



Environment Agency

KENDAL FLOOD RISK MANAGEMENT SCHEME PHASE 1

Application for consent to carry out works on Common Land - Proposed works at New Road Common, Kendal Supporting Statement





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Supporting Statement

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APPENDICES

APPENDIX A

PROPOSED WORKS IN RELATION TO THE COMMON LAND BOUNDARY



1 INTRODUCTION

1.1 BACKGROUND

Following the Storm Desmond flood event in December 2015, the Environment Agency (EA), Cumbria County Council (CCC), South Lakeland District Council (SLDC), United Utilities and other partners including the local community worked together to identify options to seek to address the complex flood issues that affect the area. As part of this work, various options have been considered, culminating in development of the proposed Kendal Flood Risk Management Scheme (“the Scheme”). The Scheme has been designed to improve resilience against flooding and incorporates sections of linear defences, walls and embankments known as Reaches along 6 kilometres of the Rivers Kent and Mint.

As part of the Scheme, the EA proposes to undertake flood risk management works to improve the resilience of the urban area around the A65 between Miller Bridge (a Scheduled Ancient Monument) and the newly constructed Gooseholme Footbridge in central Kendal. The proposed works are known as Reach F3 and require flood risk development with a permanent above ground footprint of 137m² / 0.01 hectares within land designated as common land, known as New Road Common.

2 LEGAL FRAMEWORK AND POLICY CONTEXT

2.1 THE EA'S STATUTORY POWERS AND THE PROPOSED SCHEME WORKS AT NEW ROAD COMMON

The EA is a public body with jurisdiction over main rivers and strategic oversight for flood risk in England. Subject to certain exceptions contained in the Water Resources Act 1991 ("the 1991 Act") the EA is not generally required to obtain consent prior to undertaking its flood risk management works since it uses its powers to carry out flood risk management works contained in section 165 of the 1991 Act (as amended by the Flood and Water Management Act 2010) combined with the powers of entry under section 172 of the 1991 Act.

Section 165 of the 1991 Act provides the EA with extensive statutory powers to carry out works required for the delivery of its flood risk management schemes and flood risk management works. These include powers to maintain and improve existing flood risk management works and to construct new works. There are two conditions on the exercise of these powers: (1) that the EA considers the works are desirable having regard to the National Flood and Coastal Erosion Risk Management Strategy, and (2) that the purpose of the work is to manage a flood risk from the sea or a main river. These conditions have been met in respect of the EA's proposed Scheme.

The EA wishes to undertake the flood risk management works, which are more fully described at sections 4 – 7 of this Supporting Statement, at New Road Common as part of the Scheme ("the proposed Scheme Works"). The EA's statutory powers under the 1991 Act are not stated to apply to common land, therefore the EA's proposed Scheme Works at New Road Common are subject to the provisions of the Commons Act 2006 ("the 2006 Act").

2.2 THE 2006 ACT

Section 38 of the 2006 Act provides that consent from the Secretary of State is required to carry out 'restricted works' on:

- any land registered as common land;
- land not registered as common land which is:
 - regulated by an Act made under the Commons Act 1876 confirming a provisional order of the Inclosure Commissioners; or
 - subject to a scheme under the Metropolitan Commons Act 1866 or the Commons Act 1899;
- land which does not fall into either of the above categories, but which is in the New Forest and is subject to rights of common.

Section 38(2) of the 2006 Act provides that 'restricted works' are:

- works which have the effect of preventing or impeding access to or over any common land, including in particular:
 - the erection of fencing;
 - the construction of buildings and other structures;
 - the digging of ditches and trenches and the building of embankments;
- works for the resurfacing of land.

Such works include (but are not limited to)-

- (a) *the erection of fencing;*
- (b) *the construction of buildings and other structures;*
- (c) *the digging of ditches and trenches and the building of embankments.*

A scheme of regulation and management under the Commons Act 1899 (“**the Scheme of Management**”) introduced the right of access for public recreation in respect of various pieces of land in Kendal. New Road Common is one such area of land regulated by the Scheme of Management, which was approved by order of the Board of Agriculture and Fisheries on 8th March 1910. Article 5 of the Scheme of Management provides:

“The inhabitants of the district shall have a right of free access to every part of the common and a privilege of playing games and of enjoying other species of recreation thereon, subject to any byelaws made by the Council under this scheme.”

The land at New Road Common was registered as a common under the Commons Registration Act 1965, however, no rights of common were ever registered. Since no rights of common were registered under the Commons Registration Act 1965, they can no longer be exercised.

In the absence of specific registered rights of common, however, the EA recognises that the public rights of recreation remain protected in law, separate and distinct from the rights of common (*Norbrook Laboratories & Ors v Carlisle City Council* [2014]). The rights protected for the purposes of the EA’s proposed Scheme Works are the rights of local inhabitants to free access to every part of the common land for the purposes of recreation.

The land at New Road Common is used by Taylor’s Fair for its twice yearly fair. It is understood that Taylor’s Fair has the benefit of a Royal Charter which allows it to use the land. The EA has not had sight of the Royal Charter, but it is believed to date back to 1309 and allows Marmaduke de Tweng and William de Ros of Kendal (and their heirs) to hold a fair at the “Market Place and Fairground”. SLDC’s report to cabinet dated 30 August 2017 confirms that archive photographs and pictures dating back to Victorian times show a fair being held on New Road and in the River Kent and so it is assumed that the fairground is what is now known as New Road. The EA acknowledges that the fair is an important event in the recreational and social calendar of Kendal and has accordingly sought to ensure the design of the proposed Scheme Works does not impact on the fair’s activities.

2.3 THE PROPOSED SCHEME WORKS - RESTRICTED WORKS

The EA recognises that the types of works that do not require consent are interpreted narrowly, particularly where the purpose of any such works is not primarily for recreational or agricultural purposes. The EA acknowledges that the proposed Scheme Works are not primarily for the purposes of recreation or agriculture, however, the proposed Scheme Works are in the public interest – the public benefits associated with the proposed Scheme Works and the public interest factors are further explained in section 7.4 of this Supporting Statement.

Since the EA’s proposed Scheme Works are restricted works, if the EA wishes to carry out the proposed Scheme Works, the land at New Road Common must (i) be deregistered as common land by way of an application under section 16 of the 2006 Act; or (ii) permission must be granted for the restricted works by an application for consent to undertake works pursuant to section 38 of the 2006 Act; or (iii) an order must be made pursuant to section 43 of the 2006 Act to exempt the requirement for consent.

In terms of the EA’s proposed Scheme Works, an order pursuant to section 43 of the 2006 Act is not relevant. Accordingly, the EA’s proposed Scheme Works either require consent under section 38 of the 2006 Act or a successful application for deregistration of New Road Common under section 16 of the 2006 Act.

2.4 APPLICATION FOR DEREGISTRATION, SECTION 16 OF THE 2006 ACT

The EA cannot pursue an application for deregistration of New Road Common under section 16 of the 2006 Act since the applicant must be the freehold owner of the land in question. The landowner of New Road Common, SLDC, does not consider it would be viable or appropriate to pursue an application for deregistration under section 16, since the use of New Road Common as a common has only recently been restored. The footprint of New Road Common is described at section 5.1 of this Supporting Statement.

2.5 APPLICATION FOR CONSENT, SECTION 38 OF THE 2006 ACT

Since the EA cannot pursue an application for deregistration of New Road Common under section 16 of the 2006 Act, and SLDC are not desirous of pursuing an application for the deregistration of New Road Common, the only option available to the EA is to submit an application for consent to undertake restricted works in respect of the proposed Scheme Works, pursuant to section 38 of the 2006 Act.

2.6 TEST FOR WORKS CONSENT, SECTION 39 OF THE 2006 ACT

In determining an application for consent to undertake works on common land, the EA recognises that the Secretary of State must have regard to matters set out in section 39(1) of the 2006 Act, namely: -

- (a) the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);*
- (b) the interests of the neighbourhood;*
- (c) the public interest; and*
- (d) any other matters considered to be relevant*

The reference to “*public interest*” includes the public interest in—

- (a) nature conservation;*
- (b) the conservation of the landscape;*
- (c) the protection of public rights of access to any area of land; and*
- (d) the protection of archaeological remains and features of historic interest.*

2.7 POLICY - DEFRA’S COMMON LAND CONSENTS POLICY, NOVEMBER 2015

DEFRA’s Common Land consents policy of November 2015 (“the Guidance”) explains how the Planning Inspectorate as determining authority, on behalf of the Secretary of State, approaches the test set out in section 39 of the 2006 Act. The Guidance is published for the benefit the Planning Inspectorate, applicants for consent, and other parties (such as objectors).

The Planning Inspectorate will seek to adhere to the Guidance in determining applications under section 38(1) of the 2006 Act. The EA recognises, however, that every application must be considered on its merits, and a determination may depart from the Guidance if it appears appropriate to do so. In such cases, the Inspectorate will explain why it has decided not to follow the Guidance.



The Guidance suggests that the best option for works that would not be consistent with the traditional use of the land as a common, or for its management, improvement or protection would be an application for deregistration of common land under section 16 of the 2006 Act. The Guidance makes it clear, however, that generally the sort of works envisaged here are applications for consent for works which have private benefit or works which would be to the detriment of the common.

2.8 CONCLUSION

As required by the test in section 39 of the 2006 Act, section 7 of this Supporting Statement explains the benefits of the proposed Scheme Works and identifies any impacts of the proposed Scheme Works. (Section 4 of this Supporting Statement provides an explanation of the Scheme)

The EA recognises that the test is ultimately a balancing exercise, between the rights of the inhabitants of Kendal to use New Road Common for recreation against the need and wider public benefits of the Scheme and the proposed Scheme Works. Importantly, the proposed Scheme is being undertaken in exercise of the EA's statutory powers contained in the 1991 Act and the Scheme and the proposed Scheme Works are clearly intended to provide significant underlying public benefit.

