



ADUR DISTRICT  
C O U N C I L

Key Decision [Yes/No]

Ward(s) Affected:

**Western Harbour Arm Flood Defence Project**

**Report by the Director for Place**

**Officer: Phil Graham, Project Manager**

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**Executive Summary**

**1. Purpose**

- 1.1. The purpose of this report is to set out a practical solution to ensure that vital flood defences are provided in a vulnerable location at the Western Harbour Arm in Shoreham to enable work to proceed on-site. To achieve this, authorisation will be required by Members to extinguish Restricted Byway 3157 ("RB3157") at Stowes Hard in Shoreham.
- 1.2. The extinguishment of the RB3157 will reduce and prevent the integrity of the floodwall from being compromised, minimising its vulnerability and risk to flooding and ongoing costs for management and maintenance requirements.
- 1.3. This report sets out the background to the RB3157 and explains why it is now necessary to extinguish it for the benefit of improving flood protection in Shoreham.
- 1.4. This report sets out alternative options to ensure suitable public access can be maintained.

## **2. Recommendations**

2.1. Joint Strategic Sub Committee is recommended to:

- I. note the implications and processes associated with the extinguishment of RB 3157.
- II. note that a further report will be presented back to the Joint Strategic Committee Sub-Committee setting out the next key steps, necessary budget and timescales required to deliver the Flood Defence project.
- III. delegate authority to the Assistant Director for Regenerative Development to make a formal application to extinguish RB3157.
- IV. resolve not to proceed with the Diversion Order that was made on the 8th March 2021 in respect of RB3157

## **3. Background**

- 3.1 The Joint Strategic Committee on 31 January 2019 agreed to the purchase of a 3.5m strip of land (adjacent to the A259 on Brighton Road) from Sussex Yacht Club (SYC) by Adur District Council (ADC) to build a new flood defence wall. The land in question had been identified as a key weakness in the flood defences in Shoreham, experiencing a number of flooding events in recent years, impacting investment, growth and regeneration in this area.
- 3.2 In addition to the construction of a flood wall the remaining section of land purchased by the Council from SYC, of approximately 3m on the northern boundary of the site, will be designated as a footway with the intention that West Sussex County Council Highways will adopt through a S278/38 agreement on completion of the construction programme and develop the footway into a cyclepath. Planning permission for the development was granted by the planning authority in March 2019. A condition of the planning permission required the diversion or stopping up of RB3157 prior to the commencement of work on site.
- 3.3 A project update report considered at the Joint Strategic Committee of 7 July 2020 agreed that delegated authority be given to the Head of Major Projects & Investment to make formal applications to divert the Public Right of Way at

Stowes Hard and a Stopping Up Order for a section of highway at the entrance to SYC to build the flood wall and create a new 12m entrance point to the Yacht Club land further westwards.

- 3.4 The Stopping Up Order of a section of public maintainable highway at the existing entrance to SYC grounds was formally authorised by the Secretary of State and came into force on 15 October 2020.
- 3.5 An Order was made to divert RB3157 on 8th March 2021. The Order sought to divert RB3157 from the new entrance to a point opposite the existing site entrance (see **Appendix I**). During the formal consultation process two objections were made, primarily on the grounds that the new route, with right angled turns would not be convenient to those seeking to access the River. The matter was reviewed by Officers and it was decided not to progress the Diversion Order.
- 3.6 The capital receipt from the sale of land has been used by SYC to construct their new Yacht Club on the southern side of the existing Clubhouse land which is now complete and operational.
- 3.7 Adur District Council demolished the redundant yacht club to make way for the new flood wall and ancillary infrastructure requirements in November 2021.
- 3.8 The recent demolition of the redundant Yacht Club premises and decommissioned UKPN substation reopened access to RB3156 and RB3157. These Restrictive Byways have up until recently been blocked by buildings from public access for many years.
- 3.9 Two serviced floodgates will be included as part of the flood defence wall, one of which being a 12m sliding flood defence gate. ADC will be responsible for the on-going management and maintenance costs of both flood gates.
- 3.10 The Council appointed a design team to progress the scheme to RIBA 4 Work stages (detailed design) in readiness to tender and to appoint the flood defence construction contractors. However, further important surveys and ground investigations had been required to inform the final designs. This has included geological and borehole testing which has identified more complex technical implications in relation to the required depth of pilings and how water drainage disperses above and below the gravel, chalk and clay substrates. Therefore the designs needed to consider flooding from the southern aspect of the flood defence wall and also from surface and groundwater that could be held back by

