
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: 8 November 2022

Marine and Coastal Access Act 2009

Objections by [redacted] & [redacted] and [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Aust to Brean Down

Objection Reference: MCA/ADB6/0/3

Aust to Brean Down, Wain's Hill to Huckers Bow

- 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 12 September 2019 to Report ABD 6 was made by [redacted] & [redacted]. The land in the Report to which the objection relates is route section ref. ABD-6-S041.
- The objection was made under paragraphs 3(3)(e) 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 relevant section of report ADB6 do not fail to strike a fair balance.

Objection Reference: MCA/ADB6/0/4

Aust to Brean Down, Wain's Hill to Huckers Bow

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- An objection dated 12 September 2019 to Report ABD 6 was made by [redacted]. The land in the Report to which the objection relates is route section ref. ABD-6-S037 to S039.
- The objection was made under paragraphs 3(3)(e) 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 relevant section of report ADB6 do not fail to strike a fair balance.

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. The sections of the route referred to in this Report relate to the report ABD 6: Wain's Hill to Huckers Bow. The route sections are annotated ABD6, eg ABD6-S001; for ease of reference this report will refer to the S0 number only, eg S001.
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. This report relates to two of the objections referring only to the NE Report ABD6, with other objections dealt with in separate reports.
3. Various representations were also received and are addressed below where they refer to the specific section of trail referred to in this report to the Secretary of State.
4. I conducted a site inspection on 25 May 2021 when I was accompanied by the objectors and representatives of NE.

Main Issues

5. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (MCA) 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:
 - (1) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (2) (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, but for ease of reference is referred to as 'the trail' in this report.

7. The second objective is that, in association with the trail, 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 the trail. This is referred to as '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:
 - (1) the safety and convenience of those using the trail,

- (2) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
- (3) 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 trail 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. It forms the basis of NE's proposals within each Report. This report is to 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 objections. This report sets out that determination, with a recommendation to the Secretary of State on the relevant Report.

The Coastal Route

12. 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 trail 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.
13. 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. This report relates to the trail lying on the north side of the River Yeo.

14. There are no public rights of way along the coast between Wain's Hill and Huckers Bow. The trail follows an existing walked route as far as Kingston Pill and then to Huckers Bow it follows a new path which would be on or just behind the seawall in most places. This would offer regular views of the Severn and its tributaries whilst minimising visual disturbance to feeding and roosting waterbirds. At Huckers Bow the trail would meet an existing walked route leading to Middle Hope.
15. There would be an inland diversion around Wharf Farm and the trail on the south bank of the River Yeo would operate from 16 May to 30 June inclusive. At other times it would be closed to prevent increased disturbance to wintering and migratory waterbirds, which roost there in significant numbers from July to mid-May. An alternative route would operate for the rest of the year.

The case for the objectors

16. The failure to restrict dogs on the land adjoining the path results in the possibility of detrimental effects to livestock and exposure to biosecurity threat. This leads to an unfair balance between public access and the landowners' business.
17. A modification should be made to impose an access restriction keeping dogs on leads at all times, under section 24 of the Countryside and Rights of Way Act (2000) (CROW). This would provide better protection of livestock in particular sheep, especially ewes in lamb. It would improve biosecurity.

Natural England's response

18. There are no existing public access rights to this part of the coast (nor to the southwest, between Tutshill and Huckers Bow) and farmers are understandably concerned about the change. NE have therefore invested considerable time and thought into the access proposals for this area, visited the land on more than fifty occasions over a period of five years, normally in the company of the affected land owner or tenant, and sought consensus on the best way to balance new public access with the various other interests in the land, which include sheep farming, wildfowling, waterbird conservation and sea defence.
19. NE would like to record their thanks to the farmers and other interested parties for the time taken to explain their concerns and discuss the various options considered during the development of the access proposals. Some may not feel that their concerns have been adequately addressed but, having looked carefully at their objections, NE maintain that the proposed access strikes a fair balance between public and private interests and is compatible with nature conservation and sea defence.
20. Section 8.6 of the Scheme outlines the general approach to be taken towards farm biosecurity. The Scheme says that intervention should not normally be necessary to control the spread of animal disease unless there is an outbreak of

a notifiable disease. Animal health legislation provides animal health and appropriate veterinary bodies with access prohibition powers which can be used to control access in those circumstances. These prohibitions are only necessary when an outbreak of the disease is notified and they automatically prevail over coastal access rights (Scheme paragraph 8.6.17). They have in the past been used to contain the spread of foot-and-mouth because it is highly infectious.

21. The Scheme says that special measures may be necessary where there is a local outbreak of Sarcocystosis in sheep (paragraph 8.6.12). In such cases it advises that signs should be used to encourage walkers to help control the spread of disease (paragraph 8.6.16). The proposals are in line with this overall approach and are regarded as proportionate to the risks involved. However, in view of specific concerns in these objections further advice was sought from experts at the Animal and Plant Health Agency (APHA).
22. APHA advised that tapeworms are a group of parasites that live in the digestive tracts of dogs, cattle and sheep. Dogs can pass on the disease to cattle or sheep through infected faeces and can themselves become infected through consumption of contaminated meat. Infection of livestock may therefore lead to economic loss through carcass rejection but generally does not cause clinical disease in the infected animals. Dogs can carry tapeworm parasites if they have been exposed to infected animal products, usually on farm. The main risk of transmission to livestock is exposure to infected faeces from infected farm dogs.
23. Sheep are also at risk from Sarcocystosis, a disease that dogs can pass to them through infected faeces. Dogs can become infected with Sarcocystosis by consumption of contaminated meat. APHA's assessment is that the overall likelihood that walkers' dogs may infect livestock with these diseases is very low, because 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, it is advised, 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, to pick up after their dogs and remove the waste to a public or home bin. NE intend to post signs to this effect along the route. These measures are sufficient and proportionate to the risks in most circumstances.
24. NE do not agree that people should be required to keep dogs on leads at all times on sections of the trail that pass through fields where the objectors graze livestock. In relation to concerns about the detrimental effects on sheep, especially ewes in lamb, section 8.4 of the Scheme outlines the general approach that should be 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.

25. As the Scheme explains, sheep can habituate to access when people follow a predictable route and it is expected that walkers would stick to the proposed trail because it is reasonably convenient, direct and easy to follow. It would for the most part follow field edges, but part of route, section S041, would follow an old earth embankment which provides a clear, elevated and dry route through the field. NE intend to mark out the route clearly using fingerposts that are easy to see from some distance away, so greatly reducing the likelihood that people would stray off the route.
26. Access rights would be confined to the trail in this area, because NE propose to exclude access to the coastal margin all year round between Clevedon Pill and Huckers Bow, seaward of route sections S007 to S060 as shown in Directions Maps ABD 6A and 6B. This is proposed under Section 26(3)(a) of CROW to protect resident, wintering and passage waterbirds from disturbance.
27. 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. At other times they must keep dogs under effective control. This means that people who bring a dog must:
- keep the dog on a lead; or
 - keep it within sight, remain aware of its actions and have reason to be confident that the dog will return reliably and promptly to them on command; and
 - in either case, keep the dog on land with coastal access rights or other land to which the person has a right of access.
28. The effect of the final part of this definition is that dogs must be kept on the trail at all times, using a lead if necessary – because access rights would be confined to the trail. NE intend to post signs to this effect at field entrances.
29. NE believe that these provisions are sufficient to address the objectors' concerns and that their proposed modification is unnecessary.

Representations

30. Representations from North Somerset Council (NSC), the Environment Agency (EA), the British Association for Shooting and Conservation (BASC), Clevedon Wildfowlers Association (CWA) and the Country Land and Business Association (CLA) have been provided in full. Other representations from the North Somerset Local Access Forum (LAF), [redacted], [redacted], the Disabled Ramblers (DR), the Wildfowl and Wetlands Trust (WWT), the Clevedon Pier and Heritage Trust, Clevedon Coast Community Team, Clevedon BID, [redacted], [redacted], [redacted] and [redacted] have been summarised by NE.
31. NSC welcomed the proposal, believing it to be a great resource enabling the public to walk along the coast, benefitting local residents and visitors to the area. They noted that NE had carried out numerous meetings with affected landowners

to find a fair balance between those interests, public access and nature conservation.

32. 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.
33. 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.
34. 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).
35. In relation to ABD6, EA noted that there are flood defences between Clevedon and Huckers Bow, which need to be protected. Any works would require a FRAP. EA’s maintenance access would need to be protected along the defences on this entire route, in the interests of flood risk management.
36. As the trail 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.
37. BASC noted that the proposed route would run adjacent to foreshore and other land that CWA either own or have shooting rights over. These rights have been actively exercised for many years and, in the past, there has been no public access between Wain’s Hill and Huckers Bow.
38. BASC and CWA believe that these new access rights would increase the visibility of CWA members going about their lawful and highly regulated activities, and are concerned that this may lead to attempts to disrupt legitimate activity and/or leave wildfowling open to verbal abuse or worse. From experience this type of behaviour often stems from lack of understanding of wildfowling – what it entails,

how the activity is regulated and managed, its sustainability, cultural history, and the wider benefits that the presence of the club brings to the site.

39. BASC requests that interpretation boards are put in place to explain the activity and its role in the conservation picture and would work with NE and CWA to develop materials which could include QR code links to short video clips and other resources.
40. Prolonged periods of severe weather present a serious physiological challenge to overwintering waterfowl, especially roosting waders. When little or no feeding is possible and birds are experiencing an increased energy demand to keep warm any unnecessary disturbance can lead directly to increased mortality.
41. Following 14 consecutive days of severe weather, typically persistent freezing conditions, the relevant government ministers have the power to make protection orders suspending the shooting of wildfowl and waders in England, Wales and Scotland, under Section 2 (6) of the Wildlife and Countryside Act, 1981. However wildfowlers, including CWA members, abide by BASC's Severe Weather policy by calling for voluntary restraint from day seven of 'severe weather' up to the time when any statutory suspension takes effect. An explanation of this "voluntary restraint" is available at basc.org.uk.
42. Voluntary restraint and/or statutory suspension is a vital conservation measure that would be undermined and pointless if public access is allowed to continue during periods of severe weather. The proposal for this stretch should incorporate a mechanism for the closure of the path during periods of statutory suspension, and NE should adopt the precautionary approach of the wildfowlers by restricting access during periods of voluntary restraint.
43. BASC recommend this approach be adopted nationally wherever roosting waterfowl may be at risk of disturbance from the ECP during periods of severe weather.
44. CWA refer to the majority of this section being designed such that the public and their dogs would be within fencing or behind fencing until section S041 – S042. CWA request that dog proof fencing be placed on all gates along the route to stop dogs accessing the sea wall or livestock.
45. CWA believe the proposals do not do enough to protect high tide roosts: 4k from physical disturbance; and, 4j from visual disturbance from dogs accessing the intertidal zone. The Identification of wintering waterfowl high tide roosts on the Severn Estuary Site of Special Scientific Interest (SSSI)/Special Protection Area (SPA) (Brean Down to Clevedon). The Latham Study identifies roosts 4k and 4j as high importance and the proposals do not offer sufficient protection from disturbance by dogs.
46. The LAF indicates that whilst restrictions on dogs are in place for certain sections, there should be an expectation that dogs should be kept under close

control at all times. 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 clear and/or where a potential safety hazard may be encountered.

47. The surface of the flood banks on this stretch would be suitable for off-road mobility scooters. Much of the field edges where there is currently no public access would also be suitable. Slopes to ascend/descend flood banks can be made accessible with appropriate design. From Kingston Pill to Huckers Bow the proposed route would be on or just behind the seawall in most places. This is expected to be accessible to off-road mobility scooters and all new countryside furniture should provide for this.
48. The LAF referred to NSC's plans for a new cycle route between Clevedon and Weston-Super-Mare and the need to provide suitable access furniture. The needs of off-road mobility scooters and pavement scooters should be taken into consideration when this route is planned.
49. The CLA indicate that the proposed trail follows a route close to the coast, but is often either screened from it or, due to siting on the inland side of the sea wall, provides no sea views, such as sections S035 to S042. The trail passes through primarily agricultural land, most of which is used for livestock. Many of the farmers raise concerns about the impact on their enterprises, especially as there are very limited measures to take account of the impact of the new access on a farming business.
50. There would be short sections where dogs must be kept on leads to protect birds. No restrictions on dogs are proposed for the protection of livestock. There are particular concerns about the impact on livestock as a result of the public and dogs. There are few proposals to keep dogs separate from livestock and, even where there are stipulated restrictions, would these be adhered to.
51. The report states that it has proposed this route because it "addresses farmers' concerns". The fact that most of the farmers along this stretch are objecting to the proposals should indicate that the proposed route does no such thing.
52. Concerns have been raised about the assumptions within the Habitats Regulations Assessment (HRA), especially the reliance on notices, signs and restrictions as means of mitigating any adverse effects on sensitive species, notably birds. The HRA assumes that people would largely adhere to the restrictions and notices. The experience of many land managers around the country is that this is not the case. Given that the path is proposed along the inner base of the flood bank, with no views of the estuary, the likelihood of people straying to look over this is likely to be strong. There are many known cases of dog owners allowing their dogs to chase other animals – including cattle, sheep, birds and other wildlife, often in ignorance of the damage being done.

53. This section of coast is remarkable in the context of the English coastline for being so undisturbed and its tranquillity. The high numbers of important species are a reflection of its current inaccessibility. It is therefore extraordinary that NE has proposed introducing largely uncontrolled public access, which is dependent on co-operation with signs. The risks of damage to these internationally important species, should the assumptions within the HRA and proposed mitigation measures not be complied with, are so great, it is astonishing that NE, a body charged with the care and protection of such species, is contemplating these proposals. This is especially so where alternative options exist, which would ensure that protected species remain undisturbed.
54. The proposal to extend the coastal path into this section is as a result of NE's decision to exercise its discretion to extend coastal access up the Severn estuary. The Report places emphasis on "continuity" of the path, but the legislation sets many criteria which are applicable to estuaries, all of which should be considered. The concept of continuity is given no greater prominence than the need to adhere to the periphery of the coast or provide views of the sea. Were continuity of over-riding importance as the Report suggests (the "prima facie reason for the trail to serve the estuary" (overview, section 5c)), then the additional legislative factors would be unnecessary.
55. s301 of MCA required consideration, not only of the impact on those whose land would be affected by the proposals, but on factors such as:
- The nature of the land
 - The topography of the shoreline
 - The width of the river
 - The recreational benefit to the public
 - The extent of excepted land
 - The presence of a physical feature or viewpoint.
56. The list is not exclusive, and consideration must be paid to other factors such as the long stretch of undisturbed coastline, and consequent presence of numerous highly important bird roosts, and the recent approval of a section of new cycleway between Clevedon and Weston, which could provide a link in continuity, without generating unacceptable impact on birds or causing unfair balance to owners and occupiers.
57. Modifications are suggested such that the trail should follow the cycleway from Tutshill Sluice to Kingston Pill. From Kingston Pill to Tutshill Sluice, the trail should follow the same route as the new cycleway from Tutshill Sluice to Lower Strode Road. This would meet the objectives of providing a coastal trail, combining the positive avoidance of disturbance to birds and any disruption to farmers and landowners is kept to a minimum providing a fair balance. This

would be an easy to follow route allowing the public to walk around the coast and estuary, reducing risk of trespass.

58. The report dismisses this route because it states that:

- 1) the current route addresses farmers' concerns about biosecurity.
- 2) the cycle route would not be safe.
- 3) there would be a large area of coastal margin.

59. It should be clear that biosecurity concerns have NOT been addressed, and, in many cases, the proposed route compromises the important biosecurity of individual farms.

60. It is incorrect that the local road network would not be safe or suitable; a report commissioned by NSC to review the proposed on-road cycle route between Mud Lane and Colehouse Lane and produced by Avon Traffic and Safety Services Ltd on 15 October 2018. The brief was to "identify any road safety issues along this route and outline the available options to address these issues". The report makes some recommendations regarding road surface, vegetation cut back and road markings.

61. Section 5 of the report considers "Safety Issues", and notes that "Site observations show that motor vehicle levels are very light, and speeds generally no more than 30mph, i.e. commensurate with a quiet lane suitable for use by walkers, cyclists and equestrians" The attached plan shows the location both of the approved section of cycle route and the remainder of the section to Clevedon which does not need planning approval as it relies on existing quiet lanes.

62. The suggestion that an inland route would create a large area of coastal margin is incorrect. The Access to the Countryside (Coastal Margin) England Order 2010 (SI. No 558) (the CMO) states in section 3(2) that:

"(2) the first description of coastal margin is-

(a) Land over which the line of an approved section of the English coastal route passes,

(b) Land which is adjacent to and within 2 metres either side of that line, and

(c) Land which is seaward of the line of an approved section of the English coastal route and lies between land within sub-paragraph (b) in relation to that approved section and the seaward extremity of the foreshore, if the land within sub-paragraphs (a) to (c), taken as a whole, is coastal land."

63. That final qualification is crucial. Coastal land is referred to in CROW, which describes it as:

"(a) the foreshore, and

(b) land adjacent to the foreshore (including in particular any cliff, bank, barrier, dune, beach or flat which is adjacent to the foreshore)”.

64. The intention of the legislation is clear: the coastal trail is intended, on the whole, to pass along the coast. Therefore the trail would be situated on land which is “coastal land” (foreshore, or adjacent to the foreshore). Where it does so, the land between the trail and the sea would be coastal margin.
65. Striking a fair balance is a central requirement of the legislation, s297(3) of MCA. Being mindful of the Human Rights Act 1998 (HRA), reaching a fair balance must take precedence over and above other legislative criteria.
66. It is understood that it is not always possible, whether for reasons of fair balance, or because of other statutory requirements, such as the protection afforded to certain species, for the path to be placed on coastal land in every scenario. However, the legislation provides a clear safeguard in cases where the trail needs to divert away from coastal land: that the land covered by the path and margin, when considered “as a whole” is coastal land. In the absence of any other interpretation within the legislation, it must be taken in its normal sense – that the path and the margin are expected to be sited on what is, predominantly, coastal land. Coastal land being foreshore and land adjacent to the foreshore (cliff, bank, barrier, dune, beach, flat).
67. So, if the trail follows an “inland” route, such as at Avonmouth, or as it might between Kingston Pill and Tutshill, this would not lead to the creation of a large area of coastal margin. Firstly, because the path itself would not be situated on “coastal land”; and, secondly, and the crucial qualifying factor in the legislation, the land must be considered “as a whole”. When considered “as a whole” the land is characteristic of farmland, not “coastal land”. The land between the path and the sea would be predominantly farmland, not foreshore and land adjacent to the foreshore. It therefore cannot meet the definition of coastal margin and it is wrong to suggest that it does.
68. NE has argued that land would be coastal margin, so long as the edge of the margin is along the sea. This is ridiculous as it potentially allows a path to be sited a kilometre or more inland, away from the coast, and any coastal land type, and for any other type of land not within the legislation to be considered coastal margin. This was clearly not the intention of the legislation: if it had been, the qualification that the land, when taken as a whole must be coastal land, would not have been necessary. The coastal margin argument therefore has no validity.
69. As an alternative, there could be a summer and winter route option. This would provide a summer route for a four to six week period along the route as currently proposed within the Report, subject to agreement by affected landowners. For the remainder of the year, the route would follow the cycle route. This reflects the arrangements along the West side of the Yeo. There are many similarities

between the West side of the Yeo and the estuary between Kingston Pill and Tutshill Sluice.

70. This would mean, albeit for a short period, that the public would get access to the coast. If there was disturbance to the birds it would be limited to that time, and favourably at a time when disturbance is likely to cause least damage. The problems arising from giving public access to large areas also used by cattle could be resolved if that access were for a short period only, as farming operations may be able to be adapted to accommodate this. The winter route could be easily installed by utilising existing public rights of way, quiet roads or the proposed new cycleway.
71. The Report states that it rejected a seasonal diversion for this section of coast but the reasons for doing so are wrong:
- A summer route might only be available for a maximum of six weeks that is no different from the proposals for the West side of the Yeo.
 - The currently proposed route does not address farming concerns. Unnecessary disruption could be avoided using alternative solutions available.
 - This compromise would be no less confusing to walkers than the arrangements for the West side of the Yeo. It could compliment those proposals and vice versa by having consistent arrangements in place reinforcing the measures.
72. It is likely that it would be much simpler for the public to understand a simple summer/ winter route option, with different paths open or closed at different times. All the public need do is to follow the relevant route, rather than one path on which myriad different directions would apply, many of which are likely to be ignored, with consequent effects on wildlife and farming. It is questioned why the possibility of a summer/winter route was not discussed with landowners and occupiers.
73. DR 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 said that the terrain is suitable for such use and NE should take all reasonable steps to make the trail as easy as possible for disabled people and those with reduced mobility, bearing in mind British Standard BS5709: 2018 Gaps Gates and Stiles (BS5709).
74. The Wildfowl & Wetlands Trust (WWT) is the UK's leading wetland conservation charity and works across the UK and internationally to conserve, restore and create wetlands. This section of the trail is located between two WWT-managed sites, Slimbridge to the north and Steart Marshes to the south. WWT welcomes the addition of coastal access for visitors and residents and hopes it would encourage people to explore the Severn estuary and its wildlife.

75. WWT supports the development of signage to encourage interest in the waterbirds and wildlife using the estuary. WWT welcomes the mitigation measures 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.
76. 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.
77. 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

78. NE has worked closely with NSC in the development of the proposals, from Avon Bridge (report ABD4) to Brean Cross Sluice (ABD9). NSC officers provided technical advice on the route options and attended meetings with affected land owners. NSC provided advice regarding infrastructure, estimated establishment costs and potential impacts on archaeological assets and how to avoid them. The Secretary of State is asked to note NCS's views on the benefits for residents and visitors to the area.
79. 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. NSC, 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.
80. In relation to comments on the HRA, EA are content that the flood maintenance programme is listed among the considerations in table 31. 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.
81. The need to consider land contamination risk with respect to any ground disturbance necessary to establish the route is noted. This would be passed on to the local access authority (NSC) coordinating path establishment.

82. Following on from the constructive engagement of BASC during the development of the proposals, NE agree that local wildfowling activity is likely to be more visible to members of the public than currently and note the concern that this may lead to attempts to disrupt it. NE accept that when such behaviour has occurred, experience suggests it often arises from a lack of understanding of wildfowling and agree that suitable interpretation boards would help to reduce this risk. NE would be happy to discuss this proposal further with BASC and the local club, CWA, should the Secretary of State approve access for this part of the coast.
83. NE agree with BASC that waterbirds are more vulnerable during severe winter weather, in part as energy requirements to maintain body temperature are higher in colder weather, and disturbance would both reduce the time available to feed and increase energetic cost, for example from additional flight. The route and associated mitigation measures have been designed to reduce the risk of disturbance to waterbirds at key locations for roosting and feeding.
84. Waterbirds are a qualifying feature of the Severn Estuary SPA and Ramsar site and the proposals have therefore been considered in the [HRA](#). Section 3.2D of the HRA assesses the risks to waterbirds between Wain's Hill and Huckers Bow. The HRA takes account of the greater vulnerability of waterbirds to disturbance during severe weather and concluded that the proposals would not have an adverse effect on the site integrity. NE are satisfied that no further mitigation is necessary at this location.
85. As explained in discussions with BASC and CWA it would be possible for NE to give a direction at short notice to restrict or exclude access rights for nature conservation reasons, using powers available under section 26(3)(a) CROW. It would be unusual to conclude that this was necessary, but NE remain open to that possibility and would continue to make decisions based on evidence available at the time.
86. 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.
87. 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.

88. NE agree with the LAF that waymarks, signs and interpretation should be used sparingly and after consideration of the need and suitability to the location. Specific signs and interpretation are necessary and appropriate on this part of the trail, in particular to alert walkers to the nearby presence of sensitive waterbirds and ask them to adopt certain behaviours in order to reduce the likelihood of disturbance. Small waymark discs are a helpful and unintrusive means to signal the route and give walkers the clarity and confidence to follow it.
89. NE and NSC 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 is subject to any practical considerations raised by third parties and to the agreement of the land owner, which must be sought before any works are undertaken. The planned cycle route between Clevedon and Weston-Super-Mare is a NSC project. NE are in regular contact with the team due to overlap with the coast path route on another part of this section. The cycle route Design and Access Statement makes clear that the needs of both off-road mobility scooters and pavement scooters are being taken into consideration in the design of the cycle route.
90. In respect of the CLA's comments, NE have gone to considerable lengths to discuss route options with farmers and other land managers, including 60 meetings with affected owners and tenants, numerous telephone calls and correspondence. As a result the proposed access includes numerous and in some cases very significant measures to take account of the concerns. It is acknowledged that a number of the affected farmers are nevertheless not satisfied with the resulting proposals and in comments on their representations NE explain why it is felt that a fair balance has been struck overall.
91. The CLA is mistaken that there would be no restrictions for the protection of livestock. Annex D of the Overview explains the national restrictions that would apply wherever coastal access rights are in force along the trail and coastal margin. These include a requirement for people accompanied by a dog to keep that dog on a short lead when in the vicinity of livestock and would apply to any part of the route between Kingston Pill and Tutshill sluice where livestock are present, whatever the time of year. A standard sign would be used to advise walkers of this at field entrances – the sign was designed and agreed with

stakeholders including the National Farmers Union and the Kennel Club. There is no need to restrict access with dogs further for livestock and accordingly there is no specific proposal in the report.

92. The CLA questions whether restrictions would be adhered to. NE believe that the majority of dog walkers would accept proportionate and evidence-based restrictions provided they are clearly signed and there is off lead access available nearby. There is strong support for this view in published evidence, such as [the 2016 report](#) about mitigation options for influencing walkers with dogs in the Solent area, and in recent unpublished advice from an independent expert on access with dogs engaged by NE to review the proposals. In keeping with this evidence and advice, and with the principle of the least restrictive option in chapter 6 of the Scheme, NE would place notices at Kingston Pill and Tutshill Sluice explaining that leads are necessary ahead. Further notices along the route would indicate where this is so and why, and where leads were not necessary, typically where the route was separated from the surrounding land by fences on both sides.
93. NE have acted to separate walkers and their dogs from livestock, taking the view that in this location, where there is little recent history of public access to the land, it is warranted to allay farmers' concerns. The position of the route would mean walkers and livestock were separated by existing fences in some places. During development of the proposals several farmers requested additional fencing to separate walkers and their dogs from livestock, whilst others considered the possibility and rejected it.
94. Where farmers requested fencing NE agreed to it as a gesture of goodwill and, having done so, wrote to the affected land owners to confirm that, with maps to show the locations. The maps also showed where new fencing was proposed to avoid increased disturbance to waterbirds, which in some cases would also separate the path from livestock. The proposed fences and hedges were to mitigate feared impacts on wildlife and farm businesses and were proposed either with the agreement of the occupier or where it was understood that they would prefer it to the other available options. In these cases, NE offer to pay for the labour and materials to install the fence or hedge. Where the purpose is to protect wildlife, NE do not expect the occupier to maintain it unless they offer to do so. Where the purpose is to separate walkers from stock, the occupier is expected to maintain it.
95. Where NE intend to erect new fences or hedges that would cover or enclose land currently used for grazing would not preclude a fair balance as the CLA suggests, because the fair balance test is a question of degree: there are potential impacts on both public and private interests arising from the proposals and the legislation

requires NE to aim to strike a fair balance between them. NE may therefore seek to minimise impacts in some cases, rather than to eliminate them.

96. In relation to concerns raised about the assumptions within the HRA, the proposals do not rely solely on notices, signs and restrictions to mitigate adverse effects on sensitive species. Table 6.2.8 of report ABD6 describes an extensive suite of mitigation measures, including for example the positioning of the route and the use of physical barriers to access, in addition to notices, signs and restrictions.
97. Signs and notices are an important aspect of the design and management of the route and the content and positioning of them would reflect best practice and based on experience directly managing 142 National Nature Reserves and NE's long-standing role in the management of National Trails. In NE's experience it is reasonable to expect the majority of walkers to adhere to restrictions and notices provided that they are clearly explained and that restrictions are proportionate to the need. From time-to-time people may ignore notices but with good design and positioning and well-worded content this would be the exception rather than the rule.
98. Where problems occur in the wider countryside these are usually due to a lack of appropriate access management, for example unclear or confusing signs, or where walkers have been allowed to develop unwanted habits over time without concerted or informed attempt to change them. Here there is the advantage of designing the access correctly from the outset; therefore NE do not expect significant problems.
99. The report places emphasis on continuity of the path, in keeping with the principle in section 297(2) of the Act, that interruptions should be kept to a minimum. It is also consistent with the Scheme, section 10.1.5 says NE would always give careful consideration to the option to extend the trail as far as the first bridge or tunnel with pedestrian access.
100. NE agree with the CLA that the list of criteria included in the legislation is not exclusive. Part 5 of the Overview to the reports sets out the detailed assessment of the full list of criteria which must be considered when deciding whether to propose that the coast path should include an estuary and if so, to what extent. NE also agree that it is necessary to consider, for example, potential impacts on wildlife and the option to align the coast path along the same route as the forthcoming Clevedon to Weston cycle link. With respect to wildlife considerations on the estuary the Secretary of State should refer to the published HRA and NCA.
101. The cycle link follows country lanes between Clevedon and Tutshill sluice (maps ABD 6a to ABD 6d) with a map showing the route attached in section 6 of NE's comments Representations on ABD 6 – Wains Hill to Huckers Bow (page

106). NE have been in close contact with the NSC team developing the cycle route and have sought to maximise efficiencies between the two projects, in particular the opportunity for a shared river crossing across Tutshill Sluice, to the south of this section. However, the whole cycle route from Clevedon to Tutshill Sluice is not a viable alternative to the proposed route. The cycle route is primarily for leisure cycling and commuting; there is no inherent reason why it should follow the coast. Table 6.3.3 of report ABD6 summarises the views on available road routes for the coast path - including the cycle link - under the heading "Inland routes from Kingston Pill to Tutshill sluice".

102. NE broadly agree with the CLA that the cycle route would be continuous and easy to follow, avoiding disturbance to waterbirds and minimising disruption to farmers and landowners. However, the cycle route fails to meet the core characteristics of a coastal walking route described in chapter 4 of the Scheme. Between Dowlais Farm (report map ABD 6a) and Tutshill Sluice (report map ABD 6d) it lacks any sea views or proximity to the sea. At 5.9 kilometres in length this is a significant departure from the sea which NE would only propose if satisfied that no more coastal route could be found that would strike a fair balance and meet conservation objectives for protected sites; NE maintain that the proposed route satisfies those two tests. This analysis is in keeping with section 4.2.4 of the Scheme: "the trail need not be aligned along a road used regularly by motor vehicles if there is another suitable route".
103. The CLA refers to a report commissioned by NSC to identify road safety issues along the cycle route and outline options to address them. The observation that traffic speeds and volumes were "commensurate with a quiet lane suitable for use by walkers, cyclists and equestrians" should not be read as an endorsement of the cycle route as a promoted walking route. It is a generalised statement in a report commissioned to look at the suitability of the local road network as a cycle route. Pedestrian safety on the cycle route could be improved in some places, for example by vegetation clearance or more regular cutting, but in others the narrow width and lack of verges would make this impractical. The overall experience is not consistent with public expectations of safety for a promoted walking route and would be likely to discourage or exclude many potential users including families with children and people with reduced mobility.
104. NE believe that the CLA's interpretation of article 3(2) of the CMO is mistaken. Coastal land means the foreshore and land adjacent to it, as set out in section 3(3) of CROW. That definition means what it says: it is drafted to be broad and inclusive. There is nothing in it to remove from the scope of "coastal land" any area between the path and the seaward edge of the foreshore that

does not fall into one of the example land categories shown in brackets at the end of s3(3) (these being cliff, bank, barrier, dune, beach, flat).

105. The position of the route therefore exclusively determines the extent of the seaward margin: there is no other mechanism in the legislation which could determine it. The legislation then relies on the exceptions in Schedule 1 to CROW to remove automatically from the scope of coastal access rights the most obviously unsuitable land types that may fall within this automatic margin. There are then local access exclusion and restriction powers under chapter 2 of CROW Part 1 that can be used where it is necessary to do so on one of the grounds set out in that chapter. The Scheme, which was approved by the Secretary of State to set out the approach NE would take on the ground to discharging the Coastal Access Duty, and by which NE and the Secretary of State are therefore both bound, sets out detailed criteria governing the use of these exclusion and restriction powers in different situations.

106. Paragraph 2.3.4 of the Scheme supports this interpretation of article 3(2) of the CMO, when it says:

“The position of the route that we propose in our report also determines, if approved, the inclusion of land to either side of it as coastal margin:

land on the seaward side of the trail automatically become coastal margin; and

other land of certain specific types also becomes coastal margin if it lies on the landward side of the trail...”

107. The distinction should be noted in that approved paragraph between the position seaward of the trail, where the Scheme rightly says all types of land automatically become margin by default; and the position on the landward side where, in accordance with article 3(3) of the CMO, the Scheme rightly says that only the types of land specified there are automatically included by default.

These are foreshore, cliff, bank, barrier, dune, beach, flat, or section 15 land.

108. In relation to the idea of using the proposed route as a summer route, with the cycle route forming an official ‘alternative’ route for the remainder of the year, it should be noted that directions can be given to restrict or exclude access rights for land management reasons and to address concerns about public access in fields used by livestock. However, NE are not satisfied that it is necessary to exclude access any further for this purpose. NE also do not agree that it is necessary to exclude access along the proposed route to avoid bird disturbance; the route has been designed to keep bird disturbance to a minimum as explained in section 3.2D of the HRA.

109. There are some similarities in the circumstances between Kingston Pill and Tutshill sluice and those on the southwest bank of the Congresbury Yeo:

special measures are necessary to conceal walkers from roosting and feeding waterbirds and the period of sensitivity is from early July to mid-May. However, there are important differences in circumstance which justify a different approach:

- the proposed exclusion on the southwest bank is limited to sections of the path adjacent to sensitive areas. Following the CLA's suggestion, access would be excluded to less sensitive areas where there are opportunities for people to enjoy views of the estuary;
- there is less scope for an off-road route on the southwest bank of Congresbury Yeo because the land at the landward edge of the flood bank is much wetter. This is because the fields on the southwest side drain towards the flood bank whereas the those on the northeast side drain away from it.
- the length of road walking would be 5 km which would significantly detract from the public benefit of the path. In comparison the southwest side is only 1.5km;
- the cost to establish the 'summer' route would be over £100,000, which would be disproportionate for the six weeks a year of access it would provide, whereas the cost of the 'summer' route on the southwest side is only £2,000.

110. NE do not expect that the suggested summer/winter route option would be simpler for the public to understand. As a general rule, people would be able to follow the route and willing to comply with any restrictions, provided that they were signed clearly and conspicuously as intended. NE investigated a number of options for seasonal routes with the affected land owners, as referenced on pages 23/24 of report ABD6.

111. 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. It is agreed that it is not realistic to expect everyone to read signs or adhere to behavioural messages and the signs would be backed up in some places with additional measures. It is also agreed that fencing, or other barriers, can help to avoid disturbance to waterbirds and this is an option proposed in some places, where walkers or their dogs might otherwise stray off the path into a sensitive area. It is also agreed that face-to-face engagement with the local community can be a useful way to help new access arrangements to bed in and those discussions have begun.

112. With regard to WWT's suggestion to review the proposed mitigation, there are two arrangements in place that would help: the requirement for local access authorities to report to NE on the condition of the path and associated infrastructure, in order to qualify for central government contribution towards maintenance costs; and, the ongoing Wetland Birds Survey (WeBS), which is a national scheme tracking trends in the populations of wetland bird species using the Severn Estuary.

