or format such as Braille, large print or audio, please contact the Communications Unit on 01609 53 2013 or email communications@northyorks.gov.uk.



যদি আপনি এই ডকুমেন্ট অন্য ভাষায় বা ফরমেটে চান, তাহলে দয়া করে আমাদেরকে বলুন।

如欲索取以另一語文印製或另一格式製作的資料，請與我們聯絡。

اگر آپ کو معلومات کسی دیگر زبان یا دیگر شکل میں درکار ہوں تو برائے مہربانی ہم سے پوچھئے۔

Equality Impact Assessments (EIAs) are public documents. EIAs accompanying reports going to County Councillors for decisions are published with the committee papers on our website and are available in hard copy at the relevant meeting. To help people to find completed EIAs we also publish them in the Equality and Diversity section of our website. This will help people to see for themselves how we have paid due regard in order to meet statutory requirements.

Name of Directorate and Service Area	Business and Environmental Services – Highways and Transportation
Lead Officer and contact details	Ken Moody Major Projects Manager 01609 532876 07971 543765 Kenneth.Moody@northyorks.gov.uk
Names and roles of other people involved in carrying out the EIA	Catriona Gattrel, Head of Legal (Corporate Services)

	Stephen Lilgert, Senior Strategy and Performance Officer
How will you pay due regard? e.g. working group, individual officer	This form will be completed through a combination of work from the lead officer alongside the other two officers given above.
When did the due regard process start?	The initial executive report was created on 24 th July 2019 with further EqIA discussions happening on the 18 th September 2019 and the 25 th September.

Section 1. Please describe briefly what this EIA is about. (e.g. are you starting a new service, changing how you do something, stopping doing something?)

The purpose of this report is to seek Members' confirmation of approval for the making of the Compulsory Purchase Order and Side Road Orders for the A59 Kex Gill Diversion Scheme.

Section 2. Why is this being proposed? What are the aims? What does the authority hope to achieve by it? (e.g. to save money, meet increased demand, do things in a better way.)

The A59 Kex Gill Diversion Scheme is looking to provide a long term solution to the problems with the A59 route in the region of Kex Gill. Underlying instability along the route around Kex Gill mean that there are ongoing problems with landslips currently affecting the A59 and a high risk of the road collapsing. Such a collapse on a key major route would have a significant negative impact on traffic along the route and the local area.

The route of the diversion includes areas of land that will need to be the subject of compulsory purchase orders and side road orders. This report is to seek members' approval to make these orders.

Section 3. What will change? What will be different for customers and/or staff?

The main reason for the scheme is to provide a more reliable and sustainable route for the A59 around the Kex Gill area. The location of the proposed route would remove the impact of the underlying stability issues that have caused issues with the route in the past.

Section 4. Involvement and consultation (What involvement and consultation has been done regarding the proposal and what are the results? What consultation will be needed and how will it be done?)

At present the current proposal is for members to approve the process for making the necessary CPO and SRO documents required to ensure that the chosen route can be built. At the present there is no negative impact on persons with protected characteristics as this is a procedural undertaking.

There is the expectation that as the A59 Kex Gill Diversion Scheme progresses this equality assessment form will be amended as the pieces of work have more potential for impact on persons with protected characteristics.

Section 5. What impact will this proposal have on council budgets? Will it be cost neutral, have increased cost or reduce costs?

The current scheme estimate is £43.7m excluding optimism bias with a £4.95m contribution approved by Executive on 14 November 2017. The remainder of the funding will come from the Department for Transport subject to the submission of a final business case. The decision is expected to be in 2020.