the new flood wall impacting land to the north. The result of this testing is currently being analysed and a final report is being prepared for June 2023.

3.11 The diversion or stopping up order for RB3157 remains unresolved and potentially holds up the delivery of the essential flood defence works and puts at jeopardy the public funding used to purchase land from the SYC. Officers have spent a considerable amount of time working with various partners to find a practical solution.

3.12 There are 3 Restricted Byways in the vicinity of the proposed Flood Defence and these are shown 3.1 on **Appendix II**. The legal definitive line for each Restrictive Byway being situated through SYC, ADC and WSCC land:

- RB3156 - Dolphin Hard
- RB3157 - Stowes Hard
- RB3158 - Tarmount Hard

#### **4. Issues relating to the diversion of RB3157**

4.1. The Council made the Order to divert RB3157 on 8th March 2021 (see **Appendix I**) Two objections were received through the consultation, one from the Slipways Group and the other from the Inland Waterways Association. Both Groups expressed concern about the suitability of the proposed diversion as the new route would incorporate sharp right angled turns. There were also concerns raised that the proposed access to the River would be at a point where there were no steps or ramp down to the water's edge.

4.2. A meeting was held on site with the Slipways Group to discuss the objection and it was clear that the Group felt that any diversion should provide an easier direct route to the River. Both the Slipways Group and the SYC claim the Definitive Map for RB3157 is incorrect and should be further eastwards where the existing entrance is situated, although this is yet to be substantiated with WSCC.

4.3. Following this meeting various alternative options for diverting the RB3157 were considered. SYC has raised their concerns and would oppose public access to its slipway, indicating that it is unsafe for the public to access through a busy yacht club site with large hoists moving yachts back and forwards from the boat yard to its slipway.

- 4.4. Officers have explored the option of relocating the 12m flood gate to align with RB3157 as this would avoid the need for any diversion or stopping up Order. However, this option would present the same Health & Safety concerns for SYC in terms of safe ingress and egress for all users of the site and those using the RB and SYC would not support revising the planning application.
- 4.5. SYC has prepared a detailed report setting out why it feels the Definitive map is inaccurate and has indicated that this would be submitted to WSCC. WSCC has indicated that it would potentially take up to 18 months to deal with any request to amend the Definitive Map without any guarantees on the outcome and this would just delay the construction of essential flood defences for the town.

## **5. Stopping Up Order**

- 5.1. RB3157 is defined as a highway and allows the public the right of way on foot, bicycle, on horseback and on any vehicle other than mechanically propelled vehicles. The right of way does not provide any reasonable practical use, particularly given its purpose and lack of public land in the immediate vicinity.
- 5.2. Once an order is made for the stopping up of a Restricted Byway, formal consultation will take place, for at least 28 days in accordance with Schedule 14 TCPA and Schedule 3 of the Town and Country (Public Path) Regulations 1993. Any person may make representations to the Council within 28 days of the order being made. If no objections are made (or any objections are withdrawn) the Council can confirm the order. Where objections are made, an inquiry or hearing is held and the Secretary of State will decide whether or not to confirm the order with or without amendments. This can be a lengthy process without any guaranteed outcome.
- 5.3. The Council is contractually obliged to use its 'reasonable endeavours' to secure the stopping up or the diversion of the public rights over Stowes Hard and of course it cannot fully implement the construction of the flood defence until this matter is resolved.