113. NE draw 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

114. The numbers in brackets [n] relate to the paragraphs above.
115. The concerns fairly raised at the introduction of walkers and dogs into an area previously without such access have been discussed during the development of the proposals [16 - 19, 49 - 51, 91].
116. There appears to have been a misunderstanding regarding the controls on dogs using the land in question. Although not required for dogs to be on leads at all times, this is required in the vicinity of livestock (Paragraph 5 of Schedule 2 to CROW). As a result, there is no need for a direction to be made in this respect [16, 17 24 - 29, 50, 91]. It should also be noted that there would be a requirement to remain on the trail in this area due to the year-round direction to exclude access to the coastal margin. This would limit the potential for dogs to be off-lead, due to the requirement to remain on the land to which the right of access would apply [25 - 27].
117. Section S041 is a clearly defined by the roman bank. There was mention of the potential to fence the route, which could be discussed during the establishment of the route on the ground. Report ABD6 sets out in Table 6.2.8 that fingerposts would be installed at either end of S041, with notices reminding users to keep to the waymarked route. The fact that the route follows the earthworks is likely to encourage people to remain on the trail, with discussions on the site visit suggesting information boards about the feature would help to generate interest in using that route [25].
118. With regard to the question of whether users would adhere to the restrictions, with reliance on notices and restrictions suggested to be ineffective, NE have relied upon published data and specialist advice to support their proposed management solution. The Scheme sets out the principles for the development of the route and this proposal follows those principles. However, NE agree that it is not realistic to expect everyone to read the signs and follow the directions. There would be review proposals, as already planned on this point in relation to wildlife matters; this would feed across and be relevant to other land management uses, in particular agriculture. Identified issues arising can and should be addressed by the appropriate bodies at the time. [52, 53, 75, 92 - 98, 111, 112]
119. These controls on dogs in the vicinity of livestock also help with regard to the biosecurity concerns raised, including in relation to dogs chasing sheep. The proposed provision is in line with the Scheme, which takes account of such matters in setting out how such land would be dealt with in relation to the

provision of coastal access. NE also rely on their own experience of managing dogs on land with sensitive features.. It is noted in particular that there would be a direction preventing access seaward of the trail such that users would be confined to a limited area of land, just the trail itself, see Directions Map ABD 6B. [16, 17, 20 - 28, 59, 86 - 88, 94 - 98]

120. The alignment of the proposals with the Scheme; the experience of such management; and the intended review of the situation on the ground, once the trail was in place, leads to the conclusion that a fair balance would be met over this land.

Representations

121. The representations in part raised issues referred to by the landowners and these have been referenced above as appropriate.

122. NSC, EA and WWT are working with NE as appropriate with regard to the delivery of the project in line with their own duties and/or requirements [31 - 36, 74 - 76, 78 - 81, 89]. The concerns of BASC and CWA would be addressed by way of the proposed mitigations alongside the ability to give directions should that prove necessary [37 - 45, 82 - 85].

123. With regard to the CLA representation referring to the exercise of the discretion to extend coastal access along the estuary, it is agreed that there are a number of factors which are relevant to determining to follow this route. It would be surprising if this discretion was not adopted here given the size of the Severn estuary, of which this section effectively forms a part, and the continuity that arises with the Wales Coast Path. The tributary of the River Yeo, also referred to as Congresbury Yeo, forms an integral part of that estuary [54 - 56, 99, 100].

124. In an area without a great deal of informal or formal public access it is unsurprising that the proposed change is seen as undesirable, particularly to livestock farmers. The balance to address these concerns is through mitigation, such as alignment, signage and fencing. The trail benefits from the lowest level of occupiers' liability known under English law, paragraph 4.2.2 of the Scheme. Whilst it is clear that the CLA do not feel this is sufficient the Act requires delivery of the ECP and the Scheme provides the methodology. In relation to concerns regarding disturbance to wildlife the HRA is relevant [49, 51, 53].

125. Section 297(3) of the Act sets out that [NE and the Secretary of State] "...must 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." Although not specified, the relevant parts of HRA98, Schedule 1, are likely to be Article 8: the right for respect for private and family life, and Article 1 of the First Protocol: protection of property. These are qualified rights which may be 'interfered' with or 'infringed' in order to secure specific aims. What is required is the balancing of the fundamental rights of individuals against the legitimate

interests of others and the wider public interest in securing the new public access; the Scheme sets out the methodology to be followed in meeting that requirement and NE have not departed from the delivery of their duties in this respect [65, 90].

126. The CLA suggested that the trail could instead be taken inland, making use of the proposed cycle route, entirely avoiding farmland. It would be intended that there be formal and informal links between these two projects, however, their purposes differ. Having driven and taken views on foot from various locations along the proposed cycle route, it is clear that this project would not meet some of the requirements of the Act and Scheme, in particular in relation to the lack of sea views and proximity to the sea. The development of the cycle route has other aims and objectives to those required by the Act. It would assist to some extent with regard to the desire for off-road mobility access [57 - 61, 73, 89, 100 - 103].
127. There is disagreement between NE and the CLA as to the interpretation of whether land seaward of the cycle route would or would not be coastal margin, which was cited as one of the reasons for not considering it as an alternative. However, as set out above, there are other reasons that the cycle route would not provide a suitable alternative to the proposed route in any event [62 - 68, 104 - 107].
128. Similarly, the suggestion of a summer and winter route option does not meet the fair balance so far as the public are concerned in terms of either access or the use of public money. Whilst there are some similarities between this area, Kingston Pill – Tutshill Sluice, and the west side of the Yeo, section S047 – S048, see Map ABD 6d Blake’s Pool to Wick Warth and Directions Map ABD 6B, there is a clear difference in terms of the extent of the proposal and the need for it to be implemented. The determination not to provide a summer/winter route alternative in this area does not disturb the fair balance between the public and the private interests in this matter. The mitigations identified and offered to affected owners and occupiers meet the requirements of finding that balance between the relevant interests in this project [69 - 72, 108 - 110].
129. Other representations refer to the public interest in the provision of the trail in this area for promotion of tourism, sustainable travel and health [77 and 113].

Recommendation

130. Having regard to these and all other matters raised, I conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objections. I therefore recommend that the Secretary of State makes a determination to this effect in relation to the relevant section of report ABD6.

APPOINTED PERSON

ANNEX A: INFORMATION TO INFORM THE SECRETARY OF STATE'S HABITATS REGULATIONS ASSESSMENT

Introduction

1. 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.
2. 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; the North Somerset and Mendip Bats SAC; and other nearby European sites. The HRA has identified the relevant sites affected by the proposals.
3. 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 (AEoI) of the designated sites.

4. 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 qualifying features for Report ABD6 are identified in Table 8 of the HRA, referenced Wain's Hill to St Thomas Head, see Map D2, Channel View to St Thomas Head. St Thomas Head itself lies slightly to the north of Huckers Bow and falls into Report ABD7, to which no objections were raised. The relevant matters are discussed in D3.2D, which refers to the entirety of matters in Report ABD6, not just the sections to which this report relates.
5. The assessment of AEoI for the project alone takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Section D3.3). The assessment identifies that the measures incorporated into the design of the scheme are sufficient to ensure no AEoI in light of the sites' conservation objectives. There would be some residual risk of insignificant impacts:
 - 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.
 - More frequent disturbance to juvenile shelduck, following changes in recreational activities as a result of the access proposal, leads to increased mortality and a resultant reduction in the non-breeding population within the site.
6. In section D4 of the HRA, NE considered the appreciable effects that are not themselves considered to be adverse alone to determine whether they could give rise to an AEoI in combination with other plans or projects. It was considered that there were residual and appreciable effects likely to arise from this project which have the potential to act in-combination with those from other proposed plans or projects in relation to more frequent disturbance to feeding and roosting waterbirds (non-breeding) from increases in recreational activity at specific locations between Kingston Pill and Huckers Bow (map D2).
7. 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 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.

8. 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.

Nature Conservation Assessment

9. 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.

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 subject to any further necessary consents being obtained, including to undertake operations



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

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Date: 18 August 2022

Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Aust to Brean Down

Objection Reference: MCA/ADB6/0/7

Aust to Brean Down, Wain's Hill to Huckers Bow

- 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 17 September 2019 to Report ABD 6 was made by [redacted]. The land in the Report to which the objection relates is route section ref. ABD-6-S013.
- The objection was made under paragraphs 3(3)(e) 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, with a modification, the proposals set out in the report do not fail to strike a fair balance.

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 6: Wain's Hill to Huckers Bow. The route sections are annotated ABD6, eg ABD6-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 24 May 2021 when I was accompanied by the objector, a family member involved in the farm business, a representative from the Country Land and Business Association (CLA) 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 below.

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 two objectives.

6. The first objective is to secure a route for the whole of the English coast which:
 - (1) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (2) (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:
 - (1) the safety and convenience of those using the ECR,
 - (2) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (3) 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 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 trail 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. There are extensive views of the Severn 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.
15. There are no public rights of way along the coast between Wain's Hill and Huckers Bow. The trail follows an existing walked route as far as Kingston Pill and then to Huckers Bow it follows a new path which would be on or just behind the seawall in most places. This would offer regular views of the Severn and its tributaries whilst minimising visual disturbance to feeding and roosting waterbirds. At Huckers Bow the trail would meet an existing walked route leading to Middle Hope.

The case for the objector

16. The route would not strike a fair balance and would significantly adversely affect farming practices. It would have a dramatic effect on business income, contrary to the legislative requirements for there to be a fair balance and for the access not to impose an undue burden. The Report states that its proposals "address farmers' concerns". This is untrue. As should be clear from the comments, it is not felt that the concerns have been addressed at all.
17. Rather than having to decide on the "least worst" route across this land, a fair balance could be achieved by:
 - stopping the path so that coastal access did not affect this land; or
 - locating the path elsewhere (for example using the cycle track) and ensuring that there were no rights of access, for example, to any coastal margin; or
 - providing compensation for the losses and disturbance that would be suffered. As coastal access would effectively operate within a fenced corridor with additional screening which he would be unable to use or manage, this is akin to footpath creation under the Highways Act 1980 (HA80) or other compulsory purchase situations, and not to the non-compensatory powers under the Act, which envisaged that "coastal access rights should not interfere in any significant way with the operational needs of coastal businesses....the legislation does not take land away from land owners or interfere with their freedom to manage it" (Scheme, para 5.2).

Biosecurity

18. This is a small dairy farm, here for over 100 years. There is pride in the cows' health and biosecurity. As a closed herd, cattle are not bought in but replacements are bred, which protects the herd from any diseases or illnesses from other cattle. The farm has been free of Bovine TB for the last 10 years despite being in a high TB risk area, which is taken to be due to the biosecurity and herd health.
19. In the past the farm has suffered with *Neospora caninum* (Neospora). Dogs are definitive hosts to Neospora; the disease is carried in dog faeces and can be passed to cattle on contact with these faeces. The disease causes cows to abort calves which is unpleasant for the cow and a financial loss. Once infected, the cow will carry this disease for the rest of her life. It is very unlikely that she will be able to go full term and have a calf, which makes the cow unviable, as she won't be producing milk. So, the financial consequences of this disease are very significant.
20. The farm has experienced issues with irresponsible dog use as the land adjoins the existing permissive path (to be incorporated into the trail as S012). Even though there are signs stating it is private property people ignore them and carry on through this ground. These are mainly dog walkers letting dogs off leads and allowing them to foul on the grazing land.
21. NE have known from the start that the herd biosecurity is of the utmost importance and that creating this new trail not only causes more concern but increases the likelihood of the herd picking up disease.
22. A letter from the farm vets confirms these matters, indicating that there have been Neospora cases within the herd in the past few years. There is also reference to tapeworm cysts contaminating pasture from dog mess. This could lead to condemnation of carcasses and offal at the abattoir, with no payment to the farmer. Regular worming of dogs is important, although the ability to transmit remains. Eating infected carcasses could infect dogs, which was a concern due to more raw meat diets for dogs. As a result the vets could not recommend changing the farm policy to beef and sheep production; grazing land associated with the trail would put the health of the herd in jeopardy.

Impact on Farming Operations

23. The cows cross the seawall to graze the land on the seaward side of the bank. This is approximately 5.5 acres of grazing ground, which the cows visit every 3 weeks from April to mid-October for 3 – 4 days at a time, a total of 22 days approximately. The position of the footpath at the base of the seawall and the screening system on the seaward side of that, intended to protect birds from disturbance from walkers, would restrict access to the remaining grazing ground. This would take out just over one acre of ground in total and restrict farming the acreage that is left.

24. The topography of the area, and location of the proposed route, means that cows would be shut into a low-lying area of ground. Currently, when grazing that land, cows are able to “escape” from high tides by walking back over the top of the seawall. Under the proposed new system, the cows would have to be taken across the new trail via a system of gates, adding extra time and cost. The cows would have a fence on three sides with the sea on the remaining side and would have no form of escape or be able to be collected in the event of a high tide or even of a dog attack which seems to be becoming more and more common these days.
25. This is unfair as the safety of the cows has to be put over the grazing of the remaining ground. This would lead to financial loss, from loss of milk and loss of ground, a total of 5.5 acres. If attempting to graze this ground, there would be two hours extra per day collecting and returning the cows, which would need to be factored into the business labour requirements and costs. The cows currently run through the existing fields, which allows them to come and go by themselves. With the proposed path, that freedom is taken away, meaning they would need to be taken and returned, manning the gates across the trail. NE has not properly understood the very significant and severe impact that the proposed route would have on the farming business.
26. Other new management issues would arise, such as a responsibility to maintain the proposed landward fencing, necessary to prevent ingress of people and dogs onto the land and help biosecurity, the re-location of water supplies for cattle; resolving issues of how to prevent tampering of water supplies; and how to ensure water supplies were not contaminated, with Neospora a particular risk.

Financial Loss

27. The proposed route would potentially affect the farm financially as follows:

- Loss of milk due to the loss of grazing (Arla document). Variations of calving pattern and price of milk alter results year to year: 2017 milk production value of the land was £19,442.87; 2018 £13,504.00; 2019 (to September 2019) £11,460.00 (Even under the NE assessment the loss of milk income amounts to several thousand pounds.)
- Potential loss of single farm payment (SFP) £550, for which payments would be received until 2027
- Loss of monies under any future environmental schemes which may be available after SFP is removed
- Increased labour requirements £924.00 @ £22/ hour
- The loss of land would be 1.02 acres.
- Potential loss of land if not grazing the rest of the ground would mean an additional 4.48 acres would need to be found. Additional ground at grass keep prices would be £120/acre/year so £660/year to replace the lost ground.
- Once SFP is removed, it is expected grass keep prices will rise as the landlord will no longer receive the payment. Unless able to find adjoining ground, it would not be able to physically graze so it would need to be cut to silage to feed back to the cows. This is a more expensive way of feeding grass, resulting in more cost.

Power to take Land

28. Significant “mitigating measures” have been proposed adjacent to the trail in order to make it acceptable (in terms of the Habitats Regulations Assessment (HRA)) to site the path close to the edge of the estuary. The proposals for S013 mean that the combination of the proposed route, fenced on the landward side and new screening planting on the seaward side, would result in the loss of over an acre of land. The effect of this is to remove the land from our use and control. The effect, as set out above, breaks an important principle: coastal access was supposed to be about providing a ‘right of access’ across land, not physically taking land away.

29. Government deemed that compensation would not normally be necessary because

- a) only a right of access was being granted and the occupier would still be able to use the land, and
- b) the path would be designed in such a way that it would have minimal effect on landowners.

30. Government decided not to use the provisions of the HA80 because, it said, the coastal access rights under the Act would be different. It is hard to see how the

imposition of measures which mean that it is no longer possible to use the land is different from a public footpath, which would also need to be excluded from the farming operations, but for which there would be compensation for the loss of use. If the only way in which a path can be achieved is by effectively removing land from the occupier then there is clearly not a fair balance within the meaning of the legislation.

31. The permanent, uncompensated loss of a substantial area of land, contrary to the terms of the agreement with EA, gives rise to an unfair balance. Reference to compensation which may be made in exceptional circumstances, and where no fair balance can be achieved, was made in Parliament. An extract from the Public Bill Committee meeting of Tuesday 14 July 2009 was submitted with attention drawn to Column number 304:

“However, in exceptional circumstances where a coastal path route is needed, but, despite the best dialogue and consultation, there is no alternative route, and where it could be shown that there would be a material impact to a landowner’s economic disadvantage, Natural England may come to a financial arrangement with landowners under the powers of the Natural Environment and Rural Communities Act 2006. I stress that such circumstances would be exceptional and that the power is not one of compensation in the terms of the Bill. Where there are truly exceptional circumstances, where it is recognised that there is going to be an impact and that there is no other way of routing the coastal path, a provision exists under the 2006 Act for a discussion to be held. I give that element of comfort on a truly exceptional basis.”

Lack of Consultation

32. The proposed path on S013 runs partly through Environment Agency (EA) owned ground and partly through that owned by the farm. Legal documents have been sent to EA, as in the attached “Letter to EA”, which refers to the terms of the original agreement. These state that the EA cannot offer the ground to any third party, and that it can only be taken away for structural engineering purposes and handed back once such works are completed. There has been no communication between ourselves and the EA about the proposed route. Negotiation took place between NE and the EA, without our input and it wasn’t until the later stages of the process that NE contacted us and told us what they had decided with the EA. As a lawful occupier/tenant there is a relevant interest in that land and we should have been consulted, rather than presented with a fait accompli by NE, after they had spoken to EA; this failed to take account on the impact on the occupier.

Protection of Birds

33. Over the years the farm has been protecting the birds and roosts in this area. The permissive footpath leading from Clevedon to S012 used to be a haven for

birds, as referred to in the attached document from the British Trust for Ornithology (BTO), which was written before the permissive path, with surveys undertaken 1978 - 1981. When comparing this to the recent NE surveys, it shows that the majority of the birds have been pushed down from that stretch of coast to ours, and also further down the coast. This shows that the use of the current permissive footpath is to blame.

34. The new trail, even with the proposed mitigating measures, could still cause devastating effects on the bird population in this area. The proposed route is the closest route to the birds' roosting areas and so would significantly increase the risk of disturbance to the birds. It would be at its closest position compared to the other routes NE had suggested across this land.
35. There have been several incidents where dogs that should be on leads have been allowed to roam free and chase birds. One happened on Thursday 5 September 2019 during a site meeting with NE; this demonstrates that the fear of disruption to the birds is entirely justified. It seems likely that disruption would significantly increase along this entire stretch of coast. If a dog is not on a lead then it can get through a fence quite easily and chase birds or cows.
36. No account has been taken of the 1988 bird count by the BTO before North Somerset Council (NSC) created a permissive path from Clevedon to the farm boundary. The BTO survey includes records of waterbirds on fields between Clevedon and this property (fields 12 to 17 on the accompanying map). Comparison of the distribution of roosting waterbirds shown in NE's [2016 report](#) show that waterbirds were displaced from these fields by the opening of the permissive path. It is important to learn from the history of the site and take account of all three bird surveys. If the effect of previous access provision was to move the birds, then what would be the further effect of allowing access to more of the coast, with birds displaced from existing roosts if the proposed route were opened.
37. We are also concerned about the skylark population in this area and the effect that the footpath could have on this species, which is in on the RSPB Red List. This has been raised with NE, who seem unconcerned; this is contrary to the focus of farm environmental schemes seeking to increase numbers of farmland birds. There is a list of notable species recorded between 1985 and 1997 in the area including sections S013 to S016, which records a number of skylarks.

Screening Planting

38. Whilst it is believed that there are no powers for NE to impose screening planting on land that we occupy, it is important to understand the consequences. The proposed trail is on the seaward side of the seawall and so the screening planting extends for several metres across very exposed salty land where trees and other scrub do not normally grow. There is some doubt about whether such

planting can be successfully grown and maintained, such that it provides the necessary mitigation to avoid disturbing the birds. The proposed route can only be permitted under the HRA if screening planting is successful but there is a strong possibility that it would not grow, which means there would not be the necessary mitigation.

39. Would NE implement the route only after the screening planting is successful in growing to the required height? If the planting is not successful, it is feared that NE would attempt to locate the trail on the landward side of the seawall, as already threatened. It feels like NE are determined to locate a path across the land, regardless of the consequences and the legal requirement for there to be a fair balance.
40. The screening would result in significant uncompensated land loss. Whether 6.7m (22 feet) or 4.9m (16 feet) wide, this is in excess of what could reasonably be expected as a "hedge" as permitted under Schedule 20, Section 2(3)(e) of the Act. It is questionable as to whether there are powers to undertake such works, as the Act only provides powers for the planting of a "hedge", not for wide areas of screening. Correspondence from NE indicates that the hedge is perhaps better described as a screen than a traditional hedge, composed of 12 rows of willow interspersed with thorn and bramble. This remains much in excess of a traditional hedge which would normally comprise either one or two rows.

Route Options

41. NE has discussed different route options but all of these, in one way or another, pass through the grazing land and, therefore, have a serious impact on the farming operations, as well as compromising farm biosecurity. None of these, as currently discussed, therefore offers a fair balance. It feels like being forced to consider which of NE's options is the "least bad" route. However, the legislation is supposed to protect us and provide a solution which does not cause an unacceptable impact on the business; the proposals fail to meet the legislative criteria. It is a fundamental tenet of the legislation that there should be a fair balance for each and every individual interest in land. Neither the proposed route, nor any of the other options which NE discussed provides a fair balance.
42. NE does not appear to have considered routes, land management or other options which would avoid the farm altogether and thus significantly reduce the impact on farming operations. Such alternatives would provide the public with a continuous route and would also have significantly less effect on the birds.
43. The seawall is used for storing muck, on the seaward side, having been identified around 20 years' ago as part of a waste management plan process, paid for by NSC. EA has been happy with that site for the past 20 years. NE was interested in using this route and kindly offered to pay for the removal of the manure but not to fund the relocation of the muck heap and provision of an alternative storage

facility. Without that relocation, the option was not possible; there is nowhere else on the farm to store it and we cannot afford to build something.

44. A landward fence would be erected between the muck heap and the proposed trail. The coastal margin would extend as far as the fence. As the trail is below the muck heap it seems likely that people would complain about it, and it would then need to be moved somewhere else. This would be at considerable cost, which is an unfair balance.
45. In the original objection it was indicated that, of the route options discussed, a trail along the top of the flood bank – see Appendix 1 - would be the “least worst” option. It benefits from a hardcore surface, making easy walking at all times of year. The proposed route would run across wet land and would almost certainly become very boggy.
46. There would need to be suitable agreement regarding the re-location of the muck store, in order to approach a fair balance. NE could help fund something at the farm to replace the facility of the muck storage area, which would lead to financial difficulties. We are still open to negotiations with NE regarding this route.
47. In June 2021, following the site visit, the CLA wrote on behalf of the objector to say that having considered NE's proposed modification to a route on top of the flood bank, he now considered that route to represent the "least worst" option.

Natural England's Response

48. There are no existing public access rights to this part of the coast (nor to the southwest, between Tutshill and Huckers Bow) and farmers are understandably concerned about the change. NE have therefore invested considerable time and thought into the access proposals for this area, visited the land on more than fifty occasions over a period of five years, normally in the company of the affected land owner or tenant, and sought consensus on the best way to balance new public access with the various other interests in the land, which include cattle and sheep farming, wildfowling, waterbird conservation and sea defence.
49. NE record their thanks to the farmers and other interested parties for the time taken to explain their concerns and discuss the various options considered during the development of the access proposals. Some may not feel that their concerns have been adequately addressed but having looked carefully at their objections, NE maintain that the proposed access strikes a fair balance between public and private interests and is compatible with nature conservation and sea defence.

Biosecurity

50. Section 8.6 of the Scheme outlines the general approach to farm biosecurity. Intervention should not normally be necessary to control the spread of animal disease unless there is an outbreak of a notifiable disease. Animal health legislation provides animal health and appropriate veterinary bodies with access prohibition powers which can be used to control access in those circumstances. These prohibitions are only necessary when an outbreak of the disease is notified and they automatically prevail over coastal access rights (Scheme paragraph 8.6.17). They have in the past been used to contain the spread of foot-and-mouth because it is highly infectious.
51. The Scheme says that special measures may be necessary where there is a local outbreak of Neospora in cattle (paragraph 8.6.12). It advises that signs should be used to encourage walkers to help control the spread of disease (paragraph 8.6.16). The proposals are in line with this overall approach and are regarded as proportionate to the risks involved. However, in view of specific concerns in these objections further advice was sought from experts at the Animal and Plant Health Agency (APHA).
52. APHA advised that tapeworms are a group of parasites that live in the digestive tracts of dogs, cattle and sheep. Dogs can pass on the disease to cattle or sheep through infected faeces and can themselves become infected through consumption of contaminated meat. Infection of livestock may therefore lead to economic loss through carcass rejection but generally does not cause clinical disease in the infected animals. Dogs can carry tapeworm parasites if they have been exposed to infected animal products, usually on farm. The main risk of transmission to livestock is exposure to infected faeces from infected farm dogs.
53. Sheep and cattle are also at risk from Sarcocystosis, a disease that dogs can pass to them through infected faeces. Dogs can become infected with Sarcocystosis by consumption of contaminated meat.
54. APHA's assessment is that the overall likelihood that walkers' dogs may infect livestock with these diseases is very low, because 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, it is advised, 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, to pick up after their dogs and remove the waste to a public or home bin. NE intend to post signs to this effect along the route. These measures are sufficient and proportionate to the risks in most circumstances.
55. It is worth noting that dogs generally defecate at the start of a walk and are therefore unlikely to do so on pasture on this part of the route, which is about half an hour's walk from Clevedon at its closest point. The risk of cattle being infected by diseases, in particular Neospora and tapeworm, is very low and would be

further reduced by the fences offered to separate walkers and dogs from areas where the cattle graze.

56. The concern that people would not keep dogs on leads when requested to do so is understandable as most people with dogs seek off-lead access. The path has been designed with walkers' aspirations in mind – there would be sections where dogs can be walked off the lead provided that they are kept on the path and there are no livestock present. Signs would explain the reasons for restrictions clearly, and give walkers informed choices about the path ahead. Signs would also indicate where the rules about dogs change, with reminder signs at intervals.
57. The proposals have been reviewed by an independent consultant who specialises in providing advice about managing access for people with dogs. His advice, backed up by research and practice around the UK, is that the vast majority of dog walkers would accept proportionate and evidence-based restrictions on access, provided their aspirations for off-lead access can be met nearby.
58. NE looked at existing local opportunities for off lead access including the existing path between Clevedon and Kingston Pill north of this area. The consultant said that the average length of a daily dog walk is 2.7km and lasts about an hour, hence the existing access boundary to the north of Kingston Pill is a natural destination point for most regular dog walkers, being a 3.5km round trip from the nearest housing. He advised that existing arrangements should be retained, with the transition to the more sensitive area beyond clearly communicated and places along the route where dogs can safely be let off lead, or must be kept on lead, marked out in a clear and engaging manner. He is confident that compliance levels would be high as a result.
59. Access rights would be confined to the trail in this area, because NE propose to exclude access to the coastal margin all year round between Clevedon Pill and Hucker's Bow, seaward of route sections S007 to S060 as shown in Directions Maps ABD 6A and 6B. This is proposed under Section 26(3)(a) of the Countryside and Rights of Way Act 2000 (CROW) to protect resident, wintering and passage waterbirds from disturbance.
60. 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. At other times they must keep dogs under effective control. This means that people who bring a dog must:
 - keep the dog on a lead; or
 - keep it within sight, remain aware of its actions and have reason to be confident that the dog will return reliably and promptly to them on command; and
 - in either case, keep the dog on land with coastal access rights or other land to which the person has a right of access.

61. The effect of the final part of this definition is that dogs must be kept on the trail at all times, using a lead if necessary – because access rights would be confined to the trail. NE intend to post signs to this effect at field entrances. NE believe that these provisions are sufficient to address the objector's concerns.

Impact on Farming Operations

62. NE appreciate that additional labour would be necessary to open and close gates across the path on days when the cattle are grazing the seaward land. NE suggest that the gates could be left open on these days, allowing the cattle to move freely through them. NE could supply notices asking walkers to give way to the cattle as they cross. Leaving the gates open on these days would not increase disturbance to roosting birds significantly, because path users would remain out of sight of birds and access rights to the grazing area would be excluded as shown on Directions Map ABD 6A in report ABD6. It would allow the cattle to take refuge from high tides on the far side of the bank.

Financial Loss

63. The objector says that the farm would lose money if the land cannot be grazed but the estimate for lost milk production is too high. A consultant provided an independent desktop estimate of the potential loss in terms of milk production value of affected land. He estimated the milk production value of the affected land at:

- £722/year for 1.02 acres (0.4 hectares), being the area covered by the path and screen; and
- £4,026/year for the 5.5 acres (2.23 hectares), being the area covered by the path and screen and the grazing land seaward of it.

64. NE say that the first scenario is a more realistic estimate of the impact, because the 4.48 acres seaward of the screen would still be available for grazing. Reducing the width of the screen to 4.87m would reduce the affected area to 0.87 acres, translating to a loss of £616/year using the same method.

65. NE accept the estimate for the current price of renting alternative grazing land but say this would not be necessary because the objector could continue to graze the land seaward of the screen. For the same reason, NE do not accept the estimate of the potential loss of SFP. It is Government policy that SFP will be phased out.

Lack of Consultation

66. Section S013 runs partly through land owned by EA and partly by the objector. It is understood that EA agree that he is the tenant of the Agency-owned land. NE have always treated the objector as a relevant interest in all the affected land and do not recognise his account of discussions with NE and EA. NE attended a

meeting with EA and the objector in July 2017 to discuss options for the route on EA land, at which it was suggested by the objector that there should be a hedge on the seawall to screen walkers from roosting birds.

67. There were meetings with EA to discuss this and other aspects of the ECR between Aust and Brean Down as it relates both to land that they own and land they oversee in their statutory role in flood defence management; the seawall at this location interests them in both respects. NE understand that EA normally favours grass cover on earth embankments because it is easier for maintenance and inspection. EA has provisionally agreed to the willow screen proposal in this unusual situation, in an effort to find a design solution that would be acceptable to the tenant. The right to object to the access proposal has been exercised irrespective of EA's views.
68. NE have been in regular contact with the objector about the coast path since January 2015 and remain so, meeting face-to-face on 5 August 2019, a few days before receiving the objection. At that meeting it was requested, and NE in principle agreed, a different position for the fence landward of the route on report map ABD 6b. NE appreciate that the objector remains dissatisfied with the access proposals but are confident that the consultation has fully met the requirements set out in stage 2 of the implementation process as described in chapter 3 of the Scheme.

Protection of Birds

69. Non-breeding waterbirds are qualifying features of the Severn Estuary Special Protection Area (SPA) and Ramsar site and the project has therefore been subject to an HRA. The risk of disturbance to waterbirds was identified as the key nature conservation issue at the outset. NE has taken a strategic approach to managing disturbance risk along all 80Km of the Severn estuary between Aust and Brean, as summarised in section D3.1 of the HRA. This would ensure that there is a functioning network of high-tide roosts and feeding areas on each part of the site that are protected from significant disturbance.
70. There would be statutory access rights for the first time between Kingston Pill (map ABD 6b) and Huckers Bow (map ABD 4a). NE have therefore taken care to design the route and mitigation measures with this overall aim in mind. Table 6.2.8 of the report sets out detailed measures to avoid or reduce disturbance risk on each part of the proposed route, whilst table 20 of the HRA assesses the effectiveness of these measures in relation to each waterbird feeding sector and high tide roost site. The HRA recognises that the access proposals would result in localised increases in disturbance in places along this part of the proposed route and localised reductions in others. The localised increases would not be sufficient to result in any adverse effect on the integrity of the protected sites. NE

maintain that this conclusion is correct and no modification is necessary to the access proposals for this reason.

71. Regarding the opening of the permissive path in the early 1990s between Clevedon and the farm boundary, the detailed bird records are helpful. NE agree that opening the permissive path may have resulted in more disturbance to feeding and roosting birds in that area. This does not alter the overall view on this proposal for several reasons:

- The permissive path was designed without any mitigation to reduce disturbance to waterbirds, whereas the proposed route from Kingston Pill to Tutshill has been specially designed to reduce disturbance risk;
- The records relate to the fields landward of the permissive path, many of which are screened from the path by the earth embankment. One of the fields is now a valuable site for both wintering and breeding waterbirds even though it is very close to the permissive path. The water levels and grazing in the field are controlled sympathetically to encourage them;
- Other factors are likely to be in play in the change to the bird distribution; for example some of the fields have been converted for use as a golf course, which is not compatible with the conservation requirements of waterbirds.

72. Breeding skylark, *Alauda arvensis*, may tolerate recreational activity nearby if it is confined to a particular route or routes but are vulnerable to inadvertent trampling of eggs and chicks in areas of unrestricted access. Signs would be posted throughout the area advising people to stick to the path, with fences and restrictions as detailed in table 6.2.8 of the Report, which would help to reduce this risk. Farming operations, in particular grazing density and the timing of cuts for hay or silage, will have more influence on skylark breeding success than recreation, because they affect much larger areas of potential breeding habitat, mainly landward of the proposed route.

Screening Planting

73. NE propose a willow hedge seaward of the route to screen walkers from roosting birds and so prevent disturbance. This idea arose from a suggestion from the farming family at one of a series of meetings to discuss the various options. There were several meetings with contractors to confirm that a hedge would establish at this location and provide the necessary screen.

74. With regard to the question as to whether there are powers in the legislation to plant the willow hedge, Schedule 20 of the Act sets out the powers and procedures for the establishment of the coast path. It lists works that can be carried out by NE and the access authority with the agreement of the owner or occupier and, in certain circumstances, without their agreement. It includes in these works at paragraph 2(3)(e) “the planting of any hedge”. The word ‘any’

must, in our view, have been chosen to provide NE and the access authority with reasonable discretion as to the width of the hedge and its purpose. We therefore maintain that the proposed screen can be established using the powers and procedures in Schedule 20.

75. The original proposed width of the hedge was 6.7m (22 feet), allowing for 12 rows of willow at 0.6m (2 foot) gaps. This is much wider than most hedges and was suggested by a plant supplier as appropriate to screen walkers and their dogs from nearby roosting waterbirds. Following the August 2019 meeting, the objector asked if the width could be reduced and NE asked the willow supplier if this could be done, who advised that it could be reduced to 4.9m (16 feet) without compromising the required function. This would reduce the overall area covered by the path (if fenced) and the screen to 0.87 acres. NE believe that this loss is minimal and consistent with the requirement to aim to strike a fair balance between private and public interests and the principle in chapter 5 of the Scheme to avoid significant business impacts (paragraphs 5.2.1 and 5.3.3).
76. Reducing the width of the screen would also increase the area of the grazing land seaward of the screen to 4.63 acres and make available marginally higher land for cattle to take refuge from the tide. It is worth noting that the land covered by the path (0.4 acres) would be enclosed by fencing at the objector's request – the coast path can be grazed and is grazed in other places.
77. NE have taken advice from a specialist supplier and have reasonable confidence that a willow screen could be successfully grown and maintained. Should it fail, NE would be obliged to consider other options with the relevant interested parties, following the procedures summarised in Figure 10 of the Scheme. As the Scheme explains, any change to the position of the route would require a variation report to be submitted to the Secretary of State, with those with relevant interests in the affected land invited to make representations or objections about the proposals.
78. The path and screen would be located just above mean high water, which is visible on the ground as a line of tidal debris. On most high tides there would be dry land between the screen and the sea for cattle to take refuge. On very high tides, when the water rises above this level, there is a risk that cattle would not be able to take refuge from the tide if they are shut on to the land seaward of the screen but this risk could be avoided by keeping cattle off the land when tides are very high.

Route Options

79. The saltmarsh is a favoured roosting site for waterbirds at high tide, as identified in a 2016 report to NE. With these matters in mind, several route options were considered across the land as described on page 24 of the Report under the subheading 'Kingston Pill'. An inland route that would avoid this farm altogether

was considered, as described on page 23 of the Report. For the reasons given there NE maintain that such a route would not strike a fair balance between public and private interests.

