



Agenda

Notice of a public meeting of Environment Directorate - Assistant Director - Highways and Transportation and Executive Member - Highways and Transportation

To: Councillor Keane Duncan.
Date: Wednesday, 20th December, 2023
Time: 9.00 am
Venue: via Microsoft Teams

Business

Items for Assistant Director – Highways and Transportation decision

1. Options Appraisal for Highway Engineering Design and Consultancy (2020) (*Pages 3 - 16) – part exemption*)

Barry Khan
Assistant Chief Executive
(Legal and Democratic Services)

County Hall
Northallerton

15 December 2023

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North Yorkshire Council

Environment Directorate

Executive Members

20 December 2023

Options Appraisal for Highway Engineering Design and Consultancy

Report of the Head of Commercial – NY Highways

Appendices 1 & 2 contain information of the type defined in paragraph 3 of Part 1 of Schedule 12A Local Government Act 1972 (as amended) as they contain information relating to the business affairs of Align Property Services Limited 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 seek approval from the Assistant Director, Highways and Transportation, Parking Services, Street Scene, Parks and Grounds, in consultation with the Executive Member for Highways and Transportation to proceed with Option 3 outlined below for the transfer of highway engineering design and consultancy services to Align Property Services (APS) with a top-up service for specialist services through existing external multi-consultant frameworks, from 01 April 2024.

2.0 BACKGROUND

- 2.1 North Yorkshire Council (NYC) as a highway authority has a requirement for highway engineering and design services, currently provided through an in-house design team and supported by a 4-year framework contract with WSP UK Limited. This framework expires on 31 March 2024 and to ensure continuity of these services an options appraisal has been undertaken to identify how the services will be delivered from 01 April 2024.
- 2.2 Align Property Services is a wholly owned “Teckal” company of the Council, who can provide engineering and design services and opens up a possible alternative service direction. To establish the viability of this, an options appraisal was carried out. Align Property Services was established as a Teckal company from 01 December 2023 and took over the NYC contract from Align Property Partners (APP) from that date.
- 2.3 The options appraisal was carried out in two stages. Stage 1 outlined six potential options available to the Council which included another framework contract like the current arrangement, a collaborative arrangement with another Authority, bringing the service totally in-house or variations of this which included a support element, two of which included support from APP (now APS) in some form. The Stage 1 report recommended that two of the six options be reviewed in more detail: Option 2 in-house design with support from APP (APS); and Option 3 in-house design with support from APP (APS) and a top-up multi consultant framework.
- 2.4 Following a detailed review of these options at Stage 2 of the process, the preferred option is to maintain the in-house provision at its current level, with support from APS on the core elements of the service with further support from external multi-consultant frameworks for

the more specialist elements of the service as and when they arise. A copy of the Stage 1 and Stage 2 reports are attached as Appendix 1 and Appendix 2.

2.5 As APS is a wholly owned “Teckal” company of the Council there is no requirement to carry out a procurement exercise. The Council can directly award the contract to APS enabling these services to transfer to APS from the 01 April 2024.

2.6 Due to the Corporate Director of Environment being a Director of APS, this decision has been delegated to the Assistant Director, Highways and Transportation, Parking Services, Street Scene, Parks and Grounds, to avoid any conflict of interest.

3.0 HIGHWAY ENGINEERING DESIGN & CONSULTANCY SERVICES (HEDC) POST MARCH 2024

3.1 The options for review at Stage 2 of the options appraisal process (using the original option number from Stage 1) are as follows:

- Option 2 In-house delivery with support from Align Property Services (APS) and;
- Option 3 In-house delivery with support from APS and a top-up from existing external multi-consultant frameworks.

Full details of the options can be found in the report contained in Appendix 1, Options Appraisal for Highway Engineering Design & Consultancy Stage 2.

3.2 A high-level comparison of services currently covered by WSP was carried out to identify which type of services APS could provide to support the in-house team, the main areas being the ‘core’ design services of highway design and resurfacing and reconstruction schemes. This also highlighted where there were possible service gaps, particularly in terms of more specialist capability and knowledge.

