



The Planning Inspectorate

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# Report to the Secretary of State for Environment, Food and Rural Affairs

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an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Date:

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Marine and Coastal Access Act 2009

Objections by [REDACTED] and [REDACTED]

Regarding Coastal Access Proposals by Natural England

Relating to Aust to Brean Down

Site visits made on 18 May 2021

File Refs: MCA/ABD1/0/1  
MCA/ABD1/0/2

**Objection Reference: MCA/ADB1/0/1/ABD150**

**Aust to Brean Down, Severn Bridge to New Passage**

- On 25 July 2019 Natural England submitted a Coastal Access Report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009.
- An objection dated 16 September 2019 to Report ABD 1 was made on behalf of [REDACTED]. The land in the Report to which the objection relates is route section ref. ABD-1-S003 to S006.
- The objection was made under paragraphs 3(3)(a), (b), (c) of Schedule 1A to the National Parks and Access to the Countryside Act 1949 on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

**Summary of Recommendation:** I recommend that the Secretary of State makes a determination that the proposals set out in the Report, as proposed to be modified, do not fail to strike a fair balance.

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**Objection Reference: MCA/ADB1/0/2/ABD135**

**Aust to Brean Down, Severn Bridge to New Passage**

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- An objection dated 16 September 2019 to Report ABD 1 was made on behalf of [REDACTED]. The land in the Report to which the objection relates is route section ref. ABD-1-S006 to S016.
- The objection was made under paragraphs 3(3)(a), (b), (c) of Schedule 1A to the National Parks and Access to the Countryside Act 1949 on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.

**Summary of Recommendation:** I recommend that the Secretary of State makes a determination that the proposals set out in the Report, as proposed to be modified, do not fail to strike a fair balance.

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**Procedural Matters**

1. On 25 July 2019 Natural England (NE) submitted ten Reports to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State), setting out proposals for improved public access along the estuary of the River Severn between Aust and Brean Down. Each Report makes free-standing statutory proposals for the relevant stretch, with a single Overview document.
2. The period for making formal representations and objections to the Reports closed on 19 September 2019 and 11 objections were received, two of which were subsequently withdrawn. I have been appointed to report to the Secretary of State on the remaining admissible objections. The sections of the route referred to in this report relate to the Report ABD 1: Severn Bridge to New Passage, which is the north-eastern most section of the route. The route sections are annotated ABD1, eg ABD1-S001; for ease of reference I shall use the S0 number only, eg S001. Other objections dealt with in separate reports.

3. Various representations were received and are addressed below where they refer to the specific section of route in this report.
4. I conducted a site inspection on 18 May 2021 when I was accompanied by the objectors and representatives of NE. Following the site visit I wrote to the parties requesting further information on certain matters as referred to in the relevant sections.

### **Main Issues**

5. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (the Act) and requires NE and the Secretary of State to exercise their relevant functions to secure 2 objectives.
6. The first objective is to secure a route for the whole of the English coast which:
  - (a) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
  - (b) (except for the extent that it is completed by ferry) passes over land which is accessible to the public.

This is referred to in the Act as the English coastal route (ECR).

7. The second objective is that, in association with that route, a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with that route or otherwise. This is 'the coastal margin'.
8. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
  - (a) the safety and convenience of those using the ECR,
  - (b) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
  - (c) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
9. They must also aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land.
10. In cases such as this where it is proposed that the ECR extends along a river estuary rather than the sea, section 301 of the Act applies. It states that NE may exercise its functions as if the references in the coastal access provisions to the sea included the relevant upstream waters of a river. The relevant upstream waters are the waters from the seaward limit of the estuarial waters of the river, upstream to the first public foot crossing or a specified point between the seaward limit and the first such crossing.
11. NE's Approved Scheme 2013 (the Scheme) sets out the approach NE must take when discharging the coastal access duty, forming the basis of the proposals in each Report.
12. My role is to determine consider whether the proposals set out in NE's Report fail to strike a fair balance as a result of the matters specified in the objection. This report

sets out that determination, with a recommendation to the Secretary of State on the relevant Report.

### **The Coastal Route**

13. The Report sets out that NE proposes to exercise its functions as if the sea included the estuarial waters of the river Severn. NE propose to align the ECR from Brean Down Fort alongside the river Severn, the estuarial waters of which are among the widest of all English estuaries, to Aust, where walkers may cross to Wales by means of the footway over the Severn Bridge.
14. The Severn is broadly funnel-shaped in this area, giving extensive views of the estuary from most places along it. It has the third highest tidal range in the world, exposing extensive areas of mud and saltmarsh at low tide and lending the estuary and its tributaries a strong coastal character as the tide recedes. There are cliffs at Aust, with cliffs and small bays between Portishead and Clevedon. The lower reaches of the Severn between Clevedon and Brean Down are punctuated by prominent headlands, low-lying bays and river mouths. Most tributaries can be crossed at or close to their confluence with the Severn by means of sluices already accessible to the public. Four tributaries – the River Axe, the River Banwell/Kewstoke Rhyne, the River Yeo and the Avon – would require a detour from the Severn to enable onward access. Each is flanked by saltmarsh and steep muddy banks exposed between tides.
15. Generally, the nature of the affected land would be typical of the coast and listed as coastal land types in the legislation: the ECR would mainly follow cliff tops and embankments and the coastal margin would consist mainly of cliffs, saltmarsh, beaches and foreshore. The main exception would be at Avonmouth/Royal Portbury Dock where there is no practicable seaward route. There are other places where detours would be necessary to avoid harm to wildlife.
16. The ECR in this section starts at the Severn Bridge, where there is a foot and cycle crossing to Wales linking to the Wales Coast Path. It follows the existing route of the Severn Way, which is a promoted route between Bristol and the source of the River Severn in Wales, with the exception of a new route between the Severn Bridge foot and cycle crossing (S001) and New Passage Road (S014), utilising an existing metalled access track from the bridge to the cliff top and crossing farmland to New Passage Road. The objections refer to this proposed new access.
17. Roll back is proposed in relation to S003 – S013. This would be in direct response to coastal erosion or other geomorphological processes, or significant encroachment by the sea; or to link with other parts of the route that need to roll back as a direct result of coastal erosion or other geomorphological processes, or significant encroachment by the sea. Where sections of the approved route need to change for these reasons in order to remain viable, the new route would be determined by NE without any requirement for further reference to the Secretary of State.