80. In the objection a modification to put the route on top of the seawall was proposed, that would also satisfy all the public interest criteria in chapter 4 of the Scheme including environmental considerations. The modification appears to be the objector's preference and NE, therefore, support it, but with several important provisos. The affected land consists of the top and seaward slope of an earth embankment and the saltmarsh seaward of it, which encloses a creek called Kingston Pill. The landward slope of the seawall gives on to a field of pasture that is currently unbounded from the seawall.
81. Manure is stored on the seawall, just seaward of the top of the bank. The whole area, apart from that occupied by the manure, is available for grazing. Although concerned that people would complain, so that there would be pressure to remove the manure, the access legislation would not preclude storage unless it obstructed the trail.
82. During negotiations the objector asked if NE would be prepared to meet the cost of transporting the manure to another location on the farm so that the hedge could be put where the manure is. NE offered to pay reasonable haulage costs to move the manure elsewhere on the farm on the basis that it would make the land available for the path and screen. The objector also said he would only remove the manure if NE would contribute to the cost of a new manure storage facility. After consideration NE decided that this would not be a reasonable use of public money set aside for the coast path. Other types of government funding were investigated but, regrettably, none were found that were suitable.
83. As the objector was not minded to move the manure without external funding for a new store, NE proposed the route and screen be located seaward of the manure. The land for the path is elevated and NE are satisfied it would not become boggy.
84. The objection indicates a preference for the trail to be on the top of the seawall rather than seaward of it as proposed in report ABD6. For this to be viable he says it would be necessary to reach a suitable agreement regarding the relocation of the manure. EA has since written to the objector asking him to remove the manure because it is compromising the flood defence and indicated an intention to enforce removal if it is not agreed to remove it voluntarily. In these circumstances NE believe that it would be in the best interests of all parties for the manure to be removed and for the route to be positioned on top of the seawall with the screen just seaward of it, roughly where the manure is currently stored.

85. NE has written to suggest this and renew the offer to pay reasonable costs for the relocation of the manure. At the time of writing, the objector has not replied. Should EA need to enforce the removal of the manure, NE take the view that it would be inappropriate for NE to make any contribution to the cost.
86. NE therefore support the modification to the route so that it runs along the top of the seawall, but with the proviso that the manure is first removed or that the objector, or EA, gives a written undertaking to remove it.
87. If the Secretary of State approved this modification, the willow screen would be installed approximately where the manure is currently located. Doing so would enable the cattle to retreat still further at high tide, providing additional reassurance. Installing the screen further up the bank would ensure the required protection of roosting waterbirds and would not affect the overall conclusion of the published HRA.
88. Of the available options, the proposal most closely aligns with the objector's preference for the route to be on top of the seawall and would strike a fair balance between his interests and the other considerations in play.

Proposed modification

89. An alternative modification, in the event that the manure is not removed, arises from the August 2019 meeting in which the objector asked if the proposed fence, landward of S013, could be positioned between the route and the manure, so removing this land from the coastal margin, separating it with the fence. NE agreed that this was possible and desirable as the fence is the landward boundary of the coastal margin proposed for route section S013 but is shown in a more landward position on report map 6b. Should the appointed person recommend the route proposed in report ABD6, NE ask that this includes the modification to the fence location, and consequently the landward boundary of the coastal margin, see Appendix 2.

Representations

90. Representations relating to this section of the Report from NSC, EA, the British Association for Shooting and Conservation (BASC), the North Somerset Local Access Forum (LAF) and the Country Land and Business Association (CLA) have been provided in full. Representations from [redacted], [redacted], the Disabled Ramblers (DR), the Wildfowl and Wetlands Trust (WWT), Kingston Seymour Parish Council (KSPC) and [redacted] have been summarised by NE. To avoid unnecessary repetition, the matters raised in the representation of [redacted], and the response from NE, have been included in the sections above.

91. NSC welcomed the proposal to establish a path along the 32-mile stretch of the North Somerset Coastline between the River Axe and the River Avon. The trail would be a great resource enabling the public to walk along the coastal regions and would benefit both local residents and visitors to the area. NSC are satisfied that NE have carried out numerous meetings with affected landowners and those with a legal interest in the land affected attempting to strike a fair balance between landowner interests and public access as well as protecting nature conservation sites.
92. 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.
93. 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, through the FRAP process.
94. 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).
95. In relation to ABD6, EA noted that there are flood defences between Clevedon and Huckers Bow, which need to be protected. Any works would require a FRAP. EA's maintenance access would need to be protected along the defences on this entire route, in the interests of flood risk management.
96. As the trail would predominantly utilise existing infrastructure there would be 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.
97. BASC noted that the proposed route would run adjacent to foreshore and other land that Clevedon Wildfowling Association (CWA) either own or have shooting rights over. These rights have been actively exercised for many years and, in the past, there has been no public access between Wain's Hill and Huckers Bow.

98. BASC and CWA believe that these new access rights would increase the visibility of CWA members going about their lawful and highly regulated activities and are concerned that this may lead to attempts to disrupt legitimate activity and/or leave wildfowling open to verbal abuse or worse. From experience this type of behaviour often stems from lack of understanding of wildfowling – what it entails, how the activity is regulated and managed, its sustainability, cultural history, and the wider benefits that the presence of the club brings to the site.
99. BASC requests interpretation boards are put in place to explain the activity and its role in conservation. BASC would work with NE and CWA to develop materials which could include QR code links to short video clips and other resources.
100. Prolonged periods of severe weather present a serious physiological challenge to overwintering waterfowl, especially roosting waders. When little or no feeding is possible and birds are experiencing an increased energy demand to keep warm any unnecessary disturbance can lead directly to increased mortality.
101. Following 14 consecutive days of severe weather, typically persistent freezing conditions, the relevant government ministers have the power to make protection orders suspending the shooting of wildfowl and waders in England, Wales and Scotland, under Section 2 (6) of the Wildlife and Countryside Act, 1981. However wildfowling, including CWA members, abide by BASC's Severe Weather policy by calling for voluntary restraint from day seven of 'severe weather' up to the time when any statutory suspension takes effect. An explanation of this "voluntary restraint" is available at basc.org.uk.
102. Voluntary restraint and/or statutory suspension is a vital conservation measure that would be undermined and pointless if public access continued during periods of severe weather. The proposal should incorporate a mechanism for the closure of the path during periods of statutory suspension, and NE should adopt the wildfowling precautionary approach of restricting access during periods of voluntary restraint. BASC recommend this approach be adopted nationally wherever roosting waterfowl may be at risk of disturbance from the ECP during periods of severe weather.
103. The LAF indicates that whilst restrictions on dogs are in place for certain sections, there should be an expectation that dogs should be kept under close control at all times. 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 clear and/or where a potential safety hazard may be encountered.
104. The surface of the flood banks on this stretch would be suitable for off-road mobility scooters. Much of the field edges where there is currently no public access would also be suitable. Slopes to ascend/descend flood banks can be

made accessible with appropriate design. From Kingston Pill to Hucker's Bow the proposed route would be on or just behind the seawall in most places. This is expected to be accessible to off-road mobility scooters and all new countryside furniture should provide for this.

105. The LAF referred to NSC's plans for a new cycle route between Clevedon and Weston-Super-Mare and the need to provide suitable access furniture. The needs of off-road mobility scooters and pavement scooters should be taken into consideration when this route is planned.
106. The CLA indicate that the proposed trail passes through primarily agricultural land, mostly for livestock farming. Many of the farmers raise concerns about the impact on their enterprises, especially as there are very limited measures to take account of the impact of the new access on a farming business.
107. There would be short sections where dogs must be kept on leads to protect birds. No restrictions on dogs are proposed for the protection of livestock. There are particular concerns about the impact on livestock as a result of the public and dogs. There are few proposals to keep dogs separate from livestock and, even where there are stipulated restrictions, would these be adhered to?
108. Much of the land is not currently subject to public access and farming owners/ occupiers are therefore able to graze bulls and suckler cows and calves on the land without needing risk assessments. Under Health and Safety Executive (HSE) guidelines risk assessments would be required and some types of cattle would no longer be able to be kept on the land. This would have a significant impact on some farmers as their grazing options would be reduced, leading to financial consequences.
109. The report states that it has proposed this route because it "addresses farmers' concerns". The fact that most of the farmers along this stretch are objecting to the proposals should indicate that the proposed route does no such thing.
110. Concerns have been raised about the assumptions within the HRA, especially the reliance on notices, signs and restrictions as means of mitigating any adverse effects on sensitive species, notably birds. The HRA assumes that people would largely adhere to the restrictions and notices. The experience of many land managers around the country is that this is not the case. There are many known cases of dog owners allowing their dogs to chase other animals – including cattle, sheep, birds and other wildlife, often in ignorance of the damage being done.
111. This section of coast is remarkable in the context of the English coastline for being so undisturbed and tranquil. The high numbers of important species reflect its current inaccessibility. It is therefore extraordinary that NE has

proposed introducing largely uncontrolled public access, which is dependent on co-operation with signs. The risks of damage to these internationally important species, should the assumptions within the HRA and proposed mitigation measures not be complied with, are so great, it is astonishing that NE, a body charged with the care and protection of such species, is contemplating these proposals. This is especially so where alternative options exist, which would ensure that protected species remain undisturbed.

112. The proposal to extend the coastal path into this section is as a result of NE's decision to exercise its discretion to extend coastal access up the Severn estuary. The Report places emphasis on "continuity" of the path, but the legislation sets many criteria which are applicable to estuaries, all of which should be considered. The concept of continuity is given no greater prominence than the need to adhere to the periphery of the coast or provide views of the sea. Were continuity of over-riding importance as the Report suggests (the "prima facie reason for the trail to serve the estuary" (overview, section 5c)), then the additional legislative factors would be unnecessary.

113. s301 of the Act required consideration, not only of the impact on those whose land would be affected by the proposals, but on factors such as:

- The nature of the land
- The topography of the shoreline
- The width of the river
- The recreational benefit to the public
- The extent of excepted land
- The presence of a physical feature or viewpoint.

114. The list is not exclusive and there may be other factors which might be relevant. This includes the long stretch of undisturbed coastline, and consequent presence of numerous highly important bird roosts; and approval of a section of new cycleway between Clevedon and Weston, which could provide a link without generating unacceptable impact on birds or causing unfair balance to owners and occupiers.

115. Modifications are suggested such that the trail should follow the new cycleway from Tutshill Sluice to Kingston Pill. This would meet the objectives of providing a coastal trail, combining the positive avoidance of disturbance to birds and any disruption to farmers and landowners is kept to a minimum providing a fair balance. This would be an easy-to-follow route allowing the public to walk around the coast and estuary, reducing risk of trespass.

116. The report dismisses this route because it states that:

- the current route addresses farmers' concerns about biosecurity;
- the cycle route would not be safe;
- there would be a large area of coastal margin.

117. It should be clear that biosecurity concerns have NOT been addressed, and, in many cases, the proposed route compromises the important biosecurity of individual farms.
118. It is incorrect that the local road network would not be safe or suitable; a report commissioned by NSC to review the proposed on-road cycle route between Mud Lane and Colehouse Lane and produced by Avon Traffic and Safety Services Ltd on 15 October 2018. The brief was to “identify any road safety issues along this route and outline the available options to address these issues”. The report makes some recommendations regarding road surface, vegetation cut back and road markings.
119. Section 5 of the report considers “Safety Issues”, and notes that “Site observations show that motor vehicle levels are very light, and speeds generally no more than 30mph, i.e. commensurate with a quiet lane suitable for use by walkers, cyclists and equestrians” The attached plan shows the location both of the approved section of cycle route and the remainder of the section to Clevedon which does not need planning approval as it relies on existing quiet lanes.
120. The suggestion that an inland route would create a large area of coastal margin is incorrect. The Access to the Countryside (Coastal Margin) England Order 2010 (SI. No 558) (the CMO) states in section 3(2) that:

“(2) the first description of coastal margin is-

(a) Land over which the line of an approved section of the English coastal route passes,

(b) Land which is adjacent to and within 2 metres either side of that line, and

(c) Land which is seaward of the line of an approved section of the English coastal route and lies between land within sub-paragraph (b) in relation to that approved section and the seaward extremity of the foreshore, if the land within sub-paragraphs (a) to (c), taken as a whole, is coastal land.”

121. That final qualification is crucial. Coastal land is referred to in CROW as:

“(a) the foreshore, and

(b) land adjacent to the foreshore (including in particular any cliff, bank, barrier, dune, beach or flat which is adjacent to the foreshore)”.

122. The intention of the legislation is clear: the coastal trail is intended, on the whole, to pass along the coast. Therefore the trail would be situated on land which is “coastal land” (foreshore, or adjacent to the foreshore). Where it does so, the land between the trail and the sea would be coastal margin.

123. Striking a fair balance is a central requirement of the legislation, s297(3) of the Act. Being mindful of the Human Rights Act 1998 (HRA98), reaching a fair balance must take precedence over and above other legislative criteria.

124. It is understood that it is not always possible, whether for reasons of fair balance, or because of other statutory requirements, such as the protection afforded to certain species, for the path to be placed on coastal land in every scenario. However, the legislation provides a clear safeguard in cases where the trail needs to divert away from coastal land: that the land covered by the path and margin, when considered “as a whole” is coastal land. In the absence of any other interpretation within the legislation, it must be taken in its normal sense – that the path and the margin are expected to be sited on what is, predominantly, coastal land. Coastal land being foreshore and land adjacent to the foreshore (cliff, bank, barrier, dune, beach, flat).
125. So, if the trail follows an “inland” route, such as at Avonmouth, or as it might between Kingston Pill and Tutshill, this would not lead to the creation of a large area of coastal margin. Firstly, because the path itself would not be situated on “coastal land”; and, secondly, and the crucial qualifying factor in the legislation, the land must be considered “as a whole”. When considered “as a whole” the land is characteristic of farmland, not “coastal land”. The land between the path and the sea would be predominantly farmland, not foreshore and land adjacent to the foreshore. It therefore cannot meet the definition of coastal margin and it is wrong to suggest that it does.
126. NE has argued that land would be coastal margin, so long as the edge of the margin is along the sea. This is ridiculous as it potentially allows a path to be sited a kilometre or more inland, away from the coast, and any coastal land type, and for any other type of land not within the legislation to be considered coastal margin. This was clearly not the intention of the legislation: if it had been, the qualification that the land, when taken as a whole must be coastal land, would not have been necessary. The coastal margin argument therefore has no validity.
127. As an alternative, there could be a summer and winter route option. This would provide a summer route for a four-to-six-week period along the route as currently proposed within the Report, subject to agreement by affected landowners. For the remainder of the year, the route would follow the cycle route. This reflects the arrangements along the West side of the Yeo. There are many similarities between the West side of the Yeo and the estuary between Kingston Pill and Tutshill Sluice.
128. This would mean, albeit for a short period, that the public would get access to the coast. If there was disturbance to the birds it would be limited to that time, and favourably at a time when disturbance is likely to cause least damage. The problems arising from giving public access to large areas also used by cattle could be resolved if that access were for a short period only, as farming operations may be able to be adapted to accommodate this. The winter route

could be easily installed by utilising existing public rights of way, quiet roads or the proposed new cycleway.

129. The Report states that it rejected a seasonal diversion for this section of coast but the reasons for doing so are wrong:

- A summer route might only be available for a maximum of six weeks, which is no different from the proposals for the West side of the Yeo.
- The currently proposed route does not address farming concerns. Unnecessary disruption could be avoided using alternative solutions available.
- This compromise would be no less confusing to walkers than the arrangements for the West side of the Yeo. It could compliment those proposals and vice versa by having consistent arrangements in place reinforcing the measures.

130. It is likely that it would be much simpler for the public to understand a simple summer/ winter route option, with different paths open or closed at different times. All the public need do is to follow the relevant route, rather than one path on which myriad different directions would apply, many of which are likely to be ignored, with consequent effects on wildlife and farming. It is questioned why the possibility of a summer/winter route was not discussed with landowners and occupiers.

131. WWT is the UK's leading wetland conservation charity and works across the UK and internationally to conserve, restore and create wetlands. This section of the trail is located between two WWT-managed sites, Slimbridge to the north and Steart Marshes to the south. WWT welcomes the addition of coastal access for visitors and residents and hopes it will encourage people to explore the Severn estuary and its wildlife.

132. WWT welcomes 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 worked on similar mitigation measures elsewhere in the Severn estuary and supports the development of signs to encourage interest in the waterbirds and wildlife. WWT counsels against relying on signs alone to effect behavioural change, as it is unrealistic to expect that everyone would read and adopt required behaviour displayed on signs and suggests engagement of the local community to raise awareness of the sensitivity and value of the estuary, install pride and encourage individuals to help warden the area independently.

133. WWT also encourages consideration of additional physical measures, such as screens and netting, to prevent people and dogs leaving the path in highly sensitive areas. In areas where people frequently let dogs off leads stock netting has proved effective at preventing dogs entering sensitive areas without compromising visual aesthetics. Where there is seasonal access, information on when routes are open and shut must be very clear and management with locked

gates during the closed period would aid in controlling access. WWT suggests follow-up work to identify whether the mitigation methods are effective in reducing disturbance to waterbirds.

134. KSPC take the view that the sections S013 to S017 should be on the seawall or seaward of it.
135. DR urged NE to take fuller account of the needs of mobility scooter users, indicating that there were a 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 proposed route on this part of the coast, being generally situated on flood banks and other flat surfaces, ought to be accessible provided there was reasonable adaptation. NE should take all reasonable steps to make the trail as easy as possible for disabled people and those with reduced mobility, bearing in mind British Standard BS5709: 2018 Gaps Gates and Stiles (BS5709).
136. Other representations 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

137. NE has worked closely with NSC in the development of the proposals, from Avon Bridge (report ABD4) to Brean Cross Sluice (ABD9). NSC officers provided technical advice on the route options and attended meetings with affected land owners. NSC provided advice regarding infrastructure, estimated establishment costs and potential impacts on archaeological assets and how to avoid them. The Secretary of State is asked to note NCS's views on the benefits for residents and visitors to the area.
138. 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. NSC, 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.
139. In relation to comments on the HRA, EA are content that the flood maintenance programme is listed among the considerations in table 31. 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.

140. The need to consider land contamination risk with respect to any ground disturbance necessary to establish the route is noted. This would be passed on to the local access authority (NSC) coordinating path establishment.
141. Following on from the constructive engagement of BASC during the development of the proposals, NE agree that local wildfowling activity is likely to be more visible to members of the public than currently and note the concern that this may lead to attempts to disrupt it. NE accept that when such behaviour has occurred, experience suggests it often arises from a lack of understanding of wildfowling and agree that suitable interpretation boards would help to reduce this risk. NE would be happy to discuss this proposal further with BASC and the local club, CWA, should the Secretary of State approve access for this part of the coast.
142. NE agree with BASC that waterbirds are more vulnerable during severe winter weather, in part as energy requirements to maintain body temperature are higher in colder weather, and disturbance would both reduce the time available to feed and increase energetic cost, for example from additional flight. The route and associated mitigation measures have been designed to reduce the risk of disturbance to waterbirds at key locations for roosting and feeding.
143. Waterbirds are a qualifying feature of the Severn Estuary SPA and Ramsar site and the proposals have therefore been considered in the [HRA](#). Section 3.2D of the HRA assesses the risks to waterbirds between Wain's Hill and Huckers Bow. The HRA takes account of the greater vulnerability of waterbirds to disturbance during severe weather and concluded that the proposals would not have an adverse effect on the site integrity. NE are satisfied that no further mitigation is necessary at this location.
144. As explained in discussions with BASC and CWA it would be possible for NE to give a direction at short notice to restrict or exclude access rights for nature conservation reasons, using powers available under section 26(3)(a) CROW. It would be unusual to conclude that this was necessary, but NE remain open to that possibility and would continue to make decisions based on evidence available at the time.
145. 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.
146. 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.
147. NE agree with the LAF that waymarks, signs and interpretation should be used sparingly and after consideration of the need and suitability to the location. Specific signs and interpretation are necessary and appropriate on this part of the trail, in particular to alert walkers to the nearby presence of sensitive waterbirds and ask them to adopt certain behaviours in order to reduce the likelihood of disturbance. Small waymark discs are a helpful and unintrusive means to signal the route and give walkers the clarity and confidence to follow it.
148. NE and NSC 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 is subject to any practical considerations raised by third parties and to the agreement of the land owner, which must be sought before any works are undertaken. The planned cycle route between Clevedon and Weston-Super-Mare is a NSC project. NE are in regular contact with the team due to overlap with the coast path route on another part of this section. The cycle route Design and Access Statement makes clear that the needs of both off-road mobility scooters and pavement scooters are being taken into consideration in the design of the cycle route.
149. In respect of the CLA's comments, NE have gone to considerable lengths to discuss route options with farmers and other land managers, including 60 meetings with affected owners and tenants, numerous telephone calls and correspondence. As a result the proposed access includes numerous and in some cases very significant measures to take account of the concerns. It is acknowledged that a number of the affected farmers are nevertheless not satisfied with the resulting proposals and in comments on their representations NE explain why it is felt that a fair balance has been struck overall.
150. The CLA is mistaken that there would be no restrictions for the protection of livestock. Annex D of the Overview explains the national restrictions that would apply wherever coastal access rights are in force along the trail and coastal

margin. These include a requirement for people accompanied by a dog to keep that dog on a short lead when in the vicinity of livestock and would apply to any part of the route between Kingston Pill and Tutshill sluice where livestock are present, whatever the time of year. A standard sign would be used to advise walkers of this at field entrances – the sign was designed and agreed with stakeholders including the National Farmers Union (NFU) and the Kennel Club (KC). There is no need to restrict access with dogs further for livestock and accordingly there is no specific proposal in the report.

151. The CLA questions whether restrictions would be adhered to. NE believe that the majority of dog walkers would accept proportionate and evidence-based restrictions provided they are clearly signed and there is off lead access available nearby. There is strong support for this view in published evidence, such as [the 2016 report](#) about mitigation options for influencing walkers with dogs in the Solent area, and in recent unpublished advice from an independent expert on access with dogs engaged by NE to review the proposals. In keeping with this evidence and advice, and with the principle of the least restrictive option in chapter 6 of the Scheme, NE would place notices at Kingston Pill and Tutshill Sluice explaining that leads are necessary ahead. Further notices along the route would indicate where this is so and why, and where leads were not necessary, typically where the route was separated from the surrounding land by fences on both sides.
152. NE have acted to separate walkers and their dogs from livestock, taking the view that in this location, where there is little recent history of public access to the land, it is warranted to allay farmers' concerns. The position of the route would mean walkers and livestock were separated by existing fences in some places. During development of the proposals several farmers requested additional fencing to separate walkers and their dogs from livestock, whilst others considered the possibility and rejected it.
153. Where farmers requested fencing NE agreed to it as a gesture of goodwill and, having done so, wrote to the affected land owners to confirm that, with maps to show the locations. The maps also showed where new fencing was proposed to avoid increased disturbance to waterbirds, which in some cases would also separate the path from livestock. NE agreed in principle to fund the purchase and installation of new fences.
154. Farmers are required by law to conduct risk assessments of their activities. Those that have fewer than five employees do not need to write assessments down. This overarching requirement applies irrespective of the access proposals; the access proposals would therefore entail a review of an existing risk assessment and putting additional control measures in place if necessary. Where no fences would be present to separate walkers, dogs and

cattle, the local access authority would attach notices at field entrances with standard advice about how to behave around livestock. These notices have been designed in conjunction with the NFU and KC and are used all around the ECP, which frequently crosses land where livestock graze.

155. Whether, and what, further steps would be necessary, would depend on the outcome of the risk assessment. [HSE guidance on cattle and public access](#) lists a number of options, including keeping cattle elsewhere, as suggested by the CLA, particularly when calving or with calves at foot; timing grazing to avoid busy periods, especially school holidays; temporary electric fencing to separate the path from the rest of the field; and creating a temporary diversion around the grazing land.
156. There are places where NE intend to erect new fences or hedges that would cover or enclose land currently used for grazing. Doing so would not preclude a fair balance as the CLA suggests, because the fair balance test is a question of degree: there are potential impacts on both public and private interests arising from the proposals and the legislation requires NE to aim to strike a fair balance between them. NE may therefore seek to minimise impacts in some cases, rather than to eliminate them.
157. NE have proposed fences and hedges to mitigate feared impacts on wildlife and farm businesses. Where such measures are proposed, this is either with the agreement of the occupier or where it is understood from discussions that they would prefer it to the other available options. In these cases, NE offer to pay for the labour and materials to install the fence or hedge. Where the purpose is to protect wildlife, NE do not expect the occupier to maintain it unless they offer to do so. Where the purpose is to separate walkers from stock, the occupier is expected to maintain it.
158. It is understood from representations and objections that two occupiers, who had previously expressed a preference for walkers to be separated from their livestock by a new fence, now object to that. On section S013, the land covered by the fenced route and hedge is owned by the EA, which does not object. The tenant objects and the relevant comments are set out earlier in this report. Similarly, NE's comments regarding the proposed willow hedge seaward of section S013 are set out above; again, the landowner, EA, does not object to the establishment of a hedge.
159. In relation to concerns raised about the assumptions within the HRA, the proposals do not rely solely on notices, signs and restrictions to mitigate adverse effects on sensitive species. Table 6.2.8 of report ABD6 describes an extensive suite of mitigation measures, including for example the positioning of the route and the use of physical barriers to access, in addition to notices, signs and restrictions.

160. Signs and notices are an important aspect of the design and management of the route and the content and positioning of them would reflect best practice and based on experience directly managing 142 National Nature Reserves and NE's long-standing role in the management of National Trails. In NE's experience it is reasonable to expect the majority of walkers to adhere to restrictions and notices provided that they are clearly explained and that restrictions are proportionate to the need. From time-to-time people may ignore notices but with good design and positioning and well-worded content this would be the exception rather than the rule.
161. Where problems occur in the wider countryside these are usually due to a lack of appropriate access management, for example unclear or confusing signs, or where walkers have been allowed to develop unwanted habits over time without concerted or informed attempt to change them. Here there is the advantage of designing the access correctly from the outset; therefore NE do not expect significant problems.
162. The report places emphasis on continuity of the path, in keeping with the principle in section 297(2) of the Act, that interruptions should be kept to a minimum. It is also consistent with the Scheme, section 10.1.5 says NE will always give careful consideration to the option to extend the trail as far as the first bridge or tunnel with pedestrian access.
163. NE agree with the CLA that the list of criteria included in the legislation is not exclusive. Part 5 of the Overview to the reports sets out the detailed assessment of the full list of criteria which must be consider when deciding whether to propose that the coast path should include an estuary and if so, to what extent.
164. NE also agree that it is necessary to consider, for example, potential impacts on wildlife and the option to align the coast path along the same route as the forthcoming Clevedon to Weston cycle link. With respect to wildlife considerations on the estuary the Secretary of State should refer to the published HRA and NCA.
165. The cycle link follows country lanes between Clevedon and Tutshill sluice (maps ABD 6a to ABD 6d) with a map showing the route attached in section 6 of NE's comments Representations on ABD 6 – Wains Hill to Huckers Bow (page 106). NE have been in close contact with the NSC team developing the cycle route and have sought to maximise efficiencies between the two projects, in particular the opportunity for a shared river crossing across Tutshill Sluice, to the south of this section. However, the whole cycle route from Clevedon to Tutshill Sluice is not a viable alternative to the proposed route. The cycle route is primarily for leisure cycling and commuting; there is no inherent reason why it should follow the coast. Table 6.3.3 of report ABD6 summarises the views on

available road routes for the coast path - including the cycle link - under the heading "Inland routes from Kingston Pill to Tutshill sluice".

166. NE broadly agree with the CLA that the cycle route would be continuous and easy to follow, avoiding disturbance to waterbirds and minimising disruption to farmers and landowners. However, the cycle route fails to meet the core characteristics of a coastal walking route described in chapter 4 of the Scheme. Between Dowlais Farm (report map ABD 6a) and Tutshill Sluice (report map ABD 6d) it lacks any sea views or proximity to the sea. At 5.9 kilometres in length this is a significant departure from the sea which NE would only propose if satisfied that no more coastal route could be found that would strike a fair balance and meet conservation objectives for protected sites; NE maintain that the proposed route satisfies those two tests. This analysis is in keeping with section 4.2.4 of the Scheme: "the trail need not be aligned along a road used regularly by motor vehicles if there is another suitable route".
167. The CLA refers to a report commissioned by NSC to identify road safety issues along the cycle route and outline options to address them. The observation that traffic speeds and volumes were "commensurate with a quiet lane suitable for use by walkers, cyclists and equestrians" should not be read as an endorsement of the cycle route as a promoted walking route. It is a generalised statement in a report commissioned to look at the suitability of the local road network as a cycle route. Pedestrian safety on the cycle route could be improved in some places, for example by vegetation clearance or more regular cutting, but in others the narrow width and lack of verges would make this impractical. The overall experience is not consistent with public expectations of safety for a promoted walking route and would be likely to discourage or exclude many potential users including families with children and people with reduced mobility.
168. NE believe that the CLA's interpretation of article 3(2) of the CMO is mistaken. Coastal land means the foreshore and land adjacent to it, as set out in section 3(3) of CROW. That definition means what it says: it is drafted to be broad and inclusive. There is nothing in it to remove from the scope of "coastal land" any area between the path and the seaward edge of the foreshore that does not fall into one of the example land categories shown in brackets at the end of s3(3) (these being cliff, bank, barrier, dune, beach, flat).
169. The position of the route therefore exclusively determines the extent of the seaward margin: there is no other mechanism in the legislation which could determine it. The legislation then relies on the exceptions in Schedule 1 to CROW to remove automatically from the scope of coastal access rights the most obviously unsuitable land types that may fall within this automatic margin. There are then local access exclusion and restriction powers under chapter 2 of CROW

Part 1 that can be used where it is necessary to do so on one of the grounds set out in that chapter. The Scheme, which was approved by the Secretary of State to set out the approach NE would take on the ground to discharging the Coastal Access Duty, and by which NE and the Secretary of State are therefore both bound, sets out detailed criteria governing the use of these exclusion and restriction powers in different situations.

170. Paragraph 2.3.4 of the Scheme supports this interpretation of article 3(2) of the CMO, when it says:

“The position of the route that we propose in our report also determines, if approved, the inclusion of land to either side of it as coastal margin:

land on the seaward side of the trail automatically become coastal margin; and

other land of certain specific types also becomes coastal margin if it lies on the landward side of the trail...”

171. The distinction should be noted in that approved paragraph between the position seaward of the trail, where the Scheme rightly says all types of land automatically become margin by default; and the position on the landward side where, in accordance with article 3(3) of the CMO, the Scheme rightly says that only the types of land specified there are automatically included by default. These are foreshore, cliff, bank, barrier, dune, beach, flat, or section 15 land.

172. In relation to the idea of using the proposed route as a summer route, with the cycle route forming an official ‘alternative’ route for the remainder of the year, it should be noted that directions can be given to restrict or exclude access rights for land management reasons and to address concerns about public access in fields used by cattle. However, NE are not satisfied that it is necessary to exclude access any further for this purpose. NE also do not agree that it is necessary to exclude access along the proposed route to avoid bird disturbance; the route has been designed to keep bird disturbance to a minimum as explained in section 3.2D of the HRA.

173. There are some similarities in the circumstances between Kingston Pill and Tutshill sluice and those on the southwest bank of the Congresbury Yeo, h: special measures are necessary to conceal walkers from roosting and feeding waterbirds and the period of sensitivity is from early July to mid-May. However, there are important differences in circumstance which justify a different approach:

- the proposed exclusion on the southwest bank is limited to sections of the path adjacent to sensitive areas. Following the CLA's suggestion, access would be excluded to less sensitive areas where there are opportunities for people to enjoy views of the estuary;

- there is less scope for an off-road route on the southwest bank of Congresbury Yeo because the land at the landward edge of the flood bank is much wetter. This is because the fields on the southwest side drain towards the flood bank whereas the those on the northeast side drain away from it.
- the length of road walking would be 5 km which would significantly detract from the public benefit of the path. In comparison the southwest side is only 1.5km;
- the cost to establish the 'summer' route would be over £100,000, which would be disproportionate for the six weeks a year of access it would provide, whereas the cost of the 'summer' route on the southwest side is only £2,000.

174. NE do not expect that the suggested summer/winter route option would be simpler for the public to understand. As a general rule, people would be able to follow the route and willing to comply with any restrictions that apply, provided that they are signed clearly and conspicuously as intended. NE investigated a number of options for seasonal routes with the affected land owners, as referenced on pages 23/24 of report ABD6.

175. 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. It is agreed that it is not realistic to expect everyone to read signs or adhere to behavioural messages and the signs would be backed up in some places with additional measures. It is also agreed that fencing, or other barriers, can help to avoid disturbance to waterbirds and this is an option proposed in some places, where walkers or their dogs might otherwise stray off the path into a sensitive area. It is also agreed that face-to-face engagement with the local community can be a useful way to help new access arrangements to bed in and those discussions have begun.

176. With regard to WWT's suggestion to review the proposed mitigation, there are two arrangements in place that would help: the requirement for local access authorities to report to NE on the condition of the path and associated infrastructure, in order to qualify for central government contribution towards maintenance costs; and, the ongoing Wetland Birds Survey (WeBS), which is a national scheme tracking trends in the populations of wetland bird species using the Severn Estuary.

177. In relation to the representation from KSPC, if modified as proposed, S013 to S015 of the proposed route would be on the earth bank with views of the sea. KSPC representatives have been involved in discussions and, it is understood, supports the recommended modification.

178. NE draw 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

179. The numbers in brackets [n] relate to the paragraphs above.
180. The objector was concerned that he should not be asked to clarify the 'least-worst' option as the decision should only relate to whether or not there was a fair balance. It was necessary to try to clarify this matter as the objector had altered his position on the 'least worst' route since making his objection. I am clear with regard to my role and were I to find that there was not a fair balance then further steps would be taken to investigate the matter before reporting to the Secretary of State. The objector remains of the view that there is not a fair balance [4, 12, 16, 17].
181. The purpose of the legislation is set out under the 'Main issues' and it is necessary to take account of that alongside the matters raised in objections and representations when considering whether or not a 'fair balance' has been found [5 - 11]. Other parties have indicated that the development of the ECR in this area would be of public benefit with some indicating further access improvements could be possible [91, 131 - 136]. NE indicate that they have sought consensus and the changing view of the objector is relevant to that [48 and 49]. The matters are dealt with below as set out by the objector.

Biosecurity

182. The introduction of new access raises understandable concern regarding biosecurity matters [18 - 22]. NE have followed the approach in the Scheme in deciding an appropriate route and the measures to be taken, such as signage and fencing. In addition, in view of the specific concerns raised in objection, further advice was sought from APHA and an independent consultant [51 - 58]. The LAF mentioned matters around dogs, as well as signage; the CLA raised concerns as to the separation from livestock; and, WWT regarding separation from birds [103, 107, 110, 133].
183. Taking account of the expert evidence of low risk of infection, likely areas for off-lead dog exercise and the requirement to keep dogs on the trail at all times the proposal strikes a fair balance between the continued use of the land for farming activities and the new use of the land for public access. In this particular area fencing and screening has been offered in order to separate the trail from the adjacent farmland, which would assist not only with the concerns regarding the mixing of dogs and livestock but also with wildlife, particularly birds [50 - 61, 133, 145 - 148, 149 - 153, 175].

Impact on Farming Operations

184. The consequence of balancing the biosecurity and wildlife security matters, through fencing of the trail, is that use of the land seaward of the seawall would require specific access management to and from the farm, rather than

leaving the cattle to find their own way to and from that land. Concerns that the cattle could be at risk, due to high tides, are noted; however, NE have made a reasonable suggestion regarding leaving gates open at the times the land was in use, which continue to allow free access for the cattle, whilst not preventing public access.