## **6. Proposed Solution**

- 6.1 There is no easy solution to this matter and it is clear that diverting RB3157 would instigate objections from both the landowner and local groups and delay the project. A stopping up order could also provoke objections although would be strongly supported by the SYC. Given this byway has been blocked for many years and would allow an essential flood defence scheme to be

implemented this seems the most expedient option to pursue. It would enhance the safety of the site and avoid another flood gate being installed which would weaken the resilience of the defence and add further management issues for the Council and or SYC.

- 6.2. In parallel with the proposed stopping up of RB3157, your Officers are discussing with the SYC and WSCC proposals to improve the restricted byway RB3156 on the western side at Dolphin Hard. There is the scope to make use of the existing ramp leading off Ferry Bridge to avoid a drop in levels between the pavement and SYC land. This concept would be considered in tandem with the stopping up process, although they would not be dependent on one another.

## **7. Financial Implications**

- 7.1. The budget available for this phase of the project is £2.0m. This budget was first set back in 2016/17.
- 7.2. As members are aware, there are significant cost pressures within the construction industry. Common issues across the economy including inflation, supply chain issues, and the availability of labour have been acutely felt within the construction industry. These have been further exacerbated by the war in Ukraine with the resultant impact on energy prices and commodities affecting the energy intensive construction industry.
- 7.3. Consequently, the budget for the scheme will be revised to reflect the current estimated cost of the construction and the final scheme design that is being prepared in parallel to this report. The extinguishment of RB3157 is expected to reduce the cost of the construction by avoiding the cost of an additional floodgate, and reduce the ongoing management and maintenance costs.
- 7.4. Members will be updated on delivery costs, the construction programme and the procurement strategy in Quarter 2 of 2023.

Finance Officer: Sarah Gobey

Date: 9th May 2023

## **8. Legal Implications**

- 8.1. In accordance with Section 257 Town and Country Planning Act 1990 ("TCPA"), a local authority may, by order authorise the stopping up of any footpath, bridleway or restricted byway if they are satisfied that it is necessary

to do so in order to enable development to be carried out in accordance with Planning Permission granted under Part III TCPA.