3 FLOODING IN KENDAL

3.1 HISTORY OF FLOODING IN KENDAL

The town of Kendal lies on the floodplain of both the River Kent and River Mint with approximately one third of the town at medium risk of fluvial flooding and smaller pockets at high risk of flooding. Kendal is also at risk from surface water flooding. The core of Kendal town broadly follows the River Kent, although the suburbs have moved away from the watercourse due to urban spread. The primary flood mechanism in Kendal is overtopping of the watercourses with an additional source of flooding coming from surface water run-off forming overland flows from the surrounding steep ground, overtopping storage basins and surcharging sewers.

Kendal has a long history of flood events with the earliest records dating back to the 17th century and a large event recorded in 1898. More recently, a total of eight flood events have been recorded between 1954 and 2015, with the most notable of these occurring in:

- December 1954: a substantial flood event affected circa 300 residential and 70 commercial properties. This led to the creation of the River Kent – Kendal flood alleviation scheme;
- December 1985: a flood of similar magnitude to the 1954 flood passed through Kendal with no serious flooding to the area protected by the flood alleviation scheme. Mintsfeet, however, was flooded which led to the creation of the raised embankments in this area;
- February 2004: a fluvial event flooded 80 properties in central Kendal and the Mintsfeet area. In Mintsfeet, both the Lake District Business Park and the Mintsfeet Industrial Estate were badly affected, with 20 and 27 premises flooded respectively. Residential properties on Busher Walk, Garden Road, and Burneside Road were also affected;
- January 2005: which resulted in the flooding of over 100 properties, with peak river levels on the River Kent in Kendal around 200mm higher than those experienced in February 2004. The main areas affected during this event were Mintsfeet - where 20 residential and 40 commercial properties were flooded - Busher Walk, Aynam Road, and Aikrigg End. The affected properties were in similar locations to those affected in 2004, with central Kendal suffering worse flooding than in the previous year;
- November 2009: Four properties were flooded in the Benson Green area by fluvial water from the River Kent, while property basements along Aynam Road and Lound Street were flooded by groundwater and surface water; and
- December 2015: As a result of an extreme pluvial event, the River Kent, and its tributaries, over topped its banks, leading to flooding of more than 2,150 properties in Kendal alone. This event was the most extreme flood event recorded for the town. Flooding impacted a number of roads in close vicinity to New Road Common as shown on Figures 1 and 2 below. New Road Common was at that time used as a car park.



Figure 1 - Aerial photograph of New Road area (facing east) on 6 December 2015 (Source - YouTube)



Figure 2 - Aerial photograph along New Road (facing west) on 6 December 2015 (Source - YouTube)

3.2 EXISTING FLOOD MECHANISM ALONG NEW ROAD COMMON

At present, there are no formal fluvial flood defences in place along New Road Common. The area of New Road Common contains a ramp (slipway) to the River Kent which would allow flood water access to the local vicinity from rising water levels. The stone walling bordering New Road Common alongside the River Kent is in place to prevent pedestrians from falling into the river and so does not act as any form of flood defence walling. Additionally, if flood water were to rise above the stone walling, the decorative metal fencing bordering New Road Common from New Road (as shown on Figure 5) would not prevent water from reaching the highway. This is illustrated in Figure 3 below, where flooding occurred at the junction of New Road and Blackhall Road.

The proposed Scheme Works at New Road Common are designed to address the risk of fluvial flooding.



Figure 3 - Aerial photograph illustrating water ponding at junction of New Road (foreground) and Blackhall Road (background) preventing the throughflow of traffic along the one-way system

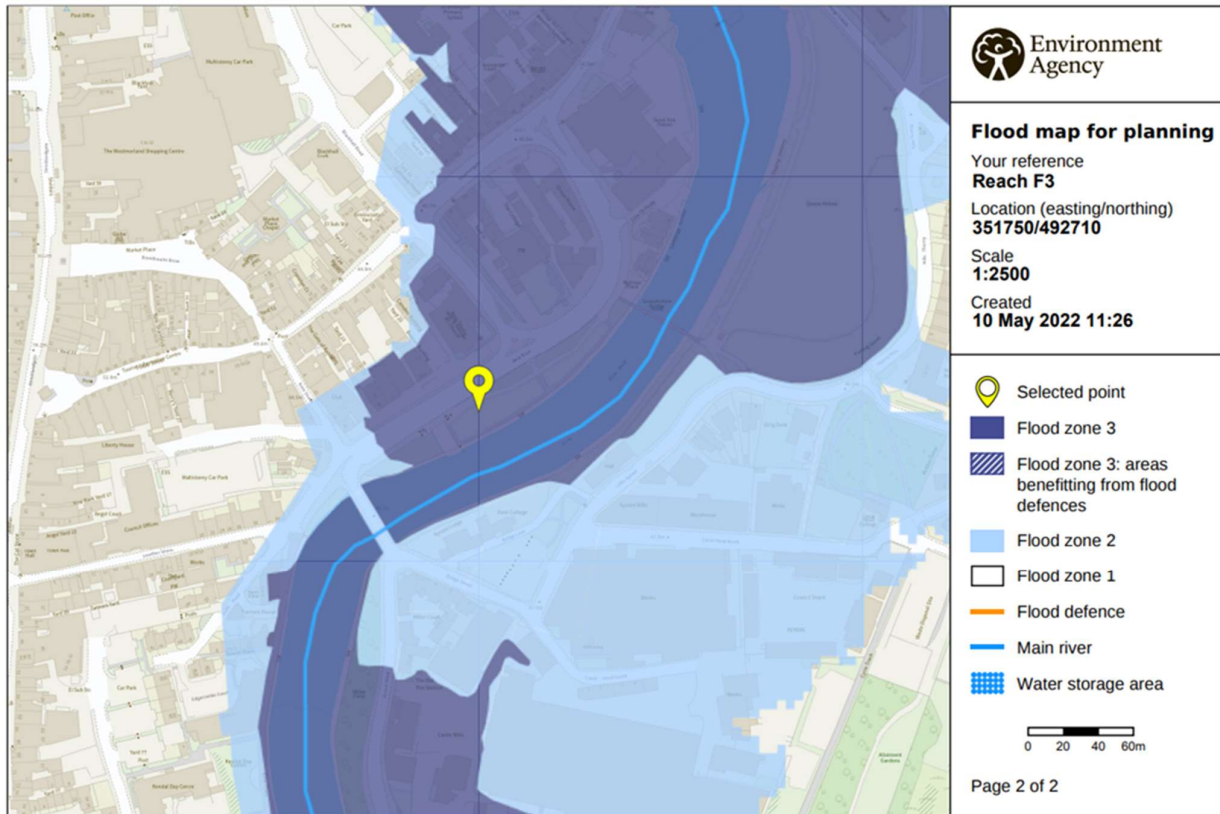
3.3 EXISTING FLOOD RISK MANAGEMENT MEASURES AND CURRENT FLOOD RISK

An earlier flood alleviation scheme, The River Kent Improvement Scheme - was completed in 1979 to manage a maximum pass-forward flow of 280 cubic metres per second in response to the flows associated with the 1954 flood event¹. This existing flood alleviation infrastructure offers variable levels of flood resilience throughout Kendal with some areas offering resilience against as little as a circa 1 in 5-year event.

¹ Kendal Appraisal Package: Kendal Short List Report – Capita (2018)

In 2006, SLDC constructed the Stock Beck Flood Storage Basin (FSB). The FSB, in combination with upsized culverts on the Stock Beck Tributaries upstream, was designed to reduce the risk of flooding to properties located upstream and downstream of the basin, mainly in the Sandylands estate. In 2013, the responsibility for maintenance of the scheme was transferred to the EA. However, the FSB is on the opposite side of Kendal to New Road Common and has no benefit in reducing flood risk at this location.

Although existing flood alleviation infrastructure has been installed in Kendal, national flood risk modelling for planning purposes indicates that both the north and centre of the town still lie within Flood Zone 3 and the surrounding areas in Flood Zone 2. As shown on Figure 4 below, the area immediately adjacent to New Road Common including New Road, Blackhall Road, Melrose Place and northwards to Stramongate is located within Flood Zone 3, with some smaller pockets to the west towards the junction of New Road and Kent Street and onto Lowther Street within Flood Zone 2. Flood Zone 3 is land which has a greater than 1% probability of flooding from river sources in a given year. New Road Common is currently in this category with a chance of flooding of approximately 20% in any given year.



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Figure 4 - Environment Agency Flood Zone Mapping for the area surrounding New Road Common

4 THE SCHEME

4.1 KENDAL FLOOD RISK MANAGEMENT SCHEME PHASE 1 (THE SCHEME)

Following the Storm Desmond flood event in December 2015, the EA, along with CCC, SLDC, United Utilities and other partners including the local community worked to identify options to address the complex flood issues that affect the Kendal area. The Scheme is designed to improve flood resilience for approximately 227 residential properties, 85 unclassified properties and a minimum of 71 businesses against flooding from the River Kent and its tributaries to a 5% Annual Exceedance Probability (AEP) (a flood event that has a 5% probability of occurring in any given year). The EA considers that the proposed Scheme are the best practicable flood risk alleviation works for this part of Kendal providing improved flood resilience for hundreds of residential and non-residential properties.

In summary the Scheme has been developed to:

- make the area more resilient to flooding;
- minimise the economic and social impacts of flooding;
- ensure that expenditure on flood risk is proportional to the risk to the community;
- explore opportunities for both engineered and natural flood management solutions; and,
- deliver wider benefits for people and wildlife that are sensitive to the local environment.

Broadly, the proposed Scheme comprise:

- A combination of walls and embankments (linear flood defences) along sections of the Rivers Mint and Kent, known as Reaches ranging from 0.3m to 2m in height and with a total length of over 6.0 kilometres (along both riverbanks) including flood gates and up and over structures to retain access;
- Flood resilience measures for some existing properties that border the watercourse. This comprises undertaking the appropriate measures to seal off any flow paths into existing properties such as repointing and raising air bricks;
- Some minor raising of existing footpaths, roads and garden patio levels to remove flow paths; and,
- A 1.5m³/s capacity pumping station at the Stock Beck outfall to pump water from Stock Beck when it becomes gravity locked by the River Kent.

Where possible the linear flood defences will tie into existing high ground or existing structures to give a consistent level of protection across the town. The Scheme is also designed to include drain down structures in the linear defences to allow water to escape back into the watercourses following a flood exceedance event. These are proposed at any low spots where water could potentially pond behind the new defences.