### **The case for the objectors**

18. The objections were submitted on behalf of the parties by Morris & Co Chartered Surveyors, Land and Property Consultants. The objectors represented themselves at the site visit and in response to queries. The general matters are set out below, with a separate section dealing with particular matters relevant to the interests of each party.

19. The proposed route imposes a burden of third party public rights over private land with no compensation being paid.
20. The proposed route fails in its objective as it does not follow the coastline. Adequate access already exists in close proximity.
21. The estimated cost of implementation has not been independently verified. It is not a good use of public funds and would fail any reasonable cost/ benefit analysis.
22. The proposed route follows an unstable cliff, which would put the public at unnecessary risk. The existing fence boundary is currently suspended due to the cliff edge being unstable and falling away.
23. There is no confirmation that South Gloucestershire Council (SGC) have agreed to take on the financial liability to maintain the proposed path and fencing.
24. The proposed signage is inadequate, with no mention of signs limiting path to walkers and the only permitted pets being dogs. There is no undertaking as to responsibility for maintenance and replacement of signs.
25. There has been no consideration to the provision of car parking for users of the proposed path. NE were made aware that parking in the locality is already a problem and this would be exacerbated by additional traffic for path users.
26. No fence specification has been provided. Sheep and cattle are grazed on the land and so the minimum acceptable would be treated round posts with pig wire and three strands of barbed wire.

**[REDACTED] – MCA/ABD1/0/1**

27. The route in the section S006 should follow a straight line. The proposed route circumvents a bramble bush which could be easily trimmed back and this would mitigate the impact of the field use. Similar straightening of the route should be implemented on sections S004 and S005.
28. No fencing has been offered for the sections S005 and S006, which forms a pinch point at the end of the field. This risks dogs, or people, driving livestock into the area of the footpath.

**[REDACTED] – MCA/ABD1/0/2**

29. Section S011 should be located to the east of the hedge, rather than the west, as the land is higher. The currently proposed route becomes waterlogged in wet weather.

**Natural England's Response**

30. The issue of compensation was discussed during the passage of the legislation through Parliament. Parliament were satisfied that because of the range of controls built into the coastal access arrangements, financial compensation for the creation of any new rights was not justified. These built-in controls include:
  - The duty for NE to aim to strike a fair balance between public and private interests when developing its proposals, and the provision for objections on this point to be independently determined.

- The inherent flexibility of the path alignment power, including when roll back is invoked, to enable sensible decisions to be made in all the circumstances.
- The commitment to discuss alignment issues with the owner or occupier of affected land, including when roll back has to be invoked because of natural processes.
- The inherent limitations on the application of coastal access rights should be recognised. These are:
  - the automatic exception of the most unsuitable categories of land from their application, even where they occur within the coastal margin, [Schedule 1 to the Countryside and Rights of Way Act 2000 (CROW)]; and
  - the national restrictions on the activities people may pursue while exercising any new rights (Schedule 2 to CROW).
- NE's ability to avoid unreasonable impacts caused by any new rights, by giving legal directions to exclude or restrict them to the extent necessary for this purpose, on the grounds set out in CROW Part 1 Chapter 2.

31. NE do not think a need for compensation arises in this case
32. Table 1.3.2 of Report ABD1 sets out the route options considered between the Severn Bridge and Old Passage on Report map ABD 1a. The proposed route was the option that best fits the requirement for a fair balance between public and private interests in this area. The rejected route options included several closer to the sea, but the proposed route offers reasonable proximity to the sea given the need to avoid buildings and their curtilage seaward of route sections S013 to S015. The proposed route has been designed to maximise sea views from the cliff top.
33. In the 1950s a public footpath was recorded on the definitive map corresponding approximately to route sections S005 to S008 along the cliff top. At the junction of sections S008 and S009 the historic footpath continued along the cliff top to the old Aust ferry pier, whereas the proposed route cuts inland to avoid private houses and gardens. The footpath was extinguished in 1961 as part of preparations for the construction of the Severn Bridge.
34. It is thought that the existing public access referenced is the Severn Way, an existing promoted route from the source of the river Severn to Bristol which passes along this part of the estuary. When there is a clear existing walked line along the coast such as this, paragraph 4.7.1 of the Scheme says NE would normally propose to adopt it as long as the alignment makes sense in terms of the other statutory criteria and principles set out in the Scheme. NE maintain that the Severn Way does not make sense in those terms, as set out in Table 1.3.2 of the Report.
35. The establishment cost estimate was prepared by the SGC rights of way team, the local access authority which would be responsible for the works and on-going maintenance of the route. SGC are best placed to carry out the estimate because they are responsible for the maintenance of other public footpaths in the local area, including part of the Cotswold Way National Trail, and have established relationships with local contractors.
36. SGC estimates the cost of the proposed works on the disputed sections at £19,000. This is not an unusual or excessive cost for a new section of route, especially taking

into consideration its strategic location at the beginning of the England Coast Path (ECP) and the fine views along the estuary afforded from the proposed route. Prices for labour and materials are subject to change, but the eventual cost should not be significantly different from the estimate.

