

South Lakeland District Council
Cabinet

Wednesday, 8 June 2022

**Grant Support for Glass Panels to form part of the
Kendal Flood Alleviation Scheme**

Portfolio: Economy, Culture and Leisure Portfolio Holder, Leader of the Council
Report from: Director of Customer and Commercial Services
Report Author: Laura Chapman – Corporate Support Officer
Wards: Kendal South & Natland; Kendal Town;
Forward Plan: Key Decision included in the Forward Plan as published on 13 April 2022.

Links to Council Plan Priorities:

Working across boundaries – Securing additional funding to deliver critical infrastructure in partnership with other authorities.

Addressing the climate emergency – Working with the Environment Agency to deliver the Kendal Flood Risk Management Scheme and mitigate risk of major flooding events.

1.0 Expected Outcome and Measures of Success

- 1.1 The approval of grant funding of £375,000 towards the installation of Glass Panels along Aynam Road, Kendal, will support the delivery of the Kendal Flood Alleviation Scheme.
- 1.2 The additional funding contribution will support the objective to retain and improve the open aspects of the riverside views along Aynam Road by increasing the total length of glass panels from 92m to 411m and change the glass panel fixing specification from aluminium powder coated to stainless steel in three locations (Gooseholme, Waterside and Aynam Road).
- 1.3 The overarching strategic objective for the Kendal Flood Risk Management Scheme, as outlined in the full business case submitted to MHCLG to receive £5.32m of European Regional Development Fund (ERDF) towards the project delivery, is to promote a scheme which makes the area more resilient to flooding and minimises the economic and social harm of flooding, whilst delivering the wider benefits for people and wildlife.

2.0 Recommendation

2.1 It is recommended that Cabinet:

(1) subject to the Environment Agency securing the necessary further planning permissions approve an additional grant of £125,000 to the Environment Agency as a contribution to deliver glass panels along Aynam Road, Gooseholme and Waterside in Kendal as part of the Kendal Flood Alleviation Scheme. This funding having been previously agreed as part of the revised Capital Programme considered by Council on 12 May 2022;

(2) Reaffirm its approval to provide a grant of £250,000 to the Environment Agency to deliver the glass panels along Aynam Road, Gooseholme and Waterside in Kendal as previously agreed at Council on 11 November 2021; and

(3) subject to the Environment Agency securing the necessary further planning permissions delegate authority to the Director of Customer and Commercial Services in consultation with the Lead Specialist Legal Governance and Democracy (Monitoring Officer) to enter into an appropriate agreement with the Environment Agency within the parameters of the financial approval as detailed in paragraphs 7.1 to 7.3 of this report.

3.0 Background and Proposals

3.1 The market town of Kendal sits within the River Kent catchment, characterised by steep uplands and a wide floodplain area and located within a rapid response catchment, Kendal and other nearby settlements have a long history of flooding.

3.2 In December 2015, the impact of Storm Desmond resulted in some of the worst flooding on record throughout Cumbria with over 7,400 properties affected including 2,150 home, key roads, bridges and other infrastructure within Kendal.

3.3 In December 2019, approval was granted to receive a total of £5.34million of ERDF funding towards the delivery of the Kendal Flood Risk Management Scheme following the submission of a business case. The scheme includes:

- Linear defences along the River Kent through Kendal Town Centre;
- A new pumping station at the confluence with the Stock Beck at Gooseholme;
- Linear defences within the villages of Burneside, Staveley and Ings;
- Flood storage areas at Kentrigg and Kentmere Tarn in the upper Kent catchment and a catchment drain in the upper Stock Beck catchment.

3.4 The design and construction of flood defences through Kendal began in spring 2021 and is due to be completed by early 2024. Planning approval was received in June 2019, which included approval to install aluminium framed glass flood defence panels in three location along Aynam Road, Kendal.