4.2 THE PROPOSED SCHEME WORKS (SECTION D1 - QUESTIONS 8, 9 AND 11)

As part of the Scheme, the EA proposes to undertake flood risk management works to improve the resilience of the urban area around the A65 between Miller Bridge (a Scheduled Ancient Monument) and the newly constructed Gooseholme Footbridge in central Kendal. The proposed Scheme Works are known as Reach F3 and will require flood development with a permanent footprint within land designated as common land, New Road Common.

As detailed in Appendix A, the proposed Scheme Works at New Road Common comprise:

- Linear Defences – Flood Wall;
- Flood Gates;
- Surface Water Drainage;
- Reprofilling and reinstating the slipway to the River Kent; and,
- Landscaping.

To facilitate construction of the above works, temporary works will be required. In the longer term the EA assets will require ongoing maintenance.

Linear Defences – Flood Wall

The proposed linear defence flood wall is shown in Appendix A in yellow. It is to be constructed along the edge of New Road Common adjacent to the New Road highway boundary. The proposed flood wall extends to approximately 155m long and will replace the current metal fencing bordering New Road Common with New Road. As such it will provide flood resilience without impeding access to New Road Common as the current access to New Road Common at Gooseholme Footbridge, the pedestrian crossing at the junction of New Road and Blackhall Road and the pedestrian crossing at Miller Bridge at the junction of New Road and Kent Street will all be retained in non-flood conditions.

During the EA’s consultation with Cumbria Highways the latter authority flagged the need for a 0.5m wide clearance between the carriageway and flood wall. This buffer strip is for reasons of safety, to provide separation between the wall and road. It is to be surfaced by deterrent paving (surfacing that is awkward to readily walk across) to prevent pedestrians from accessing the road side of the flood defence wall.

The maximum height of the proposed flood wall is approximately 1.65m. The section of the linear defence flood wall from the flood gate at Gooseholme Footbridge to just south of the pedestrian crossing at the junction of New Road and Blackhall Road will be between 1.5m – 1.65m in height. The remaining section of linear defence flood wall reduces in height to approximately 0.4m high where the linear defences meet higher ground towards Miller Bridge.

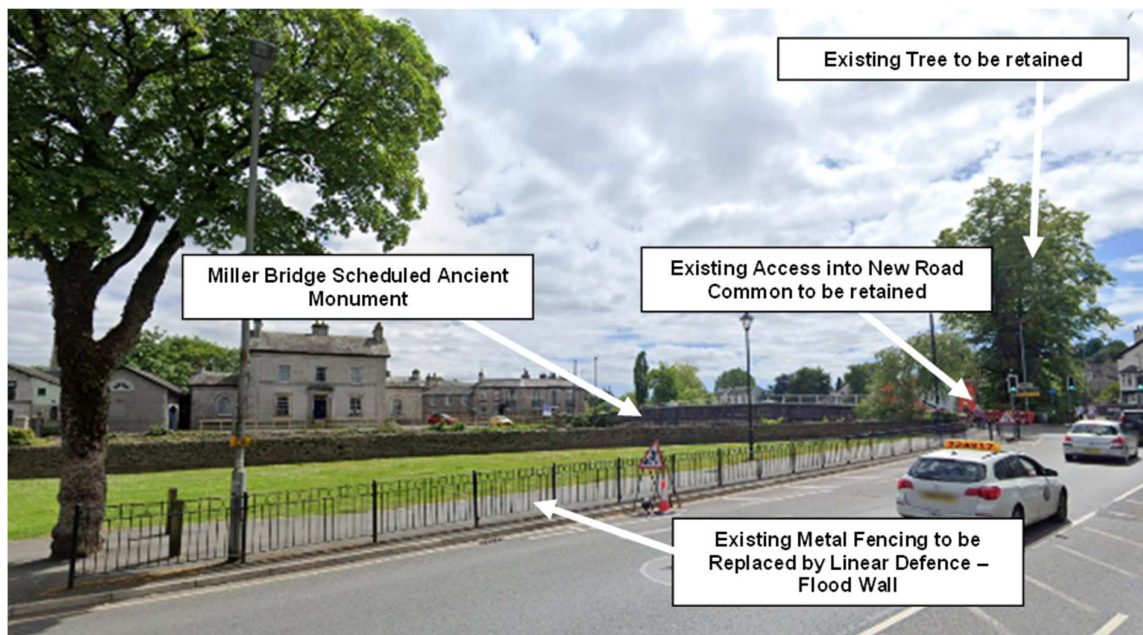


Figure 5 - Photograph to illustrate the metal fencing to be replaced and access to be retained at New Road Common in the area adjacent to Miller Bridge

Below ground steel sheet piling would be used to support the above ground defences. The visible parts of the wall will be clad sympathetically to reflect the cultural heritage and conservation status of the area. Whilst the inner part of the wall will consist of reinforced concrete, the outer surface will comprise masonry stone cladding similar to that utilised for the recently built Gooseholme Footbridge. This reflects the EA's selection of stone elsewhere on the Scheme (see Figure 6 below). The construction results in a wall that will be approximately 0.7m wide. Towards Miller Bridge, where ground levels rise, the stone clad walls will have a metal railing affixed on top, in order to provide safety to pedestrians adjacent to the road whilst avoiding a solid barrier (that would impair visibility and aesthetics) in the form of a higher wall.



Figure 6 - Completed section of stone clad EA flood defence wall at Nether Hall, Kendal

Flood Gates

As part of the linear defence walling, flood gates are to be installed. These flood gates have been designed to contain and prevent water spilling onto New Road and beyond during a flood event. Their proposed locations maintain the current access arrangements for both Taylor's Fairground (who have rights of access to New Road Common), those from the local neighbourhood who wish to use New Road Common for recreational purposes and the EA for routine operational and maintenance requirements. Their proposed location does not impede the current access arrangements except for the proposed 10-metre-wide flood gate opposite the slipway which will be closed in non-flood conditions. This section of New Road as shown in Figure 7 below, does not currently benefit from the metal railings that run along the length of New Road Common, which means that there is currently no safe means of access for pedestrians at this specific location.



Figure 7 - New Road Common existing slipway and fencing arrangement

As illustrated on Appendix A, three flood gates are proposed to be installed:

- 1 x 4.4m wide asymmetrical double leaf flood gate adjacent to the newly constructed Gooseholme Footbridge to the north-east of New Road Common. This gate would be open under non-flood conditions. The width and orientation of this gate has been designed following consultation with Taylor’s Fairground to allow their vehicles access onto New Road Common from the New Road one-way system. The position of the flood gate also allows pedestrians and bicycles to freely access Gooseholme Footbridge and therefore Gooseholme Common on the opposite side of the River Kent;
- 1 x 2m wide single leaf flood gate at the existing pedestrian crossing at the junction of New Road and Blackhall Road in the central area of New Road Common. This gate would be open under non-flood conditions to facilitate access to the existing pedestrian crossing. The linear defence flood wall and flood gate are also set back from New Road in this location to provide a safe refuge area should any pedestrians cross New Road but be unable to proceed any further if the gate was closed during a flood event;
- 1 x 10m wide double leaf flood gate to be located to the southern end of New Road Common opposite the existing slipway into the River Kent. This gate would be routinely closed in non-flood conditions. It would only be opened to exercise the rights of the Fairground and for EA operational purposes (mainly for routine gravel removal from the River Kent).

The flood gates will be constructed of steel and black in colour, similar to others installed elsewhere on the Scheme (see Figure 8 below). The heights of the flood gates would be similar to the top of wall height either side of them to provide a consistent standard of flood resilience. To allow the flood gates to be safely opened and closed by the EA field team during a flood event, the swing arc of each gate must comprise hardstanding. In New Road Common the proposed swing arcs of the gates are largely on existing hardstand, as shown by the semi-circles on Appendix A.



Figure 8 - Photograph of a flood gate in the open position, installed in the Waterside area of Kendal

In addition to the three flood gates, a 3m wide lockable pedestrian gate is proposed to be located near to the existing pedestrian crossing at Miller Bridge at the junction of New Road and Kent Street to the southern end of New Road Common. The proposed lockable gate would be open during non-flood conditions to allow continued access to New Road Common. It would be closed for safety reasons during flood events in order to prevent access to New Road Common and the wet side of the defences i.e., any flood waters. The lockable gate is not required to be designed as a flood gate as the proposed works at the southern end of New Road Common include ground reprofiling formalised with appropriate edging strips and grass reinstatement thereby achieving the required flood defence level without the need for a flood gate.

Surface Water Drainage

As part of the proposed Scheme Works, new surface water drainage will be constructed at New Road Common to allow for the discharge of water into the River Kent, via an outfall flap to be installed on the dry side of the defences. These works will have no impact upon the current access and egress arrangements at New Road Common. The works have been designed to work alongside the existing Sustainable Drainage System (SuDS) installed by SLDC in 2017 following the conversion of the car park to the current public space arrangement.

Reprofiling and Reinstating the Slipway to the River Kent

The design for the reprofiled slipway replaces the existing gravel covered slipway with stone pitching to mirror the riverbank through much of Kendal, and which is currently visible at the toe of the slipway where it meets the River Kent. The slipway will be reinstated as stone setts as per its original appearance. The proposed gradient of the reprofiled and rejuvenated slipway that is more in keeping with its original appearance on New Road Common will be approximately 1:5.6 which is less than the steepest part of the existing slipway, making the River Kent more accessible in this location.

Landscaping

As shown in Appendix A, New Road Common is largely covered by grass that is maintained by SLDC. Moveable planters are sited on small sections of hardstanding amongst the grassed areas that can be temporarily moved to facilitate access, setup and egress by Taylor's Fairground.

After construction, the existing areas of grassland at the largest section of New Road Common will be reinstated, other than where new small sections of hardstanding will be installed to facilitate the moveable planters, the flood gate arcs and the linear defence flood walls and buffer strip between the flood wall and New Road carriageway.