185. It would be possible to consider additional gates at the southern end to ensure that cattle would not have only one exit point should rising tides become an issue. The need for additional labour in opening and closing gates, was noted, although most farmers would be likely to check animals at least daily in any event, such that additional visits should be minimal. Matters relating to potentially needing to move water supplies were not commented on by NE, however, para 8.2.15 of the Scheme makes clear that an informal management technique would be relocating cattle watering or feeding stations away from routes or areas frequented by the public, provided this can be achieved without unreasonable cost or inconvenience to the land manager. This would assist in dealing with the concerns and may reasonably be taken forward as part of implementation works should that prove necessary [23 - 26, 62, 78].

Financial Loss/ Power to take Land

186. Additional financial concerns related to the loss of the land for grazing. Regardless of the disagreement as to amount between the parties the arrangement referred to above would allow continued use of the land seaward of the trail. The objectors calculations related to dates on which the cattle were grazing on the land associated with the seawall but relate to the entirety of land to which the cattle had access on those days. This includes land to the west of the seawall, which is greater in area and likely to provide better quality grazing as it is not subject to inundation by seawater during high tides, although there may be exceptional occurrences of this. The objector himself raised concerns about establishment of the willow screen due to the very exposed salty land, which is not likely to provide high quality grazing [38].
187. Placing the trail on the seawall would significantly reduce any loss of grazing as the seawall itself is predominantly hardstanding, with some at the time of the site visit in use for manure storage. This would also allow the screening to move onto the area closest to the seawall, with the agreement to narrow the screen again reducing any potential loss of grazing [27, 63 - 65].
188. Whilst understandable that issues around compensation are raised, the determination not to offer compensation was made during the legislative process. The mitigation measures do not remove the ability to use land, with the exception of a minimal amount of low-grade grazing land, which would form part of the area used to form wildlife screening. Fencing has been offered as a form of mitigation in relation to the concerns of the objector regarding biosecurity, as discussed

above. The circumstances arising here do not appear to be 'truly exceptional', with no indication that NE have found it appropriate to offer compensation in this instance [28 - 31].

Lack of Consultation

189. Concerns regarding conversations between NE and EA, who own part of the affected land, which is rented by the objector, are not relevant to this consideration. NE have indicated that some meetings have been undertaken with both parties and some independently as appropriate to the matters under discussion; EA are not simply the landowners in relation to this land but are also the statutory undertakers in relation to this and other affected land [32, 66 - 68].
190. Whilst the objector may be unhappy with the outcome, there is nothing to suggest that the requirements of consultation, set out in the Scheme, have not been properly met. NE indicate that they have met with relevant parties in relation to this proposal on 50 – 60 occasions, in addition to phone calls and correspondence. [48, 49, 68, 149].

Protection of Birds

191. The protection of birds, as raised by the objector, was a factor in the mitigation measures arrived at in relation to screening of the trail. It was noted that the implementation of the permissive path to the north was designed without mitigation measures, which would not be the case here, and that other factors would have impacted on bird numbers. The HRA, see Annex A, recognised localised increases in disturbance but reached the conclusion that these would not be sufficient to result in any adverse effect on the integrity of the protected sites [70, 110, 143, 159].
192. The purpose of NE is to help conserve, enhance and manage the natural environment for the benefit of present and future generations, thereby contributing to sustainable development; the HRA was certified by both those developing the access proposal and responsible for considering any environmental impacts. These matters were appropriately balanced through the identified mitigation [33 - 37, 69, 70, 72, 132].
193. In addition to the physical mitigation of screening, signs would be used to inform and encourage users to behave responsibly. There was some discussion around the appropriate use of signs and the monitoring of effectiveness for which measures were identified. Signs have a place in the mitigation – including in messages regarding the interaction with livestock - and there is nothing to prevent the alteration of placement and message, removal or addition of signs as appropriate in the future [20, 103, 110, 111, 132, 147, 150, 159 - 161].

Screening Planting

194. It is understood that the idea for screening as a mitigation arose following concerns raised by the objector regarding disturbance to birds seaward of the trail [73]. NE have sought advice and satisfied themselves as to the viability of the proposed plant species in this area. Whilst clearly concerned to safeguard wild birds the objector questions whether NE have the powers to implement this [38 - 40, 78].
195. NE take the view that the screening comprises a hedge for the purposes of the Act. The term 'hedge' in paragraph 2(3)(e) of Schedule 20 to the Act is not further defined in the Act nor the Scheme. The power to plant a hedge is provided under section 55D(2)(c) of the National Parks and Access to the Countryside Act 1949, which similarly does not define the term. In the absence of a statutory definition associated with the legislation, The Concise Oxford English Dictionary defines it as "a fence or boundary formed by closely growing bushes or shrubs". It seems that the proposed screening would reasonably meet this definition [40, 74].
196. The width was reduced from the original proposal in order to allay concerns raised in objection. Whilst 4.9m would be a wide hedge, the reason for the boundary would be to provide screening for wildlife; from the information provided the proposed willow planting would achieve that purpose and would be within the powers of NE and the access authority in relation to the "...planting of any hedge". This would resolve one of the concerns initially raised in objection and moving the trail, and therefore the hedge, to, and adjacent to, the seawall would reduce any loss of grazing, with the screening being placed mainly on the seawall slope, which appears less likely to be used by cattle due to topography. Much of the area to be utilised does not appear to have been used for grazing for some time due to the use for manure storage [75, 76, 87].
197. The coastal access duty is set out in the Act and summarised in the Main Issues above, paragraphs 5 - 12. There is a requirement for a fair balance to be found between the public gaining access and the affected parties, which also takes account of relevant biodiversity matters. This proposal reasonably and fairly balances those requirements [38 - 40, 73 - 78].

Route Options

198. NE looked at route options, including the use of the seawall, however, failure to reach agreement regarding funding of the moving of the manure meant that matters were not progressed, such that the initial report suggested the route below the seawall and manure storage area. Nevertheless, continued discussions have led the parties to consider this proposed route – see Appendix 1 - as the 'least-worst' or 'best' option, dependant on viewpoint. Other inland routes were looked at in the report but were not taken forward as they did not

meet the overall requirements of the duty to deliver a coastal access route [41, 42, 45, 47, 79, 80, 86, 88].

199. Negotiations have been undertaken regarding the removal of the manure, with the objector seeking funding for costs of the storage facility; however, this could not be agreed as it would not meet the tests regarding the reasonable use of public money. There are now other factors requiring the removal of the manure from the seawall and whilst NE remain open to discussion on costs of removal, this would clearly be inappropriate should EA have to enter into enforcement action on the matter [43, 44, 46, 81 - 85].

Summary

200. The introduction of new rights of access over farmland naturally raises concerns from those who would be most directly affected by it. The concerns raised have been addressed so far as possible, whilst continuing to work to deliver the duty placed by the Act meeting specific objectives. Whilst not finding that the originally proposed route would fail to strike a fair balance, the matters raised in the objection lead to a conclusion that the proposed modification to place the trail on the seawall, with the screening alongside, as shown in Appendix 1, would provide the better option.

201. It would provide a trail meeting the requirements of the duties of NE and the Secretary of State, whilst being on land which is of least value for grazing purposes, with further mitigation offered in terms of fencing. Additionally, it would provide a good quality surface continuing from the alignment of S012 to the north. The representation from KSPC suggested that this section of the proposed route should be on the seawall whilst the LAF and DR referred to the possibility of increased access for off-road mobility scooters in such areas. Whilst such matters would clearly need to be discussed with the relevant owners and occupiers, it demonstrates the wider interest and options arising from the modification of the route onto the seawall [104, 134, 135, 148, 177].

Representations

202. It is clear that NSC, EA and WWT are working with NE as appropriate with regard to the delivery of the scheme in line with their own duties and/or requirements [91 - 96, 131 - 133, 137 - 140, 175 - 176]. The concerns of BASC and CWA would be addressed by way of the proposed mitigations alongside the ability to give directions should that prove necessary [97 - 102, 141 - 144].

203. With regard to the CLA representation referring to the exercise of the discretion to extend coastal access along the estuary, it is agreed that there are a number of factors which are relevant to determining to follow this route. However, it would be surprising if this discretion was not adopted here given the size of the

Severn estuary and the continuity that arises with the Wales Coast Path. [112 - 114, 163 - 164].

204. In an area without a great deal of informal or formal public access it is unsurprising that the proposed change is seen as undesirable, particularly to livestock farmers. The balance to address these concerns is through mitigation, such as alignment, signage and fencing. The risk assessment requirement would not alter purely as a result of the proposal; however, it should be noted that on the trail itself benefits from the lowest level of occupiers' liability known under English law, paragraph 4.2.2 of the Scheme. Whilst it is clear that the CLA and some individuals do not feel this is sufficient the Act requires delivery of the ECP and the Scheme provides the methodology [106, 108, 109, 117, 154, 155].
205. Section 297(3) of the Act sets out that [NE and the Secretary of State] "...must 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." Although not specified the relevant parts of HRA98, Schedule 1, are likely to be Article 8: the right for respect for private and family life, and Article 1 of the First Protocol: protection of property. These are qualified rights which may be 'interfered' with or 'infringed' in order to secure specific aims. What is required is the balancing of the fundamental rights of individuals against the legitimate interests of others and the wider public interest in securing the new public access; the Scheme sets out the methodology to be followed in meeting that requirement and NE have not departed from the delivery of their duties in this respect [123, 156 - 158, 178].
206. The CLA suggested that the trail could instead be taken inland, making use of the proposed cycle route, entirely avoiding farmland. There would be formal and informal links between these two projects, however, their purposes differ. Having driven and taken views on foot from various locations along the proposed cycle route, it is clear that this project would not meet some of the requirements of the Act and Scheme, in particular in relation to the lack of sea views and proximity to the sea. The development of the cycle route has other aims and objectives to those required by the Act. It would assist to some extent with regard to the desire for off-road mobility access referred to above [105, 115, 116, 118, 119, 148, 164 - 167].
207. There is disagreement between NE and the CLA as to the interpretation of whether land seaward of the cycle route would or would not be coastal margin, which was cited as one of the reasons for not considering it as an alternative. However, as set out above, there are other reasons that the cycle route would not provide a suitable alternative to the proposed route in any event [120 - 126, 168 - 171].

208. Similarly, the suggestion of a summer and winter route option does not meet the fair balance so far as the public are concerned in terms of either access or the use of public money. Whilst there are some similarities between this area, Kingston Pill – Tutshill Sluice, and the west side of the Yeo, section S047 – S048, see Map ABD 6d Blake’s Pool to Wick Warth and Directions Map ABD 6B, there is a clear difference in terms of the extent of the proposal and the need for it to be implemented. The determination not to provide a summer/winter route alternative in this area does not disturb the fair balance [127 - 130, 172 - 174].

Potential Modifications

209. NE support the modification to the proposed route to run along the top of the seawall, so long as the manure is removed or that the objector, or EA, gives a written undertaking to remove it. The willow hedge to provide screening would be installed approximately where the manure is currently located.

210. An alternative modification, in the event that the manure is not removed, is to position the proposed fence, landward of S013, between the route and the manure, to remove the land from the coastal margin. NE agreed that this was desirable as the fence is the landward boundary of the coastal margin proposed for route section S013 [89].

Other Matters

211. The objector was concerned that there may have been correspondence between NE, EA and latterly the Planning Inspectorate to which he was not a party. He took advice from the NFU on this matter and was concerned that his rights under the General Data Protection Regulation (GDPR) may have been breached.

212. The Planning Inspectorate process personal data under GDPR. In addition, we operate under the requirements of openness, fairness and transparency. It is understood that all information submitted in relation to this report has been circulated to all parties, for comment or information as appropriate. There is nothing additional on which this recommendation, nor the decision of the Secretary of State, relies.

213. Any remaining concern about NE having had sight of private correspondence with EA is not relevant to this decision-making process [32, 66, 67].

Recommendation

214. Taking account of all the relevant matters, the modification of the trail to run on the seawall, with the willow screening hedge alongside, where manure was being stored at the time of the site visit, would be the option best meeting a fair balance between public access and landowner/occupier requirements. This

would require the removal of the manure, for which no written undertaking has been received by the Planning Inspectorate. Nevertheless, taking account of the requirements of EA in relation to this matter, in their statutory role in relation to the flood defence [84], it appears that the manure will be moved. This proposal is shown on the map at Appendix 1.

215. In the alternative, if the Secretary of State disagrees then the modification to the landward fence alignment should be implemented, as shown in the map at Appendix 2 [210].

216. It does not appear that any modification to the details in Table 6.3.1 of the report, 'Section Details – Maps ABD 6a to ABD 6f: Wain's Hill to Huckers Bow' would be required in relation to either potential modification.

217. The proposals would not fail to strike a fair balance with either modification. I therefore recommend that the Secretary of State makes a determination to this effect in relation to the Report ABD6, making use of the appropriate revised mapping attached in the appropriate Appendix.

Heidi Cruickshank

APPOINTED PERSON

ANNEX A: INFORMATION TO INFORM THE SECRETARY OF STATE'S HABITATS REGULATIONS ASSESSMENT

Introduction

1. 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.

2. 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.
3. 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.
4. 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 qualifying features for Report ABD6 are identified in Table 8 of the HRA, referenced Wain's Hill to St Thomas Head. St Thomas Head is slightly to the north of Huckers Bow and falls into Report ABD7, to which no objections were raised. The relevant matters are discussed in D3.2D, which refers to the entirety of matters in Report ABD6, not just the sections to which this report relates.
5. 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 (Section 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.

- More frequent disturbance to juvenile shelduck, following changes in recreational activities as a result of the access proposal, leads to increased mortality and a resultant reduction in the non-breeding population within the site.
6. In section D4 of the HRA, NE considered the appreciable effects that are not themselves considered to be adverse alone to determine whether they could give rise to an AEoI in combination with other plans or projects. It was considered that there were residual and appreciable effects likely to arise from this project which have the potential to act in-combination with those from other proposed plans or projects in relation to more frequent disturbance to feeding and roosting waterbirds (non-breeding) from increases in recreational activity at specific locations between Kingston Pill and Huckers Bow (map D1).
 7. 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.
 8. 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.

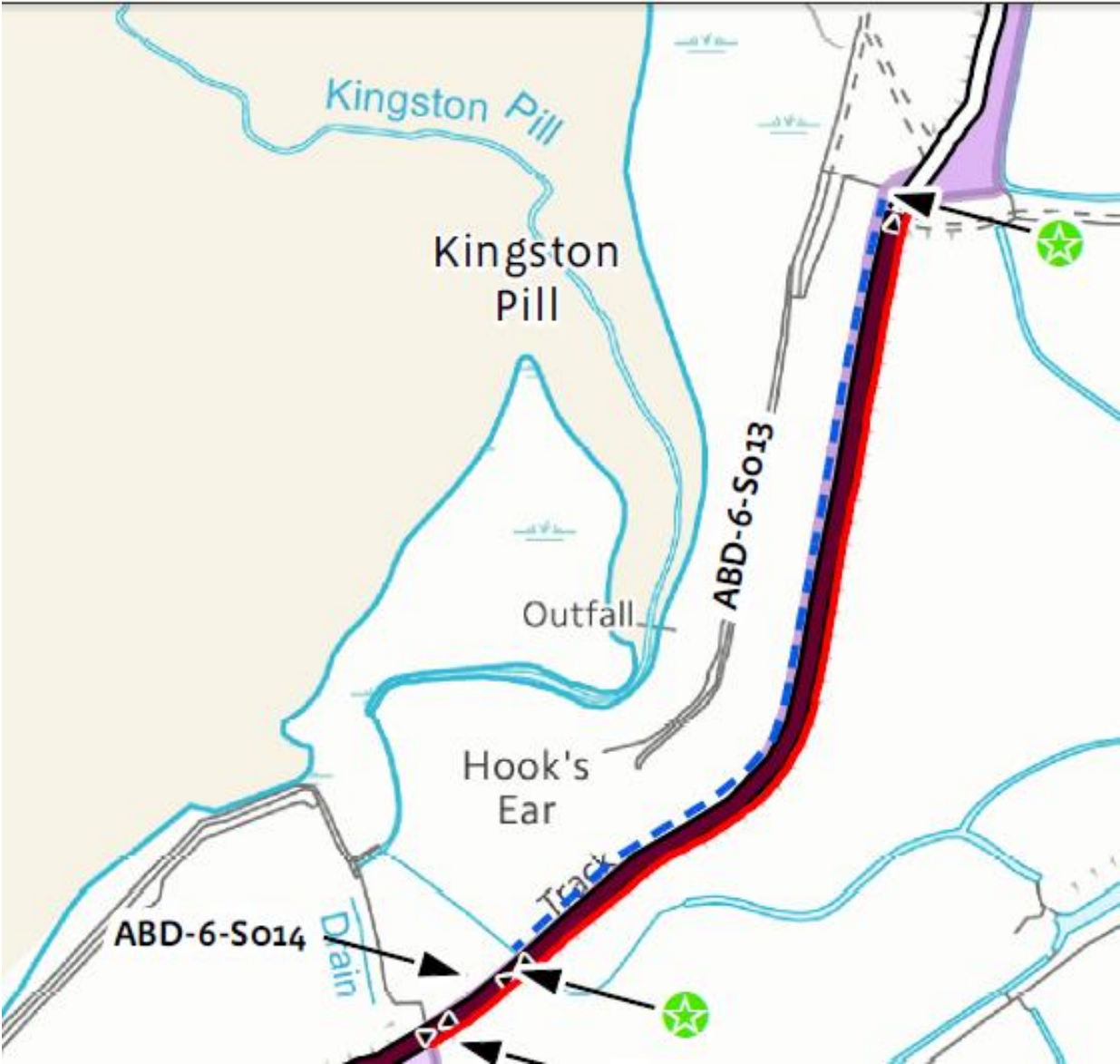
Nature Conservation Assessment

9. 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.

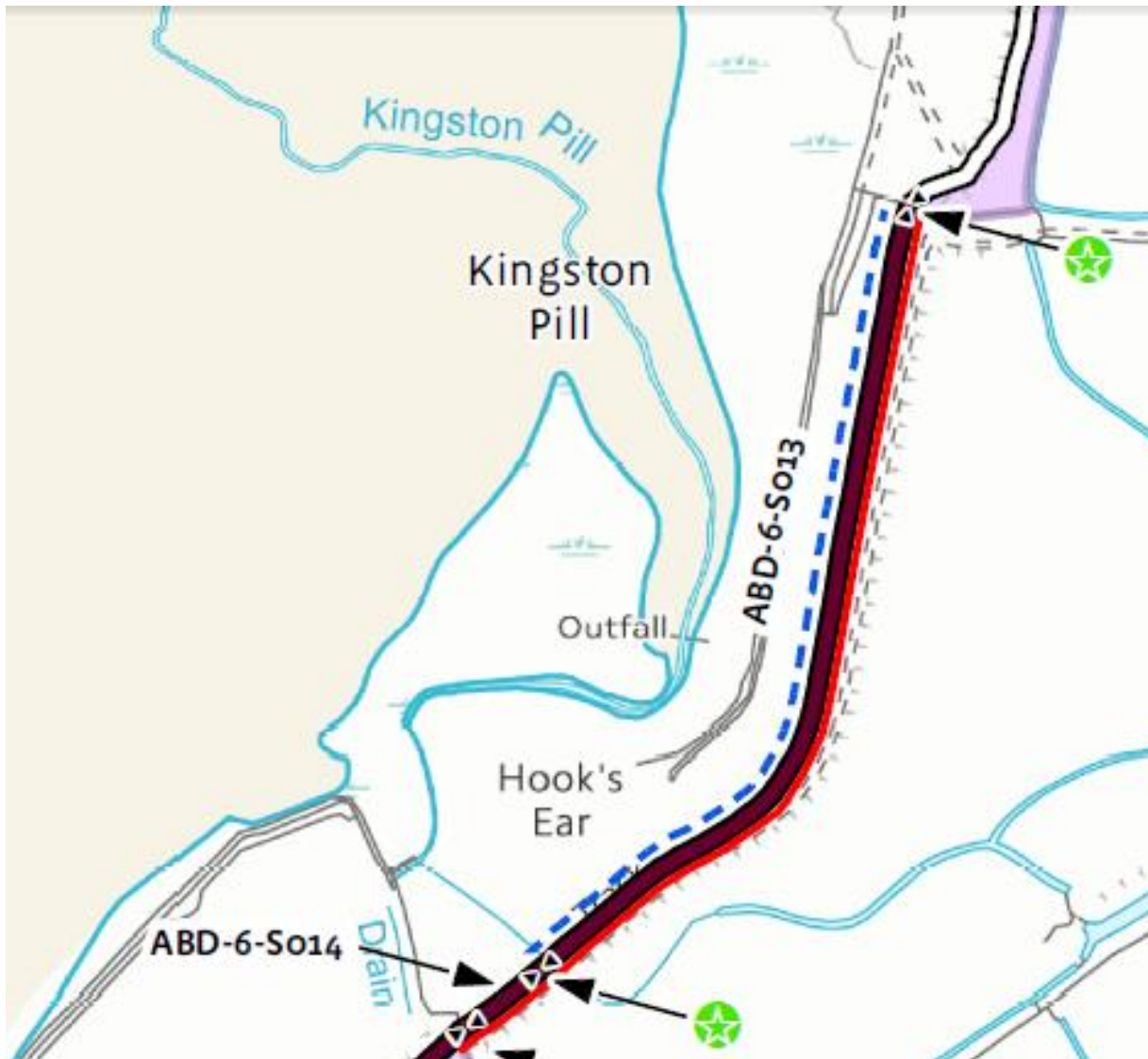
10. In respect of the relevant sites or features the appropriate balance has been struck between NE's conservation and access objectives, duties and purposes. WWT welcomes the mitigation measures set out in the NCA. Works on the ground to implement the proposals would be carried out subject to any further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

Recommended proposed modification moving route onto the seawall
(relevant if manure removed)



Appendix 2

Alternative modification moving landward fence line between the route and the manure (relevant only if manure not removed)





The Planning Inspectorate

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

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Date: 3 July 2023

Marine and Coastal Access Act 2009

Objections by [redacted], [redacted], [redacted] and [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Aust to Brean Down

Objection Reference: MCA/ABD6/1502

Aust to Brean Down, Wain's Hill to Huckers Bow

- 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 to Report ABD 6, dated 12 September 2019, was made by [redacted]. The land in the Report to which the objection relates is route section ref. ABD-6-S018.
- The objection was made under paragraphs 3(3)(a) 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 relevant section of report ADB6 do not fail to strike a fair balance.

Objection References: MCA/ABD6/0940

Aust to Brean Down, Wain's Hill to Huckers Bow

- 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 to Report ABD 6 dated, 16 September 2019 was made by [redacted], as the occupier of the relevant land. The land in the Report to which the objection relates is route section ref. ABD-6-S022 – ABD-6-S029.
- The objection was made under paragraphs 3(3)(a), (c), (d) and (e) of Schedule A 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.

- An objection to Report ABD 6 dated, 16 September 2019 was made by [redacted], as the owner of the relevant land. The land in the Report to which the objection relates are route sections ref. ABD-6-S034 – ABD-6-S035.
- The objection was made under paragraphs 3(3)(a), (c) and (d) 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 relevant sections of report ADB6 do not fail to strike a fair balance.

Objection Reference: MCA/ABD6/1563

Aust to Brean Down, Wain's Hill to Huckers Bow

- 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 to Report ABD 6, dated 17 September 2019, was made by [redacted]. The land in the Report to which the objection relates are route sections ref. ABD-6-S019, ABD-6-S022. ABD-6-S025 and ABD-6-S032 – ABD-6-S033.
- The objection was made under paragraphs 3(3)(a), (c), (d) and (e) 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 relevant section of report ADB6 do not fail to strike a fair balance.

Objection Reference: MCA/ABD6/1343

Aust to Brean Down, Wain's Hill to Huckers Bow

- 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 to Report ABD 6, dated 12 September 2019, was made by [redacted]. The land in the Report to which the objection relates are route sections ref. ABD-6-S020 – ABD-6-023.
- The objection was made under paragraphs 3(3)(a), (d) and (e) 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 relevant section of report ADB6 do not fail to strike a fair balance.

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. The sections of the trail referred to in this Report relate to the report ABD 6: Wain's Hill to Huckers Bow. The route sections are annotated ABD6, eg ABD6-S001; for ease of reference I shall use the S0 number only, eg S001.
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. This report relates to objections referring to the NE Report ABD6, which are considered together as they raise similar matters and/or relate to connected route sections identified on Maps ABD 6c, ABD 6d and Directions Map ABD 6B. Other objections dealt with in separate reports.
3. Various representations were also received and I address these below where they refer to these sections of the trail.
4. I carried out site visits on 24 May 2021. For S018 I was accompanied by the objector, their agent and representatives of NE. The other objectors were represented by the Country Land and Business Association (CLA) and were themselves present for the visits over the relevant land, along with representatives of NE.
5. A further site visit was arranged on 13 March 2023 in the company of the objector and representatives of NE in relation to sections S024 - S026.

Main Issues

6. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (MCA) and requires NE and the Secretary of State to exercise their relevant functions to secure 2 objectives.
7. The first objective is to secure a route for the whole of the English coast which:
 - (1) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
 - (2) (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, but for ease of reference is referred to as 'the trail' in this report.

8. The second objective is that, in association with the trail, 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 the trail. This is referred to as 'the coastal margin.'
9. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
 - (1) the safety and convenience of those using the trail,
 - (2) the desirability of that route adhering to the periphery of the coast and providing views of the sea, and
 - (3) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
10. 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.
11. In cases such as this where it is proposed that the trail extends along a river estuary, 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.
12. NE's Approved Scheme 2013 (the Scheme) sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within each Report.
13. This report relates to the consideration of whether the proposals set out in NE's report fail to strike a fair balance as a result of the matters specified in the objections. This report sets out that determination, with a recommendation to the Secretary of State.

The Coastal Route

14. 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 trail 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.
15. 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.

16. This report refers in part to access alongside the River Yeo, also known as Congresbury Yeo.
17. There are no public rights of way along the coast between Wain's Hill and Huckers Bow. The trail would follow an existing walked route as far as Kingston Pill and then to Huckers Bow it would follow a new path on or just behind the seawall in most places. This would offer regular views of the Severn and its tributaries whilst minimising visual disturbance to feeding and roosting waterbirds. At Huckers Bow the trail would meet an existing walked route leading to Middle Hope.
18. There would be an inland diversion around Wharf Farm. The trail on the south bank of the River Yeo would operate from 16 May to 30 June inclusive whilst at other times it would be closed to prevent increased disturbance to wintering and migratory waterbirds, which roost there in significant numbers from July to mid-May. An alternative route would operate for the rest of the year, see Directions Map ABD 6B.

The case for the objectors

19. NE identified similar points raised within the objections. This report will adopt the recurring themes and deal with any individual points raised in the same manner.

Biosecurity

20. The objections arise from those grazing cattle on the relevant land. [redacted] raises general concerns about biosecurity at Wharf Farm, fearing that walkers may bring disease to the farm from other nearby farms. There would be various places where this could happen as the proposed route would enter and leave land that his cattle graze from land owned and farmed by others.
21. [redacted], [redacted] and [redacted] raise concerns about the risk that walkers or their dogs may introduce the parasite *Neospora caninum* (*Neospora*) to cattle grazing on the land. *Neospora* can be introduced to cattle which come into contact with an infected dog's faeces. *Neospora* can cause abortion and still

- births in cattle and associated financial loss to the owners. It was indicated that veterinary advice is to exclude dogs from cattle-grazed pasture for this reason.
22. [redacted] also referred to the increased risk of tapeworm infection from walkers' dogs and asked who would be responsible for the extra costs if animals are infected by diseases as a result of the proposed access. He proposed a modification to S018 such that half of that section would be on the neighbouring Wharf Farm. That matter is dealt with further below.
23. [redacted] and [redacted] said that no measures had been proposed to mitigate the risk of disease on the land they farm.

Risk to walkers from cattle

24. [redacted] main concern is the biosecurity of the herd of British Shorthorn cattle at Wharf Farm. He raises concerns about the fence proposed by NE on section S019 which would separate that part of the route from a field where he grazes cattle. He mentions the risk that a cow with calves at foot may break down the fence if she feels threatened by walkers or their dogs.
25. [redacted] notes that the access proposals would create additional health and safety issues for him to consider and says that his insurance premium would increase if the path was approved.
26. [redacted] and [redacted] describe potential risk to walkers from cattle grazing on land where the route passes, measures that may be necessary to mitigate the risk and the impact these could have on their businesses. [redacted] grazes cattle with calves and, at times, bulls on the fields over which route sections S023 to S029 are proposed; the cattle are able to move freely between the fields at these times.
27. [redacted] grazes cattle, including bulls, on the field crossed by route sections S020 and S021. Both farmers would have to conduct risk assessments if the proposals are approved, to decide if their animals could still safely be left there. They say that risk assessment is not currently required because there is no public access.
28. Depending on the outcome of the risk assessment, it may be necessary to remove their animals, or some of them, from the fields with public access. It may then be necessary to find additional grazing land elsewhere, which would increase costs. They say these outcomes would be unfair.
29. If, as a result of the risk assessment, they continued to graze some or all of their animals on the land they would bear responsibility for the risk of injury to walkers from the cattle. Their liability under the Animals Act 1971 is not mitigated or reduced in these circumstances.
30. They are in particular concerned that injury or fatality may arise from the presence of dogs in fields with cattle. They refer to NE's Monitoring Engagement with the Natural Environment (MENE) data that around half of countryside visits

involve a dog. They also refer to Health and Safety Executive (HSE) research showing that over a fifteen-year period, where fatalities were caused to members of the public by cattle, all but one of these involved a dog. They say that the risk is not necessarily mitigated by requiring walkers to keep dogs on leads.

31. [redacted] said that fences could not be used to separate walkers from cattle in his field because the path runs through the middle of the field. The field is also bisected by the access track to Wharf Farm.

Disturbance to birds from path users

32. [redacted] and [redacted] raise concerns that the proposed access would result in increased disturbance to birds, in particular waterbirds. They point out that NE's shadow Habitats Regulations Assessment (sHRA), acknowledges that the new access would result in disturbance to birds. They fear that in places where the proposed route is along the inland toe of the flood banks to reduce disturbance risk, walkers would instead walk along the top to get sea views.
33. [redacted] argues, with reference to the sHRA, that there should be 200 metres of undisturbed habitat between waterbird areas and any new access. He goes on to list a number of statements in the sHRA which he regards as wrong or misleading, as summarised below (NE numbering):
 1. NE's conclusion in table 20 of the sHRA is misleading where it says that disturbance would be reduced except between points (g) and (h) on map D1 of the sHRA. The path would be within 200 metres of both feeding areas and the banks where birds roost, so there would be an increase in disturbance even though the path is behind the seawall in some places.
 2. NE does not propose to restrict access to roost 4F on map D1 of the sHRA.
 3. There is no assessment, in the part of the sHRA relating to Congresbury Yeo sector BV644, of impacts on birds feeding in the part of Blakes Pool nature reserve that is within that sector.
 4. The Clevedon to Weston cycleway (the cycleway) would enable access to the proposed route at Wick St Lawrence and Tutshill Sluice. There would be more use of that access at certain times of year including late June when young Shelduck gather on the Yeo. There is a particular risk of disturbance between points (l) and (m). In table 29 of the sHRA, the assessment of the risk to juvenile shelduck should be coloured red.
 5. The assessment that current disturbance levels at roost 4B/C Hooks Ear and Kingston Pill would reduce is misleading, because there is no public access to that part of the coast. The proposed access would in fact increase disturbance levels.
 6. Table 29 of the sHRA confirms that there would be unresolved adverse effects in spite of mitigation measures.

7. Why was screening considered necessary between the two sluices at Tutshill for the cycleway but not for the coast path?
8. The sHRA is not independent because it was prepared and completed by the NE staff member who was responsible for the coastal access proposals.

Use of the Clevedon to Weston cycleway route

34. For the reasons above, and others as set out below, [redacted], [redacted], [redacted] and [redacted], the objectors now represented by the CLA, proposed that the route be modified to follow parts of the cycleway proposed by North Somerset Council (NSC), a map of which was included with two of the objections. The cycleway follows NE's proposed coast path route as far as the junction of sections S011 and S012 on report map ABD 6a. From there it takes a short linking path to Lower Strode Road and follows lanes to the junction of the proposed route sections S042 and S043 near Tutshill sluice on report map ABD 6d. Each objection proposes that the route should be modified to use this cycleway, but the proposals vary slightly, as described below.

[redacted] proposed route modification

35. [redacted] proposes that NE's route (or a similar unspecified route) should be available for 4 to 6 weeks a year and that for the rest of the year walkers should be directed along a different route using existing public rights of way, quiet roads or the proposed new cycleway. He says this would limit bird disturbance and damage to grass from footfall along NE's route and he would be able to adapt his farming to avoid grazing his cattle near the trail during this limited period.
36. He compares this seasonal route proposal with NE's proposal for the southwest bank of the Congresbury Yeo (see Report maps ABD 6d and 6f) where a similar seasonal route arrangement would operate. He refers to NE's assessment of the options for seasonal diversions between Kingston Pill and Tutshill Sluice on page 23 of [report ABD6](#) and lists various reasons why it is wrong;
 - NE says that a summer route along the seawall would only be available for a maximum of six weeks, but that is no different than the proposals for the West side of the Yeo.
 - NE says its proposal is designed to address farming concerns, but it would cause unnecessary disruption to farm business given that alternatives are available.
 - The route need not pass along the seawall of Wharf Farm; [redacted] would be happy for NE's proposed route (avoiding that part of the seawall) to be open for a short period.
 - It would be no less confusing to walkers than the seasonal diversion which NE proposes for the west side of the River Yeo and the similarity may re-enforce the seasonal arrangements there.
 - The public would find it easier to understand two seasonal routes than one path on which myriad different directions will apply, many of which are likely to be ignored.

[redacted] proposed route modifications

37. [redacted] suggests three modifications to NE's proposed route:
 - it could follow the same route as the cycleway between Kingston Pill and Tutshill sluice; or

- it could stop at an existing pedestrian access point [as considered in part 5b(v) of the [Overview to the report](#) and in chapter 11 of the Scheme] allowing walkers to follow the cycleway if they wished to continue their journey to Clevedon; or
- it could operate for a short period of 4 to 6 weeks and follow the cycleway for the remainder of the year, as proposed by Peter Kingcott.

38. The first option would reduce impacts on farming and avoid disturbance to birds. It is a continuous route that would be easier to follow than NE's route, so reducing the risk of trespass. He refers to NE's assessment of inland routes in [report ABD6](#) and sets out various detailed arguments to explain why the assessment is wrong (see 'Natural England's assessment of inland routes' below).

39. [redacted] preference is for the coast path to go inland along the cycleway, which he compares to NE's proposed route inland around Avonmouth Docks. He is disappointed that NE did not consider or discuss the possibility of a seasonal route, which he would have been willing to discuss.

[redacted] proposed modification

40. [redacted] proposes that NE's route should be modified between Channel View (on report map ABD 6b) and Tutshill Sluice to follow the cycleway.

41. He draws attention to the additional statutory criteria to which NE must have regard in deciding whether and to what extent to exercise its discretion to propose a route on estuaries. He suggests that NE has placed more emphasis on the continuity of the path on the Severn Estuary than is intended by the legislation, arguing that it is not the primary reason for the trail to serve the estuary as part 5c of the Overview to the Reports suggests. He draws attention to the list of other criteria, which he says is not exclusive, suggesting other criteria relevant in the local context, including the undisturbed nature of the coastline (and linked to this, the presence of numerous highly important bird roosts) and the recent planning approval for part of the cycleway.

42. [redacted] says that the cycleway would provide continuity of access without unacceptable impacts on birds or an unfair outcome for owners and occupiers. He then lists various other reasons why this is preferable including that:

- It would be low-cost and connect to the coast path at either end;
- It is easy to follow and shorter than the inland route around Avonmouth Docks;
- It is already used by many cyclists and walkers and would meet the recreational criteria in chapter 4 of the Scheme;
- It affords open views towards the coast, rather than constrained and inland-only views beneath a flood bank;
- It provides a convenient surface in wet weather and verges for walkers.