3.3 The options were considered in more detail, identifying their relative strengths and weaknesses in various areas including, but not limited to, the types of service that can be delivered, any potential gaps in skill and capabilities of the provider, how the services will be ordered, delivered, and managed, overall contract management, and the internal capabilities with regard the commissioning process and any procurement process. Where weaknesses are identified possible mitigation was also considered.

3.4 Under Option 2, APS, as the sole provider in addition to the in-house design team, would provide many of the benefits of the current HEDC framework with WSP, namely: ability to provide core services, a simpler contract management approach with one supplier to manage, a local service as APS are based in Northallerton, one set of pricing (hourly rates) which is beneficial for managing commissions within allocated budgets, simplified commission process where the supplier can provide support if required, single supplier support providing advice and the opportunity to discuss commissions and requirements which leads to more accurate commissions in terms of detail and price, and flexibility due to non-exclusivity.

3.5 The key consideration with Option 2 is APS’s current capacity and ability to provide all of the core design services and the more specialist services. While APS can look to expand their skill base in the medium to long term, in the immediate term this leaves a gap in service provision. It is possible that Transfer of Undertakings (Protection of Employment) Regulations (2006) (TUPE) may apply to those WSP staff specifically employed to work on this framework for the Council (or who predominately work on Council matters). This transfer of knowledgeable staff could help to fill that gap, however there is no guarantee that any or all eligible staff would transfer as they do have the opportunity to object. Should any staff transfer to APS, it may not be possible to understand what their experience, skills and capabilities are in advance, to ensure any specific gaps could be filled this way.

- 3.6 To deal with the issues raised in paragraph 3.5 above, a viable alternative is a top-up support service via existing external multi-consultant frameworks (Option 3), including but not limited to YorConsult2, NEPO, ESPO or Crown Commercial Services, other frameworks are also available for NYC use, including a new framework currently being tendered by the City of York Council where NYC will be a named Contracting Authority. Initially, while APS build up their resource base, they will be offered all new commissions, and shall have five days to accept or reject the commission. If a commission is rejected this will then be resourced via a suitable external framework. The appropriate framework will be identified at the point the works are required, supported by the Council's Procurement team and an additional resource to co-ordinate, support and manage the clients' requirements and the service itself.
- 3.7 Option 3 has many of the benefits of Option 2, however there are points to consider around the top-up service element. APS currently do not have the skills or resources to undertake certain types of design work. Where APS cannot deliver the required service, these designs will be awarded to an external consultant through one of the existing external frameworks, as described in 3.6 above. The inclusion of utilising an external multi-consultant framework as a top-up may increase the level of contract management required in terms of preparing, running, and awarding call-off packages of work, and the resulting supplier and relationship management requirements on active commissions. It should also be noted that while the framework pricing will be known for these frameworks, prices will differ across suppliers therefore the actual cost will not be clear until the further competition process has been completed. Steps can be taken to mitigate this, the additional resource to manage and co-ordinate this, clear and detailed commission briefs and warming of framework suppliers as part of the procurement process.
- 3.8 Considering 3.5 to 3.7 above (the ability to provide specialist services), the Stage 2 report concludes that option 3 is the most viable option for the future of the HEDC services as it provides the benefits of Option 2 and mitigates the immediate shortage of capability, skill, and experience to provide more specialist services, until such time as APS can undertake this work themselves. Please note paragraphs 6.6 and 6.7 in relation to the insurance position between the Council and APS.

4.0 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Stage 1 of the options appraisal considered six options in total, and the four alternative options are:
- In-house with support through a single provider framework like the current arrangement
 - Bring the service totally in-house
 - In-house with support through an internal or external multi-consultant framework
 - A collaborative approach with another Local Authority such as the City of York

5.0 FINANCIAL IMPLICATIONS

- 5.1 APS, as a wholly owned "Teckal" company of the Council, will provide their services at agreed rates and will be expected to demonstrate value for money for the Council.
- 5.2 In the financial year 2022/23 WSP were commissioned for design and consultancy services by NYC at a total value of approximately £7.5M. Of this, £1.9 million (25.4%) was for, Highways Capital works (examples of applicable work include capital maintenance designs, bridge inspections, assessments and maintenance, slurry sealing, landslips, drainage schemes, supervision work, traffic works) that could be delivered by APS. However, the work and the value of it, will not necessarily be replicated in any single year going forward as it is solely dependent on design requirements and available funding. A recent estimate based on the current design requirements in 2024/25 indicates a consultancy requirement of £4m, the value of work likely to go to APS is around £1m, leaving around £3m to go to

external consultants. Proposed future highways capital maintenance budgets for 2025/26 and beyond could increase.