37. The proposed route is reasonably safe for public use. It would be three metres minimum from the cliff edge, with fencing seaward of the route in two places where previous erosion has created indentations to the regular line of the cliff edge.
38. Section 4.2.1 of the Scheme explains most people already understand that the coast can be a dangerous environment and are aware of the inherent risks. A key principle is that visitors should take primary responsibility for their own safety when visiting the coast and for the safety of any children or other people in their care. Section 4.2.2 of the Scheme explains greatly reduced civil liability for occupiers of land subject to coastal access rights with respect to features of the landscape such as cliffs, which provides further reassurance to the objectors.
39. It is not unusual for a coastal path to be sited on an eroding cliff, as is the case with much of the South West Coast Path between Minehead and Poole. The cliff top route has been designed to be wide enough for people to walk along it safely and for safe access for machinery to cut the grass and hedgerow. This was informed by a geotechnical assessment of Aust Cliff commissioned by SGC, which estimated that the current overall rate of cliff regression at this site is one metre every twenty years. It suggested that a single erosion event could result in the loss of between one and three metres of cliff edge at particular points. Short lengths of guide fencing would be provided between the route and cliff edge where the geotechnical report advised further erosion is likely to take place. Stock fencing has been offered landward of the route on the cliff top sections and the geotechnical assessment gave advice on safe installation of fencing along the clifftop.
40. Section 4.2.5 of the Scheme explains that NE would assess the likely level of visitors' familiarity with and expectations of the risks on each section of route when deciding what safety measures are necessary, if any. Since cliff top paths are unusual on this part of the estuary, with the remaining footpath north of the bridge separated from the cliff edge by a hedgerow, warning signs are proposed at the beginning and end of the route section S007, to alert walkers to the proximity of the cliff edge.
41. In the past problems have arisen when a cliff erodes such that it is no longer possible to walk along the definitive line of the public footpath safely; procedures for altering that line can prove expensive and time-consuming. To avoid this, the coastal access legislation allows NE to propose that sections of the ECP should be adjusted in the future if they are so affected, without further recourse to the Secretary of State. This roll back is proposed here, as detailed in table 1.3.1 of Report ABD1. SGC would undertake annual monitoring of the cliff to help identify when roll back is necessary on this part of the route. NE are satisfied that the route could be established, used and maintained safely provided with the necessary mitigation in place.
42. SGC would maintain the proposed route, being eligible under current rules for central government grant aid to help ensure that the route meets published standards for National Trails. It is expected that SGC would maintain the route in a condition that is safe and convenient for public use, including any access furniture along it such as pedestrian gates and signs.

43. During negotiations with the owner of route sections S007 to S010 there was a request for stock fencing to separate the route from the rest of the fields, which has been agreed as part of the establishment works. This has also been offered to [REDACTED] in relation to the part of the proposed route on land she owns, as the land is managed together. It is for the landowner or occupier, as appropriate and agreed between them, to maintain fencing if accept as part of the establishment works. SGC would not be willing to accept responsibility for the maintenance of the stock fencing, as consistent with offers of stock fencing on other parts of the coast.
44. There would be no new rights to use bicycles or bring horses on to the route due to the national restrictions in Schedule 2 to CROW (paragraphs 1a and 1c respectively). It was agreed to install kissing gates at either end of the new route (route sections S004/ S005 and S013/S014) which is proportionate to the risks.
45. There are no powers conferred by the coastal access legislation to provide parking facilities for walkers. To the extent that demand for parking increases this would be a matter for the local authority.

**Re: [REDACTED] – MCA/ABD1/0/1**

46. In relation to sections S005 to S007 the cliff edge and adjacent field edges are covered by mature hedgerow vegetation with some brambles. The proposed route was the route it was possible to walk and record without clearing dense vegetation. NE is open in principle to a straighter route closer to the cliff edge, but subject to practical considerations including the safety of route users and of contractors whose job it would be to clear such a route.
47. SGC were uneasy about clearing an alignment through the scrub closer to the cliff edge because they would not want to risk destabilising it by removing vegetation. It may be possible to make minor adjustments at the establishment stage; such a de minimis change would not materially alter the mapped route at the scale shown on Report ABD1. NE and SGC would do what could be done during establishment to meet the objectors' wishes, without putting anyone at risk.
48. Similar possibilities and limitations apply in relation to sections S004 and S005, clearing some of the bramble there, depending on the nature of the surface beneath the bramble. The work would be subject to agreement with the neighbouring landowner, Highways England. Route sections S001 to S004 are on land owned by the Severn Bridge Company which has not objected to the proposals. The proposed route cuts inland to provide ramped access to the bridge for people with reduced mobility and there is a shorter route available on set of steps within the coastal margin.
49. Cattle and sheep are frequently grazed in fields with public access, showing that the two uses are generally compatible (sections 8.2.2 and 8.4.1 of the Scheme). The route would normally be aligned along the seaward edge of fields where possible, as at route sections S005 to S008, which minimises close contact between people and livestock (see sections 8.2.11 and 8.4.9 of the Scheme).
50. The objections raise concerns about the welfare and security of stock, particularly in relation to dogs. This is taken to relate to the potential for transmission of infectious diseases to livestock by dogs and the potential for disturbance to sheep from dogs, which can increase the risk of ewe and lamb mortality.



51. Section 8.6 of the Scheme outlines the general approach to livestock biosecurity; intervention should not normally be necessary to control the spread of animal disease unless there is an outbreak of a notifiable disease (paragraph 8.6.11). Special measures may be necessary where there is a local outbreak of Neospora in cattle or Sarcocystosis in sheep. In such cases it advises that signs should be used to encourage walkers to help control the spread of disease.
52. Advice from experts at the Animal and Plant Health Agency (APHA) is that the overall likelihood that walkers' dogs may infect livestock with these diseases is very low. The vast majority of pet dogs are fed commercial dog food, which is either processed or, if raw, produced to human standards of consumption. Nevertheless APHA advise, in the interests of human and animal health and well-being, that walkers should be encouraged to stop their dogs from defecating on farmland if possible and to pick up and remove the waste to a public or home bin. NE intend to post signs to this effect along the route, which is sufficient and proportionate to the risks.
53. Section 8.4 of the Scheme outlines the general approach taken towards risks to sheep. Paragraph 8.4.6 says that when sheep are heavily pregnant or have young lambs at foot, disturbance by dogs can significantly increase the risk of ewe or lamb mortality. It goes on to say that sheep are also vulnerable to disturbance during gathering or handling. As the Scheme explains, sheep can habituate to access when people follow a predictable route; it is expected that users would stick to the proposed route because it is convenient, reasonably direct and easy to follow. The legislation already requires a person who brings a dog to keep it on a short lead in the vicinity of livestock. This is a general provision that applies without any local direction being made. These provisions are sufficient to address the objectors' concerns.
54. Fencing was initially not offered in relation to route sections S005 and S006, as it was felt that no unusual circumstances applied and that the owner could separate the short section of route from the rest of the field with electric fencing. Following the site visit NE proposed an alteration to include a section of fencing at sections S005 and S006. In doing so NE would need to ensure that the access gate and fenced corridor was wide enough to allow a cutting vehicle through.
55. The objectors proposed the use of treated round posts with pig wire and three strands of barbed wire. SGC favour steel post and wire fencing at this location as they could be installed without percussive tools, such as a post driver; this is based on advice in the geotechnical assessment to reduce the risk of destabilising the cliff edge.