Natural England's assessment of inland routes

43. [redacted] and [redacted] both refer to NE's assessment of inland routes between Kingston Pill and Tutshill Sluice on page 23 of Report ABD6. They set out three detailed points to explain why the assessment is wrong.
44. The first is that NE's proposed route does not adequately address farmers' concerns about biosecurity. The relevant points are set out under 'Biosecurity' above.
45. The second point is that NE is incorrect to say that the local road network is not safe for pedestrians. A report was commissioned by NSC to undertake a review of the proposed on-road cycle route and was produced by Avon Traffic and Safety Services Ltd on 15 October 2018 (the ATSS report). The brief was to "identify any road safety issues along this route and outline the available options to address these issues."
46. The ATSS report makes some recommendations with regard to road surface, cutting back of vegetation and road markings. Section 5 of the ATSS report considers safety Issues and notes that "site observations show that motor vehicle levels are very light, and speeds generally no more than 30mph, i.e. commensurate with a quiet lane suitable for use by walkers, cyclists and equestrians". The map attached to the objections shows the location of the section of cycle route with planning approval and the remainder of the route to Clevedon which does not need planning approval as it relies on existing quiet lanes.
47. The third point is that an inland route would not create a large area of coastal margin as [report ABD6](#) says. Their detailed legal argument to support this point is that the Access to the Countryside (Coastal Margin) England Order 2010 (SI. No 558) states (section 3(2)) that:

(2) the first description of coastal margin is-

- (a) Land over which the line of an approved section of the English coastal route passes,
- (b) Land which is adjacent to and within 2 metres either side of that line, and
- (c) Land which is seaward of the line of an approved section of the English coastal route and lies between land within sub-paragraph (b) in relation to that approved section and the seaward extremity of the foreshore, if the land within sub-paragraphs (a) to (c), taken as a whole, is coastal land.

48. Coastal land is defined in section 3 of the Countryside and Rights of Way Act 2000 (CROW). It describes coastal land as:

- (a) the foreshore, and
- (b) land adjacent to the foreshore (including in particular any cliff, bank, barrier, dune, beach or flat which is adjacent to the foreshore).

49. The intention of the legislation is clear: the coastal trail is intended, on the whole, to pass along the coast. Therefore the trail will be situated on land which is “coastal land” (foreshore, or adjacent to the foreshore). Where it does so, the land between the trail and the sea will be coastal margin.
50. Striking a fair balance is a central requirement of the legislation [s297(3) of the MCA]. Being mindful of the Human Rights Act, reaching a fair balance must take precedence over and above other legislative criteria. It is understood that it is not always possible, whether for reasons of fair balance, or because of other statutory requirements, such as the protection afforded to certain species, for the path to be placed on coastal land in every scenario. However, the legislation provides a clear safeguard in cases where the trail needs to divert away from coastal land: that the land covered by the path and margin, when considered “as a whole” is coastal land.
51. Considering what this means and in the absence of any other interpretation within the legislation, it must be taken in its normal sense – that the path and the margin are expected to be sited on what is, predominantly, coastal land. Coastal land being foreshore and the land adjacent to the foreshore (cliff, bank, barrier, dune, beach, flat).
52. So, if the trail follows an “inland” route, such as at Avonmouth, or as it might between Kingston Pill and Tutshill, this would not lead to the creation of a large area of coastal margin, for two reasons: firstly, the path itself would not be situated on “coastal land”; and, secondly, (and the crucial qualifying factor in the legislation), the land must be considered “as a whole”.
53. On this section there is no question that, when considered “as a whole” the land is characteristic of farmland, not “coastal land” as defined under the legislation. The land between the path and the sea on that section would be predominantly farmland, not foreshore and land adjacent to the foreshores. It therefore cannot meet the definition of coastal margin, and it is wrong to suggest that it does.
54. NE has previously argued that land will be coastal margin, so long as the edge of the margin is along the sea. This is clearly ridiculous. It potentially allows a path to be sited a kilometre or more inland, away from the coast (and any coastal land type) and for any other type of land not within the legislation to be considered coastal margin. This was clearly not the intention of the legislation: if it had been, the qualification that the land, when taken as a whole must be coastal land, would not have been necessary. The coastal margin argument therefore has no validity.

Other points raised

[redacted]

55. [redacted] owns land crossed by sections S015 and S018. He is content with the proposed route over section S015 (Map ABD 6b) but objects to the section S018, which is adjacent to the boundary between his land and Wharf Farm to the southwest.
56. He notes that NE intends to exclude access to land on Wharf Farm to help biosecurity measures for rare breed cattle. He says that people who bring dogs with them would increase the risk of infection of his livestock too, as referred to in relation to 'Biosecurity' above. He argues that by proposing the route on his land, instead of on Wharf Farm, NE is prejudicing his ability to keep rare breed cattle or have Environmental Stewardship Schemes there in the future.
57. [redacted] proposed a modification to section S018 such that half of that section would be on the neighbouring Wharf Farm.

[redacted]

58. [redacted] objects to the coastal access proposals across fields landward of Wharf Farm because they do not strike a fair balance between his interests and the public interest. In addition to matters referred to under headings above he indicates that the land is extremely wet and can quickly become a quagmire in winter. Should that occur, he expects that walkers would walk around wet and muddy areas and make many more tracks across the fields as he has seen this happen on the existing South West Coast Path. He fears that this would result in widespread damage to the land with a reduction in grazing capacity or less grass to crop.
59. In relation to sections S034 to S035 [redacted] indicates the trail would be on heavy clay which would become muddy when walked on and damage his land. On section S035 it would be necessary to move an existing fence and hedge one metre closer to the river to make room for the route. Both route sections would pass between two fences – one existing fence and one new fence – which would remove the land between them from his use and control. He would be unable to graze the land and would lose income, including Single Farm Payment, as a result.
60. He compares provisions under the Highways Act 1980 to compensate landowners for loss of land in such circumstances, with the coastal access legislation. The latter does not provide for compensation because government decided that it would not be necessary because the path would be designed in such a way that it would have minimal effect on landowners. He argues that he should receive compensation here because he would not be able to use the affected land.
61. He is very concerned that the arrangements for the maintenance of the fence and upkeep of the proposed new boundaries have not been properly set out. He

says they must be properly maintained by the access authority (AA) and fears that the burden of maintenance may fall on himself, which would be unfair.

[redacted]

62. [redacted] objects to the coastal access proposals across land grazed by his cattle and has submitted a representation which makes the same points. In the objection [redacted] sometimes refers to himself and sometimes to 'we,' which has been taken to mean his family. The pronoun 'he' is used here, as the objection is from [redacted].
63. NE has recognised the unique bloodlines of his cattle and the need for biosecurity to protect them, but the proposed route crosses grazing land, including a cattle holding pen, and so compromises that biosecurity. The objection notes several places where the route crosses land grazed by his cattle and neighbouring land and describes concerns regarding each location.
64. He concludes that the proposals do not strike a fair balance between public and private interests because they would cause unacceptable impacts on his farming business. He says that the access proposals do not address farmers' concerns about biosecurity as the report says they do and cannot do so.

Junction of sections S017 and S018

65. A bird hide/observation screen is proposed on the bank here, very close to an existing livestock corral on Wharf Farm. The presence of people unused to cattle very close to a cattle handling area could disturb and upset the livestock leading to greater risk of injury. The bird observation screen may encourage people nearer to and onto Wharf Farm, increasing the risk that the biosecurity of his cattle will be compromised.
66. The symbol for the bird observation hide is not shown on the map key and is easily missed. He therefore considers the maps misleading.

Section S019

67. Section S019 crosses a bio-secure area. There are two gated entry points proposed, at the junctions of sections S018 and S019 and of S019 and S020. This would allow transmission of disease from potentially contaminated neighbouring land to non-contaminated land at Wharf Farm by walkers and their dogs.
68. The route would exit his farm onto section S020 via a new footbridge and field gate. Establishing this exit point would entail the removal of existing hedge/tree cover which forms an important natural barrier between his cattle and those kept on the neighbouring farm. His cattle are a closed herd (meaning he does not buy animals from other places but relies on calves borne on the farm to maintain the

herd). This minimises the risk of disease outbreak. The path exit point would increase the risk.

69. The route crosses into land covered by a pen used for the temporary detention of livestock, which is excepted from access rights by virtue of paragraph 11 of [Schedule 1 to CROW](#).

70. Section S019 would run along a bank, fenced from the adjoining field under NE's proposals. The fence would prevent cattle from reaching sheltered land on the leeward side of the bank. The farm is generally open and exposed with little shelter. The cattle calve in this field so the loss of shelter could result in the loss of calves or ill health for calves or other animals.

71. To protect the cattle from disease the fencing needs to contain his cattle and prevent access by people, dogs and other livestock. It would not be strong enough to contain his cattle when they rub against it, in particular a cow that may consider a walker or dog to be a threat to her offspring. The posts would rot very quickly because of the very wet conditions and associated salt air. There is insufficient detail about the maintenance and "upkeep" of the fencing, for example:

- how often it will be inspected?
- who is responsible for deciding whether repairs are necessary?
- who is responsible for dealing with urgent repairs?
- would there be emergency contact information for landowners?
- what are the arrangements for any immediate restriction of public access necessary to prevent incursion onto his farmland should the fence fail?

Section S021

72. Section S021 follows the vehicle roadway which is used by cars, farm vehicles, delivery lorries and other vehicles to get to Wharf Farm. It follows a sharp bend through which tractors and trailers/articulated lorries have to make wide sweeps.

Section S022

73. Section S022 crosses land owned by Wharf Farm but was not surveyed with the owners. They should have been consulted and would have advised on the issues. This part of the route would require the removal of a field gate on land owned by Wharf Farm; the replacement of the field gate with a pedestrian gate and footbridge would not be a suitable substitute for a livestock bypass gate adjacent to a cattle grid.

Section S025

74. Section S025 crosses land owned by Wharf Farm but was not surveyed with him. It is used to move cattle from Wharf Farm to other, rented land. There are no measures here to ensure biosecurity.

Section S024 and S026

75. These sections are reached by crossing land owned by Wharf Farm but were not surveyed with him. There was no opportunity for him to discuss the issues arising, which he would have been able to, had he been consulted.

Section S031

76. Section S031 comes into extremely close proximity to seaward land owned by Wharf Farm. There is no indication in the Report of any plans to stop walkers from entering Wharf Farm at the end of this section via the old sea bank, which has a proposed long-term access exclusion. It is very likely that without adequate measures to stop people from entering, they may try to do so, compromising the herd biosecurity.

Sections S032 to S033

77. He is the lawful occupier of this land and has been for many years. It is grazed by his cattle because Avon Wildlife Trust (AWT) is keen to use them for land management. He was not consulted about the proposals along this section, and therefore there was no opportunity to discuss issues arising if the public was given access to the land.

78. The issues are the same here as on Wharf Farm. It would allow the public to enter a bio-secure area even though NE recognises the importance of the unique bloodlines in the herd. It would allow transmission of disease from potentially contaminated land to non-contaminated land by walkers and their dogs.

[redacted]

79. [redacted] objects to the proposals because they do not strike a fair balance between his private interests and the public interest in having coastal access rights. In addition to the matters already referred to above the following issues are raised.

Risk of interaction with cattle

80. From section S019 the proposed route would enter [redacted] field by way of a new footbridge and gate. The path would then curve across the field in an "S" shape before leaving by way of a new gate and footbridge into section S023. There are no features on the ground corresponding to the S-shaped route. It seems highly likely that the public will stray from it, for example taking a shortcut across the field over land that is not intended for access. There are no proposals to ensure that the public adheres to the proposed route.

81. The location of the path across the middle of the field has the effect of creating an area of coastal margin in the field, increasing the risk from interaction with the cattle.

Parking in the field

82. The field is reached by a lane which ends at Wharf Farm. The public already park alongside various local roads, such as Lower Strode Road, in order to reach sections of permissive path. The road through the field is unfenced and open to the lane. It is therefore entirely conceivable that the public would park on the grass in order to access the new coast path. There are no proposals for the management of the increased levels of use that are likely to arise from the designation of the path.

New footbridge proposal & Maintenance issues

83. The proposals include the removal of existing gates, the installation of new gates and the installation of footbridges. A new footbridge would be placed in the middle of the field. The path is supposed to provide a right of access only and not affect the ownership or rights to use the land. However, the new physical structures are obstructions to the use of the land.

84. [redacted] suggested to NE that the existing crossing in the middle of the field, where a footbridge is proposed, could be raised so that walkers could cross the ditch in the winter when water levels are high but the suggestion was not taken up. He does not know where the footbridge will be. In the summer when the ditch dries out, there is a risk of damage from cattle.

85. [redacted] presumes that the AA will be responsible for on-going maintenance of the footbridges and gates but it has not been clarified. Should his cattle suffer injury as a result of the installation of these structures on his land, he presumes that the AA would bear responsibility otherwise it would be unfair to him.

Damage to the field

86. The land is low lying and very wet, with poor drainage. If the land is damaged as a result of use of the path during wet conditions, there is no fair balance if he has to bear the loss that results from that damage. The AA should take responsibility for any repairs necessary to restore the land following damage caused by use of the path but there has been no confirmation of this.

Natural England's Response

87. There are no existing public access rights to this part of the coast (nor to the southwest, between Tutshill and Huckers Bow) and farmers are understandably concerned about the change. NE have therefore invested considerable time and thought into the access proposals for this area, visited the land on more than fifty occasions over a period of five years, normally in the company of the affected land owner or tenant, and sought consensus on the best way to balance new public access with the various other interests in the land, which include cattle and sheep farming, wildfowling, waterbird conservation and sea defence.

88. NE would like to record their thanks to the farmers and other interested parties for the time taken to explain their concerns and discuss the various options considered during the development of the access proposals. Some may not feel that their concerns have been adequately addressed but, having looked carefully at their objections, NE maintain that the proposed access strikes a fair balance between public and private interests and is compatible with nature conservation and sea defence.

Biosecurity

89. Section 8.6 of the Scheme outlines the general approach to be taken towards farm biosecurity. The Scheme says that intervention should not normally be necessary to control the spread of animal disease unless there is an outbreak of a notifiable disease. Animal health legislation provides animal health and appropriate veterinary bodies with access prohibition powers which can be used to control access in those circumstances. These prohibitions are only necessary when an outbreak of the disease is notified and they automatically prevail over coastal access rights (Scheme paragraph 8.6.17). They have in the past been used to contain the spread of foot-and-mouth because it is highly infectious.

90. The Scheme says that special measures may be necessary where there is a local outbreak of *Neospora* in cattle (paragraph 8.6.12). Signs should be used to encourage walkers to help control the spread of disease (paragraph 8.6.16). The proposals are in line with this overall approach and are regarded as proportionate to the risks involved. However, in view of specific concerns in these objections further advice was sought from experts at the Animal and Plant Health Agency (APHA).

91. APHA advised that tapeworms are a group of parasites that live in the digestive tracts of dogs, cattle and sheep. Dogs can pass on the disease to cattle or sheep through infected faeces and can themselves become infected through consumption of contaminated meat. Infection of livestock may therefore lead to economic loss through carcass rejection but generally does not cause clinical disease in the infected animals. Dogs can carry tapeworm parasites if they have been exposed to infected animal products, usually on farm. The main risk of transmission to livestock is exposure to infected faeces from infected farm dogs.

92. Cattle are also at risk from *Sarcocystosis*, a disease that dogs can pass to them through infected faeces. Dogs can become infected with *Sarcocystosis* by consumption of contaminated meat.

93. APHA's assessment is that the overall likelihood that walkers' dogs may infect livestock with these diseases is very low, because 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, it is advised, 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, to pick up after their dogs and remove the waste to a public or home bin. NE intend to post signs to this effect along the route. These measures are sufficient and proportionate to the risks in most circumstances.

94. The risk of cattle being infected by diseases, in particular *Neospora* and tapeworm, is very low. At the request of [redacted] and [redacted] NE have agreed to erect stock fencing to separate the proposed route from livestock in some places, which would further reduce the already low risk of infection.
95. In relation to Wharf Farm NE has agreed to take additional precautions for biosecurity in recognition of the very unusual circumstances there, discussed further below.
96. It is worth noting that dogs generally defecate at the start of a walk and are therefore less likely to do so on pasture on this part of the route, which is about half an hour's walk from Clevedon at its closest point.

Risk to walkers from cattle

97. Sections 8.1 and 8.2 of the Scheme outline the approach NE must take to concerns about risk to the public from bulls and cattle respectively. The Scheme describes various factors that should be taken into account, which are brought to discussions with owners and occupiers in order to design the best fit to the local circumstances.
98. Risk assessments are a legal requirement on all farming and other businesses as set out in HSE advice. [redacted], for example, would need to assess the risk to people who have to drive through his field to access Wharf Farm and may park in the field when his livestock are present. This is an existing requirement rather than one arising directly from the access proposals. However it is appreciated that farmers need to review existing risk assessments where public access arrangements are changed or newly introduced and may need to adjust their farming practices as a result, as discussed in HSE's Agricultural Information Sheet No.17: [Cattle and public access in England and Wales](#). Some adjustment to farming practice is sometimes necessary to accommodate coastal access and can in our view form part of the fair balance we must aim to strike between public and private interests. Paragraphs 8.1.15 and 8.2.15 of the Scheme include examples of this.
99. NE seek to minimise the need for farmers to make such adjustments through consultation. NE summarise discussions with [redacted] and [redacted] below. NE maintain that the access proposals have been designed in such a way that any disruption to these farmers' farming practice would be minimal and that a fair balance has been struck in this respect.

Consultation

100. NE met [redacted] twice to discuss the coastal access arrangements and have corresponded with him on numerous occasions. He expressed opposition to the introduction of access to his field, but he did not suggest that he would need to change his farming practices significantly if it happened. Our impression from the initial meeting was that [redacted] understands the temperament of his animals very well through regular contact with them and would be able to identify any individual that posed a significant risk to walkers and take precautions.
101. At the second visit he showed us a route across his field which he described as the least intrusive, which has for the most part been adopted. The proposed route includes an additional leg along the northwest boundary of the field to enable it to enter Wharf Farm at a different point – an adjustment NE believes strikes a reasonable balance between [redacted] concerns and those of his neighbour, [redacted], discussed separately.
102. NE met [redacted] on a number of occasions. In respect of the land he owns, NE negotiated with him directly. He raised concerns about the risk to walkers from his cattle when with calves and it was agreed to install fencing there to address his concerns. Bulls were not discussed and his objection about the land he owns, MCA/ABD6/0/6, does not refer to bulls.
103. In respect of the land [redacted] rents, referred to in objection MCA/ABD6/0/5, discussions were undertaken mainly through a land agent whom NE understood to be acting on his behalf. It was understood that the grass in these fields was used primarily for hay and silage production rather than grazing, because it is furthest from [redacted] home and farm buildings. The agent expressed a preference for a route following the edge of the rented land which NE agreed to and corresponds to sections S022 to S029 of the proposed route.
104. [redacted] concerns about grazing animals were not relayed in these discussions and as a result NE did not consider them in designing the proposals. Looking again at the proposal in light of his objection, NE maintain that the proposed route is the best available route through the fields he rents because by following the farm's periphery it reduces the likelihood of close proximity between cattle and walkers.

Bulls

105. It is permissible to run a bull of a beef breed in fields with public access, provided it is accompanied by cows and depending on the farmer's assessment of the bull's temperament (see paragraphs 8.1.3 and 8.1.7 of the Scheme).
106. It is not feasible to graze an unaccompanied bull in fields with public access (see page 2 of [HSE Agricultural Information Sheet No. 17](#)). To the extent that [redacted] does so in fields where the route is proposed, it would be necessary to make alternative arrangements if that route was approved. NE take the initial view, based on what is known of the extent and layout of the owned

and rented land, that it would be reasonable to ask [redacted] to avoid grazing his bull or bulls in the affected fields if not accompanied by cattle.

107. [redacted] does not refer to unaccompanied bulls in his objection and NE assume he does not graze unaccompanied bulls in the field. This may be for safety reasons because it includes the access track to Wharf Farm.

Cattle and dogs

108. As raised by the objectors, walkers are often accompanied by dogs (40% of visits in figure 13 of the MENE headline report for 2018-2019). Walkers are occasionally injured or even killed by cattle and it is known from HSE that a significant proportion of these incidents involve dogs, in particular off-lead – although NE have not been able to trace the HSE incident report to which these objections refer.

109. In partnership with the Kennel Club, the National Farmers Union (NFU) and others NE has designed the sign below to alert walkers to the risks and explain how they can avoid or minimise them. NE use this sign widely on open stretches of the England Coast Path and envisage that it would be placed on gate posts at the entrances to fields throughout this part of the proposed route. The sign is in keeping with the general requirement to keep dogs on a short lead on land with coastal access rights when livestock are present (see Annex D of the Report Overview).

110. Both objections say that risks are not necessarily mitigated by keeping a dog on a lead. NE agree: the sign also reflects experience that it is better if threatened by livestock to unclip the dog's lead than to keep the dog on a lead.



111. Cattle are often grazed on land with public access and NE take the view, in keeping with paragraph 8.2.15 and 8.2.16 of the Scheme, that the use of this sign is proportionate to the risks from cattle in most circumstances. Where particular concerns arise, electric fencing is sometimes used to separate the path from the rest of the grazing area, as suggested by HSE Information Sheet No.17. NE would be willing to pay for the purchase of a suitable length of electric fencing if [redacted] decided that it was a necessary additional precaution in the fields concerned. This would have been suggested during consultation, had the concerns been raised at that time.

Disturbance to birds from path users

112. The key principle in this context is to secure opportunities for engagement with the natural environment so far as practicable while ensuring appropriate protection of key sensitive features (section 4.9.2 of [the Scheme](#)).

Non-breeding waterbirds

113. Non-breeding waterbirds are qualifying features of the Severn Estuary Special Protection Area (SPA) and Ramsar site and the project has therefore been subject to an sHRA. The risk of disturbance to waterbirds was identified as the key nature conservation issue at the outset. NE has taken a strategic approach to managing disturbance risk along all 80Km of the Severn estuary between Aust and Brean, as summarised in section D3.1 of the sHRA. This would ensure a functioning network of high-tide roosts and feeding areas on each part of the site that would be protected from significant disturbance.

114. Table 6.2.8 of [report ABD6](#) sets out detailed measures to avoid or reduce disturbance risk on each part of the proposed route, whilst table 20 of the sHRA assesses the effectiveness of these measures in relation to each waterbird feeding sector and high tide roost site between Clevedon and Huckers Bow. In the sHRA it is recognised that the access proposals would result in localised increases in disturbance on parts of the proposed route and reductions in others. NE concluded that the increases would not be sufficient to result in any adverse effect on the integrity of the protected sites. NE maintain that this conclusion is correct and that no modification is necessary to the access proposals for this reason, including the modifications proposed by [redacted] and [redacted] for the route to follow the cycleway.

Effectiveness of mitigation

115. Concerns regarding mitigation measures are understandable; most people walking the coast path seek sea views and most with dogs seek off-lead access. The path has been designed with walkers' aspirations in mind, to provide sea views at regular intervals and sections where dogs can be walked off the lead

provided that they are kept on the path and there are no livestock present. Signs would explain the reasons for restrictions clearly, giving walkers informed choices about the path ahead. Signs would indicate where the rules about dogs change, with reminders at intervals.

116. The proposals have been reviewed by [redacted], an independent consultant who specialises in providing advice about managing access for people with dogs. His advice, backed up by research and practice around the UK, is that the majority of dog walkers will accept proportionate and evidence-based restrictions on access, provided their aspirations for off-lead access can be met nearby. The average length of a daily dog walk is 2.7km and lasts about an hour, hence the existing access boundary north of Kingston Pill is a natural destination point for most regular dog walkers, being a 3.5km round trip from the nearest housing at Clevedon. Tutshill, at the south end of the relevant area, is beyond the reach of most daily dog walkers in this area. It was advised that the existing arrangements should be retained, with the transition to more sensitive areas clearly communicated and places where dogs could safely be let off lead, or must be kept on lead, marked in a clear and engaging manner. He is confident that compliance levels would be high as a result.
117. A representation was received from The Wildfowl & Wetlands Trust (WWT), which 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.
118. WWT supports the development of signage to encourage interest in the waterbirds and wildlife using the estuary. The North Somerset Local Access Forum (NSLAF) 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
119. WWT welcomes the mitigation measures that have been identified in the sHRA 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.

Detailed remarks by [redacted] about the sHRA

120. [redacted] fears that where the path would be closer than 200 metres to a roosting or feeding site, users would disturb the birds. Disturbance is not inevitable at this distance; it is a threshold within which there more detailed consideration as to whether disturbance would be likely to happen and, if so, what mitigation is available to avoid or reduce the risk.
1. [redacted] disagrees with the assessment on page 86 of the sHRA that there would be a reduction in disturbance to waterbirds between Kingston Pill and the mouth of Congresbury Yeo. There is already disturbance at Kingston Pill and Channel View, which would be reduced by screening, including the placement of the path behind the seawall; signs would explain this, with viewpoints at either end of the bank to see the birds without disturbing them.
 2. [redacted] is correct that there is no proposal to restrict access to roost 4F (map D1 of the sHRA). The reasons for this are set out on page 94 of the sHRA.
 3. [redacted] is mistaken that there was no assessment of impacts on birds feeding in the part of Blake's Pool nature reserve, Congresbury Yeo sector BV644. The mitigation proposed for sections S032 and S033 is on pages 5 and 6 of Report ABD6 and the assessment of these measures is shown on page 87 of the sHRA. It was concluded that there would be residual risk of disturbance from path users on this part of the route but, overall, the risk is not considered significant.
 4. It is agreed that people using the proposed cycleway would be able to join the coast path at Wick St Lawrence (map ABD 6f) and Tutshill Sluice (map ABD 6d). It was concluded that this was not a significant risk to feeding or roosting birds, page 142 of the sHRA. It is agreed that the assessment of the risk to juvenile shelduck, sHRA page 136, should be coloured red to indicate a residual risk. This is a formatting error rather than substantive: a residual risk is recorded in text in that part of the table and considered in further detail later in the document.
 5. [redacted] disagrees with the assessment that there would be an overall reduction in disturbance to waterbirds at roost 4B/C (map D1, sHRA) at Kingston Pill, page 93 of the sHRA, because there is no public access at Kingston Pill. NE maintain that the assessment is correct, due to anecdotal evidence of trespass at Kingston Pill (page 76 of the sHRA), including remarks made by the farmer there. The proposed route would provide a legitimate route screened from roosting birds, reducing the overall risk of disturbance by existing and new users.
 6. [redacted] misunderstands the conclusions, table 29 of the sHRA. 'Adverse' describes effects judged of sufficient magnitude to damage the integrity of the protected sites under consideration; NE must be satisfied that there would be no adverse effects before the access project could proceed. 'Residual' is used to describe effects that would not be entirely resolved but considered of insufficient magnitude to damage the integrity of the sites alone; NE must be satisfied that there would be no adverse effects from the residual effects in combination with

those from other projects before the access project could proceed. It was concluded that there would be no adverse effects on the integrity of the sites and several residual effects that were not resolved. Section D4 of the sHRA goes on to consider these residual effects and concludes that they would not cause adverse effects in combination with other projects.

7. [redacted] asks why screening was necessary at Tutshill to reduce waterbird disturbance from the cycleway, whilst NE does not consider screening necessary at the same location to reduce disturbance from the coast path. It would take more time to walk to Tutshill from any nearby town or village than to cycle there, so it is expected there would be more cycleway users than coast path users; the risk of disturbance from the cycleway is of significantly greater magnitude.
8. [redacted] is concerned that the sHRA was not independent because it was prepared and completed by the NE staff member responsible for the coastal access proposals. The assessment included rigorous checks and balances to avoid individual bias: the sHRA was undertaken in close collaboration with NE staff responsible locally for protected sites; it was quality assured by national experts in the fields of ornithology, environmental assessment, protected sites regulation and environmental law; finally it was approved by the Senior Officer for Protected Sites in Wessex, who had oversight of the whole process.

Use of the Clevedon to Weston cycleway route

121. It is understood that farmers remain concerned about potential impacts on their businesses, with [redacted] in particular concerned about potential disturbance to waterbirds. The twin objectives, as summarised in the Scheme (sections 5.2 and 4.9) are to:
 - seek a fair balance between public interests and farmers' operational needs; and
 - secure opportunities for engagement with the natural environment so far as practicable while ensuring appropriate protection of waterbirds.
122. NE maintain that the proposed route best meets these twin objectives and that the modifications proposed in the objections would not strike a fair balance between public and private interests. The detailed comments on the land management concerns are summarised above. The modifications are not necessary to provide an appropriate level of protection to waterbirds, as explained earlier.
123. Objectors propose that the cycleway should form part of the access provisions between Clevedon and Tutshill Sluice, either as the only route or as an alternative for use when access to the main route was excluded. [redacted] and [redacted] propose that the coast path should follow the cycleway from Clevedon to Tutshill Sluice, leaving the proposed route at the junction of sections S011 and S012, Report map ABD 6a, and re-joining it at the junction of S042 and S043. [redacted] proposes that the coast path should follow the cycleway from

Channel View Farm to Tutshill Sluice, leaving the proposed route at section S016, map ABD 6b, and following a farm track inland to the corner of the road outside Channel View Farm, also re-joining the proposed route at the junction of S042 and S043.

124. NE would describe the cycleway as an inland route and the assessment of inland routes between Kingston Pill and Tutshill Sluice, including the cycleway, is on page 23 of [Report ABD6](#). That analysis there is correct; an inland route incorporating the cycleway is neither desirable nor necessary.
125. NE have been in close contact with the team at NSC developing the cycle route from the outset and have sought to maximise efficiencies and synergies between the two projects, in particular the opportunity for a shared river crossing across Tutshill Sluice, part of the red line on the cycle route map. However the whole cycle route from Clevedon to Tutshill Sluice is not a viable alternative to the proposed route. The cycle route is primarily for leisure cycling and commuting; there is no inherent reason why it should follow the coast.
126. It is agreed that there would be advantages of the cycle route including that it would be continuous and easy to follow; avoid disturbance to waterbirds; and minimise disruption to farmers and landowners. However, the cycle route fails to meet the core characteristics of a coastal walking route described in chapter 4 of the Scheme. Between Dowlais Farm (map ABD 6a) and Tutshill Sluice (map ABD 6d) it lacks any sea views or proximity to the sea. At 5.9 kilometres in length it is a significant departure from the sea which would only be proposed if satisfied that no more coastal route could be found that would strike a fair balance between public and private interests and meet the conservation objectives for protected sites; the proposed route satisfies those two tests. This is also in keeping with section 4.2.4 of the Scheme: “the trail need not be aligned along a road used regularly by motor vehicles if there is another suitable route”

[redacted] proposed route modification

127. NE's views on the options for seasonal diversions between Clevedon and Tutshill are set out on page 23 of [Report ABD6](#). The option of a route broadly along the seawall between Kingston Pill and Tutshill Sluice, operating for 4 to 6 weeks a year with an inland alternative route for the remainder of the year was considered. This option is neither desirable nor necessary.
128. [redacted] proposal differs slightly, suggesting that the main route could 'largely follow' NE's proposed route with another more inland route along 'existing rights of way/quiet roads/the cycleway' available for the remainder of the year. His rationale for excluding access to the 'summer' route at other times of year would be to avoid disturbance to birds and make it easier for farmers to adapt to the new access.

- It should be noted that directions can be given to restrict or exclude access rights for land management reasons and address concerns about public access in fields used by cattle, for example as proposed in the unusual circumstances set out in paragraph 6.2.24 of Report ABD6. However, on the basis of the evidence available, NE are not satisfied that it is necessary to exclude access further for this purpose.
- It is not necessary to exclude access along the proposed route to avoid bird disturbance; it has been designed to keep bird disturbance to a minimum as explained in section 3.2D of the published sHRA.

129. There are some similarities in the circumstances between Kingston Pill and Tutshill sluice and those on the southwest bank of the Congresbury Yeo: special measures are necessary to conceal walkers from roosting and feeding waterbirds and the period of sensitivity is from early July to mid-May. However, there are important differences which justify a different approach:

- the proposed exclusion on the southwest bank is limited to sections of the path adjacent to sensitive areas, whereas, under [redacted] proposal, access would be excluded to less sensitive areas where there are opportunities for people to enjoy views of the estuary (for example sections S032 and S033);
- there is less scope for a route along the toe of the flood bank on the southwest side because the land at the landward edge of the flood bank is much wetter; the fields on the southwest side drain towards the flood bank whereas those on the northeast side drain away from it.
- the length of road walking between Clevedon and Tutshill under [redacted] proposal is 5 km, which would significantly detract from the public benefit of the path (on the southwest side it is only 1.5 km);
- the cost to establish the 'summer' route under this proposal would be over £100,000, which would be disproportionate for the six weeks a year of access it would provide. The cost of the 'summer' route on the southwest side is £2,000.

130. [redacted] also argues that the summer/winter route option would be simpler for the public to understand than "to have just one path on which myriad different directions will apply, many of which are likely to be ignored." The expectation is that, as a general rule, people would follow the route and comply with any restrictions that apply, provided that they were signed clearly and conspicuously as intended.

[redacted] proposed route modifications

131. [redacted] contemplates a seasonal diversion although his preference is for the coast path to follow the cycleway. He says that he is disappointed that NE did not discuss or consider the possibility of a seasonal diversion, which he would have been willing to discuss it. The consideration of seasonal diversions is on page 23 of the Report and, on page 25, is the assessment of a further option for a shorter 4–6-week route along the seawall at Wharf Farm with a more inland alternative available for the remainder of the year.

132. The idea was discussed with [redacted] in 2016/17; he asked that the seawall route be fenced to separate walkers from livestock. Accordingly there was a site visit on 23 March 2017 with [redacted] and an engineer from NSC to

survey that option. The engineer was asked to consider the feasibility and cost of fencing in that location; his advice was that a fence or other barrier was not feasible at reasonable cost and so NE began to explore more inland routes with [redacted].

133. [redacted] also proposed that the route could extend up the Severn estuary only as far as an existing, unspecified, pedestrian access point giving walkers the option to continue to Clevedon along the cycleway. He refers to extending the coast path upstream as far as Sand Point, see chapter 11 of the [Scheme](#) and part 5e (v) of the [Report Overview](#); with reference to the criteria for estuaries set out in the legislation it is indicated that such an option would not provide access to other parts of the estuary further upstream, which have a strongly coastal character, nor link the ECP to the Wales Coast Path. [redacted] proposal would have the same significant drawbacks, see the analysis of inland routes on page 23 of the Report and comments on the cycleway above.

[redacted] proposed modification

134. This route option, following a farm track from section S016 (map ABD 6b) to Channel View Farm where the track meets the cycleway, was considered alongside other inland routes on page 23 of [the Report](#). Local people sometimes park in a layby at Channel View Farm and walk up the track to the seawall; the farmer is content for this to happen in the current low numbers. It is unusual to see walkers on the lanes between Channel View Farm and Tutshill Sluice. The shortest route along the lanes is 3.6 Km and offers no sea views.
135. The report does place emphasis on continuity of the path, in keeping with the principle in [section 297\(2\) of the MCA](#), that interruptions to the route should be kept to a minimum. It is also consistent with the Scheme, in particular section 10.1.5 which says NE will always give careful consideration to the option to extend the trail as far as the first bridge or tunnel with pedestrian access.
136. NE also agree that the list of criteria included in the legislation is not exclusive, see part 5 of [the Overview to the Reports](#), which sets out the detailed assessment of the full list of criteria to consider when deciding whether to propose that the path should include an estuary and, if so, to what extent.
137. It is necessary to consider potential impacts on wildlife and the option to align the coast path along the same route as the forthcoming cycleway. With respect to wildlife considerations on the estuary the [HRA](#) and [nature conservation assessment](#) (NCA), which addresses wildlife considerations outside the scope of the Habitats Regulations, are relevant. With respect to the cycleway, the comments above are relevant.