The tarmac path that currently runs through New Road Common will gently ramp up to higher ground at the southern end, as shown on Appendix A. The tarmac path will therefore be reprofiled and formalised with appropriate edging strips and grass reinstatement. The gradient of the ramp will comply with design codes that promote equitable access for users of all abilities to New Road Common, as per the existing arrangement. A railing (approximately 1.1m high) will be installed on the southern margin of New Road Common as shown on Appendix A, against which the lockable pedestrian gate will be retained in an open position except when closed during a flood event to prevent pedestrian access. The proposed Scheme Works around Miller Bridge retain the existing tree whilst protecting the Scheduled Monument. The tarmac path will be locally widened to 3m (as shown on Appendix A) to accommodate cycle throughfare.

The area of New Road Common located to the north in between Melrose Place and Gooseholme Footbridge will also be reinstated to grassland in accordance with a condition attached to the common land consent for the Footbridge (reference COM/3236938).

A schedule for landscaping and planting of the moveable planters at Reach F3 has been developed and will be submitted for SLDC's approval within the parallel non material amendment (NMA) planning application (see section 6.1 below onwards). This specifies in the majority, a mixture of ornamental perennials and grasses together with shrub planting. The landscaping and planting details will also be submitted to SLDC for approval via a discharge of condition application in compliance with Condition 14 (Landscaping) attached to the original consent for the Scheme (Reference SL/2018/0625).

Temporary Works

In order to construct the proposed Scheme Works, a temporary working area within New Road Common will be required. This will require a temporary land take of 3,054m² / 0.31 hectares. Temporary fencing will be erected along the length of New Road Common ensuring that unauthorised personnel cannot enter the working area both for their safety and the safety of the workers. This will take the form of solid secure site fencing which will also act to limit noise to the wider area. The extent of site fencing factors in the need for sheet piling at the edge of New Road Common for the flood wall foundations and therefore the need to close off the inside lane of New Road, as per the EA's liaison with the Highways Authority. The temporary works will be kept to a minimum and for as short a duration as reasonably possible to safely carry out the works in accordance with the requirements of the CDM 2015 Regulations.

The detail of the welfare facilities has yet to be finalised but as a minimum there will be a small set up with toilets, office and stores. There are drying room facilities nearby if required at Little Aynam and the main welfare facilities are located at the contractors compound at Gilthwaiterigg Lane.

From the start to the finish of the proposed Scheme Works there will be a significant requirement for traffic management. The nearside lane of New Road from the ski equipment shop (Anything Technical Ltd, Sand Aire House, New Rd, Kendal LA9 4AY) to Miller bridge will be temporarily closed via a Temporary Traffic Regulation Order (TTRO). The traffic lights and the existing pedestrian crossings onto New Road Common at the junction of New Road and Blackhall Road and at Miller Bridge at the junction of New Road and Kent Street will also be closed for the duration of the proposed Scheme Works (six months).

Maintenance

To ensure serviceability of EA assets (flood walls, flood gates and the pedestrian gate) in the future, annual inspection visits will be required.

Following reinstatement as part of the proposed Scheme Works, the grassland will be handed back to the landowner (SLDC), who will determine the required maintenance schedule. It is anticipated that six amenity grass cuts to 30-50mm height in the first two years of establishment, with an additional cut at the end of the season (October) if required will be undertaken. All arisings to be removed off site.

The moveable planters will need regular watering, depending on the weather – more regular checks will be required in hot and dry summers. Ornamental perennials and grasses are to be cut back once a year, in late winter. Again, all arisings will be removed. Shrub planting within the movable planters may require pruning every two – three years in very early spring.

Land Take

The proposed permanent works at New Road Common will incorporate a land take of 137m² / 0.01 hectares, changing existing grassland into permanent hardstanding. This permanent land take is associated predominately with additional hardstanding required to accommodate the three proposed flood gates including their required flood gate arcs and the footprint of the proposed flood defence wall. Existing hardstanding within New Road Common including the slipway and Gooseholme Footbridge ramp extends to 1,413m² / 0.14 hectares.

The proposed Scheme Works have been designed to be located within the areas of existing hardstanding where possible thereby significantly reducing the impact upon those exercising their rights of access, the local neighbourhood or any persons wishing to use New Road Common for recreational purposes.

The proposed permanent works would result in a land take of around 2% of the overall New Road Common land area.

The temporary working area land take within New Road Common as stated above would extend to 3,054m² / 0.31 hectares. This is required to facilitate construction, which is anticipated to take approximately 6 months.

4.3 CONSULTATION

Government Guidance

Government Guidance “*Common land guidance sheet 1a, updated February 2022*” sets out the steps that should be undertaken by those proposing to construct works on common land and advises that informal consultation should be carried out prior to the submission of the application for consent pursuant to section 38 of the Commons Act 2006. It explains that such informal consultation should help to identify objections to the proposal and how any objections may be overcome. It goes on to list those parties that may be consulted including those who must be formally consulted in the event that an application is made.

Consultation on the Scheme

In developing the Scheme, including the proposed Scheme Works at New Road Common, the EA has been undertaking consultation in respect of the Scheme since 2016, when it was first being considered following Storm Desmond. Consultation events included the following:

- Appraisal Long List - 7 July 2017 – engagement session to build the EA’s understanding of the flooding and discuss options for flood risk management;

- Appraisal Short List - 7 February 2018 – engagement session to present the short list following the testing of the long list options;
- Preferred option - 26 September 2018 – engagement to share the preferred options following further testing;
- Mobile Engagement Days – pre-application engagement on the outline design. These mobile events provided opportunities for the EA to engage more with the local community and were held over a number of days in the following locations:
 - Morrisons 15 February 2019;
 - Westmorland Shopping centre 16 February 2019;
 - Waterside 18 February 2019; and
 - Kendal Leisure Centre 19 February 2019.

In July 2021 the EA produced the Kendal Flood Risk Management Scheme Design and Benefits Guide (the Guide) which set out how the Scheme aimed to deliver improved flood protection, environmental enhancements and improved community amenities in Kendal. The Guide encompassed the proposed Scheme Works at New Road Common. The Guide was published in July 2021 to The Flood Hub (www.thefloodhub.co.uk/kendal), which is an online website containing free access to a source of flood information and resources to support householders, businesses and communities across the North West of England in becoming more flood resilient. The Guide was also posted out to key stakeholders including elected members (CCC, SLDC, Kendal councillors and Kendal Town councillors) and portfolio holders, and copies provided to the Kendal Community Emergency Planning Group (KCEPG) and the six flood action groups representing Kendal flood affected communities for circulation in the areas they covered. Boxes of the Guide were delivered to key community pick up points including CCC offices, Kendal library, Kendal Town Council town hall and SLDC offices. The Guide remains on The Flood Hub and within the Flood Scheme Information Hub located on Little Aynam, on the opposite bank of New Road Common, which was opened in January 2020 and forms the community hub providing information for local communities and visitors. The Hub remains open for 2 days a week.

In addition, the EA produced a Public Arts and Interpretation (Design) Strategy ('PAID') in July 2020 on which the EA consulted with the community and stakeholders for art, seating design, and design components such as flood wall finishes, railings and handrails. Consultation events on the Scheme and the PAIDS document were held at Westmorland Shopping Centre as follows:

- Presentation for Elected Members, key stakeholders and Flood Action Groups – 19 September 2019; and
- Community drop-in event – 24 September 2019.

Consultation on the Proposed Scheme Works

Consultation specifically relating to the proposed Scheme Works, the subject of this application, has been ongoing since 2018.

SLDC have been consulted regularly throughout the development of the Scheme and the proposed Scheme Works at New Road Common, due to their unique role as landowner, maintaining the common under a scheme of management and a key partner in the delivery of the Scheme. SLDC were consulted throughout the Scheme optioneering and design process, since 2017. SLDC were in agreement that the setback location was the least damaging and therefore the preferred option to carry forward. The flood defence wall alignment also factored in a 0.5m setback from the New Road carriageway following input from Cumbria Highways.

As mentioned in section 3.1 of this Supporting Statement, New Road Common had for a period been used as car park. In 2018, SLDC undertook works to restore New Road Common as common land. SLDC's works included landscaping which took into account the possibility of future flood defences and was designed to accommodate the needs of the public and fairground rights.

Taylor's Fairground have been consulted and were actively involved in informing the access path arrangements which minimise the potential for damage to the grassed areas when the fair is held, twice yearly on the site.

The EA met with Taylor's Fairground on 17 June 2022 to discuss the proposed Scheme Works and better understand how the Fair utilises New Road Common in terms of access, egress and layout. The discussions and follow up information provided by Taylor's via email on 6 July 2022 (vehicles dimensions and fair layouts) were used to inform the proposed Scheme Works, including revised flood gate dimensions and positions that better suited their vehicles. By using the existing fairground layout and working with Taylor's to provide appropriately sized access points for their specialist vehicles the EA aimed to ensure that the design of the proposed Scheme Works is sensitive to the Fair's needs, the public right to recreation and that the rights under the royal charter will not be impacted by the proposed Scheme Works.

In addition, meetings were arranged with the Open Spaces Society (OSS) and Friends of the Lake District (FOLD) to discuss the overall approach to the Scheme, including the proposed works at New Road Common. Following an initial meeting on 8 October 2019 two further meetings have been held with the OSS on 25 March 2022 and 22 November 2002. FOLD was unable to attend these meetings.

OSS and FOLD have both objected to the Scheme generally stating their preference for upstream natural flood management measures. Natural flood management measures and slowing the flow does form part of the Scheme, complementing the traditional engineered measures, however, such measures alone cannot provide sufficient flood resilience for the communities within the Kent catchment. OSS and FOLD have also raised concerns about the proposed Scheme Works at New Road Common, these concerns relate to the loss of footprint of the common land, the further bisection of the land by walls on the boundary and elsewhere and the desire for replacement land to be provided under section 16 of the 2006 Act. In light of the concerns raised by OSS and FOLD, the EA has amended the Scheme design to minimise the impact of the Scheme Works on the New Road Common, both in terms of location and design of flood defence structures and the need to retain an open feel to the common. Accordingly, the EA's proposed Scheme Works (described in Section 4.2) are those which will have the lowest impact in terms of loss of common land and will retain the openness to and across New Road Common whilst retaining the flood risk management aims of the Scheme and the proposed Scheme Works for the wider public benefit.