Section 6. How will this proposal affect people with protected characteristics?	No impact	Make things better	Make things worse	Why will it have this effect? Provide evidence from engagement, consultation and/or service user data or demographic information etc.
Age		✓		The aim of the project is to provide a more stable and sustainable route for the A59. The expectation is that this will have a positive impact on all users of the route including those with protected characteristics. As the project progresses, then where specific impacts are identified then this document will be updated to reflect these impacts. This applies to all the items listed in the table(s) below.
Disability		✓		
Sex		✓		
Race		✓		

Gender reassignment		✓		
Sexual orientation		✓		
Religion or belief		✓		
Pregnancy or maternity		✓		
Marriage or civil partnership		✓		

Section 7. How will this proposal affect people who...	No impact	Make things better	Make things worse	Why will it have this effect? Provide evidence from engagement, consultation and/or service user data or demographic information etc.
..live in a rural area?		✓		
...have a low income?		✓		
...are carers (unpaid family or friend)?		✓		

Section 8. Geographic impact – Please detail where the impact will be (please tick all that apply)	
North Yorkshire wide	<p>The A59 is a key route that has an importance beyond the two districts through which it is located. As the most important east-west route in the county any failure of all or part of the route at Kex Gill would impact significant number of traffic from across the county.</p> <p>The provision of a safe and sustainable route for the A59 would eliminate this impact.</p>
Craven district	
Hambleton district	
Harrogate district	
Richmondshire district	

Ryedale district	
Scarborough district	
Selby district	
If you have ticked one or more districts, will specific town(s)/village(s) be particularly impacted? If so, please specify below.	
A significant failure of the A59 at Kex Gill would cause issues with the towns and villages along the temporary diversion route due to the increase in traffic levels.	
The provision of a safe and sustainable route for the A59 would eliminate this impact.	

<p>Section 9. Will the proposal affect anyone more because of a combination of protected characteristics? (e.g. older women or young gay men) State what you think the effect may be and why, providing evidence from engagement, consultation and/or service user data or demographic information etc.</p> <p>At present, there are no additional impacts for those persons with a combination of protected characteristics.</p>

Section 10. Next steps to address the anticipated impact. Select one of the following options and explain why this has been chosen. (Remember: we have an anticipatory duty to make reasonable adjustments so that disabled people can access services and work for us)	Tick option chosen
1. No adverse impact - no major change needed to the proposal. There is no potential for discrimination or adverse impact identified.	✓
2. Adverse impact - adjust the proposal - The EIA identifies potential problems or missed opportunities. We will change our proposal to reduce or remove these adverse impacts, or we will achieve our aim in another way which will not make things worse for people.	
3. Adverse impact - continue the proposal - The EIA identifies potential problems or missed opportunities. We cannot change our proposal to reduce or remove these adverse impacts, nor can we achieve our aim in another way which will not make things worse for people. (There must be compelling reasons for continuing with proposals which will have the most adverse impacts. Get advice from Legal Services)	
4. Actual or potential unlawful discrimination - stop and remove the proposal – The EIA identifies actual or potential unlawful discrimination. It must be stopped.	
<p>Explanation of why option has been chosen. (Include any advice given by Legal Services.)</p> <p>At present the request to which this document refers is to seek approval to begin the procedure of creating the compulsory purchase orders and side road orders required to ensure that the authority has the land along the route available.</p> <p>At present there is no impact on persons with protected characteristics.</p>	

Section 11. If the proposal is to be implemented how will you find out how it is really affecting people? (How will you monitor and review the changes?)

At present the proposal has no impact on persons with protected characteristics and so there is no means of measuring the impact.

Section 12. Action plan. List any actions you need to take which have been identified in this EIA, including post implementation review to find out how the outcomes have been achieved in practice and what impacts there have actually been on people with protected characteristics.

Action	Lead	By when	Progress	Monitoring arrangements

Section 13. Summary Summarise the findings of your EIA, including impacts, recommendation in relation to addressing impacts, including any legal advice, and next steps. This summary should be used as part of the report to the decision maker.

The A59 Kex Gill Diversion Scheme is a significant piece of work within the Highways and Transportation service. Although, when delivered, it will have a positive impact on all members of the public, including those with protected characteristics, there will be times when the project will have the potential for adverse impacts.

For this reason, it is expected that this EqIA will be amended to include assessments made at such times.

At the present time, however, the nature of the report that the executive is considering has no impact on persons with protected characteristics.

Section 14. Sign off section

This full EIA was completed by:

Name: K Moody
Job title: Major Projects Manager
Directorate: Business and Environmental Services
Signature:

Completion date: 3 October 2019

Authorised by relevant Assistant Director (signature): *Barrie Mason*

Date: 02 10 2019

This page is left intentionally blank