Natural England's assessment of inland routes

138. The concerns about biosecurity are addressed under 'Biosecurity' above.

139. The ATSS report site observations suggested traffic speeds and volumes were “commensurate with a quiet lane suitable for use by walkers, cyclists and equestrians.” This should not be read as an endorsement of the cycleway as a promoted walking route; it is a generalised statement in a report commissioned specifically to look at the suitability of the local road network as a cycle route.

140. Whilst pedestrian safety on the cycleway could be improved, for example by vegetation clearance or more regular cutting, in other places the narrow width and lack of verges would make this impractical. The overall experience is not consistent with public expectations of safety for a promoted walking route and would be likely to discourage or exclude many potential users including families with children and people with reduced mobility.

141. It is considered that the interpretation of the Article 3(2), such that the farmland seaward of the cycleway would not be coastal margin because it is not “coastal land”, is mistaken for the reasons set out:

- Coastal land means the foreshore and land adjacent to it, section 3(3) of CROW. That definition means what it says and is drafted to be broad and inclusive. There is nothing in it to remove from the scope of “coastal land” any area between the path and the seaward edge of the foreshore that does not fall into one of the example land categories shown in brackets at the end of s3(3) (these being cliff, bank, barrier, dune, beach, flat).
- The position of the route therefore exclusively determines the extent of the seaward margin: there is no other mechanism in the legislation which could determine it. The legislation then relies on the exceptions in Schedule 1 to CROW to remove automatically from the scope of coastal access rights the most obviously unsuitable land types that may fall within this automatic margin. There are then local access exclusion and restriction powers under chapter 2 of CROW Part 1 that can be used where it is necessary to do so on one of the grounds set out in that chapter. The Scheme, which was approved by the Secretary of State to set out the approach NE will take on the ground to discharging the Coastal Access Duty (and which NE and the Secretary of State are therefore both bound by), sets out detailed criteria governing the use of these exclusion and restriction powers in different local situations.

142. Paragraph 2.3.4 of the Scheme supports the above interpretation of Article 3(2), when it says:

“The position of the route that we propose in our report also determines, if approved, the inclusion of land to either side of it as coastal margin:

- o land on the seaward side of the trail automatically become coastal margin; and
- o other land of certain specific types also becomes coastal margin if it lies on the landward side of the trail...”

143. The distinction should be noted in that approved paragraph between the position seaward of the trail, where the Scheme rightly says all types of land automatically become margin by default; and the position on the landward side where, in accordance with article 3(3) of the Coastal Margin Order, the Scheme rightly says that only the types of land specified there are automatically included by default. These are foreshore, cliff, bank, barrier, dune, beach, flat, or section 15 land.

Other points raised

[redacted]

144. The access rights have been proposed so that the neighbouring Wharf Farm be excluded to help biosecurity measures for the herd of British Shorthorn cattle kept there (paragraphs 6.2.24 and 6.2.25 of Report ABD6). [redacted] argues that this is not fair to him because, as a result, the route crosses more of his land than would otherwise be necessary.
145. The legislation does not require NE or the Secretary of State to aim to strike a fair balance between the interests of neighbouring landowners, it is to be struck between private interests and the interests of the public in having access to the land. That said, NE have sought to treat all the neighbouring landowners fairly. It is maintained that the access proposals are fair and that any impacts on [redacted] and his neighbours would be minimal.
146. [redacted] proposes two modifications to share the impacts of the new access more fairly with Wharf Farm. The first is that half of section S018 be moved across the boundary onto Wharf Farm as shown on plan 1981-001 (attached to the objection). The second proposal is not clear and is understood to propose that walkers would be directed along the proposed route section S018 for half the year and along the neighbouring field edge in Wharf Farm for the other half.
147. Section S018 is located on a historic flood bank, which is dry, elevated and offers views over the estuary towards Wales. Under [redacted] proposal, walkers would instead be directed along lower ground on the edge of the neighbouring field for half of the distance (or half the time), with no comparable views and wetter conditions underfoot. This proposed route is less convenient and has more restricted views.
148. Some additional costs would also arise from these proposals. Under the first it would be necessary to cut back vegetation at the halfway point and bridge the ditch that separates the two farms. If either proposal were approved it would be expected that Stephen Hamilton, who manages Wharf Farm, would ask for fencing on his land to separate the path from the cattle, which has already been agreed on the next route section S019. This would result in a marginal increase in costs, with that part of the land then unavailable for grazing. Under the second proposal, it would be necessary to operate a seasonal diversion system, with additional signs and locked gates to discourage access along the closed part of the route.
149. For these reasons [redacted] proposed modifications are not supported.

[redacted]

150. It is understood that [redacted] rents fields over which sections S023 to S029 pass, whilst section S022 is occupied by [redacted] (objection MCA/ABD6/O/8/ABD1563). The reference to section S022 in [redacted] objection is taken to be an error. He made a separate objection about sections S034 and S035 which cross land he owns and submitted representations making the same points as his objections.
151. The fields rented by [redacted] are about 400 metres from the foreshore at its nearest point. The reasons for proposing this inland route (rather than a route closer to the sea on neighbouring Wharf Farm) are explained on page 25 of Report ABD6 under the heading 'Wharf Farm'. It is appreciated that he remains concerned that as a result the path will cross his land, however, having met with him and the agent acting on behalf of the landowner on several occasions a path alignment has been chosen that NE believe would strike a fair balance between his and the public interests.
152. It is agreed that the land can be wet in winter and after rain in warmer months. It is also agreed that paths can become muddy when wet and, when this happens, walkers may seek drier or less muddy ground either side of the path which can lead to further damage to the grass around it. This is a common problem on heavily used sections of path, in particular on slopes where rainwater flows along the bare ground created by the passage of feet. It is not expected to be a problem on this part of the path because it will not be visited frequently enough. It is 4.7 km from the nearest parking at Clevedon, a journey of at least two hours there and back at average walking pace. The average daily dog walk, for comparison, is thought to be 2.7 km and to last about an hour, as identified by the report of Hampshire County Council.
153. This part of the route was surveyed three times; it was uniformly dry in May 2017 and August 2018. Whilst in January 2019 it was generally wet underfoot there were no places where water had collected which would indicate mitigation would be necessary. On the advice of the agent care was taken to avoid existing field entrances, which can be made muddy by livestock, and to keep to field edges, where cattle are less likely to gather. If experience shows that there are localised areas where problems develop, it would be possible to remedy them easily at a later date, for example with short sections of boardwalk. AAs will be eligible for central government grant aid which can be used to help meet the costs of such small-scale improvements.
154. The route follows field boundaries and would be prominently marked with fingerposts at boundaries and sometimes within fields. There would be conspicuous galvanised steel gates and bridges at ditch crossings and it is unlikely that walkers would get lost. It is also unlikely that they would deliberately

stray from the path, since there are no visible features in the landscape that might attract them to do so.

155. The route of S034 and S035 would be on the grassland below, and landward of, the flood defence bank. Putting the path here would avoid disruption to wildfowling which is licenced to take place on the other side of the bank. It would also prevent danger to the public when shooting takes place and, at other times, help to avoid increased disturbance to waterbirds feeding and roosting along the river.

Path surface (S034 – S035)

156. Paths can become muddy when wet and grass can be damaged in those circumstances if there is heavy use. This is not expected to be a problem on this part of the path because it will not be visited so frequently to cause significant damage. It is 6.3 Km from the nearest parking at Clevedon, a journey of well over two hours there and back at average walking pace. Surveying identified a patch of rushy ground at the end of section S035, nearest the junction with S034. This is more prone to lie wet than the rest of the route and so it is proposed to install a short length of boardwalk across it, which should be sufficient to ensure that the path remains convenient to walk on.

Use and control of land covered by the path

157. These sections S034 – S035 would be in a fenced corridor, which would be necessary on the seaward side of the path (nearest the riverbank) to discourage walkers and dogs from straying onto the top of the adjacent flood defence bank. In addition, [redacted] requested that there should be a fence on the landward side of the path to separate cattle in the adjacent fields from path users.

158. There is already one fence along the base of the flood bank at this location. It was installed by the Environment Agency (EA) as part of a recent project to raise and strengthen the flood defence banks:

- At section S035 the EA also installed a hedge alongside the fence and a ditch between the hedge and the adjacent field. There is a gap of variable width between the hedge and ditch.
- There is a farm access gate leading to the flood bank between the two route sections.
- There is no corresponding hedge or ditch adjacent to section S034.

159. There have been a number of discussions with [redacted], the EA and NSC to decide how best to configure both the existing and proposed fences so as to limit or avoid impacts on flood defence maintenance and farming operations and to enable the grass on the path to be cut by the AA at reasonable cost:

- NSC (the AA) advised that three metres would be the minimum necessary to allow the corridor to be machine cut at reasonable cost.
- The EA agreed for the existing fence and hedge alongside S035 to be moved a little further away from the ditch so that there would be three metres for the path between the hedge and the ditch.

The additional area that would be removed from [redacted] use and control by doing so is 215 square metres.

- [redacted] indicated that his cattle sometimes ford the ditch in dry weather to graze the grass between the ditch and the hedge. At his request provision was made for an additional fence between the path and ditch to stop the cattle from getting on to the path, so separating them from walkers.
- At section S034 a new fence, landward of the path, was offered to separate the path from the adjacent field where the cattle graze. This fence would enclose an additional 45 square metres.

160. The total area newly enclosed by fencing under the proposals is therefore 260 square metres (0.06 acres). This is minimal and strikes a fair balance between public and private interests.

Fence maintenance

161. It is understood that [redacted] accepts that one of the fences is his responsibility, being the boundary between the flood bank and the adjacent field. This is taken to mean the landward fence that (under the proposals) would be between the path and the field. This being so, he asked who should be responsible for the other, seaward fence, which would prevent walkers from walking up to the top of the bank. In a letter to [redacted] (25th March 2019) it was explained that there are discussions with NSC about how to replace this fence when it becomes necessary; it is not expected that he would take responsibility for it.

[redacted]

162. [redacted] manages Wharf Farm, which is understood to be owned by a family member. Wharf Farm comprises most of the land seaward of sections S018 to S031 and certain other land. It is understood that [redacted] also rents land from AWT over which sections S030 - S033 pass.

163. The general approach to cattle given in section 8.2 of the Scheme and to farm biosecurity given in section 8.6 of the Scheme are relevant to matters on this land. Paragraph 8.2.2 the Scheme makes clear that cattle farming is normally compatible with well-designed access. It is understood that the Wharf Farm herd is unused to contact with people and would need time to get used to the proximity of the route. [redacted] has not mentioned anything about the temperament of his animals that suggests that they should be treated differently to other cattle in this respect.

164. Paragraph 8.6.11 the Scheme explains that intervention in relation to biosecurity will not normally be necessary unless there is an outbreak of a notifiable disease, in which case temporary restrictions may be necessary, as discussed earlier. It has been concluded that the risk that walkers or their dogs would introduce disease to Wharf Farm is very low, as it is elsewhere.

165. [redacted] and the Rare Breeds Survival Trust (RBST) explained that the British Shorthorn bloodline of the cattle at Wharf Farm is unique in Britain. It is understood that the impact of the loss of an animal or animals to disease is greater than on most other farms, because of the difficulty and expense of finding like-for-like replacements. In this very unusual circumstance extra precautions have been agreed to protect the herd. These include alignment of the proposed route around the landward edge of the farm; the proposed exclusion of access rights to parts of the farm that would be seaward of that route, paragraph 6.2.24 of Report ABD6, and the proposed fence should separate section S019 from the rest of the adjacent field.
166. There are a few places along the proposed route where, should [redacted] choose to graze his cattle, they would be exposed to slightly increased risk because there is no practical means to physically separate the path from the adjacent land. However, the extra measures proposed for Wharf Farm strike a fair balance between the biosecurity of the herd and the other considerations, which includes the public interest in having access rights to the coast; the views of neighbouring farmers who are affected by positioning the route further inland; and, the duty to avoid adverse effects on waterbirds which roost and feed at the seaward edge of Wharf Farm.

Consultation with [redacted]

167. NE visited Wharf Farm with [redacted] six times between 19 February 2015 and 6 July 2017, sometimes accompanied by other interested parties including the RBST, the Clevedon Wildfowlers Association (CWA), the NFU and NSC. [redacted] engaged in frequent correspondence during this period and attended three events at which there was discussion of the progress and options along that part of the coast with him and other farmers.
168. At the first 5 farm visits route options seaward and landward of the earth embankment that forms the principal sea defence at Wharf Farm were explored, see page 25 of the Report. It was concluded that neither option was viable. A meeting was organised with [redacted] and neighbouring landowners to discuss the issue on 29 March 2017. At that meeting several farmers suggested looking for a route on the landward side of the farm and it was agreed to explore the idea with affected landowners.
169. At a sixth farm visit on 6 July 2017 with [redacted] there was discussion of the option of a route along the earth embankment that broadly follows the landward boundary of the farm. [redacted] outlined various concerns with that option and would have wanted any part of that route to be separated from the adjoining field with two fences, one to prevent dogs entering and one to contain stock. This would interfere with the movement of cattle from one field to the next,

if the route extended across a field boundary, because the gates between fields are located on the bank.

170. There were a series of visits with neighbouring farmers to discuss locating the route on adjoining land, during which period [redacted] was unavailable to meet with NE. A fresh proposal was drawn up, with the length of route on the Wharf Farm embankment considerably reduced to less than one field edge (section S019) to avoid blocking gateways further along the bank. NE wrote to [redacted] on 9 July 2018 with a map to explain and illustrate the proposal and indicated that there were opportunities for further discussion.
171. An event at the nearby village hall for all the farmers in the two parishes in report ABD6 NE laid out maps and spent time answering questions and, in a few cases, arranging further meetings to explore difficulties or fine tune the proposals. [redacted] attended this meeting and invited NE to arrange a further visit to look at some details. NE wrote requesting that visit on 12 September 2018, including information about a minor change to the route on neighbouring land which had been agreed with the land agent following the village hall event. [redacted] did not reply. NE wrote again on 25 October 2018 responding to points he had made at the village hall and again asking if he would like to meet or offer views on the proposals. No reply was received.
172. In conclusion, every effort was made to design the route around Wharf Farm with sensitivity to the unusual circumstances of that herd. There has also been every effort to answer questions, respond to concerns and be available to meet for discussion.

Junction of sections S017 and S018

173. A bird hide/observation screen is proposed on an earth embankment adjoining section S017 as indicated on Report map ABD6b. The symbol for the hide was not included in the map key and the key on the online version of the Report was corrected a few days after publication when another landowner alerted NE. [redacted] was not directly informed because it was considered that it did not affect him, the hide being on land owned by EA.
174. [redacted] is concerned that the hide would attract people to his farm boundary and may upset the cattle. The hide would be about 50 metres from the farm boundary, which is a stockproof fence. It should be noted from the representations received about section S017 that the adjoining seawall is already used by local people for recreation; the appearance of people near the boundary fence should not be an unusual one for cattle in the neighbouring field.
175. When visiting the farm boundary at Channel View there was no evidence of a livestock corral at that end of Wharf Farm. Access to that part of Wharf Farm would be excluded as indicated on Directions Map ADB 6B. The route would cut inland through an adjoining field under different ownership as shown on the

Report map. [redacted] has in place a sign at the farm boundary to further discourage walkers from crossing it. It is not agreed that the bird hide affects [redacted] interests.

Section S019

176. The route here would be fenced to prevent dogs from entering the field; a dog-proof fence has been sourced for this purpose at [redacted] request. Additionally, in an email on 12 April 2018, a second parallel fence of two strand barbed wire to separate the stock from the dog-proof fence was offered, which remains an option. This would be sufficient to deter cattle from approaching the route more closely and rubbing against the dog-proof fence.
177. The fence posts would be inserted into the earth embankment where the ground is drier and they would be less prone to rot than the surrounding land. It is expected that the fences would last for 15 – 20 years with minimum intervention. The local AA, NSC, would maintain the route itself, for example cutting vegetation on it and repairing and replacing access furniture. The AA would not be expected to maintain fences such as these put in at the landowner's request.
178. The risk of disease transmission from walkers and dogs to cattle is very low as explained above. The fences would seal off the land crossed by the route, making disease transmission still less likely. There would be minimal need for vegetation clearance to install the entry points at either end of section S019 and the cut vegetation would be allowed to grow back. This part of Wharf Farm is separated from the fields to the southeast by a ditch and from the field to the northeast by a ditch for much of its length and by a fence and gate in the field corner which is the junction of sections S018 and S019. The two fences offered would act as a further barrier along those boundaries, reducing the likelihood that [redacted] cattle would come into contact with livestock from neighbouring land, reducing the risk of infection from that source. This part of the route would not affect biosecurity at Wharf Farm.
179. When surveying this part of the route it did not cross a pen used for the temporary detention of livestock. When viewed recently from the neighbouring field that remained the case. Therefore it would not be excepted from the access rights by virtue of paragraph 11 of [Schedule 1 to CROW](#) as suggested in objection.
180. Much of the leeward side of the bank is covered in dense scrub which would not provide shelter for cattle. The position of the junction of sections S019 and S020 was chosen so that the leeward side of the bank at its westernmost end would remain available for cattle to shelter.

Section S021

181. In relation to the access track to Wharf Farm, which is in the field owned by [redacted], this a rough track shared with grazing cattle and it would be expected that vehicles would travel along it slowly. There would be ample space for pedestrians to step off the track when necessary to allow vehicles to pass.

Section S022

182. There is no proposal to replace a field gate with a pedestrian gate and bridge; this has been misunderstood. At the junction of sections S021 and S022 there is a cattle grid, next to which there is a field gate used by [redacted], the owner of the land crossed by section S021, to move his cattle into the field. [redacted] has been offered a combination gate to replace the existing field gate, which can be used both as a pedestrian and field gate, to allow his cattle to access his field.

183. At the other end of section s022 a new pedestrian bridge and gate is proposed alongside the existing field gate so again, farm traffic would not be disrupted.

Section S025

184. This section crosses a track owned by Wharf Farm. It is understood that the track is sometimes used to drive cattle to and from rented land at Blakes Pools, Report map ABD 6c. The route crossing of the track would be bounded by self-closing pedestrian gates, with signs requesting that pedestrians give way to farm traffic. This is proportionate to the very low risk to biosecurity at this point.

Section S024 and S026

185. [redacted] indicates that he sometimes drives cattle across these fields to rented land at Blake's Pools, so there would be a risk that they may encounter walkers and/or dogs. This risk could be reduced by choosing times of day when walkers are less likely to be present. It is not agreed that these proposals significantly affect his interests.

Section S031

186. The land seaward of the route here would be excluded under the terms of the direction proposed at paragraph 6.2.24 of Report ABD6. Section S031 is separated from Wharf Farm by a dense hedge and ditch until it meets an earth embankment at the junction with section S032. There is a field gate and wing fencing across the bank a few metres from the junction, closer to the river mouth. This would be kept shut to discourage people from entering Wharf Farm and there would be a sign on the gate to explain that access is excluded. The landowner, EA, can be provided with a padlock and chain for the gate if necessary. These measures are thought adequate to discourage people from approaching the Wharf Farm boundary more closely.

Sections S032 to S033

187. Sections S032 to S033 are on the top of an earth embankment which is the primary sea defence. The bank is owned by EA and leased to AWT to manage as part of a nature reserve which also includes the field skirted by section S030 and a redundant, breached embankment seaward of the proposed route.
188. Neither the landowner nor the tenant objected to our proposals but the AWT representation notes that the new access may make it more difficult to graze the bank. In recent years AWT acquired permission to graze it from EA and reached an agreement with Stephen Hamilton for him to do so as part of the management of the land as a nature reserve. EA and AWT therefore have the controlling interests in the land and [redacted] is not viewed as the lawful occupier of the affected land. Nevertheless it is understood that he wishes to continue the grazing arrangement and is unwilling to graze land crossed by the route because of his biosecurity concerns.
189. It is appreciated that the proposal would reduce the area of land that could be grazed. The length of bank occupied by sections S032 and S033 covers 3.6 acres. There is no reasonable alternative to this aspect of the proposal; any other route would involve an impact on a neighbouring landowner and would not provide the public with any views of the sea. The views here are important to the overall design of the route, which offers no sea views from the sections to either side. However, it has been agreed in principle with EA and AWT to fence a significant part of the nature reserve from the proposed route, including the redundant embankment seaward of the route and the land parcel skirted by section S030, a total area of 8.5 acres. This land would be separated from the route by stock fencing and therefore available to [redacted] to graze his cattle separately if he wished to do so.

[redacted]

190. [redacted] field is about 400 metres from the foreshore at its nearest point. The reasons for proposing this inland route, rather than a route closer to the sea on neighbouring Wharf Farm, are explained on page 25 of [Report ABD6](#) under the heading 'Wharf Farm'. It is appreciated that [redacted] remains concerned that as a result the path would cross his land. However, having met with him on several occasions the path alignment chosen would strike a fair balance between his interests and those of the public.

Risk of interaction with cattle

191. At one of the meetings, [redacted] explained his view that the best walking route would be the shortest line between the field entrance, junction of sections S022 and S021, and the boundary with Wharf Farm, approximately at the end of the arrow indicating section S020 on Report map ABD 6c. This is the shortest most direct route across the field and is easy to follow, avoiding the wettest parts of the field and minimising the likelihood of interaction with cattle.
192. However, this route would have consequences for Wharf Farm as section S019 would have to extend further southwest along the bank and cross into a second field in Wharf Farm, via the gateway. As that part of the route is to be fenced to help with biosecurity of the unusual cattle on Wharf Farm, the fenced route would obstruct the existing gateway between the fields. The option of installing an alternative farm access between the two fields to mitigate this impact was considered but the proposed route was thought preferable because there would be less impact on [redacted].
193. From the junction of sections S019 and S020 the proposed route follows the northern edge of the field. It would then turn south across the field along the alignment first described by [redacted], skirting an old building near the junction of sections S020 and S021 to follow the lane to the gate at the southern edge of the field. This avoids the wettest parts of the field.
194. Long-distance walkers tend to adhere strictly to a waymarked route in NE's experience. There would be prominent fingerposts to help walkers follow the route easily, in particular at the turn on the northern edge of the field. It is agreed that there is a risk that regular visitors may try to take a short-cut, but they would be unlikely to attempt this more than once because there are drains and ditches in the way.
195. It would be very unusual for path users to use the area of coastal margin in this field because the ground is wet and rough and does not lead anywhere or offer any visible attractions. Subject to [redacted] agreement steps would be taken to secure the entrance to the old building near the junction of sections S020 and S021 to discourage people from exploring it. Subject to his agreement a notice would be erected at that junction to explain that there is no through access in the direction of Wharf Farm.
196. The proposed route avoids places along the north-eastern edge of the field where [redacted] has created access for his cattle to drink from the boundary ditch.
197. It is believed that it would be rare for people to leave the proposed route and that interaction between walkers and cattle would be minimal.

Parking in the field

198. There are parking places on Lower Strode Road and Middle Lane that are used by people when they visit the coast. These are parking areas on the side of

public roads. The lane leading to Wharf Farm is privately owned and the general public have no right to drive along it or to park in [redacted] field. The coastal access arrangements would not change that.

New footbridge proposal & Maintenance issues

199. A new footbridge is marked at the junction of sections S020 and S021 to cross a ditch at the side of the lane. NE remain open to other suggestions from [redacted] for the ditch crossing and would in principle prefer the option that best fits with farming operations provided it can be installed at reasonable cost and is straightforward for the AA to maintain.
200. It is correct that the AA would take responsibility for the on-going maintenance of the path including the signs, footbridges and gates, paragraph 6.2.22 of Report ABD6. It is not known why [redacted] is concerned about injury to his cattle from access structures but they would be installed at a time agreed between him and the AA so it would be possible for the work to take place when his cattle are not in the field.

Damage to the field

201. It is agreed that [redacted] field is generally wet, but the chosen route is drier than the rest of the field. This part of the route was surveyed in May 2017 and May 2018. The route itself, apart from the ditch crossing, was dry on these occasions although the land to either side was generally wet. Paths can become muddy when wet and when this happens walkers seek drier or less muddy ground either side of the path which can lead to further damage to the grass around it. This is a common problem on heavily used sections of path, in particular on slopes where rainwater flows along the bare ground created by the passage of feet. This is not expected to be a problem on this part of the path because it will not be visited frequently enough to result in damage. It is 4.3 km from the nearest parking at Clevedon, a journey of at least two hours there and back at average walking pace.
202. If localised problems developed, it would be possible to remedy them easily at a later date, for example with short sections of boardwalk. AAs will be eligible for central government grant aid which they can use to help meet the costs of such small-scale improvements.

Further information sought following the site visits

203. In relation to section S019 it was noted that there was a pen, apparently used for the temporary detention of livestock, at the eastern end of the route section. It was indicated that this had been present for around 2 years. How do NE propose to deal with this matter?

204. On section S020 concerns have been raised on the 'S'-shape of the proposed route, being unclear for the public, leading to likelihood of people straying or taking short-cuts. Whilst on site a potential alternative was noted to the north-east of the former bunker (note that the letter sent to parties incorrectly referred to 'north-west,' however, this does not alter the general principle discussed, nor the responses made). It is understood that NE are open in principle to 'straighten' the route in this location.
205. In relation to the junction between sections S020 and S021 the Report indicates a new footbridge but it was understood that a culvert may be a preferred option at this location.
206. In relation to section S022 the Report appears to indicate a field gate to be removed from this location. In relation to the junction between sections S022 and S023 the Report indicates a new pedestrian gate and footbridge alongside the existing field gate in this location. It was understood that a joint pedestrian/field gate would be required and/or preferred at these locations, for example, what may be referred to as a 'Bristol 2 in 1 gate', to allow both pedestrian and livestock/farm vehicle access as required.
207. There was also indication that fencing may be required for prevention of livestock mixing between Wharf Farm and Brittons Farm, with appropriate gate/s for livestock and/or farm vehicle access.
208. An 'out of process objection' letter, dated 26/05/2021, was sent to [redacted], NE, copied to the AP. This appears to relate to sections S025 and/or S026. It is understood that the relevant NE team have sight of this letter and if there are comments on this matter, then the AP would be pleased to receive them.
209. Following on from the responses the AP organised a further site visit (paragraph 5), taking account that this had not been part of the original site visit. The site visit related to the sections ABD-6-S024 – S026. It was noted there had been a suggestion for the proposed route to be realigned to the south-west of that currently proposed, which may improve concerns regarding privacy at Wharf Farm; minimise the number of new structures required to be provided and subsequently maintained; and reduce hedgerow loss. An alternative suggested in relation to privacy was that additional screening be provided on the north-eastern field boundary. It was recognised that further conversation with the relevant parties would be required to determine the final proposal NE wished to pursue.

Responses to the request for further information

210. On S019 [redacted] explained that the corral is used as a temporary holding area to sort animals and also serves as a bio-security measure to stop animals from touching those on adjacent land, so inhibiting the spread of disease. NE indicated that as the proposed path is in the same place as the pen

there is no practicable way to arrange both on the bank crest. As the path is fenced it will provide the same biosecurity function as the pen but would not be suitable as a holding area. NE can offer a pen the same size in a different location anywhere in that field. NE request an instruction from the Secretary of State to NE to provide a similar pen at another location of [redacted] choosing. [redacted] also indicated that he wanted a stock proof fence alongside the dog proof fence already proposed and NE agree to that in principle.

211. NE were open to a modification of section S020 should [redacted] wish to discuss on a site visit, accompanied by the AA to provide advice on suitability and infrastructure. NE were similarly open to a culvert at the junction with S021. NE tried to arrange a site visit, however, it was indicated via the CLA that he was “...not unwilling to discuss modifications, but he feels that discussion falls naturally once the principal issues have been determined”. Without a feasibility assessment NE cannot support the proposed modification and the preference is for the route to remain as published.
212. On section S022 [redacted] suggested there should be a three-way corral to allow vehicle and stock access, keeping the public within a fenced pathway from [redacted] land to [redacted] land while passing over Wharf Farm land. This was to control the biosecurity risks and separate the public from the cows.
213. NE indicated that the Report map failed to include a symbol (with location arrow) denoting a new gate to be installed to replace the field gate at the junction of S021 and S022. The proposed new gate is a York 2 in 1 – 2-way gate. NE are happy to provide fencing at this location but would ask the landowners to confirm what would work best, ideally with a map of the fencing layout.
214. NE would be happy to use a York 2 in 1 gate instead of the proposed gate and footbridge at the junction between sections S022 and S023, dependant on the landowner’s preference.
215. In relation to the ‘out of process objection’ letter, this was confirmed by [redacted] to relate to sections S025 and S026. He said that these sections had not been surveyed with the owners of this land and, at the site visit, he said was apparent that it had not been surveyed by NE. The line was not walked at the site visit.
216. The land is grazed and is used as access to the pools, which Wharf Farm have leased from five years' ago with an ongoing rolling agreement. Biosecurity issues need to be addressed in this area by NE or public access will undermine the measures accepted as necessary elsewhere on the farm. NE consulted [redacted], who also rents some of this land, but did not consult us as lawful occupiers. There has to be a fair balance in relation to the rented land as much as for the owned land. NE has offered to meet with us to discuss possible alternatives and we are willing to do so.

217. NE noted that a new line of objection was raised regarding “overlooking” and “Loss of privacy;” these concerns were not included in the original objection. Neither could be considered new issues that have only recently become apparent; the proposals as published clearly showed the route of the coast path at this location and [redacted] had an opportunity to comment at the relevant time to raise these points.
218. The proposed route was discussed and agreed with the relevant landowner’s agent in order to minimise both the amount of seaward coastal margin and disruption to land management practices for the landowner and tenant. [redacted] is not the landowner of the route in this instance and as such NE disagree with the need to modify the route at this location as the proposals strike a fair balance.
219. However, NE note there is a hedgerow running adjacent to the seaward side of the proposed route and would be open to working with the relevant landowner and [redacted] to identify any gaps that could be filled by planting of suitable hedgerow plants. This could act as a visual barrier preventing views across the field in the direction of [redacted] property. NE would cover these costs as part of the establishment works.
220. The ‘out of process objection’ indicated that had these sections been walked during the site visit, it would have been obvious that there was an issue of overlooking and loss of privacy. NE had not surveyed the area due to poor communication with [redacted], who lived outside the UK at the time, but has been full time in the UK since late 2018. The proposed route would be less than 30m away from the farm dwellings, which does not strike a fair balance between public and private interests.
221. Due to lack of consultation [redacted] was not aware of the impact the proposed path on privacy. Wharf Farm has been in one family over 100 years and this privacy breach creates a nuisance, reasoning based on privacy as a stand-alone right, and as a human right to a private home life.
222. As there are no coastal views along this proposed section there is no reason not to use existing gateways further up the lane and follow the contour of the field. This would have less of a biosecurity risk for the conservation of the Original Population Beef Shorthorn herd on Wharf Farm. Less hedgerow will need to be ripped out, gates and bridges not required and [redacted] will have no footfall to ruin crops. [redacted] went on to indicate that in discussion with NE for many years he had offered many realistic options for a coastal path. These have included:
1. NE to buy the sea bank on Wharf Farm for the path.
 2. Path to go along the sea wall, with a fence along the sea bank (NE to maintain the fence).

3. Seasonal 6-week outer bank walk (fenced at the bottom of bank) then using the road.
4. Use the road and original footpaths through the village (the cycleway now provides this option).

223. Over the course of many discussions, NE mentioned that it could move gates, water lines and drinkers or provide housing for winter calving in order to facilitate a route.

224. [redacted] remains concerned how a fair balance can be made. There are already issues with people trespassing and becoming threatening. They called 999 on 5 July 2021 when three walkers disturbed a calving heifer on the bank and on 9 July with two further men. There was verbal abuse and threatening behaviour, with the matters reported to the police. These people climbed over gates that have signage, are padlocked and even have barbed wire as deterrent to come onto our land.

225. The farm is remote and the nearest police response station is at Weston. NE has told us that most people don't behave like this and whilst accepting that, it is not NE who will have to live with the impact of the people who do. There has been no consideration of the security of people who live on land affected by the proposed path, and the increased risk in bringing people into such a remote area. Putting a hide at the corner of the land (S017) is an invitation for more trespass on our land.

226. [redacted] would have been happy with a path along the sea wall, fenced to maintain security of our stock and prevent trespass. This also fits with putting a path along the coast. NE rejected this due to cost. However, it has not considered the extra costs that we - and others - will have by taking the path on the proposed convoluted inland route and which will make no sense to the public. (Putting the path either along the sea wall, or along the cycleway makes much more sense).

227. They were willing to meet NE to discuss amendments to its current proposals, but would like to know:

- how will the security of people who live here be protected?
- why, when the biosecurity need is accepted on Wharf Farm, have those principles not been applied across all the land that we farm?
- why does the path go from TB infected land and then onto our land creating a new biosecurity risk?
- what procedures will be put in place to protect the biosecurity of our livestock and crops while the path is being installed, and how will loss of access to our land/crops be managed?

228. NE had no further comments to make and referred the Inspector to the original comments and Report proposals. There was no confirmation that any modification would be required or supply of an appropriate map and/or wording for this purpose.

229. Following the 2023 site visit NE confirmed that they had spoken to the relevant landowners and the response was that movement of the route would have a significant effect on how the land could be farmed. As it was used for grazing a suckler herd this would no longer be possible if the footpath was re-located, due to cows with their calves being protective and potentially a risk to walkers. They would prefer a (unspecified) alternative route. As a result NE propose no change to the original proposal. They remain able and happy to establish such screening that may be considered necessary due to privacy concerns

Representations

230. Representations relating to this section of the Report from NSC, EA, the British Association for Shooting and Conservation (BASC), CWA, the NSLAF and the CLA have been provided in full. Representations from [redacted], [redacted], the Disabled Ramblers (DR), [redacted], [redacted], [redacted], [redacted], Kingston Seymour Parish Council (KSPC), [redacted], [redacted], AWT and WWT have been summarised by NE.

231. For clarity, and to avoid unnecessary repetition, the matters raised in the representations of [redacted], [redacted], [redacted] and the response from NE, have been included in the relevant sections above. It should also be noted that as the CLA represented these objectors some of the arguments in their own representation have been included there and are not repeated in this section.

232. NSC welcomed the proposal to establish a path along the 32-mile stretch of the North Somerset Coastline between the River Axe and the River Avon. The trail would be a great resource enabling the public to walk along the coastal regions and would benefit both local residents and visitors to the area. NSC are satisfied that NE have carried out numerous meetings with affected landowners and those with a legal interest in the land affected attempting to strike a fair balance between landowner interests and public access as well as protecting nature conservation sites.

233. 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.

234. 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.

235. 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).
236. In relation to ABD6, EA noted that there are flood defences between Clevedon and Huckers Bow, which need to be protected. Any works would require a FRAP. EA's maintenance access would need to be protected along the defences on this entire route, in the interests of flood risk management.
237. As the trail 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.
238. BASC noted that the proposed route would run adjacent to foreshore and other land that CWA either own or have shooting rights over. These rights have been actively exercised for many years and, in the past, there has been no public access between Wain's Hill and Huckers Bow.
239. BASC and CWA believe that these new access rights would increase the visibility of CWA members going about their lawful and highly regulated activities and are concerned that this may lead to attempts to disrupt legitimate activity and/or leave wildfowling open to verbal abuse or worse. From experience this type of behaviour often stems from lack of understanding of wildfowling – what it entails, how the activity is regulated and managed, its sustainability, cultural history, and the wider benefits that the presence of the club brings to the site.
240. BASC requests that interpretation boards are put in place to explain the activity and its role in the conservation picture and would work with NE and CWA to develop materials which could include QR code links to short video clips and other resources.
241. Prolonged periods of severe weather present a serious physiological challenge to overwintering waterfowl, especially roosting waders. When little or no feeding is possible and birds are experiencing an increased energy demand to keep warm any unnecessary disturbance can lead directly to increased mortality.
242. Following 14 consecutive days of severe weather, typically persistent freezing conditions, the relevant government ministers have the power to make

protection orders suspending the shooting of wildfowl and waders in England, Wales and Scotland, under Section 2 (6) of the Wildlife and Countryside Act, 1981. However wildfowlers, including CWA members, abide by BASC's Severe Weather policy by calling for voluntary restraint from day seven of 'severe weather' up to the time when any statutory suspension takes effect. An explanation of this "voluntary restraint" is available at basc.org.uk.