- 5.3 Undertaking further competitions through external multi-consultant frameworks should demonstrate value for money. It is unknown whether this will be a higher or lower cost than the current arrangement, but it will be based on the market price at the time of award.
- 5.4 We also anticipate that APS will benefit from this arrangement by developing their skills and capacity to enable them to secure other external works.

6.0 LEGAL IMPLICATIONS

- 6.1 The proposal may involve a possible transfer of staff from WSP UK Limited to APS under the Transfer of Undertakings (Protection of Employment) Regulations (2006) (TUPE).
- 6.2 The proposal (Option 3) involves the following contract awards:
a) direct award of the HEDC to APS; and
b) further awards (direct or further competition) through frameworks for specialist works that APS is unable to undertake.
- 6.3 The award to APS under (a) is compliant with the Public Contracts Regulations 2015 (“PCRs”). APS is a company wholly owned by the Council which complies with the “Teckal” exemption in Regulation 12 of the PCRs. Under this exemption, the Council is able to award work to its “Teckal” company without the need to undertake a procurement procedure.
- 6.4 Any further awards through external frameworks for specialist works (b) would be undertaken by the Council at the time that the work was required, as detailed in paragraph 3.6 above. This would involve undertaking procurement processes either through direct awards or further competitions under frameworks which are compliant with the PCRs. The Council will need to ensure such awards are compliant with the PCRs and the Council’s Procurement and Contract Procedure Rules.
- 6.5 The direct award to APS would be managed by way of a services contract which would set out the specification for works expected of APS. Council staff will be required to manage this contract to ensure the Council is achieving best value. Any awards through the frameworks would require legal and procurement advice at the time to ensure that the contracts were appropriate for the Council’s requirements.
- 6.6 APS and NY Highways Limited (along with a number of other wholly owned companies) are insured under the Council’s insurance programme. Under these circumstances, the Liability insurers treat the companies as the same entity as the Council and therefore will only consider claims from third parties, not for claims between the companies or between the companies and the Council. The Council’s Professional Indemnity policy will cover third party financial loss, caused due to the negligence of the Council and the companies. The policy will not cover financial loss incurred by the Council or one of the companies that is caused due to the negligence of the Council or one of the companies.
- 6.7 As described in the insurance position set out in paragraph 6.6 above, if something were to go wrong, the Council would not be able to claim against APS. Therefore, for certain matters the Council may consider putting the work out to external providers in order to be able to claim against the provider’s insurance. This would be recommended where the work is particularly complex or where there is a risk to the Council which would be mitigated by the relevant insurance cover. This should be a key consideration when determining what work should be put through APS and what work should be outsourced.

7.0 EQUALITIES IMPLICATIONS

7.1 The proposal is not expected to have an adverse impact on any of the protected characteristic groups. An Equality Impact Assessment form is included as Appendix 3.

8.0 CLIMATE CHANGE IMPLICATIONS

8.1 The proposal is not expected to have an adverse impact on climate change. A Climate Change Impact Assessment form is included as Appendix 4.

9.0 REASONS FOR RECOMMENDATIONS

9.1 Option 3 provides many of the same benefits of option 2 and provides an effective solution to the main issue of providing more specialist services in the short term.

10.0 RECOMMENDATION

10.1 To approve the transfer of the Council's engineering design and consultancy requirements to Align Property Services for the provision of core services, with the support of the existing in-house design provision and an external multi-consultant framework for specialist services (Option 3).

