



Supplementary Agenda

Meeting: Executive

To: Councillors Carl Les (Chairman), Gareth Dadd, Derek Bastiman, David Chance, Keane Duncan, Michael Harrison, Simon Myers, Janet Sanderson, Greg White and Annabel Wilkinson.

Date: Tuesday, 19th July, 2022

Time: 11.00 am

Venue: Council Chamber, County Hall, Northallerton, DL7 8AD

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The government position is that of learning to live with COVID-19, removing domestic restrictions while encouraging safer behaviours through public health advice. In view of this, hand cleanser and masks will be available for attendees upon request. The committee room will be well ventilated and attendees encouraged to avoid bottlenecks and maintain an element of social distancing. Please contact the named supporting officer for the committee, if you have any queries or concerns about the management of the meeting and the approach to COVID-19 safety.

Please do not attend if on the day you have COVID-19 symptoms or have had a recent positive Lateral Flow Test.

Business

4. **Exclusion of the public from the meeting during consideration of each of the items of business listed in Column 1 of the following table on the grounds that they each involve the likely disclosure of exempt information as defined in the paragraph(s) specified in column 2 of Part 1 of Schedule 12A to the Local Government Act 1972 as amended by the Local Government (Access to information)(Variation) Order 2006:-**

Item number on the agenda	Paragraph Number
Item 11 - Appendix B	3

11. **A59 Kex Gill Diversion Contract Award**

(Pages 3 - 20)

Barry Khan
Assistant Chief Executive
(Legal and Democratic Services)

County Hall
Northallerton

Wednesday, 13 July 2022

North Yorkshire County Council

Executive

19 July 2022

Major Highway Schemes A59 Kex Gill Diversion

Report of the Corporate Director – Business and Environmental Services

This report contains exempt information as described in paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (as amended) (information relating to the financial or business affairs of any particular person (including the authority holding that information)) and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

1.0 Purpose of Report

- 1.1 To provide an update on the progress of the A59 Kex Gill diversion.
- 1.2 To award the works contract to a 'preferred bidder'.
- 1.3 To request an increased budget provision, following return of construction tenders.

2.0 Background

- 2.1 The A59 is a key trans-Pennine route, which runs between Skipton and Harrogate. There is a long history of land instability and slippage above the A59 to the west of Blubberhouses at Kex Gill.
- 2.2 This movement has caused a number of landslides leading to a closure or restrictions upon the A59 for several weeks on twelve occasions since the year 2000. As a result, the road and hillside is subject to ongoing monitoring and periodic interventions to ensure the safety of the travelling public. As part of this ongoing monitoring and intervention, works to ensure that the slope drainage system is operating as efficiently and effectively as possible are due to commence during late July 2022, lasting for four weeks.
- 2.3 As a result of ongoing slope instability, there remains a high risk that there will be further landslips in the future, which could potentially result in long term closures of the route, severely impacting connectivity between Skipton and Harrogate. Conversely there is a risk to public safety and economic disruption.
- 2.4 Whilst short to medium term management measures are continually being undertaken, the County Council recognised that in the longer term there was a need to develop proposals for a permanent solution. This would require a major realignment of the route. As such, improvements to the A59 at Kex Gill are identified within the County Council's Local Transport Plan, Strategic Transport Prospectus and also within the York, North Yorkshire and East Riding Local Enterprise Partnership's Strategic Economic Plan.

- 2.5 Following detailed Geotechnical Investigation and evaluating 16 potential route options, Executive approved the preferred route on 24 July 2018 which represented the best engineering, most deliverable and cost effective solution in an area where the ground is stable on the northern side of the valley, opposite the A59's current southern location. See Appendix A for the project design layout.
- 2.6 The detailed design is complete; Outline Business Case approval was gained from the Department of Transport (DfT) and during February 2021 confirmation was received of programme entry for the project to the DfT Large Local Majors Programme, where the project is ranked strategically as a national top 10 priority.