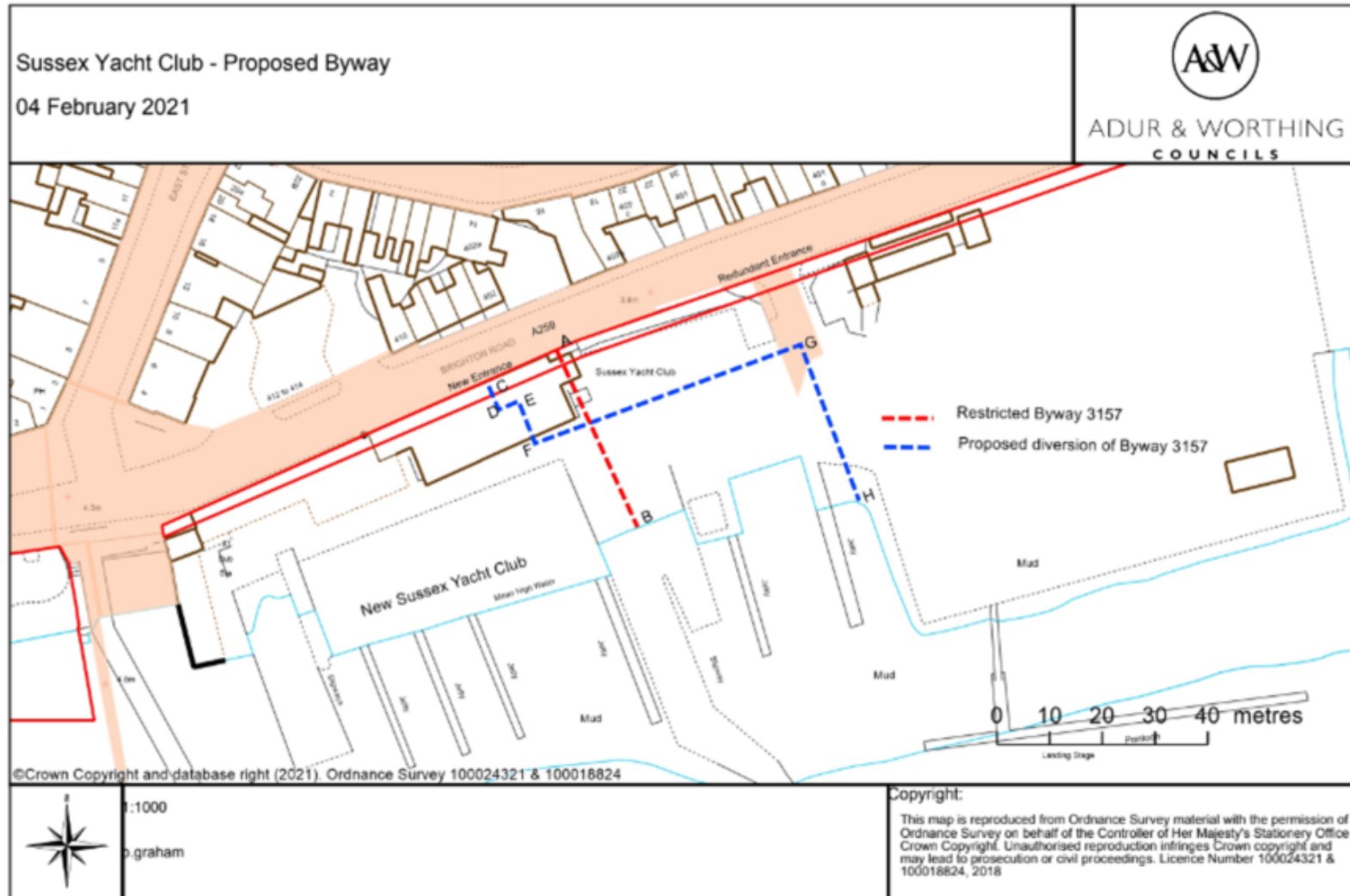
- 8.2. The process to obtain a stopping up order is explained in paragraph 3.2 above.
- 8.3. Further Section 257(2) TCPA states that an order under this section may, if the competent authority are satisfied that it should do so, provide, inter alia, for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or for the improvement of an existing highway for such use.