3.5 In response to the Kendal Flood Risk Management Scheme, Kendal Town Council formed a Flood Relief Scheme Working Group that included representatives from the Environment Agency and South Lakeland District Council to report on the scheme and identify opportunities to improve the visual design of the glass panels in public realm areas of the town. Through the working group and in consultation with residents a new planning application has been submitted to improve the glass panels by extending the total length and upgrading to a stainless steel specification as reflected in the revised planning application. The inclusion of the glass panels is a fundamental aspiration from the local community and will improve the visual design of the defences in these areas whilst still allowing views along the river for residents. Further ground investigations have enabled the EA to improve the design to more effectively control seepage and groundwater using an augered foundations between Jennings Yard Footbridge and Nether Bridge. The inclusion of glass panels will not impact on the safety or the effectiveness of the defences.

3.6 South Lakeland District Council previously sought approval to make a financial contribution of £250,000 towards the cost of the new and improved glass panels to be installed by the Environment Agency along Aynam Road, Waterside and Gooseholme through the Capital Programme at Council on 11 November 2021. This was following the request from Kendal Town Council on behalf of the community to replace the

stonewall flood defences with Glass Panels at these particular locations. The installation of the glass panels would also be dependent on a funding contribution of £150,000 from Kendal Town Council. However since this approval was sought and in light of the new and improved design material costs have since increased and therefore an additional £125,000 is required from South Lakeland District Council in order to deliver the changes. This would increase South Lakeland District Council's funding contribution to £375,000. It is acknowledged that despite recent material cost increases the Environment Agency is respecting the prices outlined in 2019.

- 3.7 Subject to the additional funding being received the Environment Agency would be responsible for:
- The management and proposed delivery;
 - The design, planning, installation and future maintenance of the new improved glass panels.
 - Procurement of the materials in accordance with ERDF requirements.
- 3.8 The Council is seeking expenditure of the total sum of £375,000 to the Environment Agency towards the installation of Glass Panels.
- 3.9 The design of glazed panel flood defences, including support frames, posts and fixing arrangements to connect to supporting structures will be by the Environment Agency's Contractors and suppliers and agreed in consultation with Kendal Town Council and South Lakeland District Council.
- 3.10 The design life of the glazing and associated structural supports shall be minimum 50 years and the design life of replaceable seals and fixing shall be minimum 25 years. All installation fixings shall be tamper proof and provide a high level of security against malicious damage or theft.
- 3.11 The glass panel frame design shall be consistent throughout the three locations of glass panels along Aynam Road, Waterside and Gooseholme.
- 3.12 All glazing shall incorporate measures to reduce colour impurity, provide clear glass, and incorporate a low-maintenance coating to minimise cleaning requirements.

4.0 Appendices Attached to this Report

Appendix No.	Name of Appendix
1	Health and Sustainability Impact Assessment

5.0 Consultation

- 5.1 The Environment Agency, South Lakeland District Council and Kendal Town Council have worked in collaboration during the design development of the glass panel improvements and the wider scheme to ensure that:
- The improved glass panel is designed as a flood defence and per the agreed glass panel specification.
 - The design integrates with the flood defences and other elements of the Environment Agency's Kendal Flood Risk Management Scheme.
 - The design complements the existing Kendal townscape and river environment.
- 5.2 Communication regarding the works shall be undertaken by the Environment Agency as the project lead. They will be responsible for scheme communication and publicity, intended publicity programmes will be shared with partners and the community to ensure consistency.

6.0 Alternative Options

- 6.1 The alternative option would be not to approve the additional expenditure of £125,000 however, this would affect the delivery of the Kendal Flood Alleviation Scheme that, in turn would affect the ERDF funding, as well as create reputational damage for the Council.
- 6.2 In accordance with the grant funding agreement the ERDF funding could be clawed back or a fine imposed as a result of any project delays. Should the funding towards the glass panels not be approved, additional funding streams would need to be sought which would create project delays.