**Re: [REDACTED] – MCA/ABD1/0/2**

56. NE agree that the land on the eastern side of the field boundary of section S011 is higher than the land on the western side and therefore less likely to become waterlogged in wet weather. However, the land on the western side, would offer better views over the estuary once the derelict hedge is restored as proposed. During land surveys in October 2015, June 2016, July 2016 and March 2017 the ground was reasonably dry. The benefit of views outweighs the drier ground at this location.
57. NE have offered to fund installation of stockproof fencing separating the route and fields which are owned and leased by [REDACTED], sections S007 to S011. NE would re-establish derelict hedges adjacent to sections S010 and S011, partly for public safety reasons because, at the time of the negotiations, beef bulls were kept in those fields, sometimes unaccompanied by cattle. In relation to the campsite in the field

nearest the farm buildings, fences would also help to maintain the privacy of customers by discouraging walkers from straying off the route.

## Representations

58. Representations from the SGC Public Rights of Way and Commons Registration Subcommittee (SGCPROWCRS), the Ramblers (Avon Area), the Environment Agency (EA) and the Joint Local Access Forum (Bath and North East Somerset, Bristol City and South Gloucestershire) (the JLAF) have been provided in full. Other representations from [REDACTED], [REDACTED], the Disabled Ramblers (DR), North Somerset Local Access Forum, Aust Parish Council and the Wildfowl and Wetlands Trust have been summarised by NE.
59. There were concerns about pedestrian safety in relation to the proposal for a route across the cliffs at Aust, as the cliffs were seen to be unstable. An existing footpath - the Severn Way, which (where different from the proposed route) is indicated by a line of green diamonds on map ABD1a – could be used instead.
60. In relation to the proposed fencing the SGCPROWCRS confirmed that whilst NE would fund the establishment of the fencing at 100% of the cost, SGC would not undertake or fund any maintenance, even at 75% funding.
61. There were concerns regarding New Passage Road, section S016 RD, in relation to pedestrian safety and many, including EA, referred to the Avonmouth-Sevenside Flood Defence and Ecological Mitigation Project (ASEA) ecological mitigation and flood defence scheme. This includes Area 1 Scheme (Aust to Severn Beach - Sevenside) - Construction of new flood defence walls, embankments and flood gates, raising of existing flood defence walls and embankments, and improvements to the Cake Pill Outfall, Chestle Pill Outfall, and Cotteralls Pill Outfall. Concerns were raised about the impact and coordination of works.
62. The EA noted their operational responsibility for managing the risk of flooding from main rivers, reservoirs, estuaries and the sea, as well as being a coastal erosion risk management authority. EA has a statutory duty under the Water Resources Act 1991 and the Environmental Permitting Regulations (England and Wales) 2016 to assess and review works in particular locations.
63. There was no “in principle” objection to the proposals but it was noted that they would need to assess detailed matters through the Flood Risk Activity Permit (FRAP) process. The proposals may require a permit under the Environmental Permitting (England and Wales) Regulations 2010 for any proposed works or structures, in, under, over or within sixteen metres of the top of the bank of the Severn Estuary, designated a ‘main river’. An Environmental Permit may also be required for any works on, or within sixteen metres of the landward toe of any EA designated flood defence structure(s). Permits are separate to and in addition to any planning permission granted. EA would like to agree the location of any signage and new gates to be installed, which could be done through the FRAP process.
64. It was noted that works in proximity of a watercourse other than a main river, may be subject to the regulatory requirements of the Lead Local Flood Authority/Internal Drainage Board (e.g. Lower Severn Internal Drainage Board).

65. In relation to specific sections, EA ask that detailed proposals fully address the points raised, to ensure the integrity of coastal defences is not adversely impacted by the ECR, in the interest of flood risk management. For section S016 RD EA advise that a new flood embankment will be constructed parallel to the road on the landward side. The flood defence crosses over New Passage Road with a road ramp and flood gate at approximate grid reference ST5634788782.
66. The road is currently at risk of flooding on particularly high tides, as occurred in 2014. During these events EA would close the floodgates across the road, therefore also closing the footpath. NE may wish to consider the re-alignment of the footpath along the crest of the new flood embankment, rather than along the road to avoid closure. EA and NE may also need to consider provision of public safety signage.
67. Assent from NE for the flood defence maintenance programme and Habitats Regulations Assessment (HRA) is renewed on an annual basis. EA are now seeking a 3-year agreement and it is hoped assent will be sought on a 3 yearly basis in future for the Bristol Avon catchment. EA would assess in subsequent years how any residual effects from the work could interact with residual effects from the Coast Path. In 2019 EA received assent for North Somerset maintenance work between the period 2019 - 2021, so any in-combination effects between the maintenance plan and coastal path would need to be considered when assent is reapplied for in 2022.
68. As the route would predominantly utilise existing infrastructure there is little likelihood of ground disturbance during construction that may encounter contamination or pose a risk to groundwater. Should ground disturbance be required, NE should consider the potential for contamination, following the 'Land Contamination: Risk Management' guidance for managing risks.
69. The DR and the North Somerset Local Access Forum (NSLAF) urged NE to take fuller account of the needs of mobility scooter users, arguing that the Accessibility statement 1.2.11 had not recognised the significant and increasing number of people who use off-road mobility scooters and other mobility vehicles to enjoy routes on more rugged terrain. They say that the terrain is suitable for such use and NE should take all reasonable steps to make the ECR as easy as possible for disabled people and those with reduced mobility, bearing in mind British Standard BS5709: 2018 Gaps Gates and Stiles (BS5709). In particular, NSLAF asked NE to consider such users in the design of any new gates to be installed along Aust Cliff, corresponding to route sections S005 to S013 on map ABD 1a.
70. The Wildfowl & Wetlands Trust (WWT) is the UK's leading wetland conservation charity, working across the UK and internationally to conserve, restore and create wetlands, save wetland wildlife, and inspire people to value the wetlands. This section of the ECP is located along a stretch of the Severn Estuary between two WWT sites, Slimbridge to the north and Steart Marshes to the south. WWT welcomes the addition of coastal access and hopes this would encourage people to explore the Severn estuary and its wildlife.
71. WWT supports the development of signage to encourage interest in the waterbirds and wildlife using the estuary. NSLAF, which is not the LAF for this area, says that on-site signage and interpretation should only be used after consideration of need and appropriateness to the location. Waymarks should only be used where the route is not abundantly clear and/or where a potential safety hazard may be encountered