Having considered the outputs of consultation the EA has sought to ensure that the proposed Scheme Works remain sympathetic to this part of the Kendal conservation area and to retain the amenity value and openness of New Road Common.

4.4 ALTERNATIVES CONSIDERED

The Scheme

As stated above, further to the Storm Desmond flood event in 2015, a full long list of options for the Scheme was developed.

This included a wide variety of potential Flood and Coastal Erosion Risk Management (FCERM) measures such as the creation of pumping stations on all watercourses in the area, a widespread campaign of education and early warning systems targeting the nature of flooding locally, modification to local development policies to include Sustainable Drainage System (SuDS) as well as a series of other small-scale measures.

Each of these options was assessed at a high level for its potential positive and negative environmental, technical, financial, economic and social impacts against the established baseline, using professional judgement. This assessment led to an overall multi-criteria analysis score for each potential measure.

The majority of the River Kent and its tributaries form part of the River Kent and tributaries Site of Special Scientific Interest (SSSI) and the River Kent Special Area of Conservation (SAC). These designations provide a high level of environmental protection to the river system. An initial assessment was undertaken of the impacts on the SAC of each of the options considered.

It was clear that except for a few complementary measures, all the options could have an adverse impact on the interest features of the River Kent SAC.

In some cases, options that may be environmentally damaging including to the local landscape and cultural heritage features but would otherwise be capable of achieving the objectives of the project were taken through to the short list where further environmental assessments could be undertaken to determine which option would have the least impact on the SAC.

Additionally, some options were taken through to the short list despite not being the most technically, economically or socially acceptable, but resulted in the least damage to the SAC. This ensured that the requirements of the Habitats Directive could be fully implemented.

The long-list was reviewed, and a series of measures were subjected to a more detailed examination using the FCERM appraisal guidance (FCERM-AG) four-point test, which helps determine if an option is:

- technically feasible;
- economically viable;
- environmentally sustainable; and
- socially acceptable.

Options were assessed for their ability to reduce flood risk, buildability, health and safety issues, cost, economic benefit, impact on the environment, impact on the residents and businesses, impact on local heritage and designated sites, risk and future maintenance issues.

Each measure that passed the four tests was considered as a standalone option and taken forward to the short list. By passing the four tests, each option was identified to viably reduce the risk of flooding in Kendal. Where a measure could not protect the whole study area as a standalone option it was combined with other measures to form other 'Do Something' options.

Each option identified was developed until better understanding of lengths, heights, volumes and flows were derived. The approved hydraulic model for the catchment was used to determine an optimum design and dimensions for each of the options shortlisted.

A full assessment of the technical, economic, environmental and social impacts was then undertaken, ultimately concluding in the selection of the preferred option for the Scheme. It is important to be clear that no flood risk management scheme can deliver the level of protection required to prevent any properties at risk from ever flooding. The preferred option for Phase 1 of the Scheme was selected on the basis of risk management and that it will deliver a higher level of resilience than currently available to a significant number of properties along the River Kent.

A planning application for Phase 1 of the Scheme was submitted to SLDC in November 2018 and planning consent was granted in June 2019 (SL/2018/0925).

Options for the Proposed Scheme Works

The June 2019 planning consent provided approval for works within all Reaches, including Reach F3. However, further to the receipt of additional topographical survey data, it became apparent that a re-design of the proposed Scheme Works at Reach F3 would be required to address emerging technical design difficulties. Discussions with Taylor's Fairground, SLDC and CCC were also held around optimising the re-design to minimise impacts upon access to and egress from New Road Common.

Two alternative options to the proposed Scheme Works detailed in Appendix A and above were considered.

Alternative 1 – Alignment of Proposed Linear Defence Flood Wall Along the River Edge

At the optioneering stage, running the linear defence flood wall along the edge of the River Kent rather than along the edge of New Road Common was considered.

As shown in Appendix A, New Road Common extends into the River Kent. This option was therefore discounted as it would have resulted in a severe impact on the openness of New Road Common, effectively segregating the landward side of New Road Common from the river side of New Road Common. The condition of the existing river wall would have also necessitated extensive and costly repair works.

Alternative 2 – Flood Gate Arrangement

The linear defence flood wall alignment utilised a different method of flood gates for the slipway when it was granted consent as part of the Scheme in June 2019. The original system utilised two smaller floodgates either side of the linear defence flood wall with a larger gate to access the River Kent. This design has been amended to remove the section of wall entering New Road Common and to match the proposed alignment of the other sections of linear defence flood wall. In doing so, the number of flood gates has been reduced, which avoids segregation of New Road Common.

The Preferred Option

The proposed Scheme Works were considered to be preferable to Alternatives 1 and 2 as they are technically feasible and provide a level of flood resilience whilst maintaining the openness of and access to New Road Common. The proposed Scheme Works also minimise the permanent land take.

5 NEW ROAD REGISTERED COMMON LAND

5.1 HISTORY OF NEW ROAD REGISTERED COMMON LAND

It is not known when the land at New Road Common was registered as common land, however, records indicate a management scheme for the area dated 1910 under the Commons Act 1899. For the purpose of this Supporting Statement, the date of New Road Common being registered is assumed to be 1899.

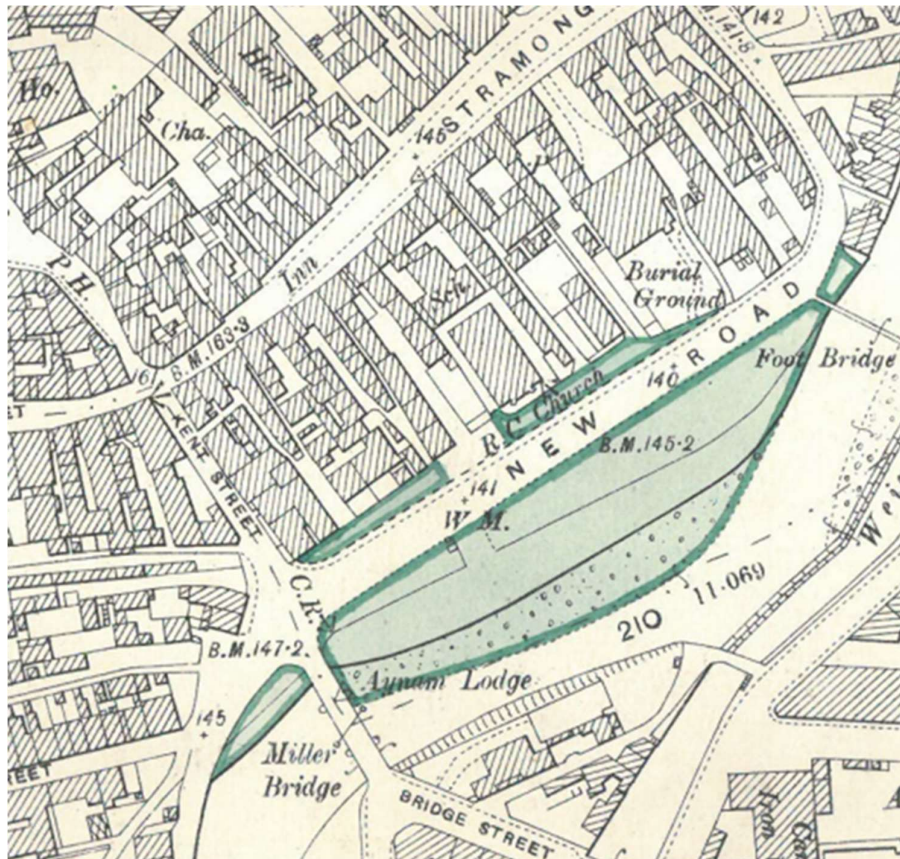


Figure 9 - SLDC New Road Common 1899 layout

As illustrated on Figures 1 and 2 above, New Road Common was previously used as a car park. It was therefore deemed to have been unlawfully used under the Road Traffic Act 1988, as this prohibits the use of mechanically propelled vehicles on common land.

In August 2017, SLDC took the decision to reinstate New Road Common for public open space. A section of New Road Common which is shown on Figure 9 above to extend across Blackhall Road was de-registered as it was situated in the middle of a major junction. The updated total extent of New Road Common across six parcels of land is shown edged green on Figure 10 below and in Appendix A is 6,933m² / 0.69 hectares. Each separate parcel of common land extends to:

- Parcel 1 – 137m² / 0.01 hectares
- Parcel 2 – 134m² / 0.01 hectares
- Parcel 3 – 189m² / 0.02 hectares
- Parcel 4 – 338m² / 0.03 hectares