7.0 Implications

Financial, Resources and Procurement

- 7.1 The recommendation to approve the expenditure of £250,000 to the Environment Agency as a contribution towards the installation of Glass Panels as agreed in the Capital Programme by Council on 11 November 2021, as well as an additional one off payment of £125,000 has a financial implication on the existing Business Rates Pool as reflected in the Capital Programme approved by Cabinet on 13 April 2022. Council considered the Capital Programme on 12 May 2022.
- 7.2 It is proposed that South Lakeland District Council pay a fixed contribution of £375k in the 2022/23 financial year towards the glass panels due to LGR implications. Kendal Town Council will also pay a fixed contribution of £150k (2022-£35k, 2023-£35k, 2024-£40k, 2025-£40k). It is expected that the Environment Agency will be responsible for all other related costs regarding planning, design, purchase, installation and future maintenance. The Environment Agency will lead on the procurement of goods and materials to deliver the project and must work in accordance with ERDF funding procurement guidance and regulations. The Council as the accountable body for the ERDF fund will undertake appropriate checks to ensure the Environment Agency are working in accordance with the requirements.
- 7.3 The proposed payment scheduled would be as follows:-

Partner	Year	Amount	Date / Milestone
South Lakeland District Council	2022/2023	£375,000	Before 31 March 2023
Kendal Town Council Payment	2022/2023	£35,000	Before 31 March 2023
Kendal Town Council payment	2023/2024	£35,000	Before 31 March 2024
Kendal Town Council Payment	2024/2025	£40,000	Before 31 March 2025
Kendal Town Council Payment	2025/2026	£40,000	Before 31 March 2026
Total		£525,000	

The additional costs for the installation of glass panels is being met by Kendal Town Council and South Lakeland District Council only. The Environment Agency will be responsible for all other related costs regarding planning, design, purchase, installation and future maintenance.

Human Resources

7.4 No human resource implications have been identified.

Legal

- 7.5 This report is seeking approval for £125,000 be granted to EA to install glass panels along Aynam Road, Waterside and Gooseholme in connection with the Kendal Flood Alleviation Scheme. South Lakeland District Council previously sought approval for a payment contribution of £250,000 towards the cost of the glass panels through the Capital Programme at Council on 11 November 2021. However, as described in this report the design has since changed and this additional contribution is being requested to cover increased material costs as a result of the new design.
- 7.6 Subject to approval of the additional £125,000 {and planning permission submitted by the Environment Agency}, South Lakeland District Council will enter into an appropriate agreement with the Environment Agency to make a grant of £375,000 in connection with the installation of the glass panels.
- 7.7 A separate grant agreement between Kendal Town Council and Environment Agency would be required to confirm Kendal Town Councils contribution of £150,000.
- 7.8 External legal advice has been taken in connection with this report. The initial advice has been focussed on the powers of South Lakeland District Council to provide funding to EA to carry out these works, and on the subsidy control and procurement position.
- 7.9 In respect of powers, the advice is that the general power of competence under s.1 of the Localism Act 2011 (LA) provides a source of powers for the Council to make a grant to the Environment Agency. This is on the basis that providing a grant to the EA for these purposes is within the scope of things that an individual generally may do. This power is subject to pre and post commencement limitations, but external legal are not aware of any limitations which would impact upon this advice.
- 7.10 In respect of the procurement position, legal advice is that if the Council provides a grant to EA in order to carry out the works in relation to these glass panels (as opposed to entering into an agreement with EA which is in the nature of a services agreement), then this will not be a procurable contract which falls within the scope of the Public Contracts Regulations 2015 (PCR). This reflects the Council's intentions and so it is very unlikely that the agreement with EA would be seen as a procurable contract which is subject to the PCR. Even if it were, it would be below the current threshold for works contracts (currently £5,336,937) and therefore no procurement process would be required to award the contract. The procurement risk in connection with this transaction is therefore very low.
- 7.11 In respect of the subsidy control position, legal advice is that where a public body provides funds to another public body in connection with their public functions, this would sit outside of the subsidy control regime, on the basis that the recipient of funds is not an economic actor in this context and is therefore not capable of receiving a subsidy. The subsidy control risk in connection with this transaction is therefore very low.
- 7.12 It was considered that there may be an interaction between the agreements that South Lakeland District Council has entered into with the Secretary of State for Communities, Housing and Local Government (SOS) and the EA in connection with the ERDF funded flood defence scheme. This was raised by South Lakeland District Council with the ERDF representative, who confirmed that SLDC's funding of the glass panels would not impact upon the agreement in relation to the ERDF funded flood defence scheme. This prior confirmation from the ERDF representative provides comfort that the risk here is low.