3.0 Progress Update

Statutory Procedures

- 3.1 Three statutory procedures are being followed to acquire the necessary land acquisitions and access rights, all are in the latter stages of completion:-
- The Planning Inspector (PINS) has approved continuation onto statutory advertising of the Common Land exchange; the Order is live until 19 July for public comment
 - The Duchy of Lancaster has instructed their solicitor to produce a draft agreement for loss of mineral rights within the affected moorland; legal process nearing a conclusion.
 - The Compulsory Purchase Orders (CPO) plus Side Roads Order (SRO) are anticipated to have no outstanding objections so there would be no requirement for an Inquiry prior to confirmation.

The Planning Application approved on 12 January 2021, contains 45 Conditions of which 19 are classified as pre-commencement, that the works Contractor will be responsible for discharging. The works tender incorporated these Planning actions and it is intended to requisition in advance of the main contract award to enable the milestone programme to meet its targeted dates.

Construction Tender

- 3.2 Construction tenders were first released during mid-2021 and returned in September of that year; three bids from market leading contractors were received. Under the terms of the contract these bids were valid for six months, expiring in March 2022. It became evident during 2021 the statutory processes would not be complete to coincide with award of the contract, implicating a re-pricing exercise during 2022 when project wide milestones aligned.
- 3.3 The pricing evaluation has now been completed, with all original bidders submitting a revised price, returned on 27 June 2022. In the intervening time, market conditions have become more volatile for several world event factors, resulting in high inflation and placing pressure on pricing strategy; in this case for project completion in mid-2025. Analysis of tendered component rates, shows a pro-rated increase across all items, while earthworks and highway surfacing shows a greater rise, ostensibly due to rises in bitumen market and plant fuelling costs. Of note is government legislation on the 1 April 2022 that banned the use of red diesel, so construction plant now has to pay the forecourt price, which has coincided with the rising price per litre.

3.4 Cost certainty is a primary feature of a pending Full Business Case to the DfT (to be submitted late July 2022), so inflation risk was contractually placed upon bidders, as opposed for the Employer to capture this risk. While the latter would have garnered potential lower entry level bids from the market, the Council's liability for future escalating inflation outweighed potential bid pricing gains and also conferred uncertainty of outturn costs.

3.5 New bids have been received and details are provided confidentially in Appendix B.

Tender Evaluation

3.6 The tender is evaluated on a price / quality basis (70/30%) with quality submissions evaluated in 2021. As the works scope has not changed; bidders were invited to submit revised prices only as a result of the delay in the scheme.

3.7 The contract model utilised is NEC3 Engineering and Construction (ECC) contract for construction works. These contract forms are published in the form of a set of core clauses with a range of main and secondary option clauses, along with a bespoke schedule of amendments enabling scheme specific contracts to be produced to reflect individual requirements. NYCC as the Employer chose to proceed with an Option A contract (Priced Contract with Activity Schedule).

3.8 Following completion of the full evaluation process, the Gate 3 recommendation has been drafted and circulated in accordance with the Council's Constitution: Procurement and Contract Procedure Rules. A resume of the tender evaluation is contained in the confidential Appendix B.

4.0 Decision point 1

4.1 Following a procurement exercise, permission is sought to proceed to award the contract to the successful tenderer. This award will be subject to receipt of the funding for the project from DfT. Upon confirmation of the funding from the DfT, the Council will proceed to entering into the contract.

4.2 As a precursor to being awarded the full works contract the preferred bidder will support submission of the Full Business Case to DfT, prepare the contractual works programme, develop value engineering solutions to potentially reduce works cost and also engage upon pre commencement planning conditions. This advance output has a bid cost of £360k, which will be funded from the NYCC project allocation within the 22/23 capital plan. Full contract award is forecast during October 2022 when DfT provide the outcome to FBC evaluation and release access to project grant funding.

5.0 Finance

5.1 Grant funding was awarded by the DfT at £56.1million against the original baseline budget estimate of £61.6m and Executive allocated £4.95m from Capital Plan- Strategic Capacity Reserve on 14 Nov 2017, subsequently increased to £5.5m on 11 March 2021.

5.2 Financial implications of the new tender pricing and adjustment to baseline project cost is contained in the confidential Appendix B.