72. WWT welcomed the mitigation measures that have been identified in the HRA and Nature Conservation Assessment (NCA) to reduce the impact on waterbirds and estuarine habitats. WWT has concerns about relying on adoption of behavioural change outlined on signs to mitigate disturbance and, to encourage adoption of appropriate behaviour, suggests further engagement of the local community may be useful in encouraging individuals to help warden the area independently.
73. NSLAF said that whilst specific restrictions on dogs are in place for certain sections of the ECP, there should be an expectation that dogs should be kept under close control at all times. With regards to seasonal access, WWT indicates that information on when routes are open and shut is made clear and easy to read. Locked gates during the closed period also aids in controlling access. WWT suggests follow-up work to check if the mitigation is effective.
74. The JLAF, who are the LAF for this area, and the Ramblers support the proposals for the ECP. The Report identifies improvements to provide better access, path surfaces and protection to sensitive areas of habitat. This is a significant opportunity to improve public access to this stretch of coast, with benefits for residents, businesses and visitors. A greater number of people would have easier and more extensive access to the coastal environment for open-air recreation, which is widely acknowledged to have significant benefits for human health and well-being.
75. Others anticipate that the ECP would promote tourism, sustainable travel, as the ECP links several coastal towns and so may be used by commuters, and a more active lifestyle. One person mentions being able to access to previously unavailable areas.

#### **Natural England's comments on the representations**

76. NE has worked closely with SGC in the development of the proposals. SGC provided technical advice on the route options and attended meetings with affected land owners. SGC provided advice regarding infrastructure, estimated establishment costs and potential impacts on archaeological assets and how to avoid them.
77. NE has been guided by the criteria in section 4.2 of the Scheme in relation to use of the cliff top as well as the geotechnical assessment commissioned in 2017 by SGC to consider the feasibility of a cliff top route, which found that it appeared suitable for pedestrian access. NE is satisfied that the proposed route along Aust Cliff is safe for public use and would provide appropriate fencing and signage to ensure safety. SGC would undertake the recommended annual inspections of the cliff.
78. SGC would maintain this part of the ECR to the extent it considers necessary to keep it reasonably safe and convenient. NE has offered to fund the purchase and installation of stock fencing in certain locations and has made the affected landowners aware that SGC would not accept responsibility for maintenance of stock fencing.
79. The road known as Passage Road is normally a quiet road providing access for local residents and people visiting the coast. At times there may be ten or more vehicles parked along it, but it is unusual to encounter more than one moving vehicle whilst walking. Section S016 is a straight section of the road with uninterrupted sightlines for drivers and pedestrians. It forms part of an existing long distance walking route called the Severn Way, managed and maintained by SGC. SGC officers have not raised any concerns about the safety on Passage Road.

80. The flood bank improvements scheduled to take place as part of the ASEA would affect access along that part of the proposed ECR between 2020 and 2025. Close working relationships would be necessary between NE, EA and contractors carrying out the ASEA, including SGC and Bristol City Councils as partners in both the ECP and ASEA. This would help avoid any conflict between the flood defence works and recreational use, minimise impacts on wildlife and ensure efficient operations for both projects. All the organisations involved are aware of this requirement and a meeting has been held to discuss expected timescales and ways of working.
81. It is envisaged that the ECP between Aust and Brean would become operational during the ASEA project works period. Temporary arrangements would be necessary to ensure public safety and cater for people following the existing Severn Way or the ECP. The ASEA would affect sections S016 to S027 of the proposed route between Old Passage (on map ABD 1a) and New Passage (on map ABD 1c). It seems that the Severn Way would be subject to temporary diversions while the ASEA flood defence works are undertaken. Should the Secretary of State approve this part of the ECR, NE would make directions necessary to exclude temporarily access and direct people along agreed diversions. In the interests of efficiency it has been agreed that some establishment of the approved route may be delayed until the construction phase of the ASEA flood defence improvements are complete.
82. In discussion with the ASEA team and SGC it was agreed that the new flood embankment (landward of the road) may be a more suitable route for the coast path than Passage Road itself; the bank would offer more elevated views of the sea and avoid that part of the road, which most walkers would prefer. At the time of writing NE do not know the views of the affected land owners and therefore suggest that the Secretary of State consider only the current proposal. If after discussion with the affected land owners NE conclude that a route along the flood bank would strike a fair balance between public and private interests it would be proposed to the Secretary of State at a later date using a variation report.
83. Section S016 is at risk of occasional flooding and when this happens the road may be closed for a period of approximately an hour until the tide goes out. This is predicted to happen once or twice a year in the short to medium term; NE do not consider it necessary to make any special provisions for walkers at this time.
84. NE has worked closely with the EA throughout the development of the coastal access proposals for Aust to Brean Down and has a good understanding of EA's operational requirements at specific locations. It is anticipated that EA would permit all necessary works to establish the route and expected that they may place specific conditions on, for example, the timing or detailed specification of some in order to ensure compliance with flood risk management. SGC, the local access authority which would undertake the necessary works, is aware of the FRAP requirement and would acquire the necessary permits before any works commence. The need to consider land contamination risk with respect to any ground disturbance is noted.
85. It is helpful that EA intend to consider any in-combination effects between the maintenance programme and the coast path as part of its application to NE for assent in 2022.
86. In relation to the comments of DR and the NSLAF, NE and SGC share the ambition to make the coast path accessible to mobility scooter users and in principle agree to the

suggestions made to achieve this. This aim is subject to practical considerations which may be raised by other interests in the land, including any requirements of the FRAP issued by the EA and agreement of affected land owners.