- Parcel 5 – 158m² / 0.02 hectares
- Parcel 6 – 5,977m² / 0.6 hectares

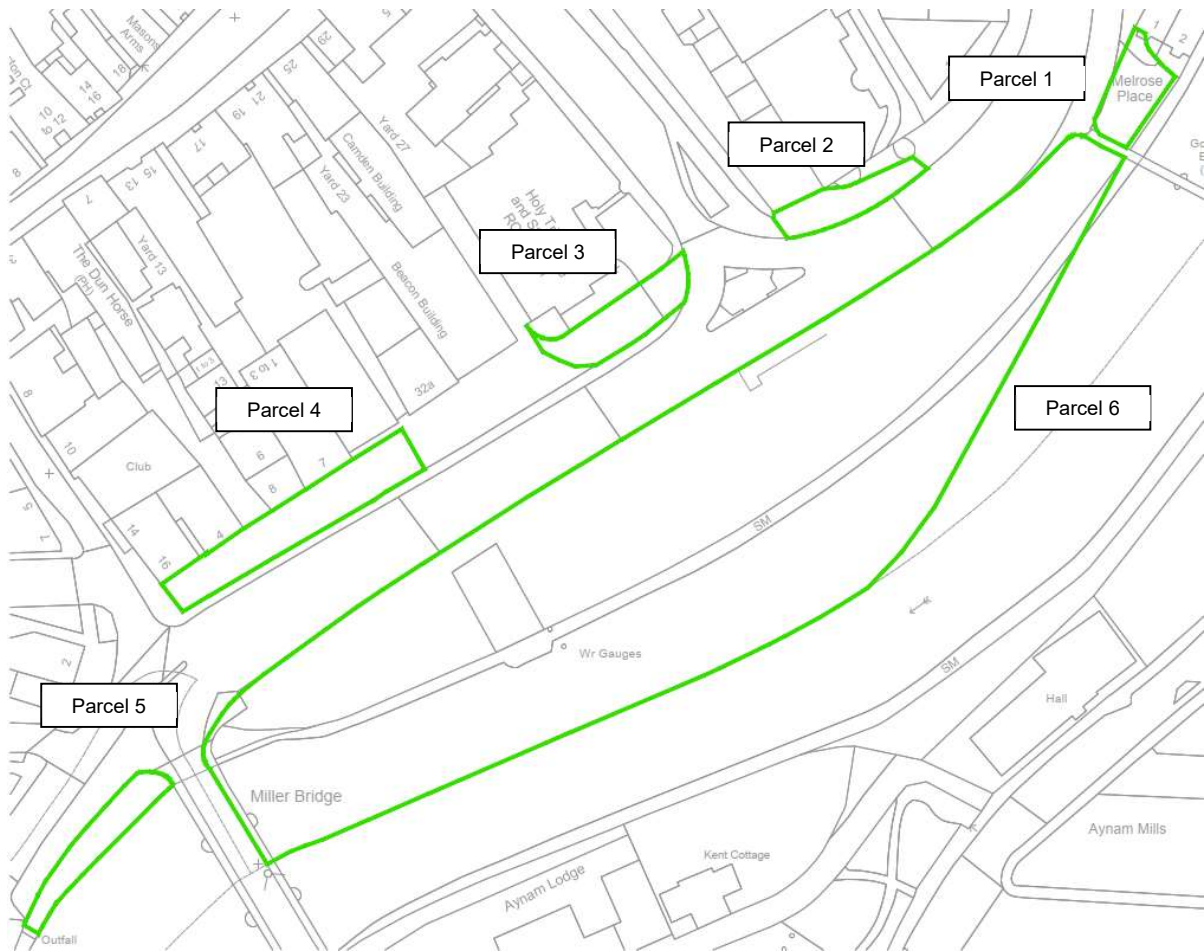


Figure 10 - Full Extent of New Road Common CL68

New Road Common is located within an Air Quality Management Area (AQMA), has 62 listed buildings in close proximity and is connected to Gooseholme Park Common via the recently constructed Gooseholme Footbridge (See Appendix A).

5.2 NEW ROAD CURRENT COMMON RIGHTS (SECTION C - QUESTIONS 1, 5, 6 AND 7)

As explained in section 2 of this Supporting Statement, New Road Common was originally registered under the Commons act in 1899. At the time of registration and subsequently, no specific rights of common have been registered. SLDC have confirmed that no person has tried to assert or exercise any rights of common since the designation of the area.

Section 2 of this Supporting Statement also explains the existence and implications of the Scheme of Management.

In the absence of specific registered rights of common, however, the EA recognises that the public rights of recreation remain protected in law, separate and distinct from the rights of common. The rights protected for the purposes of the EA's proposed Scheme Works are the rights of local inhabitants to free access to every part of the common land for the purposes of recreation.



As explained in section 7, while impacting an area of the New Road Common, the public benefit from the proposed Scheme Works will outweigh the impact of the proposed Scheme Works.

6 PLANNING AND CONSENTS

6.1 CURRENT PLANNING STATUS (SECTION E - QUESTION 19)

As requested in Question 19 of the “Application for Consent to Carry Out Works on Common Land - Commons Act 2006: Section 38”, the sections below set out the current planning status of the proposed Scheme Works.

SLDC granted planning consent for the Scheme in in June 2019 (reference SL/2018/0925). The planning consent allows for the development of the *‘Phase 1 Kendal Linear Defences comprising works along the rivers Kent & Mint through Kendal including new & raised flood embankments, ground raising, pumping station & associated changes to the public realm and landscaping.’*

The planning consent provided approval for works within all Reaches of the Phase 1 development including Reach F3 at New Road and extending into New Road Common. However, as stated above further to the receipt of additional topographical survey data, it became apparent that a re-design of the proposed Scheme Works at Reach F3 would be required to address emerging technical design difficulties. A simplified solution to improve public access was subsequently proposed. Discussions with Taylor’s Fairground, SLDC and CCC were also held around optimising the re-design to minimise impacts upon access to and egress from New Road Common.

In parallel with this application for common land consent, approval for the design changes is also required under town and country planning legislation from SLDC. The route to obtain such approval is dependent on the nature and materiality of the proposed change. In this instance SLDC agreed that the proposed change from the approved Scheme is not material, it does not breach any conditions placed on the original consent and it is not an impediment to the development. The EA has therefore submitted an application for a non material amendment (NMA) to SLDC under section 96A of the Town and Country Planning Act 1990.

For the avoidance of doubt, the proposed Scheme Works detailed in this Supporting Statement and accompanying application for common land consent, are also detailed within the NMA application.

The NMA application is accompanied by detailed design drawings illustrating the extent of the proposed Scheme Works, a review of the relevant sections of the Environmental Statement, and an addendum to the Habitats Regulations Appraisal submitted and approved by SLDC under the original 2019 consent, a Biodiversity Protection Plan and details of the proposed construction method of works.

6.2 ALTERNATIVE CONSENTS CONSIDERED

The proposed Scheme Works at New Road Common including the development of flood defence walls, flood gates and surface water drainage require permission under section 38 of the 2006 Act. As explained in the Legal Framework and Policy Context at section 2 of this Supporting Statement, the alternative to the EA applying for consent under section 38 of the 2006 Act would be an application to deregister the common land under section 16 of the 2006 Act.

The reasons why the EA is not able to pursue an application under section 16 of the 2006 Act are briefly explained in section 2 of this Supporting Statement. In the absence of an application under section 16 of the Act, the EA’s only option to enable delivery of the proposed Scheme Works is an application for consent under section 38 of the 2006 Act.



During the design process for the proposed Scheme Works and through consultation with third parties, the EA has sought to minimise the impact of the proposed Scheme Works on New Road Common. Whilst the EA acknowledges that there will be some permanent land take as a result of the proposed Scheme Works, the openness of New Road Common and use of New Road Common for public recreation will be preserved, as will the benefit of common land protection.

7 COMMON LAND IMPACTS (SECTION D1 - QUESTION 12)

7.1 NECESSITY OF THE WORKS

Kendal has historically been prone to flooding, most notably during the 2015 Storm Desmond event which affected more than 2,015 residential and commercial properties in total. The proposed Scheme Works at New Road Common are an integral part of the wider Scheme and are necessary to provide the best practicable flood risk management measures for this part of Kendal. Without the proposed Scheme Works at New Road Common, significant areas of Kendal including New Road, Blackhall Road, Melrose Place and northwards to Stramongate and to the west towards the junction of New Road and Kent Street and onto Lowther Street would remain vulnerable during a flood event. The traffic flow and accessibility to this part of central Kendal would also be severely disrupted due to the one-way system in operation, with New Road providing a significant part of the town's infrastructure.

Delivering the required flood resilience works at Reach F3 including the proposed Scheme Works at New Road Common would assist with providing a consistent level of resilience across the wider 6km Scheme along the Rivers Kent and Mint. Without the Reach F3 works and the proposed Scheme Works, the New Road area would be more vulnerable to flooding as the effective 'gap' in the Scheme flood defences and would generate a localised spill point.

7.2 IMPACT OF THE WORKS AND THE CRITERIA IN SECTION 39 OF THE 2006 ACT

This section of the Supporting Statement describes the likely impacts of the proposed Scheme Works on New Road Common and explains how the proposed Scheme and the Scheme Works fulfil the criteria set out in section 39 of the 2006 Act and the criteria set out in the Guidance (please see the Legal Framework and Policy Context considerations at section 2 of this Supporting Statement).

New Road Common currently provides all year-round public open space for the community as well as organised activities by Taylor's Fairground for several days twice each year (typically spring and autumn). New Road Common is largely covered by grass that is kept neat and tidy through regular mowing by SLDC. There are sections of tarmacked path across New Road Common that were installed following its restoration to use as common land by SLDC in 2017. The recreational usage of New Road Common and retention of public open space will remain unchanged by the EA's proposed Scheme Works, as explained below.

The interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it)

The temporary works for the proposed Scheme Works will require the closure of New Road Common in its entirety. In particular pedestrian access will be affected adjacent to Gooseholme Footbridge and the pedestrian crossings at the junction of New Road and Blackhall Road and at Miller Bridge at the junctions of New Road and Kent Street. The temporary construction works will require a temporary land take of 3,054m² / 0.31 hectares. Temporary fencing will be erected along the length of the New Road Common ensuring that unauthorised personnel cannot enter the working area. This will take the form of secure site fencing which will also act to limit noise to the wider area. The temporary works are expected to take six months.

Following construction of the proposed Scheme Works, the permanent land take would be approximately 137m² / 0.01 hectares, changing existing grassland into permanent hardstanding. This permanent land take is associated predominately with additional hardstanding required to accommodate the three proposed flood gates, including the associated flood gate arcs and the footprint of the proposed linear defence.

The majority of the proposed permanent hardstanding is required for the 0.5metre wide buffer strip between the highway of New Road and the proposed flood defence wall. CCC Highways have required the buffer strip for safety reasons (including the retaining of sight lines for users of the carriageway) and being situated at the margin of New Road Common the buffer strip will have no significant impact on the wider public open space that will largely be retained (as shown in Appendix A).

Where possible, the proposed Scheme Works have been designed to be located within the areas of existing hardstanding thereby significantly reducing the impact upon those exercising their rights of access, the local neighbourhood or any persons wishing to enjoy New Road Common for recreational purposes. The paths will enable public access for such activities as walking and cycling, as well as accommodating access to vehicles associated with use for long-standing traditional activities associated with Taylor's Fairground.