- 5.3 Value Engineering is being undertaken to reduce construction costs and to realise this opportunity further, ground investigation is being carried out on site to determine if retaining wall designs can be rationalised. The contractors experience can contribute to this outcome, where they are incentivised via a 50/50 cost savings share agreement if they deliver a cheaper solution to the Employer; early indications are that savings will be possible, but the extent of this will not be known until the value options are validated during the Autumn period.
- 5.4 Enquiries with the DfT for increased grant funding has garnered a negative response and a condition related to the DfT funding cap of £56.1m, contained in the existing funding offer is being referred to at this time.

6.0 Decision point 2

- 6.1 Following confirmation that the DfT will not fund the shortfall highlighted in paragraph 12.3 of Appendix B; other funding options are being explored.
- 6.2 Whilst other external funding options are considered, it is requested that a financial provision up to the project funding shortfall be made from the Brexit Reserve so that the scheme may progress. Should alternative funding sources be secured, whether in part or in full, the Reserve provision will be relinquished.
- 6.3 De-scoping the project to suit available budget is not possible due to fixed tie in location upon the existing highway, however value engineering options are currently being explored. Potential for cost overrun will be managed by engagement of a dedicated site contract supervisory team to ensure the risk budget is not exceeded, however, as with any large scale construction project there is a risk of unforeseen events leading to increased cost which would fall upon the Council.

7.0 Legal

- 7.1 Statutory process deliverables are currently ongoing pending completion of land sales, land exchange, land mineral rights and land access as described in section 3.1 of this report.
- 7.2 A procurement process has been undertaken via a call-off under the YORcivil Major Works Contractors Framework. Any award is conditional upon the outcome of the DfT business case and securing funding, along with the completion of the relevant statutory processes.

8.0 Equalities

- 8.1 Consideration has been given to the potential for any adverse equalities impacts arising from the recommendations of this report. It is the view of officers that the recommendations included in this report do not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010. However, it is worth noting as this is a major project the Equalities Impact Assessment is revisited at key points as the scheme progresses. See Appendix C.

9.0 Climate Change

- 9.1 There are no climate change issues arising from this report. A copy of the Climate Change Impact Assessment screening form is attached as Appendix D.