87. NE welcome the WWT support for the overall objective of a continuous route along the lower Severn estuary, the measures proposed to mitigate potential disturbance of waterbirds and the use of branded signs to stimulate public interest in waterbirds. The overall approach to disturbance and mitigation is set out in the HRA, including the behavioural messages that it is proposed to promote to walkers along the estuary.
88. For ABD1 NE do not propose mitigation measures other than new signs because the patterns of use are well established and no significant changes are foreseen when the coast path opens, as set out in the assessment of existing access and predicted change in section D3.2A of the HRA. NE agree that waymarks, signs and interpretation should be used sparingly, considering need and suitability to the location; SGC would advise as to the design and location of signs for this part of the route. Fingerposts and small waymark discs are thought necessary to signal the route and give walkers the clarity and confidence to follow it. The proposed behavioural signs would be backed up as appropriate with additional measures.
89. NE's approach to access by people with dogs is underpinned by the coastal access legislation, the principle of the 'least restrictive option' set out in section 6.3 of the Scheme and the specific interpretation of the Scheme. The default position on the ECP is that people must keep dogs under effective control, although the precise legal requirement may be different where there are pre-existing access rights. Access legislation defines effective control as meaning that the dog must either be:
- on a lead or:
  - within sight of the person and the person remains aware of the dog's actions and has reason to be confident that the dog will return to the person reliably and promptly on the person's command.
90. Dogs must be on a lead at all times in the vicinity of livestock. Paragraph 6A of Schedule 2 to CROW, as amended in relation to coastal margin is relevant. NE think that 'effective control' is a clearer and more easily understood expectation than the words 'close control', which are not further defined in law. It is known that many people seek to exercise their dogs off lead and there are many places at the coast where they may reasonably expect to do so. NE support the use of further local restrictions provided, in accordance with the least restrictive principle, there is a proven need and the restriction used is proportionate to that need.
91. NE are confident that the mitigation measures proposed would give the required level of protection. There are arrangements in place that would help to check that the measures act as expected:
- the requirement for local access authorities to report to NE on the condition of the route and associated infrastructure, in order to qualify for central government contribution towards maintenance costs; and,
  - the ongoing Wetland Birds Survey a national scheme tracking trends in the populations of wetland bird species using the Severn Estuary.

92. NE draws the Secretary of State's attention to the anticipated benefits of the coastal access proposals with respect to promotion of tourism, sustainable travel, public enjoyment, physical health and well-being.

### **Discussion**

93. It is understandable that parties raise issues around compensation in relation to these matters, however, as NE indicate, the determination not to offer compensation was decided during the legislative process. It is necessary for the Secretary of State to be satisfied that a fair balance has been struck between the public and private interests and that is the subject of this report [19, 30 and 32].
94. The Report sets out why the proposed route was chosen over the other options considered; this relates particularly to the need to avoid buildings and curtilage in certain locations. The proposed route would follow the coastline well and meet the objectives of the Scheme appropriately. The existing route of the Severn Way would be used in part but in this location it passes inland for a distance; the proposed route, which generally follows a route previously recorded as a public footpath, is a better fit to the Scheme[8, 20, 32 - 33].
95. There is a requirement in managing public money that certain criteria are met. The organisations involved in the development of the Scheme are public bodies, who should be familiar with those concepts. SGC, as a body which already manages and maintains public rights of way in the locality, is the appropriate body to provide cost estimates. There is nothing to suggest that the estimate is excessive or that the overall benefits arising, which are recognised by many other interested parties, would not be deliverable, appropriate and proportionate [21, 35, 36, 74, 75, 76 and 92].
96. Potential issues have been identified by the geotechnical report and measures in terms of design and implementation methodology identified to deal with any public safety matters arising. This includes signs, fencing, roll back as necessary and ongoing maintenance of the ECR and safety features [22, 37 - 42, 59, 71, 77, 78].
97. The ECP is subject to rights and restrictions under CROW and so no new higher rights arise. Appropriate measures are proposed to deal with such concerns, with the control of unnecessary signs. Such signs as are necessary would be maintained by SGC with other actions already in place to promote appropriate user behaviour [24, 42, 44, 63, 71, 72, 77, 87, 88].
98. Car parking is not a matter provided for by the Scheme, although the point is made that businesses would not be prevented from charging for specific goods, services or facilities, such as parking. This would be subject to the relevant permissions, with parking ultimately a matter for the relevant local authority, in this case SGC [25, 45].
99. Fencing the route has been offered, with a specification of steel post and wire fencing, to avoid the need to use percussive tools as set out in the geotechnical assessment. The ongoing maintenance of stock fencing, as oppose to safety fencing, would lie with the landowners/occupiers in this case as SGC do not wish to accept that responsibility [26, 39, 43, 54, 57, 60, 78].

**Re: [REDACTED] – MCA/ABD1/0/1**

100. The owners and occupiers wish to limit the potential loss of land and so sought straightening of the route in some locations. As indicated in response, and observed on site, the cliff-edge is obscured by vegetation. Given the concerns as to the safety of the cliffs the surveyors did not risk exploration of these areas during initial investigation. NE were in principle in agreement to straightening where possible in relation to sections S004 – S007 but this must, of course, take account of the safety of staff and contractors as well as the public. An additional factor is the possibility of destabilisation of the cliff by the removal of vegetation. [27, 46 - 48, 59, 77, 78].
101. To ensure understanding of the matters as looked at on site I requested further information on this matter. In clarification NE indicated that a minor modification of the Report would be needed in this respect and supplied Map A – MR1 – Modification, which is attached to this report at Appendix 1.
102. In relation to fencing on S005 and S006 NE initially felt that there was nothing that should lead to the need for fencing in this area and in general I would say that this was correct. However, following the site visit I was of the view that unusual circumstances applied here, taking account of the possibility of livestock becoming trapped in this pinch-point area and the relative expense of provision of fencing on this short section. I requested further information and NE supplied a proposed amendment to Table 1.3.1, set out in Appendix 2, which would deal with the addition of a landward fence in this location, subject to maintenance issues as set out in paragraph 99 and the need to ensure that the access gate and fenced corridor was wide enough to allow a cutting vehicle through [28, 49 - 54].
103. The proposed route, taking account of the minor modifications to alignment and fencing, provides a fair balance between the interests of the landowner and the public. Taking account of these matters, the Secretary of State should make a minor modification to the published route in respect of these sections.