243. Voluntary restraint and/or statutory suspension is a vital conservation measure that would be undermined and pointless if public access is allowed to continue during periods of severe weather. The proposal for this stretch should incorporate a mechanism for the closure of the path during periods of statutory suspension, and NE should adopt the precautionary approach of the wildfowlers by restricting access during periods of voluntary restraint.
244. BASC recommend this approach be adopted nationally wherever roosting waterfowl may be at risk of disturbance from the ECP during periods of severe weather.
245. NSLAF indicates that whilst specific restrictions on dogs are in place for certain sections, there should be an expectation that dogs should be kept under close control at all times. 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 clear and/or where a potential safety hazard may be encountered.
246. The surface of the flood banks on this stretch would be suitable for off-road mobility scooters. Much of the field edges where there is currently no public access would also be suitable. Slopes to ascend/descend flood banks can be made accessible with appropriate design. NSLAF referred to NSC's plans for a new cycle route between Clevedon and Weston-Super-Mare and the need to provide suitable access furniture. The needs of off-road mobility scooters and pavement scooters should be taken into consideration when this route is planned.
247. The CLA indicate that the proposed trail passes through primarily agricultural land, most of which is used for livestock. Many of the farmers raise concerns about the impact on their enterprises, especially as there are very limited measures to take account of the impact of the new access on a farming business.
248. There would be short sections where dogs must be kept on leads to protect birds. No restrictions on dogs are proposed for the protection of livestock. There are particular concerns about the impact on livestock as a result of the public and dogs. There are few proposals to keep dogs separate from livestock and, even where there are stipulated restrictions, would these be adhered to?

249. Much of the land is not currently subject to public access and farming owners/ occupiers are therefore able to graze bulls and suckler cows and calves on the land without needing risk assessments. Under HSE guidelines risk assessments would be required and some types of cattle would no longer be able to be kept on the land. This would have a significant impact on some farmers as their grazing options will be reduced, leading to financial consequences.
250. The report states that it has proposed this route because it “addresses farmers’ concerns.” The fact that most of the farmers along this stretch are objecting to the proposals should indicate that the proposed route does no such thing.
251. Concerns have been raised about the assumptions within the sHRA, especially the reliance on notices, signs and restrictions as means of mitigating any adverse effects on sensitive species, notably birds. The sHRA assumes that people would largely adhere to the restrictions and notices. The experience of many land managers around the country is that this is not the case. Given that the path is proposed along the inner base of the flood bank, with no views of the estuary, the likelihood of people straying to look over this is likely to be strong. There are many known cases of dog owners allowing their dogs to chase other animals – including cattle, sheep, birds and other wildlife, often in ignorance of the damage being done.
252. This section of coast is remarkable in the context of the English coastline for being so undisturbed and its tranquillity. The high numbers of important species are a reflection of its current inaccessibility. It is therefore extraordinary that NE has proposed introducing largely uncontrolled public access, which is dependent on co-operation with signs. The risks of damage to these internationally important species, should the assumptions within the sHRA and proposed mitigation measures not be complied with, are so great, it is astonishing that NE, a body charged with the care and protection of such species, is contemplating these proposals. This is especially so where alternative options exist, which would ensure that protected species remain undisturbed.
253. The proposal to extend the coastal path into this section is as a result of NE’s decision to exercise its discretion to extend coastal access up the Severn estuary. The Report places emphasis on “continuity” of the path, but the legislation sets many criteria which are applicable to estuaries, all of which should be considered. The concept of continuity is given no greater prominence than the need to adhere to the periphery of the coast or provide views of the sea. Were continuity of over-riding importance as the Report suggests (the “prima facie reason for the trail to serve the estuary” (overview, section 5c)), then the additional legislative factors would be unnecessary.

254. s301 of MCA required consideration, not only of the impact on those whose land would be affected by the proposals, but on factors such as:

- The nature of the land
- The topography of the shoreline
- The width of the river
- The recreational benefit to the public
- The extent of excepted land
- The presence of a physical feature or viewpoint.

255. The list is not exclusive, and therefore consideration must be paid to other factors which might be relevant. This includes factors such as the long stretch of undisturbed coastline, and consequent presence of numerous highly important bird roosts, and the recent approval of a section of new cycleway between Clevedon and Weston, which could provide a link in continuity, without generating unacceptable impact on birds or causing unfair balance to owners and occupiers.

256. Modifications are suggested such that the trail should follow the cycleway from Tutshill Sluice to Kingston Pill. From Kingston Pill to Tutshill Sluice, the trail should follow the same route as the new cycleway from Tutshill Sluice to Lower Strode Road. This would meet the objectives of providing a coastal trail, combining the positive avoidance of disturbance to birds and any disruption to farmers and landowners is kept to a minimum providing a fair balance. This would be an easy-to-follow route allowing the public to walk around the coast and estuary, reducing risk of trespass.

257. The report dismisses this route because it states that:

- the current route addresses farmers' concerns about biosecurity;
- the cycle route would not be safe;
- there would be a large area of coastal margin.

258. It should be clear that biosecurity concerns have NOT been addressed, and, in many cases, the proposed route compromises the important biosecurity of individual farms.

259. It is incorrect to state that the local road network would not be safe or suitable; a report commissioned by NSC to review the proposed on-road cycle route between Mud Lane and Colehouse Lane and produced by ATSS Ltd on 15 October 2018. The brief was to "identify any road safety issues along this route and outline the available options to address these issues." The report makes some recommendations regarding road surface, vegetation cut back and road markings.

260. Section 5 of the report considers "Safety Issues", and notes that "Site observations show that motor vehicle levels are very light, and speeds generally no more than 30mph, i.e. commensurate with a quiet lane suitable for use by walkers, cyclists and equestrians" The attached plan shows the location both of

the approved section of cycle route and the remainder of the section to Clevedon which does not need planning approval as it relies on existing quiet lanes.

261. As an alternative, there could be a summer and winter route option. This would provide a summer route for a four-to-six-week period along the route as currently proposed within the Report, subject to agreement by affected landowners. For the remainder of the year, the route would follow the cycle route. This reflects the arrangements along the West side of the Yeo. There are many similarities between the West side of the Yeo and the estuary between Kingston Pill and Tutshill Sluice.
262. This would mean, albeit for a short period, that the public would get access to the coast. If there was disturbance to the birds it would be limited to that time, and favourably at a time when disturbance is likely to cause least damage. The problems arising from giving public access to large areas also used by cattle could be resolved if that access were for a short period only, as farming operations may be able to be adapted to accommodate this. The winter route could be easily installed by utilising existing public rights of way, quiet roads or the proposed new cycleway.
263. It is likely that it would be much simpler for the public to understand a simple summer/ winter route option, with different paths open or closed at different times. All the public need do is to follow the relevant route, rather than one path on which myriad different directions will apply, many of which are likely to be ignored, with consequent effects on wildlife and farming. It is questioned why the possibility of a summer/winter route was not discussed with landowners and occupiers.
264. DR and 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 trail 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.
265. AWT raises concerns about the proposed access through part of the Blake's Pools nature reserve which AWT manages for nature conservation. It refers to a report to NE published in 2016 ([the 2016 report](#)) which identified several places near the reserve where significant numbers of waterbirds gather to roost at high-tide. It appreciates the efforts that NE has taken to site the path in the least sensitive location but fears the increased access may affect the nearby

roosts. To reduce disturbance, AWT would prefer section S032 to be along the inland base of the bank rather than along the bank top as proposed, but fears walkers would nevertheless walk along the top of the bank. It says that the proposed route may make it more difficult to graze the bank for conservation purposes because EA, which owns and manages the bank for flood defence, will not permit a fence to separate the path from livestock. Lastly it asks NE for an interpretation panel at the entrance to the reserve and for the opportunity to have reasonable input into the design and content of the board.

266. NSLAF says 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.
267. 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.
268. A number of representations referred to sections S018 to S031 which cut inland around Wharf Farm. The representations refer to historic use of the seawall by local people and ask that it is maintained. KSPC says that access to the sea wall has been the right of the residents of Kingston Seymour for over 100 years. The representations describe recreational use of the seawall to which it is said that local villagers have had access for many decades for relaxation and to check potential risk of flooding to their properties when there is a combination of high tide, onshore wind and tidal surges, with much of the land in Kingston Seymour is below high tide level.
269. KSPC refers to page 36 of [the Report Overview](#), where NE states that any use people already make of coastal land locally by formal agreement with the landowner or by informal permission or traditional toleration would not be protected or affected by the proposals. They also refer to NE's comment about tidal debris, arguing that this is a potential hazard anywhere on this stretch of coast which walkers will be aware of.
270. Some argue that the outer seawall, which is made of concrete and bitumen, is much more suitable as a walking route than the route proposed (which is generally grass).

271. Some of this group of representations question whether it is necessary for the route to be set back from the seawall to avoid potential disturbance to migratory and wintering shorebirds. They refer anecdotally to local birdwatchers who have said it is not of particular importance for birds. [redacted], who is a professional biologist, has not observed significant numbers of birds here despite visits over a number of years. The representations refer to other parts of the country where there are well-walked public paths that do not affect bird behaviour, such as Woodbridge in Suffolk.
272. Representations from [redacted] and KSPC also question whether it is necessary for the route to go inland of Wharf Farm to help with bio-security measures put in place to protect a herd of rare breed cattle. They argue that such a route presents a greater risk to biosecurity because it takes walkers and their dogs closer to livestock than would a route that went straight down the sea wall.
273. 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

274. NE has worked closely with NSC in the development of the proposals, from Avon Bridge (report ABD4) to Brean Cross Sluice (ABD9). NSC officers provided technical advice on the route options and attended meetings with affected land owners. NSC provided advice regarding infrastructure, estimated establishment costs and potential impacts on archaeological assets and how to avoid them. The Secretary of State is asked to note NCS's views on the benefits for residents and visitors to the area.
275. 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. NSC, 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.
276. In relation to comments on the sHRA, EA are content that the flood maintenance programme is listed among the considerations in table 31. 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.

277. The need to consider land contamination risk with respect to any ground disturbance necessary to establish the route is noted. This would be passed on to the AA (NSC) coordinating path establishment.
278. Following on from the constructive engagement of BASC during the development of the proposals, NE agree that local wildfowling activity is likely to be more visible to members of the public than currently and note the concern that this may lead to attempts to disrupt it. NE accept that when such behaviour has occurred, experience suggests it often arises from a lack of understanding of wildfowling and agree that suitable interpretation boards would help to reduce this risk. NE would be happy to discuss this proposal further with BASC and the local club, CWA, should the Secretary of State approve access for this part of the coast.
279. NE agree with BASC that waterbirds are more vulnerable during severe winter weather, in part as energy requirements to maintain body temperature are higher in colder weather, and disturbance would both reduce the time available to feed and increase energetic cost, for example from additional flight. The route and associated mitigation measures have been designed to reduce the risk of disturbance to waterbirds at key locations for roosting and feeding.
280. Waterbirds are a qualifying feature of the Severn Estuary SPA and Ramsar site and the proposals have therefore been considered in the [HRA](#). Section 3.2D of the sHRA assesses the risks to waterbirds between Wain's Hill and Huckers Bow. The sHRA takes account of the greater vulnerability of waterbirds to disturbance during severe weather and concluded that the proposals would not have an adverse effect on the site integrity. NE are satisfied that no further mitigation is necessary at this location.
281. As explained in discussions with BASC and CWA it would be possible for NE to give a direction at short notice to restrict or exclude access rights for nature conservation reasons, using powers available under section 26(3)(a) CROW. It would be unusual to conclude that this was necessary, but NE remain open to that possibility and would continue to make decisions based on evidence available at the time.
282. 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.

283. 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.

284. NE agree with NSLAF that waymarks, signs and interpretation should be used sparingly and after consideration of the need and suitability to the location. Specific signs and interpretation are necessary and appropriate on this part of the trail, in particular to alert walkers to the nearby presence of sensitive waterbirds and ask them to adopt certain behaviours in order to reduce the likelihood of disturbance. Small waymark discs are a helpful and unintrusive means to signal the route and give walkers the clarity and confidence to follow it.

285. NE and NSC 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 is subject to any practical considerations raised by third parties and to the agreement of the land owner, which must be sought before any works are undertaken. The planned cycle route between Clevedon and Weston-Super-Mare is a NSC project. NE are in regular contact with the team due to overlap with the coast path route on another part of this section. The cycle route Design and Access Statement makes clear that the needs of both off-road mobility scooters and pavement scooters are being taken into consideration in the design of the cycle route.

286. In respect of the CLA's comments, NE have gone to considerable lengths to discuss route options with farmers and other land managers, including 60 meetings with affected owners and tenants, numerous telephone calls and correspondence. As a result the proposed access includes numerous and, in some cases, very significant measures to take account of the concerns. It is acknowledged that a number of the affected farmers are nevertheless not satisfied with the resulting proposals and in comments on their representations NE explain why it is felt that a fair balance has been struck overall.

287. The CLA is mistaken that there would be no restrictions for the protection of livestock. Annex D of the Overview explains the national restrictions that would apply wherever coastal access rights are in force along the trail and coastal

margin. These include a requirement for people accompanied by a dog to keep that dog on a short lead when in the vicinity of livestock and would apply to any part of the route between Kingston Pill and Tutshill sluice where livestock are present, whatever the time of year. A standard sign would be used to advise walkers of this at field entrances – the sign was designed and agreed with stakeholders including the National Farmers Union and the Kennel Club. There is no need to restrict access with dogs further for livestock and accordingly there is no specific proposal in the report.

288. The CLA questions whether restrictions would be adhered to. NE believe that the majority of dog walkers would accept proportionate and evidence-based restrictions provided they are clearly signed and there is off lead access available nearby. There is strong support for this view in published evidence, such as [the 2016 report](#) about mitigation options for influencing walkers with dogs in the Solent area, and in recent unpublished advice from an independent expert on access with dogs engaged by NE to review the proposals. In keeping with this evidence and advice, and with the principle of the least restrictive option in chapter 6 of the Scheme, NE would place notices at Kingston Pill and Tutshill Sluice explaining that leads are necessary ahead. Further notices along the route would indicate where this is so and why, and where leads were not necessary, typically where the route was separated from the surrounding land by fences on both sides.

289. NE have acted to separate walkers and their dogs from livestock, taking the view that in this location, where there is little recent history of public access to the land, it is warranted to allay farmers' concerns. The position of the route would mean walkers and livestock were separated by existing fences in some places. During development of the proposals several farmers requested additional fencing to separate walkers and their dogs from livestock, whilst others considered the possibility and rejected it.

290. Where farmers requested fencing NE agreed to it as a gesture of goodwill and having done so, wrote to the affected land owners to confirm that, with maps to show the locations. The maps also showed where new fencing was proposed to avoid increased disturbance to waterbirds, which in some cases would also separate the path from livestock. The proposed fences and hedges were to mitigate feared impacts on wildlife and farm businesses and were proposed either with the agreement of the occupier or where it was understood that they would prefer it to the other available options. In these cases, NE offer to pay for the labour and materials to install the fence or hedge. Where the purpose is to protect wildlife, NE do not expect the occupier to maintain it unless they offer to do so. Where the purpose is to separate walkers from stock, the occupier is expected to maintain it.

291. Where NE intend to erect new fences or hedges that would cover or enclose land currently used for grazing would not preclude a fair balance as the CLA suggests, because the fair balance test is a question of degree: there are potential impacts on both public and private interests arising from the proposals and the legislation requires NE to aim to strike a fair balance between them. NE may therefore seek to minimise impacts in some cases, rather than to eliminate them.
292. In relation to concerns raised about the assumptions within the sHRA, the proposals do not rely solely on notices, signs and restrictions to mitigate adverse effects on sensitive species. Table 6.2.8 of report ABD6 describes an extensive suite of mitigation measures, including for example the positioning of the route and the use of physical barriers to access, in addition to notices, signs and restrictions.
293. Signs and notices are an important aspect of the design and management of the route and the content and positioning of them would reflect best practice and based on experience directly managing 142 National Nature Reserves and NE's long-standing role in the management of National Trails. In NE's experience it is reasonable to expect the majority of walkers to adhere to restrictions and notices provided that they are clearly explained and that restrictions are proportionate to the need. From time-to-time people may ignore notices but with good design and positioning and well-worded content this would be the exception rather than the rule.
294. Where problems occur in the wider countryside these are usually due to a lack of appropriate access management, for example unclear or confusing signs, or where walkers have been allowed to develop unwanted habits over time without concerted or informed attempt to change them. Here there is the advantage of designing the access correctly from the outset; therefore NE do not expect significant problems.
295. The report places emphasis on continuity of the path, in keeping with the principle in section 297(2) of the Act, that interruptions should be kept to a minimum. It is also consistent with the Scheme, section 10.1.5 says NE would always give careful consideration to the option to extend the trail as far as the first bridge or tunnel with pedestrian access.
296. NE agree with the CLA that the list of criteria included in the legislation is not exclusive. Part 5 of the Overview to the reports sets out the detailed assessment of the full list of criteria which must be considered when deciding whether to propose that the coast path should include an estuary and if so, to what extent. NE also agree that it is necessary to consider, for example, potential impacts on wildlife and the option to align the coast path along the same route as the forthcoming Clevedon to Weston cycle link. With respect to wildlife

considerations on the estuary the Secretary of State should refer to the published sHRA and NCA.

297. The cycle link follows country lanes between Clevedon and Tutshill sluice (maps ABD 6a to ABD 6d) with a map showing the route attached in section 6 of NE's comments Representations on ABD 6 – Wains Hill to Huckers Bow (page 106). NE have been in close contact with the NSC team developing the cycle route and have sought to maximise efficiencies between the two projects, in particular the opportunity for a shared river crossing across Tutshill Sluice, to the south of this section. However, the whole cycle route from Clevedon to Tutshill Sluice is not a viable alternative to the proposed route. The cycle route is primarily for leisure cycling and commuting; there is no inherent reason why it should follow the coast. Table 6.3.3 of report ABD6 summarises the views on available road routes for the coast path - including the cycle link - under the heading "Inland routes from Kingston Pill to Tutshill sluice".
298. NE broadly agree with the CLA that the cycle route would be continuous and easy to follow, avoiding disturbance to waterbirds and minimising disruption to farmers and landowners. However, the cycle route fails to meet the core characteristics of a coastal walking route described in chapter 4 of the Scheme. Between Dowlais Farm (report map ABD 6a) and Tutshill Sluice (report map ABD 6d) it lacks any sea views or proximity to the sea. At 5.9 kilometres in length this is a significant departure from the sea which NE would only propose if satisfied that no more coastal route could be found that would strike a fair balance and meet conservation objectives for protected sites; NE maintain that the proposed route satisfies those two tests. This analysis is in keeping with section 4.2.4 of the Scheme: "the trail need not be aligned along a road used regularly by motor vehicles if there is another suitable route."
299. The CLA refers to a report commissioned by NSC to identify road safety issues along the cycle route and outline options to address them. The observation that traffic speeds and volumes were "commensurate with a quiet lane suitable for use by walkers, cyclists and equestrians" should not be read as an endorsement of the cycle route as a promoted walking route. It is a generalised statement in a report commissioned to look at the suitability of the local road network as a cycle route. Pedestrian safety on the cycle route could be improved in some places, for example by vegetation clearance or more regular cutting, but in others the narrow width and lack of verges would make this impractical. The overall experience is not consistent with public expectations of safety for a promoted walking route and would be likely to discourage or exclude many potential users including families with children and people with reduced mobility.

300. In relation to the idea of using the proposed route as a summer route, with the cycle route forming an official 'alternative' route for the remainder of the year, it should be noted that directions can be given to restrict or exclude access rights for land management reasons and to address concerns about public access in fields used by livestock. However, NE are not satisfied that it is necessary to exclude access any further for this purpose. NE also do not agree that it is necessary to exclude access along the proposed route to avoid bird disturbance; the route has been designed to keep bird disturbance to a minimum as explained in section 3.2D of the sHRA.

301. There are some similarities in the circumstances between Kingston Pill and Tutshill sluice and those on the southwest bank of the Congresbury Yeo: special measures are necessary to conceal walkers from roosting and feeding waterbirds and the period of sensitivity is from early July to mid-May. However, there are important differences in circumstance which justify a different approach:

- the proposed exclusion on the southwest bank is limited to sections of the path adjacent to sensitive areas. Following the CLA's suggestion, access would be excluded to less sensitive areas where there are opportunities for people to enjoy views of the estuary;
- there is less scope for an off-road route on the southwest bank of Congresbury Yeo because the land at the landward edge of the flood bank is much wetter. This is because the fields on the southwest side drain towards the flood bank whereas the those on the northeast side drain away from it.
- the length of road walking would be 5 km which would significantly detract from the public benefit of the path. In comparison the southwest side is only 1.5km;
- the cost to establish the 'summer' route would be over £100,000, which would be disproportionate for the six weeks a year of access it would provide, whereas the cost of the 'summer' route on the southwest side is only £2,000.

302. NE do not expect that the suggested summer/winter route option would be simpler for the public to understand. As a general rule, people would be able to follow the route and willing to comply with any restrictions, provided that they were signed clearly and conspicuously as intended. NE investigated a number of options for seasonal routes with the affected land owners, as referenced on pages 23/24 of report ABD6.

303. 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. It is agreed that it is not realistic to expect everyone to read signs or adhere to behavioural messages and the signs would be backed up in some places with additional measures. It is also agreed that fencing, or other barriers, can help to avoid disturbance to waterbirds and this is an option

proposed in some places, where walkers or their dogs might otherwise stray off the path into a sensitive area. It is also agreed that face-to-face engagement with the local community can be a useful way to help new access arrangements to bed in and those discussions have begun.

304. With regard to WWT's suggestion to review the proposed mitigation, there are two arrangements in place that would help: the requirement for local access authorities to report to NE on the condition of the path and associated infrastructure, in order to qualify for central government contribution towards maintenance costs; and, the ongoing Wetland Birds Survey (WeBS), which is a national scheme tracking trends in the populations of wetland bird species using the Severn Estuary.
305. It is agreed with AWT and [redacted] that there is a risk of increased disturbance at Blake's Pools nature reserve where sections S032 and S033 pass along the bank top and walkers will be visible to feeding waterbirds. To reduce this risk people should be required to keep dogs on leads there at all times (paragraphs 6.2.29 of report ABD6) and there should be a new wing fence and gate to discourage people from straying off the path at the upstream end of section S033.
306. On page 87 of sHRA it is explained that there will be a residual risk of disturbance but overall it is not considered a significant risk. It is not necessary to move the route to the landward toe of the bank as AWT propose; it is considered advantageous to position the path on the bank because it affords sea views to walkers. This will encourage compliance in more sensitive areas nearby where the path is positioned landward of the bank and there are no sea views. An interpretation panel at the entrance to the reserve forms part of NE's plan and AWT will be asked to contribute to the content and design of the panel.
307. It may be more difficult to graze sections S032 and S033 because walkers would be in close proximity to grazing animals on the narrow bank. It has been suggested to AWT that if this proves to be the case, this part of the reserve could be managed by cutting instead. This may be beneficial in conservation terms because it will encourage small mammals and the longer grass will partially screen walkers from birds on the adjacent mud and saltmarsh during the growing season. In addition, the wing fence and field gate near the junction of S033/S034 would separate the outer bank from the path. This may make it easier to graze that part of the bank.
308. It is proposed that sections S018 - S031 should cut inland, with access rights seaward of the route excluded. A group of representations argue that the route should instead follow the seawall which would be excluded under the proposal. It is acknowledged that local people have walked along this part of the seawall in the past. Unlike the adjoining seawall at S017 it is understood from the

landowner that use has been without her permission or tolerance. The owner has actively discouraged access in recent years by placing signs at the farm boundaries and asking walkers to leave the land.

309. The seawall route was considered (page 25 of Report ABD6, heading 'Wharf Farm', option (a)). The main reason for choosing a route avoiding this part of the seawall was to avoid increased disturbance to roosting waterbirds. The main evidence for waterbird use is in a [2015 report](#) to NE which refers to two primary roosts, 4H and 4I. This is the best available evidence about the roosting habits of waterbirds on this part of the estuary. The [sHRA](#) explains why increased disturbance can be problematic and how it would be avoided at this location. It is necessary to avoid increased disturbance at this location and this proposal is the best way to achieve this. The other issue at this location is the biosecurity of the herd of British Shorthorn cattle, which has been referred to earlier in relation to the objection of [redacted].
310. It is agreed that the surface of the seawall is suitable for walking, although that is not to discount the merits of the grass surface along the proposed route. It is also agreed that tidal debris is a common hazard on the coast, but KSPC misunderstands the reference to tidal debris in the Report; the issue is that heavy items which are periodically washed up here would make it impractical to fence the seawall from the farmland to landward.
311. NE draw 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

312. The numbers in brackets [n] relate to the paragraphs above.
313. It is a particular feature of this stretch of coast that there is no existing right of public access, although representations suggest that there has historically been access in the area, including along the sea wall. The introduction of formal rights of access therefore raise understandable concern in relation to a number of matters [87, 88, 268]. These are referred to below, following the same general pattern in relation to the recurring themes.

Biosecurity

314. Particular precautions have been proposed in relation to Wharf Farm, which is used for the grazing and breeding of a herd of British Shorthorn cattle. The additional precautions and concerns regarding this farm are discussed further below in relation to comments from the occupier, [redacted] [95].
315. NE have followed the approach in the Scheme, section 8.6, Animal Diseases, in deciding an appropriate route in this location and the measures to be taken, such as fencing. In view of the specific concerns raised in objection,

further advice was sought from APHA and an independent consultant. NSLAF mentioned matters around dogs, as well as signage; the CLA raised concerns as to the separation from livestock; and, WWT regarding separation from birds [20 - 23, 89 - 94, 245, 248, 266].

316. Taking account of the expert evidence of low risk of infection, and the requirement to keep dogs on the trail at all times, the proposal strikes a fair balance between the continued use of the land for farming activities and the new use of the land for public access. Dogs must be on a lead in the vicinity of livestock, with fencing offered to separate the trail from the adjacent farmland; this would reduce or remove the possibility of the mixing of dogs with livestock and also with wildlife, particularly birds. It is fairly recognised that there may well be those who would not follow instructions or advice given by signage but that minority should not detract from the majority who are likely to be responsible in the exercise of the rights proposed. [287, 288]
317. Whilst the village of Kingston Seymour is relatively close, with some residents apparently already accessing the area, the larger population concentrations of Clevedon, Yatton and Weston-super-Mare lie at least half an hours walk from this area. With the information that dogs generally defecate at the start of their walk this again lessens the probability of disease implications, as well as being likely to lower the overall number of dogs that would be walked over this land. [96, 115, 116]

Risk to walkers from cattle

318. The Scheme - sections 8.1, Bulls, and 8.2, Cattle - sets out the approach which NE must take in relation to the potential interaction of livestock and the public. Whilst the current revision of the relevant HSE guidance (Agriculture Information Sheet No 17EW (rev1), revised 05/19) postdates the Scheme the relevant information has been referenced in the development of proposals and will remain relevant to the AA during the establishment works, as well as to those wishing to keep cattle on the land subsequently. [24, 26, 30 - 31, 97 - 111, 209]
319. NE have generally sought to make use of field edge locations, which assists with the ability to physically separate walkers and/or dogs from livestock with fencing. Some fencing would be proposed as part of the establishment works to address concerns raised in the consultation process, although that has then given rise to further objection in relation to potential loss of grazing land, a matter dealt with further below. The offer has been made of additional electric fencing in relation to concerns raised by the landowners subsequent to the formal consultation. [111, 229]
320. Fencing would be provided as part of the establishment works where considered necessary by NE, for example in relation to wildlife protection, or requested by owner/ occupiers to deal with particular concerns. Where fences

were put in place for the purpose of wildlife protection they would be maintained by the AA. Where already in situ, moved to a more appropriate location or installed to respond to owner/occupier concerns, for example with regard to biosecurity, subsequent maintenance would fall to the relevant owner/occupier. Taking all those matters into account some farmers have chosen not to take up the option of additional fencing. [161, 177, 289, 290]

321. Whilst the overall message would be that dogs should be kept on leads it has been recognised that this may not always be appropriate. The proposed signs - developed in consultation with relevant bodies - show that if threatened by livestock dogs should be unclipped from their leads. [30, 110]

322. It is not the case that no risk assessment has been required previously, as every farm business would have such a requirement. However, there would be a requirement for an additional appropriate risk assessment to take account of the introduction of access. Mitigations have been offered to reduce so far as possible the impact upon businesses but some adjustments may be necessary.

323. No evidence has been provided that insurance premiums would rise as a result of the introduction of access. Paragraph 4.2.2 of the Scheme sets out that land subject to coastal access rights benefits from the lowest level of occupiers' liability known under English law – considerably lower than the duty of care owed towards trespassers on private land. Overall, there appears to be a fair balance with regard to walker safety and owner/occupier liability within the framework of the need to deliver the ECP. [25, 27 - 29, 98]

Disturbance to birds from path users

324. Section 4.9.2 of [the Scheme](#) sets out a key principle to secure opportunities for engagement with sensitive features whilst ensuring the appropriate protection of those features. This is in keeping with the statutory purpose of NE to conserve, enhance and manage the natural environment for the benefit of present and future generations (s 2(1), Natural Environment and Rural Communities Act 2006). [112]

325. Some of the matters raised, in particular by [redacted], relate to the sHRA in other areas not under consideration in this report. They are dealt with here for ease of completeness of the matters with which he is concerned.

326. The sHRA, referred to in Annex A attached to this report, acknowledges that the proposed access would result in disturbance to birds. The risk of disturbance to waterbirds was identified as a key nature conservation issue, such that management of the risk to high-tide roost sites and feeding areas was part of the design process. Table 6.2.8 of Report ADB6 sets out the measures to be taken, for example alignment landward, with access rights excluded on the coastal margin; installation of fencing and/or willow screening; provision of specific observation points; direction for dogs to be kept on leads; and the

installation of barriers in certain locations. The proposed measures, which would remain under review as appropriate, fairly balance the duties of management of nature conservation alongside the provision of access. [32, 113, 114]

327. Table 20 of the sHRA indicates that the overall risk of disturbance would be reduced, except between points (g) and (h) on map D1 of the sHRA. The sections to which objections have been received, as dealt with in this report, are mainly shown on Map D2 of the sHRA. Existing disturbance from informal public access to certain locations would be reduced by the measures proposed, see paragraph 326. [33(1), 120(1)]

328. Paragraph D3.1.19 of the sHRA sets out that recreational activity at 200 metres or less of roosting or feeding birds is a potential cause of visual disturbance, requiring consideration of location specific factors. It does not indicate that there should be 200m left between the birds and the proposed access or works. The sHRA goes on to consider those individual locations as appropriate indicating required mitigation, such as in Table 7, regarding timing of works. [33, 120]

329. Roost 4F is dealt with at page 94 of the sHRA, Table 21: Possible risk – increased disturbance to roosting waterbirds (Wain’s Hill to St Thomas Head). The risk analysis shows that the path would be within 200m of the roost, with no physical barrier. Birds rarely roost in this location, only when there are very high tides, at which point the path at (c) (S008/S009) is temporarily submerged discouraging walkers from Clevedon. Pedestrian access from the south would be limited by the distance from the nearest conurbation whilst from the east it would be limited by the lack of formal existing access links to the coast at this point, although it is noted that the landowner permits local residents to access the seawall at (h) (S016). There are no records regarding existing disturbance as a result. Taking all these matters into account, it is not unreasonable to conclude that the increased risk of disturbance would not be significant, also bearing in mind that there are alternative roosts nearby. [33(2), 120(2)]

330. There was assessment of impacts on birds feeding in the part of Blake’s Pool nature reserve, Congresbury Yeo sector BV644. This relates to S032 and S033, I(L) – m, with the entirety of the sector considered in the sHRA being I(L) – r, S032 – S046. The route was noted to be partially screened from the main channel by a disused embankment with notices and wing fences to discourage trespass onto that embankment. A direction requiring dogs to be on leads would replicate existing rules for AWT members, reducing risk of disturbance to feeding waterbirds generally, and predation of juvenile shelduck in particular; the proposed mitigations are set out on pages 5 and 6 of Report ABD6. There would be a residual risk of disturbance to redshank and shelduck feeding on the saltmarsh adjacent to the route from (l) to (m), which may cause waterbirds to

stop feeding temporarily or to fly short distances to undisturbed feeding areas in the sector. There is nothing to disturb the conclusion NE reached that the low frequency of disturbance would not result in long-term changes to the numbers or distribution of waterbirds feeding in this sector. [33(3), 120(3)]

331. There was a formatting error in table 29 of the sHRA (page 136), where residual adverse effect on site integrity alone in relation to the risk to juvenile shelduck was indicated 'Yes', such that it should have been coloured red, however, the risk was appropriately carried forward to the conclusion, page 138. Users of the proposed cycleway would be able to access the proposed route at Wick St Lawrence (map ABD6f) and Tutshill Sluice (map ABD6d), with the combinable risk identified in Table 30, page 139. Table 31 then takes account of the risk of in combination effects, in particular in relation to Shelduck on pages 142/143 and concludes that there would be no adverse effect in combination, with juvenile Shelduck less frequently recorded at Tutshill. The cycle route incorporating a screen with observation slots, which would reduce impacts from walkers or cyclists, whatever the time of year. The screen relates to the cycle route, rather than the ECP, because the impact of the cycle route was concluded to be of greater risk due to the ability for people to travel from greater distances than they would on foot. Whilst construction of this screen may impact on young Shelduck gathering on the Yeo in late June, disturbance would be restricted to daylight hours and other parts of the river would be available as refuges. Overall, the balance of risk of disturbance to young Shelduck with the proposed access, whether alone or in combination, has been appropriately considered. [33(4) & (7), 120(4) & (7)]

332. In relation to Hooks Ear/Kingston Pill, roosts 4B/4C, route section S013, mitigation measures have been discussed in the separate report regarding the objection raised by the occupier of the relevant land. The proposal would provide a formal screened route in an appropriate location, reducing risk of disturbance from existing informal access/ trespass (Table 18, sHRA) alongside new access. The separate report, reference MCA/ABD6/0/7, deals appropriately with the concerns raised here. [33(5), 120(5)]

333. It is understandable that concerns are raised when Table 29 of the sHRA appears to indicate that there would be unresolved adverse effects in spite of mitigation measures. However, 'residual' effects are those which are considered of insufficient magnitude to damage the site integrity alone; it is helpful to look at the second section of the conclusion on page 138 of the sHRA. These residual effects are then considered in combination with other plans or projects to ensure that there would be no adverse effect overall. NE has a statutory duty in this regard, as does any decision maker, and there is nothing within the sHRA to

suggest that the assessment was not carefully and properly undertaken. [33(6), 120(6)]

334. NE have verified that the sHRA included checks and balances to avoid individual bias: was undertaken in collaboration with NE staff responsible locally for protected sites; was quality assured by national experts in the fields of ornithology, environmental assessment, protected sites regulation and environmental law; and approved by the Senior Officer for Protected Sites in Wessex. NE has needed to balance two statutory duties but the sHRA does not suggest that either of these duties was given inappropriate weight over the other. The oversight process provides the appropriate evidential trail of the work carried out in this respect. [33(8), 120(8)]

The Estuary Discretion

335. The objectors were keen to find alternative routes, with [redacted], [redacted], and [redacted], supported by the CLA as agent and in their own representation, suggesting use of the cycleway in whole or in part. Whilst there are some variations as to the extent of the route suggested, the general relevant matters raise similar considerations and so are taken together here.