10.0 Recommendations

10.1 It is recommended that Members of Executive:

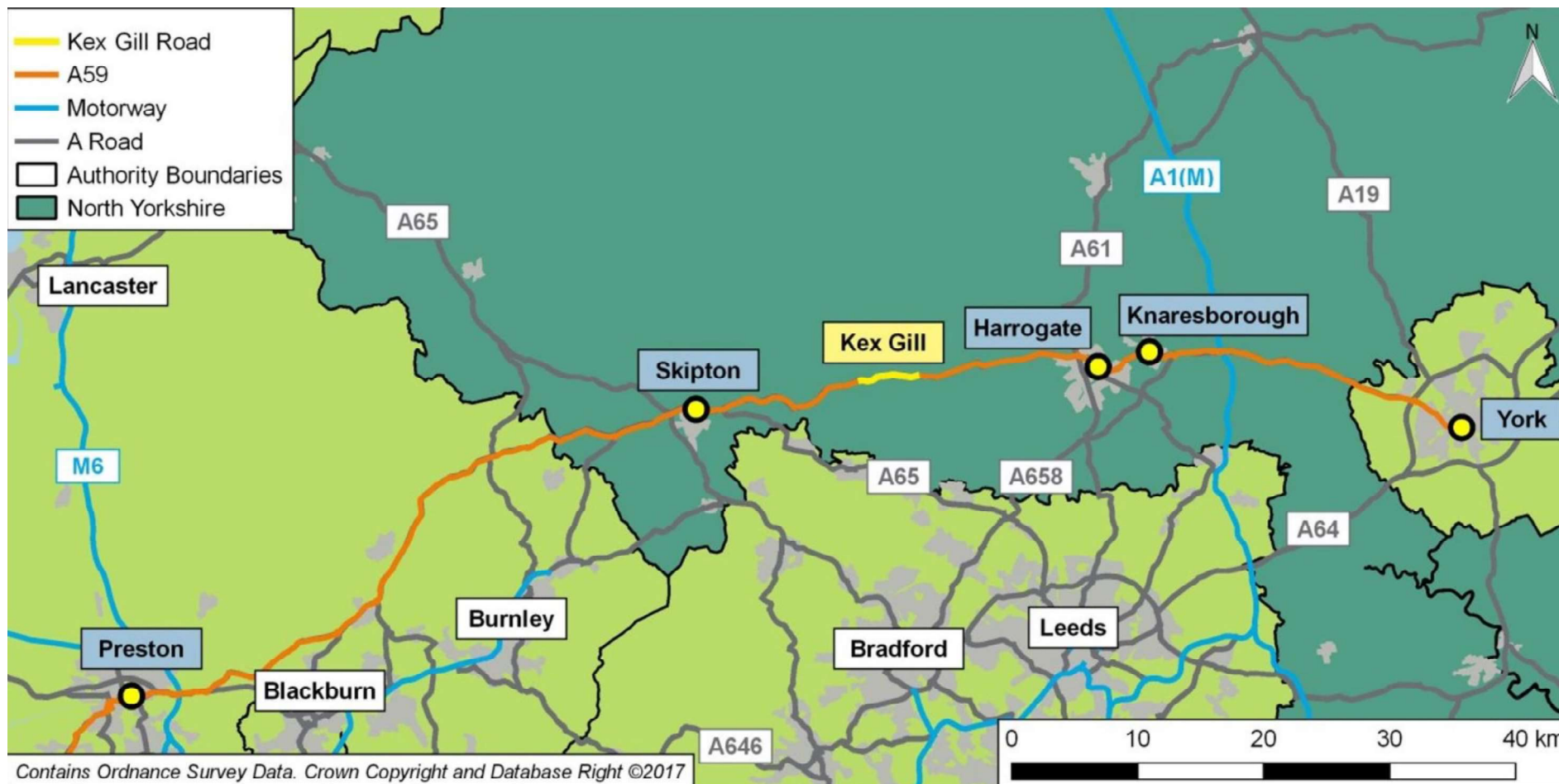
- (a) note progress achieved towards delivery of the A59 Kex Gill highway diversion;
- (b) approve the award of the procurement to the successful tenderer subject to receipt of the DfT funding and statutory processes being completed including the full financial assessment of the preferred bidder. Subject to these conditions being met, Executive is requested to delegate any decisions to proceed to enter into the contract and associated actions to the Corporate Director - Business and Environmental Services in consultation with the Corporate Director, Strategic Resources;
- (c) approve release of additional project funding from the Brexit Reserve of up to the shortfall amount contained in Appendix B.

KARL BATTERSBY
Corporate Director – Business and Environmental Services

Author of Report:
Richard Binks – Head of Major Projects and Infrastructure

Background Documents: A59 Kex Gill Outline Business Case
DfT grant funding award letter dated 1 February 2021
Executive Committee report 14 Nov 2017 and 11 March 2021

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Location plan, A59 / Kex Gill in regional / County context



A59 Kex Gill diversion route alignment, to northern valley side; circa 4km new highway and abandonment of existing on southern side.

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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Initial equality impact assessment screening form			
<p>This form records an equality screening process to determine the relevance of equality to a proposal, and a decision whether or not a full EIA would be appropriate or proportionate.</p>			
Directorate	BES		
Service area	H&T		
Proposal being screened	Major schemes development A59 Kex Gill		
Officer(s) carrying out screening	Richard Binks		
What are you proposing to do?	<ul style="list-style-type: none"> Update Members on progress of A59 Kex Gill Capital project Seek construction contractor preferred bidder status Seek increased project funding allocation 		
Why are you proposing this? What are the desired outcomes?	<ul style="list-style-type: none"> To increase member awareness of the project progression Following receipt of construction tenders a successful bidder requires appointment Following receipt of construction tenders the emerging project cost has increased. 		
Does the proposal involve a significant commitment or removal of resources? Please give details.	The project baseline cost has been updated and informed to a more definitive position following return of construction tenders; market conditions have seen rising inflation factors lift the project delivery cost by £7m.		
<p>Impact on people with any of the following protected characteristics as defined by the Equality Act 2010, or NYCC's additional agreed characteristics</p> <p>As part of this assessment, please consider the following questions:</p> <ul style="list-style-type: none"> To what extent is this service used by particular groups of people with protected characteristics? Does the proposal relate to functions that previous consultation has identified as important? Do different groups have different needs or experiences in the area the proposal relates to? <p>If for any characteristic it is considered that there is likely to be an adverse impact or you have ticked 'Don't know/no info available', then a full EIA should be carried out where this is proportionate. You are advised to speak to your Equality rep for advice if you are in any doubt.</p>			
Protected characteristic	Potential for adverse impact		Don't know/No info available
	Yes	No	
Age		X	
Disability		X	
Sex		X	
Race		X	
Sexual orientation		X	
Gender reassignment		X	
Religion or belief		X	
Pregnancy or maternity		X	