Appendices attached:

Appendix 1 – Options Appraisal for Highway Engineering Design and Consultancy Stage 1
(confidential)

Appendix 2 – Options Appraisal for Highway Engineering Design and Consultancy Stage 2
(confidential)

Appendix 3 – Equality Impact Assessment

Appendix 4 – Climate Change Impact Assessment

ANDREW BINNER

Head of Commercial - NY Highways Limited

Report Author – Claire Smart, Commercial Contracts Officer

Presenter of Report – Andrew Binner, Head of Commercial

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	Business and Environmental Services		
Service area	Highways and Transportation, Parking Services, Street Scene, Parks and Grounds		
Proposal being screened	Options Appraisal for Highway Engineering Design and Consultancy Services		
Officer(s) carrying out screening	Andrew Binner, Head of Commercial, NY Highways Claire Smart, Commercial Contracts Officer, NY Highways		
What are you proposing to do?	To ask for approval to transfer the current services on expiry of the contract on 31 March 2024 to Align Property Partners, to provide the core highways design services with a 'top-up' service from existing external multi-consultant frameworks when specialist services are required. This will support the existing in-house design service.		
Why are you proposing this? What are the desired outcomes?	To ensure the Council can access the required design and consultancy services on expiry of the current contract on 31 March 2024. The desired outcome is continuity of service in the most cost-effective manner.		
Does the proposal involve a significant commitment or removal of resources? Please give details.	The financial commitment will continue to be the same from a budget perspective. There may be a limited impact on the use of an external framework. There will be an additional person required to manage the service going forward.		
<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
	No	Yes	
Age	No		
Disability	No		
Sex	No		
Race	No		
Sexual orientation	No		

Gender reassignment	No		
Religion or belief	No		
Pregnancy or maternity	No		
Marriage or civil partnership	No		
NYCC additional characteristics			
People in rural areas	No		
People on a low income	No		
Carer (unpaid family or friend)	No		
Are from the Armed Forces Community	No		
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 decision to transfer the services to Align Property Partners and utilise existing external frameworks where required, will have no adverse impact on any of the protected characteristic groups.		
Signed (Assistant Director or equivalent)	Barrie Mason		
Date	08/12/2023		



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.

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Title of proposal	Options Appraisal for Highway Engineering Design and Consultancy Services
Brief description of proposal	To ask for approval to transfer the current services on expiry of the contract on 31 March 2024 to the Council owned company, Align Property Partners, to provide the core design services with a 'top-up' service from existing external multi-consultant frameworks when more specialist services as required, to support the existing in-house design service.
Directorate	Business and Environmental Services
Service area	Highways and Transportation, Parking Services, Street Scene, Parks and Grounds
Lead officer	Andrew Binner, Head of Commercial, NY Highways

Names and roles of other people involved in carrying out the impact assessment	Claire Smart, Commercial Contracts Officer, NY Highways
Date impact assessment started	10 August 2023

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.

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- In-house with support through a single provider framework like the current arrangement – another framework would need to be a new tender exercise with its associated costs, and there is no guarantee that prices would not be higher than they currently are and there is no control over pricing over the course of the contract. This offers no flexibility to the Council.
- Bring the service totally in-house – the Council does not have the resource to cover all of these services and this option would require significant recruitment with an increase in cost to the Council.
- In-house with support through an internal or external multi-consultant framework – costs are an unknown factor and could be significantly more than other options with each commission would be a new tender/call-off process
- A collaborative approach with another Local Authority such as the City of York – this would be a long process identifying partners, balancing political agendas and management of such an arrangement and would involve a procurement process and could lead to higher prices.
- In-house with support solely from Align Property Partners – this would not cover all aspects of the service required as the company does not currently have the resource, skills and capability to provide more specialist services.

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.

It is anticipated this should be cost neutral due to a balance between lower costs to provide the core services and potentially higher costs to procure more specialist services from an existing multi-consultant external framework. It is not possible to quantify any estimated savings at this time as it depends on the requirements of individual commissions. Align Property Partners will be working on a “cost” basis which should reduce spend on Capital scheme design.