336. A primary matter related to the decision by NE to extend the trail up the river estuary further than the seaward limit; page 171 of the Scheme shows the seaward limit for the Severn Estuary lies south-west of Weston-super-Mare. Beyond the seaward limit, NE has a discretion under s301 MCA to exercise its functions as if the references in the coastal access provisions to the sea included the relevant upstream waters of the river. The “relevant upstream waters” means:

- (1) the waters from the seaward limit of the estuarial waters of the river upstream to the first public foot crossing, or
- (2) if NE so decides, the waters from the seaward limit of the estuarial waters of the river upstream to such limit, downstream of the first public foot crossing, as may be specified by it.

337. It was suggested that in exercising that discretion NE had placed more emphasis on the continuity of the path on the Severn Estuary than was intended by the legislation, rather than take account of all the applicable criteria. Beyond the factors within s301 MCA it was indicated that consideration should be given to other relevant factors. [39, 251, 252, 253]

338. Chapter 10 of the Scheme sets out the way in which the Secretary of State expects NE to act with regard to the consideration of estuaries, including the specific matters set out by ss301(4), see in particular sections 10.3 – 10.6 of the Scheme. The Severn Estuary was referenced on page 171 of the Scheme, indicating the relevant factors and identifying 3 options:

- End the trail at Sand Point, which would provide a route from Weston-super-Mare along the open coast, and could incorporate beaches, dunes and cliffs in the vicinity of the town. However, there would be no means to cross the Severn to Wales.
- Align the trail as far as Portishead, which would incorporate several more beaches and other features of interest. It would provide a route along the English coast for other towns along that stretch, but there would be no means to cross the river to Wales.
- Align the trail as far as the M48 bridge. This would provide a pedestrian link to the coast of Wales. However, it would require a significant detour around port and industrial facilities at Avonmouth.

339. Section 5 of the Overview to the Reports refers specifically to the exercise of the discretion in relation to estuaries as a key issue. In addition to the options in the Scheme it fairly notes option 1 to be to omit the Severn estuary from the ECP. The Overview indicates that s297(2)(c), MCA, requires NE, and the Secretary of State, to have regard to the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum. It is reasonable that the significant interruption to continuity of access which would otherwise arise was part of the reason to exercise the discretion to include the estuary in this stretch. It is not accepted that inappropriate weight has been placed on this factor.

340. There is nothing within the Overview or the Report ABD6 to suggest that the relevant factors were not taken into account in relation to this stretch; section 5 of the Overview provides the most relevant matters taken into account. Given the extent of the estuary, and the recreational benefits which would arise from the provision of coastal access within reach of Bristol, Portishead, Clevedon and Weston-super-Mare, as well as other residents of and visitors to the coast, it would be surprising if NE had not decided, following appropriate consideration, to exercise the discretion to extend coastal access along this estuary. The continuity with the Wales Coast Path would provide an additional public benefit. [265, 267, 271, 295].

341. It was suggested that the undisturbed nature of the coast should be weighed in relation to whether or not to extend the ECP along the estuary. Part 9 of MCA introduces the Coastal Access Duty, with ss (2) and (3) making clear that this relates to "...the whole of the English coast..." and "...along the length of the English coast..." respectively. This is subject to the various considerations and exceptions but indicates the clear expectation of the legislation, which would inevitably affect areas of the coast where there was no existing access; if the access was already present then the legislation would not have been required. [39, 250]

342. Once the decision has been taken to exercise the estuary discretion, as has been the case here, all the other factors must be dealt with in the same way as for any other part of the ECP, as set out in the Scheme. This includes matters such as the important bird roosts in this locality, with the impact on waterbirds identified as the main biodiversity concern in this area by the sHRA.

Use of the cycleway

343. Use of the cycleway would, by virtue of distance from the coast, obviously reduce the potential impact on birds. However, it would not provide the opportunities for engagement with the natural environment, which remains a key principle of the approach set out by the Scheme, paragraph 4.9.2. The proposed mitigations would ensure appropriate protection of waterbirds such that the proposal to use the cycleway would not be required in order to achieve this objective.

344. Of primary importance in consideration of the cycleway as an alternative route is the fact that it was not designed to be used as part of the ECP; it is an inland route and does not have the core characteristics of a coastal walking route, generally lacking sea views, although at points it does provide open views towards the coast. This may be preferred by some to the more limited views behind the flood bank at some points of the proposed route. However, the proposed trail generally has more of the character to be expected of a coastal route than would be offered by the cycleway. [42]

345. It was suggested that the cycleway would provide a shorter inland route than that around Avonmouth Docks. This is dealt with in Report ADB4, with page 21 of the Overview report setting out that "A significant detour from the periphery of the coast would be necessary to establish a continuous route at Avonmouth because there is no practicable route seaward of Royal Portbury Dock and Avonmouth Docks." This is not the case here as NE have identified a practicable seaward route. [42]

346. Whilst there may be additional cost to provide mitigation required for the ECP over and above use of the cycleway, this is not the only factor to be considered. Existing use by cyclists and walkers does not indicate that the cycleway is an appropriate alternative; at present there is no route nearer the coast to allow recreation in this area. Some walkers may continue to use the roads, preferring the surface for example, but this does not weigh against development of the trail. [42]

347. The ATSS report was part of the investigations into the suitability of the local road network as a cycle route. Whilst finding that **traffic speeds and volumes were "commensurate with a quiet lane suitable for use by walkers, cyclists and equestrians,"** noting some improvements that could be made, the overall experience is not consistent with public expectations of safety for a promoted

walking route. Having driven the route, so far as that was possible, it is considered that the nature of it would be likely to discourage or exclude potential walkers including families with children and people with reduced mobility. [44, 45]

348. Taking all these matters into account the cycleway would not provide an appropriate alternative to proposed route as part of the ECP. The slightly varied proposals relating to use of the cycleway are discussed below. [34, 121 - 126]

[redacted] proposed route modification

335. Seasonal diversions were considered as set out on page 23 of Report ADB6. In relation to the northeast side of the Congresbury Yeo it is proposed that a route should be available for 4 to 6 weeks a year, during the summer, with walkers directed along a different route using existing public rights of way, quiet roads or the proposed new cycleway outside of that period. Whilst this exclusion outside of a summer period would avoid disturbance to birds and assist with farming activities the proposed design takes account of bird disturbance, as discussed to some extent above and further within the sHRA. [127]

336. There are differences between this suggestion and the seasonal route proposal on the southwest bank of the Congresbury Yeo (see Report maps ABD 6d and 6f and sHRA map D2):

- the proposed exclusion on the southwest bank is limited to sections of the path adjacent to sensitive areas, whereas, to the northeast access would be excluded to less sensitive areas where there are opportunities for people to enjoy views of the estuary, such as sections S032 and S033;
- there is less scope for a route along the toe of the flood bank on the southwest side due to topography, with the fields on the southwest side draining towards the flood bank whereas those on the northeast side drain away from it;
- the length of road walking between Clevedon and Tutshill would be 5 km, which would significantly detract from the public benefit of the path, whereas on the southwest side the proposed alternative is only 1.5 km;
- the cost to establish the 'summer' route under this proposal would be over £100,000, in comparison to £2,000 for the southwest 'summer' route. This cost would be disproportionate for the six weeks a year of access. [35, 36, 128, 129]

337. Although argued that the public would find it easier to understand two seasonal routes than one path with different directions in different places, there is a reasonable expectation that people would follow the route and comply with appropriate restrictions. [36, 130]

[redacted] proposed route modifications

338. Seasonal diversions were considered as set out on page 23 of Report ADB6 and in particular in relation to Wharf Farm on page 25. In reaching the conclusions on that proposal, appropriate account was taken of the feasibility and cost of the suggestions made in relation to a 4 – 6 week route along the seawall. [39, 127, 131, 132]

339. The suggestion of using part of the cycleway as part of the route would not provide a satisfactory route for use as part of the ECP. Whilst it is a continuous route it was not designed as a walking route and lacks the expected proximity to the sea and views that a reasonable person would expect on the ECP. [37 - 39, 131, 133]

[redacted] proposed modification

340. This option, following a farm track from section S016 (map ABD 6b) to Channel View Farm where the track meets the cycleway, was considered on page 23 of [the Report](#). For the reasons set out above in relation to use of the cycleway, this proposed modification does not adequately meet the balance to be found in setting out the trail.

Coastal margin

349. Although satisfied that the proposed route would be more appropriate as the ECP than the cycleway the matter of coastal margin is also relevant, should the Secretary of State wish to consider this inland alternative Objectors argue that an inland route would not create a large area of coastal margin, as the Access to the Countryside (Coastal Margin) England Order 2010 (SI. No 558) states (section 3(2)) that:

(2) the first description of coastal margin is-

- (a) Land over which the line of an approved section of the English coastal route passes,
- (b) Land which is adjacent to and within 2 metres either side of that line, and
- (c) Land which is seaward of the line of an approved section of the English coastal route and lies between land within sub-paragraph (b) in relation to that approved section and the seaward extremity of the foreshore, if the land within sub-paragraphs (a) to (c), taken as a whole, is coastal land.

350. Coastal land is defined in section 3 of the Countryside and Rights of Way Act 2000 (CROW) as:

- (a) the foreshore, and
- (b) land adjacent to the foreshore (including in particular any cliff, bank, barrier, dune, beach or flat which is adjacent to the foreshore).

351. Objectors argued that, as a result, the legislative intention was that the trail should, on the whole, pass along the coast and so be situated on “coastal land”. Where it does so, the land between the trail and the sea would be coastal margin and would be sited predominantly on coastal land as described above. If the trail followed an “inland” route, such as the cycleway, the objectors argued that the trail would not be situated on “coastal land” and the land “as a whole”

being characteristic of farmland, would not meet the definition of coastal margin. It is reasonable to read the term 'as a whole' to refer to the block of land lying between the trail and the foreshore, rather than to the characteristics of the land in question. It is clear from the Scheme, with the advice on dealing with situations such as grazing cattle or sheep for example, that farmland was envisaged as a land type which may form part of the trail or the coastal margin.

352. Coastal land is defined by MCA to mean the foreshore and land adjacent to it. That definition does not exclude any land type and use of the phrase 'in particular' does not limit it only to those listed types of land. As a result, the position of the route determines the extent of the seaward margin with the legislation then relying on the exceptions in Schedule 1 to CROW to remove automatically from the scope of coastal access rights the most obviously unsuitable land types that may fall within this automatic margin. There are then local access exclusion and restriction powers under chapter 2 of CROW Part 1 that can be used where it is necessary to do so on one of the grounds set out in that chapter. The Scheme sets out detailed criteria governing the use of these exclusion and restriction powers in different local situations.

353. Paragraph 2.3.4 of the Scheme says "The position of the route that we propose in our report also determines, if approved, the inclusion of land to either side of it as coastal margin:

- land on the seaward side of the trail automatically become coastal margin; and
- other land of certain specific types also becomes coastal margin if it lies on the landward side of the trail..."

354. Taking these matters into account, should the cycleway be used as the ECP the land between the trail and the foreshore would become coastal margin, subject to automatic exclusions and the exercise of any additional powers. This would place a burden not just on those currently objecting to the proposal, but on numerous other landowners between the cycleway and the foreshore. Balancing those competing factors leads to the current proposal before the Secretary of State. [47 - 54, 141 - 143]

Other points raised

[redacted]

341. The proposed modification of section S018, such that the burden of access be shared, either in space or in time, takes insufficient account of the reason that Wharf Farm has been given additional assistance with regard to biosecurity matters, as discussed elsewhere in this report. There is no requirement to balance the 'fairness' over neighbouring landholdings. Whilst it is recognised that this may prevent David Crossman from keeping rare breed cattle himself in the future it would not be possible to deliver the ECP if the possibility of

any particular future development had to be left open. The corollary to that is that should Wharf Farm no longer hold rare breed cattle then an alternative route may become available at a later date, even many years hence. [55 - 57, 144 - 149]

342. The existence of public access does not in itself prevent entrance into appropriate Environmental Stewardship Schemes – now Environment Land Management schemes (ELMs) – although some aspects of payments may be limited by the location of the trail. There is no evidence of a particular scheme under consideration on this land at this time and, therefore, little weight is placed on this concern.

343. Taking account of these matters, and the additional financial burden that would arise from the proposal, this modification would not appear to be reasonable nor necessary.

[redacted]

344. NE agree that there can be problems when land becomes wet and muddy such that walkers seek new routes, damaging grass alongside. It is reasonable to expect that these sections would be one of the lesser-used parts of the ECP on this stretch given the distance from the main conurbations of Clevedon and Weston-super-Mare, although local walkers from Kingston Seymour might make more use of the new walks available to them relatively locally. [58, 59, 152]

345. Surveys showed, unsurprisingly, that the land, being heavy clay in certain locations, was wet underfoot in the winter period. This would be the time at which less use was being made of the route, with most visits reasonably expected to take place in the drier months of the year. However, should issues arise the AA would be able to access grants to remedy any such issues. The route follows field boundaries, as agreed with the agent for the sections passing over rented land, which would be marked with fingerposts such that walkers would be encouraged to remain on the trail. At installation boardwalk would be used on part of S035 to deal with a wetter area. [153, 154, 156]

346. The route of S034 – S035 seeks to prevent access onto the riverbank to avoid increased disturbance to waterbirds feeding and roosting on the river; avoid disruption to licensed wildfowling; and avoid danger to the public from shooting. In order to achieve this fencing would remain on the (seaward) river side. [redacted] also requested fencing on the landward side, to separate cattle and users. Maintenance of the landward fence, should he still desire it, would be for the landowner, whilst the EA would retain maintenance responsibility for the seaward fence. [59, 61, 155 - 157, 161]

347. The effect of the dual fencing on this section would be that 0.06 acres of land, 260 metres squared, would be enclosed from the field. [redacted] refers to compensation which may have been available under the Highways Act 1980, however, the MCA was drawn up as a separate piece of legislation within which it

was decided not to offer compensation. Fencing has been offered as mitigation in relation to the concerns of the objector regarding biosecurity. This reasonably strikes a balance to address the farming concerns, however, if he does not wish to continue with fencing, due to loss of that small area, that could be discussed during the installation phase. The way in which farming subsidies are paid is currently changing; it seems unlikely that there would be any significant loss in income due to this proposal. [59, 60, 160]

[redacted]

348. Concerns regarding biosecurity in this area are more complicated than may be the case elsewhere as some of the land is used for the grazing and breeding of British Shorthorn cattle, which the RBST noted to be a unique bloodline. The farm is kept as a closed herd and interaction with neighbouring cattle avoided. NE have proposed that the route crosses this land but this would be with specific mitigation in place, with fencing to separate livestock from walkers and dogs and restrictions with regard to the coastal margin such that the farm is excluded from such access.
349. Other local people argued for greater access in this area and NE investigated the possibilities in the Report, page 25, including placing the route on the seawall. It is clear that weight was given to the livestock biosecurity in development of the route, which has resulted in some additional land being affected that might not otherwise have been in relation to sections S020 – S023. Whilst concerns may remain for those directly involved with the animals the proposal is a reasonably practicable solution to balance all the relevant issues. [62 - 64, 79, 150, 151, 162 - 166, 190, 222, 223, 226, 268 - 273, 308 - 310]
350. There is criticism of the consultation process, with suggestions that NE have not done all that they should. NE set out a record of the farm specific visits and opportunities for discussion. It has been suggested that further discussion on amendments could be arranged. On balance reasonable and proactive action has been taken by NE in the consultation both with the affected family and more generally in the wider community. The evidence indicates that NE have developed the proposals in consultation with those who manage the affected land as set out in the Scheme at section 2.4.10. It is, of course, understandable that people would wish to avoid new access on their land but there comes a point where continued dialogue leads no further and a decision must be taken. It is reasonable that the Secretary of State should take that decision now; fair and reasonable steps have been taken to consult and to make adjustments to the proposals in response to concerns raised by those managing the land, as well as wider stakeholders. [73, 74, 75, 76, 167 - 172, 227, 228]

Junction of sections S017 and S018

351. The proposed bird hide/observation screen would allow walkers to view the waterbirds with minimal disturbance to the birds themselves. The owner of the land on which this would be sited has not raised concerns with regard to this addition. It would add to the value of the route for birdwatchers in particular, meeting the goal of appropriate engagement with such sensitive wildlife features. As the proposed route would cross Wharf Farm land in any case it is not understood why the hide, approximately 50 metres from the entry onto Wharf Farm, would in itself encourage people onto that land. There was no indication of an existing livestock corral near this location according to NE, nor noted on the site visit. The evidence indicates that local people already make informal use of this area and so there is no reason to suppose that the cattle would be unfamiliar with that. [65, 173 - 175, 208, 215, 220, 221, 225, 269, 271]
352. The printed map key does not include the symbol, but it is included online. There is no indication that this has led to any prejudice; the objector is clearly aware of the plans and has raised his concerns on the matter. [66, 174]

Section S019

353. Section S019 would be fenced from the adjacent land to deal with the biosecurity concerns. The fence would be dog-proof, as requested by the objector and a parallel barbed wire fence has been offered to further separate stock from the trail. It is not considered that there would be any significant biosecurity risk as animals and people would not be able to directly interact. Whilst there would be some vegetation clearance for access through the hedge at the junction S019/S020 this would be the minimum required. Furthermore, the access points in the fenced area would be separate from the cattle on Wharf Farm such that they could not interact with neighbouring livestock. NE expect the fences to last for 15 – 20 years. The AA would maintain the route and related access furniture but would not maintain fences put in at the landowner's request, as here. [67 - 68, 71, 176 - 178, 210]
354. The objector says that the fence, proposed to mitigate his initial concerns, would prevent cattle from reaching sheltered land on the leeward side of the bank. Whilst NE felt that this was generally dense scrub there were obvious accesses and areas where the cattle sheltered on the bank amongst the scrub. The junction of S019/S020 was placed as far north-east as possible in relation to the field within which S020 continues so as to provide some area of bank to west to which the cattle would have access in this field. This leads to a compromise on the route of S020 so far as [redacted] was concerned, however, this appears reasonable with Wharf Farm having some shelter left and the neighbouring land having access along the field edge in the first section of S020. It is accepted that there may need to be a change to farming practice, perhaps calving cattle in the next field west, where continued access to the shelter of the bank could be

advantageous. This would have the added advantage of being closer to the main farm yard area, allowing easier oversight of cows and calves. [70, 180, 191 - 193]

355. The objector suggested that the route would cross land covered by a pen used for the temporary detention of livestock, which is excepted from access rights by virtue of paragraph 11 of [Schedule 1 to CROW](#). This pen was sited to the south-west of the junction of S018 and S019. It was not present during any initial visits by NE, or it would have been dealt with in the Report. At the time of the site visit the dug earth and condition of the woodwork gave the impression of a very new structure. The location adjacent to the neighbouring farmland was at odds with the arguments around the importance of ringfencing and biosecurity, even if at present the neighbouring livestock appear to be sheep.

356. The Scheme indicates that it will usually be possible in discussion with the land manager to align the trail so that it avoids close proximity to areas where the public would be at significant risk such as yards and handling areas. NE have offered to provide a similar pen elsewhere in that field, if the Secretary of State so directs and this appears to provide the best solution to this matter. [69, 175, 203, 210]

Section S021

357. Whilst section S021 follows the access to Wharf Farm this is an unmade farm track on which vehicles would not be expected to travel at speed. It is an unfenced, unhedged route with good visibility and space for people to step back if necessary. The main area of concern would be at the junction with S020, as walkers may step into the track with vehicles travelling from the west perhaps slightly behind the hedge line, however, given that there are already cattle grazing in this field it would be expected that most users of the track – as a private access most would be regular users - would be aware of the precautions they may need to take in driving on it. NE propose that, subject to agreement with [redacted], a notice would be erected to make clear there was no through access in the direction of Wharf Farm; if thought necessary this could be supplemented by a warning to drivers that pedestrians may access the track at this point. [72, 181, 195]

Section S022

358. NE confirmed there was some misunderstanding of the proposals at the junction of sections S021 and S022, where there is a cattle grid, and a field gate used by [redacted] to move cattle. A combination gate, such as a York 2 in 1 – 2-way gate, would be provided. NE could also provide fencing to control the biosecurity risks and separate the public from the cows on confirmation from the affected landowners as to their preference for layout.

359. At the other end of section S022 a new pedestrian bridge and gate is proposed alongside the existing field gate so that farm traffic would not be disrupted. NE could use a York 2 in 1 gate if that was preferred. On balance these matters could be dealt with in the implementation stage, with no need to vary the Report, subject to agreement by the Secretary of State. [73, 73, 182, 183, 206, 207, 212 - 214]

Sections S024 - S026

355. Issues of surveying procedures and consultation remain a matter between NE and the relevant parties. The affected landowner was away for a period of time but made an objection and a representation on certain matters set out in the report. As the whole of the proposed route was set out in the report and associated mapping the opportunity to raise objections and representations to any other matters considered relevant to this party was available. Continuing discussions during the establishment phase should assist in dealing with any matters outstanding.

356. In order to ensure all relevant information was before the Secretary of State there was a further site in relation to sections S024 – S026 on which particular issues were raised both within the statutory timeframe and after the appropriate opportunity had passed. Having viewed the site I considered that a different solution to issues raised was available but NE were content that the original proposed route is the appropriate one to take forward.

357. It is noted that the current landowners (due to a recent family loss) of land crossed by S026 desire a different route. The movement of the proposed route to the south-west would appear no worse than the current proposal in general terms, although as NE indicate this would be likely to fall into the area of coastal margin, as there appears no reason for it to be included in neighbouring Section 24 long-term access exclusion (Directions Map ABD 6B). It remains open to the Secretary of State to pursue a different option; I can only advise on whether or not a fair balance is met in relation to the proposed route.

358. With the opportunity to fence the proposed route with additional electric fencing issues of biosecurity and conflict between the public and suckler cows, which will be more protective due to having calves at foot, are lessened. NE have chosen a route which will cut through hedges and require structures to be erected and maintained; this is a burden on the public purse, however, in terms of the overall cost-benefit analysis the cost in this particular area is small and so should not tip the balance.

359. The dwellings and neighbouring field at Wharf Farm would be visible from the proposed route, with matters of privacy and security raised. NE agreed, as part of establishment works, to erect appropriate fencing and/or hedging along the boundary between Wharf Farm and S026; the suggestion was that fencing

would be required initially to allow sufficient establishment of appropriate hedging to provide screening. This would remove any overlooking from S026.

360. The provision of locks and keys for the gate north-east of S025 would assist with management at that end of the private access lane. The fear that introducing new rights in this area would encourage trespass is understandable. It appears that there is already some unlawful access and so the farm may benefit from the lowered level of occupiers' liability in relation to the trail. Liability would still apply in relation to reckless or deliberate acts or omissions by the occupier. Matters of criminal activity would remain the responsibility of the appropriate authorities, that is the police.
361. The structures leading to the lane crossing would be self-closing gates, which would ensure cattle would not be able to escape. Signage and management practices, in terms of times of use, should be sufficient to lower the biosecurity risks in relation to the use of the lane to reach Blake's Pool. [208, 209, 229]
362. Section 297(3) of the Act sets out that [NE and the Secretary of State] "*...must 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.*" Although not specified the relevant parts of sHRA98, Schedule 1, would be Article 8: the right for respect for private and family life, and Article 1 of the First Protocol: protection of property. These are qualified rights which may be 'interfered' with or 'infringed' in order to secure specific aims. What is required is the balancing of the fundamental rights of individuals against the legitimate interests of others and the wider public interest in securing the new public access; the Scheme sets out the methodology to be followed in meeting that requirement and NE have not departed from the delivery of their duties in this respect [308].

Section S031

363. The land seaward of S031 would be excluded by the direction proposed at paragraph 6.2.24 of Report ABD6. It is separated from Wharf Farm by a hedge and ditch until it meets an earth embankment at the junction with section S032. The field gate and wing fencing across the bank, closer to the river mouth, would be kept shut with a sign to explain that access was excluded. The landowner, EA, could be provided with a padlock and chain for the gate. On balance these measures should be adequate to discourage people from approaching the Wharf Farm boundary. [76, 186]

Sections S032 to S033

360. [redacted] occupies the land and grazes it as AWT wishes to use the cattle for land management. Biosecurity issues are similar to those at Wharf Farm,

although the more limited time that cattle would be likely to be on this land, rather than on the home farm, would affect the overall risk assessment. AWT noted that the access may make it more difficult to graze the bank, for which permission has been given by EA.

361. The length of bank occupied by sections S032 and S033 covers 3.6 acres. NE indicate that there is no reasonable alternative, with any other route impacting on a neighbouring landowner and not providing with any sea views. The views from this section are important to the overall design, as there are no sea views from the sections to either side, in part due to the mitigation measures in relation to Wharf Farm, but also in relation to the need to ensure biodiversity duties are met. It has been agreed in principle with EA and AWT to fence a significant part of the nature reserve from the proposed route, which would give a total area of 8.5 acres, separated from the route by stock fencing and therefore available to Wharf Farm for grazing.
362. In addition to the management measures to reduce the risk of disturbance to birds another option that may be taken, should it prove necessary, would be to manage the growth through cutting rather than grazing. This is a matter on which the way forward should become clear during establishment, or even once the route was in use. [77, 78, 187 - 189, 265 305 - 307]

[redacted]

Risk of interaction with cattle

363. NE understood the desired alignment was from a point further southwest. Unfortunately it would not be reasonable to take the route further on Wharf Farm as this would involve another field on that farm; due to the additional relevant biosecurity issues the route must enter [redacted] land at an earlier point. The option of an alternative farm access would also impact on [redacted] and so was not pursued. The need to avoid places on the north-eastern edge of the field where there is access for cattle to drink from the boundary ditch was also a factor. [191, 192, 196]
364. The proposed route appears unnecessarily convoluted, taking users along the northern edge of the field before turning south and then to the west of an old building, referred to onsite as a bunker, and then to a proposed footbridge at the junction of sections S020 and S021. Whilst it is NE's experience that long-distance walkers tend to adhere to a waymarked route, they accept that more local visitors may try to take a short-cut. However, given the visible drains and ditches, as well as the overall wet ground underfoot, it seems unlikely that this would occur regularly. [193, 194]
365. The intention to place prominent fingerposts to help walkers follow the route easily would be appropriate. However, a fingerpost in the middle of the

field, directing users to west of the bunker, would become an obvious scratching post for cattle, meaning it would be unlikely to survive in the long term. This would result in additional costs of replacement/re-erection and potential for confusion for walkers during periods it was down. [194]

366. NE noted that they would wish, with agreement, to secure the entrance to the bunker to discourage people from exploring it. Whilst this may still be necessary, due to natural curiosity sometimes taking over, it may be sensible to align the route on the opposite side of the entrance, which would not be the case as proposed. [195]

367. During the site visit there was some discussion regarding a preferred route, to address some of the concerns raised in relation to section S020. [redacted] was unwilling to respond directly to this question on the request for further information, or to meet with NE to discuss the matter subsequently, appearing to feel it may remove the overall weight of his objections, which is not the case. Taking account of the matters outlined above the more obvious route would lie to the north-east of the bunker, in a generally straighter line from the hedge, removing the need for a fingerpost mid-field and directing users away from the bunker entrance, although subject to matters discussed below, paragraph 398, there would still be a right of public access over the coastal margin here. Should this route be preferred it would be hoped that NE and the AA could work towards it but the failure to engage in relation to this specific point means that the Secretary of State does not have a minor variation proposal available to consider and must make the decision solely on the proposed route. [80, 204, 211]

368. The question that then arises is whether this section of the proposed route means that there is a failure 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. The convenience of those using the trail would be affected to some extent by the need to follow a more complicated route than necessary on this section. This could lead to some nuisance for the farmer in dealing with people who could not locate the route easily, although, as noted, the right to use the coastal margin would remain. It is considered that whilst there may be a better route over part of this particular section, S020, in the interests of all parties, overall this does not demonstrate that there is not a fair balance, taking account of the many factors relevant to selection of a route in this area, including the biosecurity issues at Wharf Farm and the biodiversity matters relevant to the estuary to the north-west. [9, 10]

369. Directions Map ABD 6B shows that whilst most of this part of the ECP is subject to directions preventing public access on the coastal margin for reasons of sensitive wildlife or land management, the land northwest of sections S020 –

S023 would remain open coastal margin. Whilst this appears as an anomaly in the area, NE have followed the requirements of Chapter 2 of the Scheme in determining the coastal margin and deciding whether or not a direction should apply in this particular location.

370. It seems unlikely that walkers would make much use of the coastal margin here, with the ground noted to be quite wet. Concerns regarding interaction with cattle on the coastal margin remain as for the trail itself and discussed earlier, from paragraph 318; the Scheme does not require the prevention of such interaction. The proposed provision of coastal margin in this location does not indicate that there is no fair balance. [81, 195 197]

Parking in the field

371. It is noted that the public already park alongside local roads to reach sections of the coast. As set out in section 4.3.12 of the Scheme NE are not required to consider additional visitor facilities such as car parks as part of their proposals, with an expectation that local businesses and communities would decide what additional visitor facilities were appropriate. Whilst there may be concerns that people would park on the grass alongside the lane to Wharf Farm to reach the ECP, the coastal access arrangements would not introduce any new right to do so.

372. Access from Ham Lane is signed with a 'No through road for vehicular traffic' sign and whilst it is a tarmac route for much of the length towards Wharf Farm it is an unmade farm track beyond Bramble Farm, with gates as it enters the fields. This gives a clear indication to any reasonable person that the land is not open for public use, such that the probability of problems arising in this regard remain low. Management of any uninvited parking would remain with the landowner/occupier, as currently. [82, 198]

New footbridge proposal & maintenance issues

373. During the site visit it appeared that a culvert may be preferred to a footbridge at the junction between sections S020 and S021. As indicated above, Michael Wallis was unwilling to respond directly to this question, or to meet with NE to discuss the matter subsequently; the Secretary of State must make the decision with the proposed footbridge as the structure in this location. Whilst feeling that the precise location was unclear it is not unreasonable to rely on Map ABD 6c in this regard. Minor movement within this general location may be required to deal with localised ground conditions during installation but no significant changes would be likely; if this were the case a variation report could be prepared. [84, 199, 205, 211]

374. The proposed footbridge, or other agreed structure if practicable, would cross the ditch alongside the access track. The location is such that there is no

indication that it would obstruct the use of the land. The installation of a new feature, rather than works to an existing structure, are the preferred option in this instance and would seem to be appropriate in terms of liability and damage concerns. [83, 84]

375. It is the case that the AA would be responsible for on-going maintenance of any new footbridges or gates. With regard to concerns of injury to cattle the installation of the access structures would be timed to suit such that animals would not be disturbed during that operation. [85, 200]

Damage to the field

376. NE agree that the field is generally wet but indicate that the route as surveyed in May 2017 and May 2018 was dry, despite the adjacent land being generally wet. It was noted that walkers can damage grass through seeking drier or less muddy ground, particularly on heavily used sections of path and on slopes. It is reasonable to expect that use on this part of the path would be relatively infrequent, due to the distance from the populated areas. It seems very unlikely that any loss of grass would be at such a level that it would lead to any significant, if any, loss of grazing. [86, 201]
377. If localised problems developed then the AA would be eligible for central government grant aid to help meet the costs of small-scale improvements. This indicates a fair balance not placing an unnecessary cost burden on the landowner. [86, 202]

Representations

407. It is clear that NSC, EA and WWT are working with NE as appropriate with regard to the delivery of the scheme in line with their own duties and/or requirements [117 - 119, 125, 132, 158 - 161, 177, 187 - 189, 232 - 237, 266, 274 - 277, 297, 303 - 304]. The concerns of BASC and CWA would be addressed by way of the proposed mitigations alongside the ability to give directions should that prove necessary [238 - 244, 278 - 281].
408. With regard to the CLA representation the matters raised were also part of the issues raised by the [redacted], [redacted] and [redacted] who were also represented by the CLA. As such the relevant points have been dealt with in the earlier sections of the discussion.
409. Waymarks, signs and interpretation boards will be put in place as part of the establishment works and may develop over time in response to unforeseen requirements once the ECP is in use. There appears general agreement that they should not be used unnecessarily, although there is also concern that they will not achieve the intended outcome of directing people and their behaviour, such as in the appropriate control of dogs. The Scheme identifies the use of signs both formally and informally as a management tool and this is considered

an appropriate measure to balance the interests of users and land managers. However, these would sit alongside other measures, such as route positioning and barriers as appropriate. [245, 283, 284, 292 - 294]

410. Accessibility is built into the development of the proposals, following the principles set out in “By All Reasonable Means” (paragraph 4.3.8 on of the Scheme). Alongside the trail in this area the development of the cycle route also takes account of and provides further off-road access. Development of this type must also balance the needs of landowners and managers, as well as the nature conservation measures in this area, such that some of the desired access is not immediately available. [246, 264, 285]

411. Whilst there are those who would not wish for any access in the area and those who would prefer an alternative route to be proposed there remain those who welcome the proposals which will assist in the promotion of tourism, sustainable travel, public enjoyment, physical health and wellbeing. [267, 273, 311]

Recommendation

412. Having regard to these and all other matters raised, I conclude that the proposals do not fail to strike a fair balance as a result of the matters raised in relation to the objections. I therefore recommend that the Secretary of State makes a determination to this effect in relation to the relevant sections of report ABD6.

413. It would be appropriate to direct that NE agree to supply an appropriate alternative corral, of similar size and structure to that recently erected on the route of S019, should the landowner desire it be supplied.

Heidi Cruickshank

APPOINTED PERSON

ANNEX A: INFORMATION TO INFORM THE SECRETARY OF STATE'S HABITATS REGULATIONS ASSESSMENT

Introduction

1. 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.
2. A shadow Habitats Regulations Assessment (sHRA), 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 sHRA 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; the North Somerset and Mendip Bats SAC; and other nearby European sites. The sHRA has identified the relevant sites affected by the proposals.
3. 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, a sHRA 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 sHRA considered the potential for the project to give rise to Adverse Effects on the Integrity (AEol) of the designated sites.

4. The scope of the assessment is set out in Table 6 of the sHRA 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 qualifying features for Report ABD6 are identified in Table 8 of the sHRA, referenced Wain's Hill to St Thomas Head, see Map D2, Channel View to St Thomas Head. St Thomas Head itself lies slightly to the north of Huckers Bow and falls into Report ABD7, to which no objections were raised. The relevant matters are discussed in D3.2D, which refers to the entirety of matters in Report ABD6, not just the sections to which this report relates.
5. 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 (Section 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 objectives. There would be some residual risk of insignificant impacts:
 - 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.
 - More frequent disturbance to juvenile shelduck, following changes in recreational activities as a result of the access proposal, leads to increased mortality and a resultant reduction in the non-breeding population within the site.
6. In section D4 of the sHRA, NE considered 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. It was considered that there were residual and appreciable effects likely to arise from this project which have the potential to act in-combination with those from other proposed plans or projects in relation to more frequent disturbance to feeding and roosting waterbirds (non-breeding) from increases in recreational activity at specific locations between Kingston Pill and Huckers Bow (map D2).
7. 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 Clevedon to Weston Cycle Route (Tutshill Crossing). However, assessing the risk of in combination effects (Table 31 of the sHRA), 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.

8. Part E of the sHRA 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 sHRA that the proposals would not adversely affect the integrity of the relevant European sites.

Nature Conservation Assessment

9. The NCA, 25 July 2019, should be read alongside the sHRA. 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 sHRA. 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.
10. 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 subject to any further necessary consents being obtained, including to undertake operations on a SSSI.