Marriage or civil partnership		X	
NYCC additional characteristics			
People in rural areas		X	
People on a low income		X	
Carer (unpaid family or friend)		X	
Does the proposal relate to an area where there are known inequalities/probable impacts (e.g. disabled people's access to public transport)? Please give details.	No.		
Will the proposal have a significant effect on how other organisations operate? (e.g. partners, funding criteria, etc.). Do any of these organisations support people with protected characteristics? Please explain why you have reached this conclusion.	No		
Decision (Please tick one option)	EIA not relevant or proportionate:	✓	Continue to full EIA:
Reason for decision	The project being developed should enhance, not inhibit, people's ability to access travel options and opportunities. This includes people with reduced mobility and increases east / west highway network reliance across the County, which is of strategic national travel importance for all to benefit from.		
Signed (Assistant Director or equivalent)	Barrie Mason		
Date	12 July 2022		



Climate change impact assessment

The purpose of this assessment is to help us understand the likely impacts of our decisions on the environment of North Yorkshire and on our aspiration to achieve net carbon neutrality by 2030, or as close to that date as possible. The intention is to mitigate negative effects and identify projects which will have positive effects.

This document should be completed in consultation with the supporting guidance. The final document will be published as part of the decision making process and should be written in Plain English.

If you have any additional queries which are not covered by the guidance please email climatechange@northyorks.gov.uk

Please note: You may not need to undertake this assessment if your proposal will be subject to any of the following:

Planning Permission
Environmental Impact Assessment
Strategic Environmental Assessment

However, you will still need to summarise your findings in in the summary section of the form below.

Please contact climatechange@northyorks.gov.uk for advice.

Title of proposal	Major Highway Schemes A59 Kex Gill Diversion
Brief description of proposal	Progress update on A59 Kex Gill Diversion
Directorate	BES
Service area	Major Projects and Infrastructure
Lead officer	Richard Binks
Names and roles of other people involved in carrying out the impact assessment	na
Date impact assessment started	04/07/2022

Options appraisal

Were any other options considered in trying to achieve the aim of this project? If so, please give brief details and explain why alternative options were not progressed.

The project contained in this report underwent an extensive options development phase which saw 16 design configurations evaluated before taking forward the option which delivers the best value, deliverability and engineering outcome to detail design and tendering.

When delivering schemes consultation is carried out with residents and stakeholders to ensure that they are the correct schemes and that a consistent approach is taken to introducing carbon neutral measures within the build landscape and attendant public safety is captured.

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

Please explain briefly why this will be the result, detailing estimated savings or costs where this is possible.

Impact upon Council Capital financial budget is to the fore; while the project is in receipt of generous grant funding up to £56.1million the whole project cost is forecast to be £68.55m. This places a call for £12.45m from Council Capital reserves, an increase of £7m over prior commitment of £5.5m.

Large major highway focused projects such as Kex Gill are generally externally funded, in this case up 82% of total cost; no cost increases are directly related to climate change and tendered solutions require a commitment from bidders to demonstrate green credentials, use of local supply chains and resources within their quality bid in association with price.

It was intended that the project will be delivered with the funding that has been offered by the DfT and the originally approved County Council funding contribution, however current extraordinary market inflation conditions have resulted in higher tendered bids being returned than forecast, a situation which is being widely felt across the sector and wider economy, largely brought about by world events such as the pandemic and Ukraine war.