**Re: [REDACTED] – MCA/ABD1/0/2**

104. Following the site visit I asked for further clarification on the matter of siting S011 to the east of the hedge line. NE had not found the land to be waterlogged and it was not so on the site visit, although a 'ditch' feature was noted to the west of the hedge, which gives rise to uneven ground in comparison to the land to the east. I asked whether, to balance the change to affected landowners, section S010 could move to the south of that boundary, with the advantage that the hedge reinstatement on this section would then follow and restore historic landscape boundaries.
105. NE carried out further works and supplied relevant information should it be considered that the Secretary of State may modify the route in this respect. Part of the work undertaken by NE was, of course, additional consultation with the adjacent landowner. He was clear that he was happy with the proposals as published and, as he was already losing grazing land to the route corridor along the stretch S007 to S0010, due to the need to account for coastal erosion and the erection of a livestock fence, he did not wish to lose more grazing land. There were also concerns as to responsibility for additional infrastructure given the stance on maintenance taken by SGC. The landowner felt he had worked fairly with NE to agree the published route but would object to modifications as suggested.



106. The proposed route clearly provides a fair balance between the interests of the neighbouring landowners and occupiers and the public. The objection makes a fair suggestion, which could have been accommodated with appropriate agreement, but the published route provides a good option for the public, in line with the Scheme. Taking account of these matters, the Secretary of State should not modify the published route in respect of section S011 [29, 56, 57].

***Re: Representations***

107. The representations in part raised issues referred to by the landowners and these have been referenced above as appropriate. A main issue arising from the representations related to works associated with the ASEA, however, it is clear that the relevant bodies are aware of the potential conflict and working towards resolution of matters in favour of both projects. It is possible a variation report may be made in relation to the affected section at a later date [61, 80 - 83].
108. EA and the WWT note their respective responsibilities and interests. There is nothing to suggest that there has not been appropriate partnership working and regard to legislative requirements in the development of the proposed route or that that would not continue during the establishment and operational phases [62 - 68, 70 - 72, 79, 84, 85, 89 - 91].
109. The matter of access for those with mobility scooters has been noted by NE and is a matter to be taken forward at the establishment stage as appropriate [69, 86].

***Habitats Regulation Assessment***

110. This is to assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Competent Authority is required to make an Appropriate Assessment (AA) of the implications of a plan or project for the integrity of any European site in view of the site's conservation objectives. The appropriate nature conservation body must also be consulted, in this case Natural England (NE). If the AA demonstrates that the integrity of a European site would be affected then consent for the plan or project can only be granted if there are no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (IROPI) and compensatory measures will be provided which maintain the ecological coherence of the Natura 2000 network.
111. An HRA, dated 25 July 2019, providing the information to inform the Competent Authority's AA, was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations and is recorded separately in the suite of reports. The HRA considered the potential impacts of the coastal access proposals on the following sites of international importance for wildlife: Severn Estuary Special Area for Conservation (SAC), Special Protection Area (SPA) and Ramsar site; Mendips Limestone Grasslands SAC; Chew Valley Lakes SPA; Somerset Levels and Moors SPA and Ramsar site; and the North Somerset and Mendip Bats SAC. The HRA has identified the relevant sites affected by the proposals.
112. Initial screening set out that as the plan or project is not either directly connected or necessary to the management of all of the European sites' qualifying features, an HRA was required. The overall Screening Decision found that the plan or project would be likely to, or may, have significant effects on some or all of the Qualifying Features of

the European Sites 'alone' in the absence of mitigation measures. On this basis, the HRA considered the potential for the project to give rise to Adverse Effects on the Integrity (AEol) of the designated sites.

113. The scope of the assessment is set out in Table 6 of the HRA and identifies the sites and qualifying features for which significant effects (whether 'alone' or 'in combination') would be likely or could not be excluded beyond reasonable scientific doubt. The relevant information for section ABD1 is identified in the first line of Table 8 of the HRA and discussed in D3.2A; note that this covers the entirety of ABD1, not just the section to which this report relates.
114. The assessment of AEol for the project alone takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Table D3.3). The assessment identifies that the measures incorporated into the design of the scheme are sufficient to ensure no AEol in light of the sites' conservation. Those relevant to this report where there is some residual risk of insignificant impacts are:
- Physical damage to saltmarsh during establishment work leads to a long-term reduction in population and/or contraction in the distribution of Qualifying Features within the site.
  - More frequent disturbance to feeding or roosting waterbirds (non-breeding) following changes in recreational activities as a result of the access proposal, leads to reduced fitness and reduction in population and/or contraction in the distribution of Qualifying Features within the site.
115. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to be adverse alone to determine whether they could give rise to an AEol in combination with other plans or projects. Insignificant and combinable effects likely to arise, and with the potential to act in-combination with the access proposals, were identified in relation to the ASEA and the Clevedon to Weston Cycle Route (Tutshill Crossing). However, assessing the risk of in combination effects (Table 31 of the HRA), NE concluded that, in view of site conservation objectives, the access proposal (taking into account any incorporated avoidance and mitigation measures) would not have an adverse effect on the integrity of the Severn Estuary SAC, SPA and Ramsar site either alone or in combination with other plans and projects.
116. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Aust and Brean Down are fully compatible with the relevant European site conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Scheme. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the HRA that the proposals would not adversely affect the integrity of the relevant European sites. It is noted that, if minded to modify the proposals, further assessment may be needed.