The current access and egress arrangements onto New Road Common by Taylor's Fairground will not be impacted significantly by the proposed Scheme Works. Discussions have been ongoing with key stakeholders, including SLDC, CCC Highways and Taylor's Fairground, with the permanent proposed Scheme Works designed to facilitate continued use of and access to New Road Common by Taylor's Fairground in particular. The input of Taylor's Fairground, supported by a site meeting and the sharing of their fairground vehicles dimensions, access needs and fairground layout has informed the EA's design and location of the proposed flood gates to ensure that their rights over New Road Common are maintained and not curtailed in any way. The proposals therefore do not cause any financial loss to rights holders. Furthermore, as a result of the proposed Scheme Works, Taylor's Fairground egress from New Road Common will be improved in comparison to the existing arrangement via the following measures:

- The removal of the two existing trees located at the existing slipway in the central area of New Road Common, which is necessary to facilitate the construction of the flood defence wall foundations local to the flood gate that will be opposite the slipway. The removal of the two trees will provide more room for the fairground vehicles to manoeuvre both onto New Road and to better access the area to set up the attractions on the southern end of New Road Common, to the south of the existing slipway, which is currently a challenge to them;
- The existing wall and railings either side of the slipway will be reduced from their current extent. This allows the creation of a platform at the top of the slipway (level ground, rather than the existing slope at the top), which provides more room for the vehicles to swing out of the flood gate and onto New Road. The small platform is an extension of the existing hardstand in this area and allows the safe opening of the flood gates by the EA field team to prepare for a flood event.

The existing tree and slipway arrangement is shown on Figure 7 above.

SLDC as the landowners and managers of New Road Common maintain the space under a management agreement. SLDC are also a key partner in the delivery of the Scheme and have therefore been consulted regularly throughout the optioneering and design process for the Scheme and the proposed Scheme Works.

The principle of the proposed Scheme Works was considered during the planning process, as part of the assessment of the Scheme. In terms of the impact of the proposed Scheme Works, the 2019 Committee Report states *'The wall adjoining New Road will have a greater impact, although less so than elsewhere within the conservation area. The relationship between the river and the properties fronting New Road contributes relatively little to the significance of this part of the conservation area and, in that context the wall will have a neutral impact...The wall along the back edge of the footway will have no harmful impact on this context; it will not sever this important relationship.'*

SLDC concluded that even with mitigation in place there would be a residual adverse impact as a result of the Scheme on the landscape and townscape character of Kendal and to the setting of one listed building and two (and fabric of one) scheduled monuments including Miller Bridge but that the strategic importance of reducing flood risk was a significant public benefit that outweighs the harm in this case.'

7.3 THE INTEREST OF THE NEIGHBOURHOOD

As set out above, the temporary construction works will require the closure of New Road Common in its entirety. In particular the closure of the current pedestrian access adjacent to Gooseholme Footbridge and the pedestrian crossings at the junction of New Road and Blackhall Road and at Miller Bridge at the junctions of New Road and Kent Street. The temporary construction works will require a temporary land take of 3,054m² / 0.31 hectares. Temporary fencing will be erected along the length of the New Road Common ensuring that unauthorised personnel cannot enter the working area. This will take the form of solid secure site fencing which will also act to limit noise to the wider area.

The temporary works are expected to take six months and will not interfere with future use and enjoyment of New Road Common as a whole.

Whilst the proposed Scheme Works will prevent the inhabitants of the local neighbourhood from using New Road Common during the temporary construction period, the permanent proposed Scheme Works will, once constructed, have a net positive impact by significantly increasing the flood resilience of the surrounding residential, commercial and cultural properties along New Road, Blackhall Road, northwards to Stramongate and Melrose Place and to the west towards Kent Street and Lowther Street. New Road as a significant piece of transport infrastructure is particularly vulnerable without the proposed Scheme Works. Owing to the one-way system in Kendal, any traffic impairment on New Road can gridlock Kendal town centre. The proposed Scheme Works would therefore improve the local highways resilience during a design flood event, including access by emergency services.

There are 62 listed buildings within close proximity of the proposed Scheme Works, and which have national significance as cultural heritage designations (refer to Appendix A for location of Listed Buildings in the vicinity of the works proposed on the New Road Common). Additionally, as a result of the increase in flood resilience, there are clear benefits for public health and safety during a flood event. This is especially relevant to vulnerable (elderly or disabled, for example) residents as well as users of New Road.

The EA's proposed Scheme Works have been designed with access, surfacing and gradients that will allow users of all abilities to enjoy New Road Common in the same way as users can in its current layout.

The location of the proposed flood wall along the highway boundary with New Road largely replaces existing metal railing and therefore has a neutral impact on access. The one stretch of the proposed flood wall that could be regarded as negatively impacting existing access to New Road Common is opposite the existing slipway where a 10-metre wide flood gate is proposed (See Figure 7 above). This slipway flood gate would remain in a closed position in non-flood conditions, and opened in two scenarios:

- To enable Taylor's Fairground to egress New Road Common onto New Road;
- During periodic EA maintenance activities whereby, gravel is removed from the River Kent via the slipway to maintain conveyance and reduce flood risk.

Whilst the slipway floodgate would fill a current gap (and therefore open access) between the railings it will have a minimal impact on access since currently pedestrians cannot access New Road Common safely due to the absence of a pedestrian crossing at that specific location.

The safe crossing points across New Road from Blackhall Road and Kent Street onto New Road Common will be retained. Following consultation with CCC Highways, the EA has incorporated a safe pedestrian refuge on the New Road Common side of the crossing at the junction of New Road and Blackhall Road into the design of the proposed Scheme Works. During a design flood event when it is not safe to enter New Road Common, and the flood gate opposite the pedestrian crossing is closed, a sign on the safe (dry) side of the flood gate will warn pedestrians to return back on the crossing. In this instance, users of New Road Common will also be prevented from accessing New Road Common at the other two locations i.e., via the flood gate to the north (adjacent to Gooseholme Footbridge) that will be locked in a closed position, and the lockable gate on the higher ground to the southern end of New Road Common (adjacent to Miller Bridge).

Moreover, as discussed above, significant consultation has been undertaken with SLDC planning, parks, locality, conservation and arboricultural teams throughout the optioneering and design processes to seek to ensure the proposed Scheme Works remain sympathetic to this part of the Kendal conservation area and the amenity value of New Road Common. SLDC as landowner and project partner supports the Scheme and the proposed Scheme Works, recognising the provision of public open space for recreational use by the residents of the town.

The proposed Scheme Works have been designed to be located within the areas of existing hardstanding where possible thereby significantly reducing the impact upon those exercising their rights of access, the local neighbourhood or any persons wishing to use New Road Common for recreational purposes. The current access and egress arrangements onto New Road Common will not be impacted significantly with the proposed Scheme Works resulting in a land take of around 2% of the overall New Road Common land area.

7.4 THE PUBLIC INTEREST

The increase in flood resilience is equally relevant at a neighbourhood level and in the broader context of public interest, providing the same socio-economic, cultural heritage and public health benefits.

Section 39 of the 2006 Act also directs us to consider, at a public interest level, whether the proposed Scheme Works will negatively impact nature conservation, conservation of the landscape, the protection of public rights of access to any area of land and the protection of archaeological remains and features of historic value.

These factors were addressed in detail within the planning application for the Scheme and by SLDC in the determination and approval of that planning application in 2019. Having considered the construction and operational impacts of the Scheme, SLDC concluded that even with mitigation in place there would be a residual adverse impact as a result of the Scheme on the landscape and townscape character of Kendal and to the setting of one listed building and two (and fabric of one) scheduled monuments including Miller Bridge. However, the Committee Report concluded that *'the strategic importance of reducing flood riskrepresents a significant public benefit that outweighs the harm in this case.'*

A review of the 2019 Environmental Statement and an addendum to the HRA have been undertaken and they will be submitted to SLDC in support of the parallel NMA application. The main conclusions of this Review and Addendum are summarised below:

- **Nature Conservation** - The original assessment undertaken in support of the June 2019 planning consent for the Scheme, identified Miller Bridge as one structure in Reach F3 with a moderate bat roost potential. Immediately adjacent to Miller Bridge there are also three trees with a low bat roost potential, one of these trees was identified as being impacted by the Scheme. With appropriate mitigation in place effects on bats were considered to be

significant (slight / moderate adverse) across the Scheme. Except for bats, the original assessment stated that there will be no significant residual impacts from the Scheme with appropriate mitigation in place.

The scale and nature of the proposed Scheme Works at New Road Common will not differ greatly from the approved Scheme but one of the three trees with low bat roost potential will now be retained. This is more beneficial in comparison to the previous design but will have a neutral impact on bats overall. The effects on bats will therefore remain unchanged.

- **Conservation of the Landscape** - During the temporary works, the visual impacts at surrounding viewpoints including Gooseholme Park and Miller Bridge will be significant. Construction activities involving removal of the existing fencing and existing trees will occur across the entire view. Tree removal will result in adverse visual effects within the vicinity of St George's Church. South of Miller Bridge the tree removal will be clearly visible.

However, the proposed Scheme Works including ground reprofiling at the southern end of New Road Common adjacent to Miller Bridge will have a beneficial impact overall on the landscape character of the area. The proposed Scheme Works will also retain the openness of New Road Common and the flood wall itself constructed of natural stone that is sympathetic to local buildings and structures. The proposed Scheme Works would not impact upon the landscape character of New Road Common to any significant degree.

- **Public Rights of Access to any Area of Land** – During the temporary works, there is significant negative potential for community severance from the footpaths, with the closure of New Road Common in its entirety. In particular, footpaths 536265, 536261 and 536210 will be affected. However, after construction and following the reinstatement of the grassland, there will be an insignificant negative potential for community severance. The scale and nature of the proposed Scheme Works will not differ greatly from those approved under the original Scheme and whilst access onto New Road Common from New Road into the existing slipway will be prevented with the installation of the flood gate, the existing access at Gooseholme Footbridge and the existing pedestrian crossings at the junctions of New Road and Blackhall Road and at Miller Bridge at the junction of New Road and Kent Street will be retained. Furthermore, there is no current safe means of pedestrian access onto New Road Common at the entrance to the slipway and the refuge at the existing crossing at New Road and Blackhall Road will be enlarged for safety.