<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 where relevant)</p>	<p>No impact (Place a X in the box below where relevant)</p>	<p>Negative impact (Place a X in the box below where relevant)</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>Minimise greenhouse gas emissions e.g. reducing emissions from travel, increasing energy efficiencies etc.</p>	<p>Emissions from travel</p>	<p>x</p>		<p>There should be no negative impact in terms of travel to sites as the same site visits will be undertaken in line with client requirements. Teams is commonly used for business meetings where face to face is not required and will continue reducing travel.</p> <p>Potential positive impact as there may be reduced or no travel for business within or outside of the UK (currently there is some of this travel) but we cannot be sure as don't know what APP may do in the future in terms of new staff for example.</p>	<p>APP will refer to the climate change strategy followed by the Council in its business travel.</p>	
	<p>Emissions from construction</p>	<p>x</p>		<p>No impact anticipated, no construction</p>		

How will this proposal impact on the environment?		Positive impact (Place a X in the box below where relevant)	No impact (Place a X in the box below where relevant)	Negative impact (Place a X in the box below where relevant)	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.
Page 13	Emissions from running of buildings		x		The service will move to another Northallerton office – standard office building with similar emissions so no impact anticipated.	APP will refer to the climate change strategy followed by the Council in running its office.	
	Other		x		N/A		
Minimise waste : Reduce, reuse, recycle and compost e.g. reducing use of single use plastic			x		No anticipated impact, it is anticipated that the office environment will be the same/similar to others.	APP will refer to the climate change strategy followed by the Council in running the office in terms of recycling, etc.	
Reduce water consumption			x		No anticipated impact, it is anticipated water consumption will be the same or similar to other standard offices/buildings.	APP will refer to the climate change strategy followed by the Council in	

<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 where relevant)</p>	<p>No impact (Place a X in the box below where relevant)</p>	<p>Negative impact (Place a X in the box below where relevant)</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>Page 7</p>					<p>running the office in terms of water consumption.</p>	
<p>Minimise pollution (including air, land, water, light and noise)</p>		<p>x</p>		<p>No anticipated impact, same or similar to any other standard office.</p>	<p>APP will refer to the climate change strategy followed by the Council in running the office.</p>	
<p>Ensure resilience to the effects of climate change e.g. reducing flood risk, mitigating effects of drier, hotter summers</p>		<p>x</p>		<p>No anticipated impact.</p>	<p>Ensure APP work to the climate change strategy followed by the Council in its design work.</p>	
<p>Enhance conservation and wildlife</p>		<p>x</p>		<p>No anticipated impact.</p>	<p>Ensure APP work to the climate change strategy and any others relevant to this service, followed by</p>	

<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 where relevant)</p>	<p>No impact (Place a X in the box below where relevant)</p>	<p>Negative impact (Place a X in the box below where relevant)</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>Page 5</p>					<p>the Council, in its design work.</p>	
<p>Safeguard the distinctive characteristics, features and special qualities of North Yorkshire's landscape</p>		<p>x</p>		<p>No anticipated impact.</p>	<p>Ensure APP work to the climate change strategy and any others relevant to this service, followed by the Council, in its design work.</p>	
<p>Other (please state below)</p>		<p>x</p>		<p>Data movement. Assuming similar data practices continue (Teams etc), no impact anticipated. Potential positive impact on reduction of email traffic with large attachments. Data moved via one shared location everyone can access.</p>	<p>Ensure APP continue to follow current practice with regard data.</p>	

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

None

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.

In summary, there is no negative impact anticipated on the proposed option for these services – it will remain a local service with a standard office accommodation and similar travel arrangements for site visits, but there is some potential for a positive impact in terms of reduced emissions due to potential reduction in other business travel. APP will follow the same strategy for climate change as the Council in running its business and providing the services. This will apply to all commissions scoped to the Council's specification and in line with their requirements.

The recommendation is for no further action.

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Sign off section

This climate change impact assessment was completed by:

Name	Claire Smart
Job title	Commercial Contracts Officer
Service area	Commercial
Directorate	NY Highways Limited
Signature	C Smart
Completion date	24 August 2023

Authorised by relevant Assistant Director (signature): Barrie Mason

Date: 08/12/2023