### ***Nature Conservation Assessment***

117. The NCA, 25 July 2019, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI) Marine Conservation Zones and undesignated but locally important sites and features, which are not already addressed

in the HRA. Relevant to this report are the Severn Estuary SSSI and the Aust Cliff SSSI. NE were satisfied that the proposals to improve access to the English coast between Aust and Brean Down were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs, consistent with the proper exercise of their functions.

118. In respect of the relevant sites or features the appropriate balance has been struck between NE's conservation and access objectives, duties and purposes. WWT welcomes the mitigation measures set out in the NCA. Works on the ground to implement the proposals would be carried out by SGC subject to any further necessary consents being obtained, including to undertake operations on a SSSI [72].

### **Recommendation**

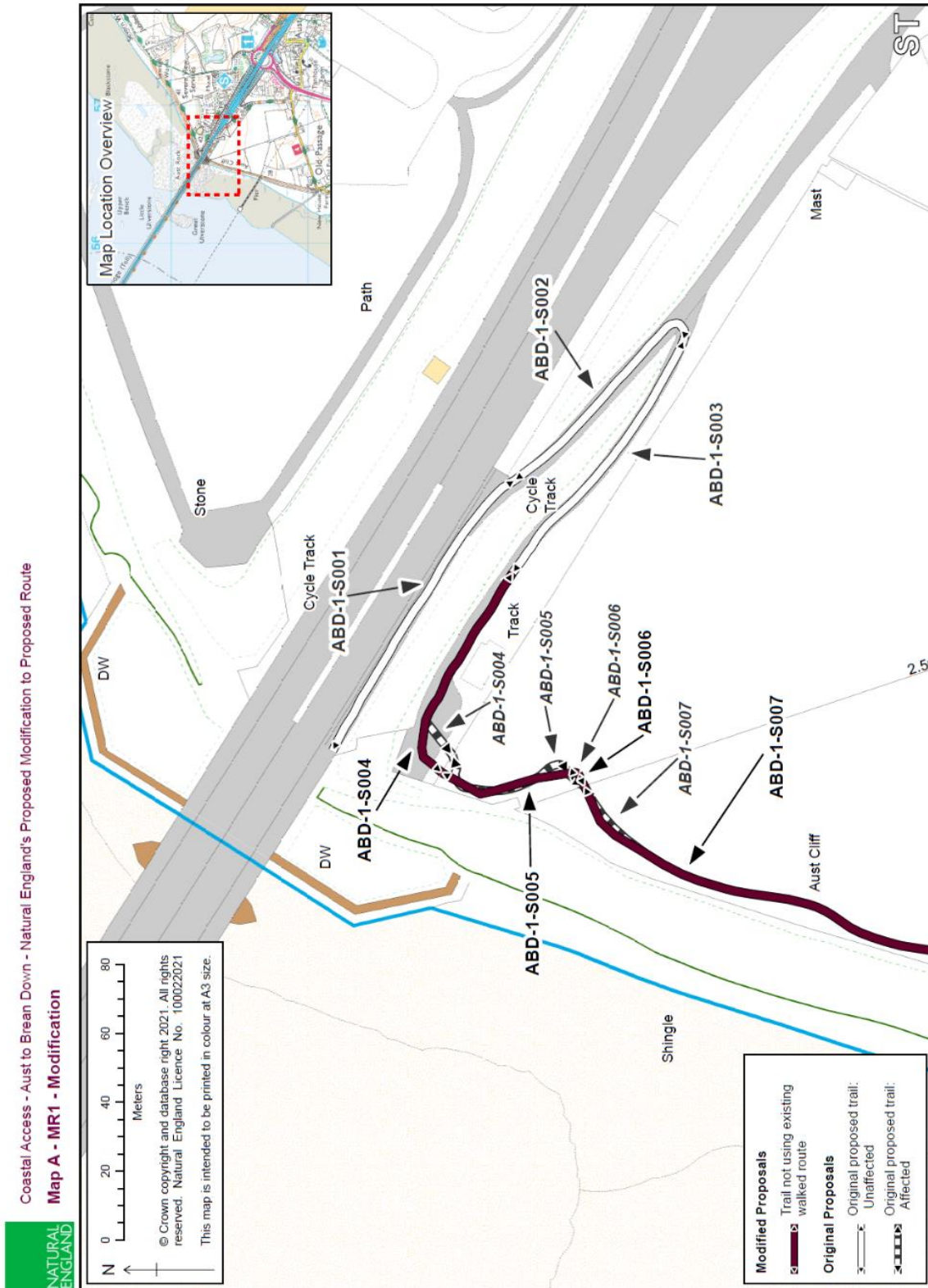
119. A minor modification of the alignment of S004 – S007 to align the route to the west so much as is safe and practicable has been agreed by NE, as shown on the map at Appendix 1. A minor modification to add fencing landward of sections S005 – S006 would require a modification to Table 1.3.1 of the Report, 'Section Details – Maps ABD 1a to ABD 1c – Severn Bridge to New Passage' as set out in Appendix 2.
120. NE agrees to the modifications. No new potential objectors have been identified in consequence of these minor modifications.
121. With those minor modifications, I conclude that the proposals would not fail to strike a fair balance. I therefore recommend that the Secretary of State makes a determination to this effect in relation to the Report ABD1, making use of the revised mapping and Table attached in the Appendices, to clarify matters in relation to this section.

*Heidi Cruickshank*

### **APPOINTED PERSON**

# Appendix 1

Map A - MR1 - Modification



**NOT TO ORIGINAL SCALE**

## Appendix 2

### Proposed amendment to Table 1.3.1

1	2	3	4	5a	5b	5c	6
Map(s)	Routes Section number(s)	Current status of route section(s)	Roll back proposed?	Proposals to specify seaward boundary of alternative route strip	Proposal to specify landward boundary of alternative route strip	Reason for landward boundary proposal	Explanatory notes
ABD 1a	ABD-1- S005*	Not an existing walked route	Yes - Normal	No	Fence line	Clarity and cohesion	
ABD 1a	ABD-1- S006*	Not an existing walked route	Yes - Normal	No	Fence line	Clarity and cohesion	