7.13 Following the legal advice, it is clear that the Council has the powers to enter into this transaction. The risk of granting an unlawful subsidy or breaching the Council's obligations under the Public Contracts Regulations 2015 is very low. Appropriate legal advice will be taken in connection with the grant agreement. Legal advice will also be provided to ensure compliance with the s.24 Direction.

Health and Sustainability Impact Assessment

7.14 Have you completed a Health and Sustainability Impact Assessment? Yes

7.15 If you have not completed an Impact Assessment, please explain your reasons: Assessment completed, see appendix 1.

7.16 Summary of Health and Sustainability Impacts:

		Positive	Neutral	Negative	Unknown
Environment and Health	Greenhouse gases emissions		X		
	Air Quality		X		
	Impacts of Climate Change	X			
	Reduced or zero requirement for energy, building space, materials or travel		X		
	Active Travel	X			
Economy and Culture	Inclusive and sustainable development		X		
	Jobs and levels of pay	X			
	Healthier high streets		X		
	Culture, creativity and heritage	X			
Housing and Communities	Standard of housing	X			
	Access to housing		X		
	Crime		X		
	Social connectedness		X		

Equality and Diversity

7.17 Have you completed an Equality Impact Analysis? No

7.18 If you have not completed an Impact Analysis, please explain your reasons: Not required.

7.19 Summary of Equality and Diversity Impacts:

Please indicate: P = Positive impact; 0 = Neutral; N = Negative; Enter "X"				
Age	P		O	N
Disability			X	
Gender reassignment (transgender)			X	
Marriage & civil partnership			X	
Pregnancy & maternity			X	
Race/ethnicity			X	
Religion or belief			X	
Sex/gender			X	
Sexual orientation			X	
Armed forces families			X	
Rurality			X	
Socio-economic disadvantage			X	

Risk Management	Consequence	Controls required
Flood defence budget and programme will be put at significant risk.	Significant delays and cost implications for the EA if the work is not approved.	Reports to be approved and legal agreements to be put in place to move forward in line with the EA's programme.
SLDC does not approve expenditure of the total funding contribution of £375,000	The Councils reputation is damaged and the project risks being insufficiently funded.	The Council contributes where it can and supports the EA in attracting other possible funding streams. (These would need to be identified)
The new authority does not take forward the funding contributions in the future.	Potential to stop the project progressing, and impacts on the number of properties protected and puts the ERDF funding at risk.	The interests of the communities in South Lakeland are championed through the Local Government reform process. Legal services will advise regarding implications of s.24 direction.
Reputational Risk	Damage to SLDC's reputation with community, residents and businesses.	Working closely with EA to manage potential risks and timings of works.
Civil disruption	Delays in scheme delivery affecting ERDF timescales, could put businesses and	EA are working with local authorities and others to ensure that these are

Risk Management	Consequence	Controls required
	residential properties at potential risk of flooding.	minimised as much as possible.

Contact Officers

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Background Documents Available

Name of Background document	Where it is available
Council Minute C/55 (2021) for previous approval of £250,000	Minute C/55 Corporate Financial Updates Quarters 1 and 2 2021/22
Revised Planning Application (Awaiting consideration)	SL/2022/0286
Previous Planning Application	SL/2018/0925

Tracking Information

Signed off by	Date sent	Date Signed off
Section 151 Officer	02-04-22	23/05/2022
Monitoring Officer	02-04-22	19-04-22
CMT	02-04-22	04-05-22

Circulated to	Date sent
Lead Specialist	13/04/22
Human Resources Lead Specialist	N/A
Communications Team	N/A
Leader	13/04/22
Committee Chairman	N/A
Portfolio Holder	13/04/22
Ward Councillor(s)	N/A
Committee	N/A
Executive (Cabinet)	8 June 2022
Council	N/A