How will this proposal impact on the environment? N.B. There may be short term negative impact and longer term positive impact. Please include all potential impacts over the lifetime of a project and provide an explanation.		Positive impact (Place a X in the box below)	No impact (Place a X in the box below)	Negative impact (Place a X in the box below)	Explain why will it have this effect and over what timescale? Where possible/relevant please include: <ul style="list-style-type: none"> Changes over and above business as usual Evidence or measurement of effect Figures for CO₂e Links to relevant documents 	Explain how you plan to mitigate any negative impacts.	Explain how you plan to improve any positive outcomes as far as possible.
Minimise greenhouse gas emissions e.g. reducing emissions from travel, increasing energy efficiencies etc.	Emissions from travel	*			improved network efficiency; less road closures and long diversion routes		
	Emissions from construction			*	sustainable material supply chains, improved construction plant and company carbon neutral commitments will support cleaner construction activities to minimise the impact of construction activities		
	Emissions from running of buildings		*		na		
	Other		*		na		
Minimise waste : Reduce, reuse, recycle and compost e.g. reducing use of single use plastic		*			Recycled material will be incorporated in design and construction as achievable		
Reduce water consumption		*			Marginal improvements vis improved highway drainage		
Minimise pollution (including air, land, water, light and noise)	*				Air quality improvements applicable to increased highway network efficiency and resilience		

<p>How will this proposal impact on the environment?</p> <p>N.B. There may be short term negative impact and longer term positive impact. Please include all potential impacts over the lifetime of a project and provide an explanation.</p>	<p>Positive impact (Place a X in the box below)</p>	<p>No impact (Place a X in the box below)</p>	<p>Negative impact (Place a X in the box below)</p>	<p>Explain why will it have this effect and over what timescale?</p> <p>Where possible/relevant please include:</p> <ul style="list-style-type: none"> • Changes over and above business as usual • Evidence or measurement of effect • Figures for CO₂e • Links to relevant documents 	<p>Explain how you plan to mitigate any negative impacts.</p>	<p>Explain how you plan to improve any positive outcomes as far as possible.</p>
<p>Ensure resilience to the effects of climate change e.g. reducing flood risk, mitigating effects of drier, hotter summers</p>	*			<p>Improvement to valley slope stability; reduce risk of landslides.</p>		
<p>Enhance conservation and wildlife</p>	*			<p>Projects include comprehensive ecology interventions ranging from creation of wetlands, new coppices, habitat investment, nesting sites and respect of wildlife seasons.</p>		
<p>Safeguard the distinctive characteristics, features and special qualities of North Yorkshire's landscape</p>	*			<p>Project is designed to enhance the natural beauty of NY landscape and follow the natural terrain, while converting the existing highway back to moorland where possible.</p>		
<p>Other (please state below)</p>		*				

Are there any recognised good practice environmental standards in relation to this proposal? If so, please detail how this proposal meets those standards.

Project design complies with all current good practice or regulatory guidance / statutes and has undergone a rigorous assessment by the Department for Transport during Business Case development to ensure national standards are being adhered to.

Summary Summarise the findings of your impact assessment, including impacts, the 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.

Development of this Major Project has encapsulated strategic directives to support proactive climate change features within design and construction. The A59, a strategic east / west principal highway route across the southern region of the county is regularly interrupted by landslides in this valley location high upon the Pennine hill chain. Weather events in this remote location feel the full force of increased storm conditions plus intensity, which generate afore noted land instability. The new route will provide additional resilience to anticipated climate change impacts – ie storm, flash floods, which will grow in intensity and frequency.

Next steps focus upon progress towards construction delivery on site and include completion of statutory land acquisition processes, appointment of works contractor following recent receipt of tenders, submission of Full Business Case to the DfT to enable full access to grant monies and discharging of Planning Conditions, many of which relate to ecology and environment considerations.

Sign off section

This climate change impact assessment was completed by:

Name	Richard Binks
Job title	Head of Major Projects and Infrastructure
Service area	Highways and Transportation
Directorate	BES
Signature	RJBinks
Completion date	04/07/2022

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

Date: 12 July 2022

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