Legal Officer: Caroline Perry

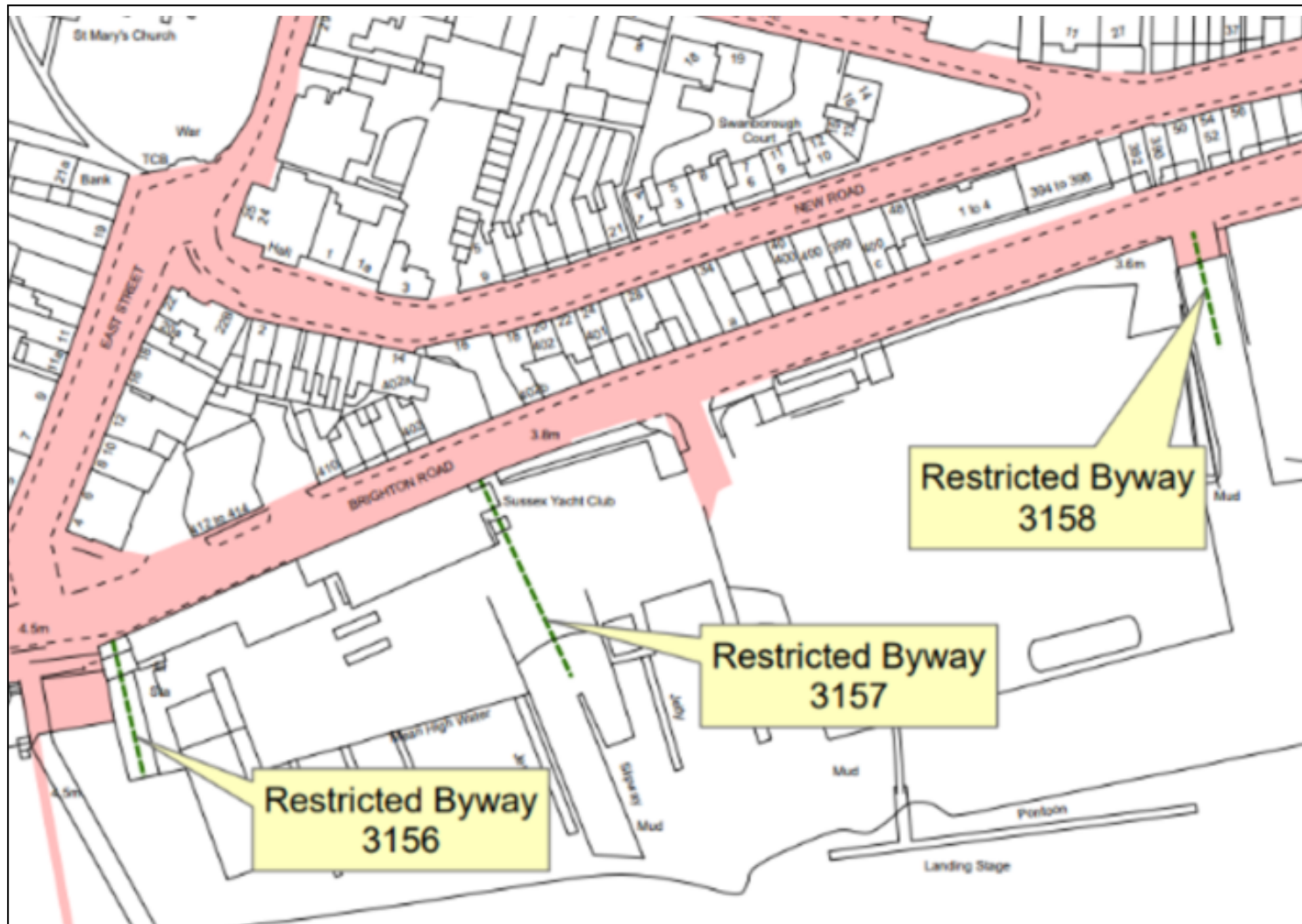
Date: 11th May 2023

### **Background Papers**

- Joint Strategic Committee 5th June 2018 Agenda Item 7- Sussex Yacht Club.
- Joint Strategic Committee 10th January 2017 Agenda Item 11 - Flood Defences at Sussex Yacht Club.
- Joint Strategic Committee 7th July 2015 Agenda Item 12 - Shoreham Harbour Flood Defence Project for Sussex Yacht Club and Kingston Beach, Western Harbour Arm.
- JSC Report, 31 January 2019
- JSC Report, 7 July 2020







## **Sustainability & Risk Assessment**

### **1. Economic**

- The project will deliver significant economic benefits through the protection of Shoreham Town Centre and the A259 from flooding incidents and will create a number of direct and indirect economic benefits through the construction process.

### **2. Social**

#### **2.1 Social Value**

- The project outlined in the above report will have a positive impact on our local communities by improving local flood, cycle and pedestrian Infrastructure.

#### **2.2 Equality Issues**

- Matter considered and no issues identified.

#### **2.3 Community Safety Issues (Section 17)**

- Building an appropriate flood defence wall and flood operational procedures will protect the safety of the community.
- A safe and accessible pathway/cyclepath will provide a safer movement along the A259 Brighton Road

#### **2.4 Human Rights Issues**

- The development would protect homes and businesses and therefore would not impinge on anyone's human rights. The proposals, in any event, would require planning permission and due consideration will be given to all the consultation responses received.

### **3. Environmental**

- It is not anticipated that any aspect of the scheme will have a Harmful impact on Adur District's environment or habitats. The environmental and ecological effects of the scheme have been fully considered through the planning application.

### **4. Governance**

- The developments outlined within this report are aligned to the Council's contract of standing orders