As stated above, the proposed access arrangements onto New Road Common as part of the proposed Scheme Works have been discussed and agreed with those who have rights of access including Taylor's Fairground, SLDC and CCC.

There would be an overall benefit to public rights of access to New Road Common as a result of the proposed Scheme Works.

- **Protection of Archaeological Remains and Features of Historic Interest** – Adjacent to New Road Common is Miller Bridge which is designated as a Scheduled Monument.

The original assessment for the Scheme identified the impacts on Scheduled Monuments as significant (moderate adverse) during the temporary works construction phase and not significant (slight adverse) once construction has been completed and the land reinstated. The original assessment for the Scheme also identified the impacts on designated historic buildings as not significant (slight adverse) during the construction phase, significant (moderate adverse) at year 1 of the operational phase and not significant (slight adverse) during year 15 of the operational phase.

The flood defences approved under the 2019 consent, abutted Miller Bridge. These have been changed to the proposed linear defence flood wall which is aligned along New Road away from Miller Bridge. Whilst the proposed Scheme Works will result in an increase in height of a section of the flood wall from 900mm - 1.2m to approximately 1.2m-1.65m, the move away from Miller Bridge in particular reduces the overall impact of the proposed Scheme Works.

7.5 ANY OTHER MATTER CONSIDERED TO BE RELEVANT

The Scheme is a major government funded project with wider public interest that is designed to improve the flood resilience of Kendal town centre, which in turn benefits from:

- reduced risk of flooding;
- reduced direct physical damage to buildings, other property and infrastructure;
- reduced loss associated with business downtime, traffic disruption and emergency costs;
- reduced loss of life, adverse health effects, loss of ecological values and cultural values; and,
- reduced inconvenience of post-flood recovery and reduced vulnerability of survivors.

Notwithstanding the above benefits associated with the Scheme, the EA considers that the proposed Scheme Works will not adversely impact the openness of and access to New Road Common on a permanent basis.

8 SUMMARY

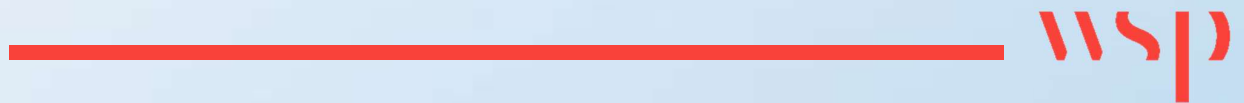
The Guidance advises that works may be proposed in relation to common land which do not benefit the Common but confer some wider benefit on the local community.

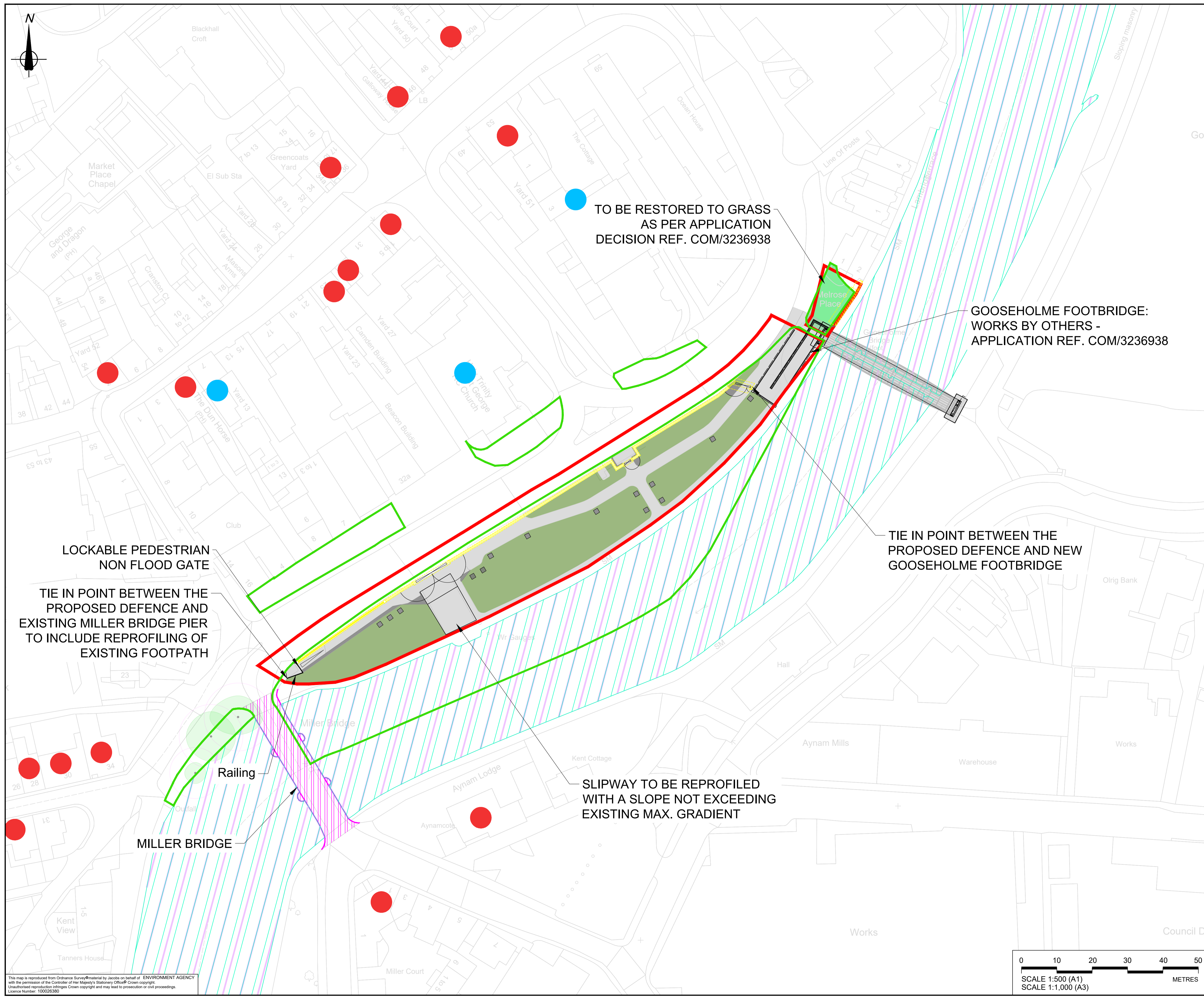
There will be temporary disruption to those wishing to exercise rights during construction of the proposed Scheme Works as access to New Road Common will be prevented. The proposed Scheme Works will require additional permanent land take with the installation of additional hardstanding and linear defence flood walling; however, the EA has sought to minimise this. As has been explained in Section 7 of this Supporting Statement, the EA considers that the proposed Scheme Works will not significantly affect users future use and experience of New Road Common.

The proposed Scheme Works will provide significant benefits to “the public interest” and “the interests of the neighbourhood” by providing improved flood resilience to the local community whilst ensuring that other local public interests such as the protection of public rights of access and the conservation of the towns character are not permanently compromised. Moreover, mitigation measures, such as the use of natural stone cladding and minimising the permanent land take of the proposed Scheme Works, have ensured that the permanent impacts of the proposed Scheme Works have been limited and reduced as much as is possible.

Appendix A

PROPOSED WORKS IN RELATION TO THE COMMON LAND BOUNDARY





KEY

PROPOSED FLOOD DEFENCES

- FLOOD WALL ALIGNMENT
- FLOOD GATE
- FLOOD GATE ARC
- RAMP
- ADDITIONAL HARDSTANDING AREAS ASSOCIATED WITH THE PROPOSED FLOOD WORKS
- EXISTING HARDSTANDING AREAS
- EXISTING GRASSLAND AREAS
- MELROSE PLACE - AREA TO BE RESTORED TO GRASSLAND

DESIGNATIONS

- LISTED BUILDING GRADE II*
- LISTED BUILDING GRADE II
- SCHEDULED MONUMENT
- SITE OF SCIENTIFIC INTEREST (SSSI)
- SPECIAL AREAS OF CONSERVATION (SAC)
- EXISTING TREES/TREE GROUPS TO BE RETAINED
- INDICATIVE ROOT PROTECTION AREA

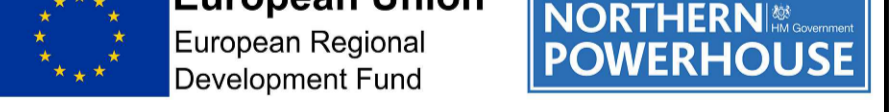
PLANNING BOUNDARIES

- NEW ROAD COMMON LAND BOUNDARY (REFERENCE CL68)
- LINEAR DEFENCES WORKING AREA

NOTES

1. THE PURPOSE OF THE DRAWING IS TO SHOW THE PROPOSED FLOOD RISK MANAGEMENT SCHEME IN RELATION TO THE COMMON LAND AND OTHER STATUTORY DESIGNATIONS.

Rev	Rev. Date	Purpose of revision	Drawn	Checked	Rev'd	Appr'd
P02	05/01/2023	FOR PLANNING	MA	AM	AM	EM
P01	13/06/22	DD1 - FOR CLIENT COMMENTS	BT	AM	AM	EM



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Client **Environment Agency**

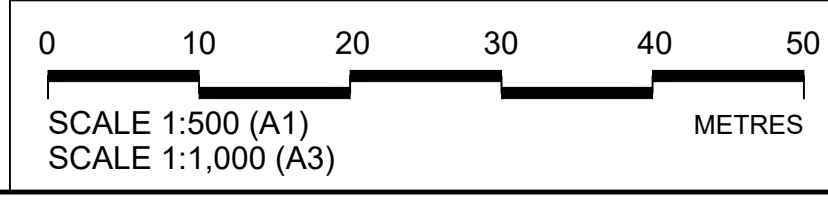
Project **KENDAL FLOOD RISK MANAGEMENT SCHEME 1**

Drawing title **PROPOSED WORKS IN RELATION TO THE DEFINITIVE COMMON LAND BOUNDARY**

Drawing status	S2
Scale	1:250 @ A1 DO NOT SCALE
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Client no.	ENV0000489C
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