



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

Marine and Coastal Access Act 2009

Objections by Tournerbury Woods Estate and MDL Marinas Group

Regarding Coastal Access Proposals by Natural England

Relating to South Hayling to East Head

Site visits made on 27 June 2023

File Refs: MCA/SHE1/0/1, MCA/SHE1/0/2

Objection A - Ref: MCA/SHE1/0/1

Tournerbury Woods Estate, Hayling Island, Hampshire

- On 3 October 2019 Natural England submitted Coastal Access Reports 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 27 November 2019 to Report SHE 1, South Hayling Beach to Langstone Bridge, has been made by Tournerbury Woods Estate. The land in the Report to which the objection relates is the whole of the land on Hayling Island covered by Report SHE-1, South Haying Beach to Langstone Bridge (Maps SHE1a to SHE1i) and Direction maps SHE 1A, SHE 1B and SHE 1C.
- The objection is made under paragraph 3(3)(a) and (f) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in Report SHE1 do not fail to strike a fair balance.

Objection B - Ref: MCA/SHE1/0/2

MDL Marinas Group

- On 3 October 2019 Natural England submitted Coastal Access Reports 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 27 November 2019 to Report SHE1, South Hayling Beach to Langstone Bridge, has been made by MDL Marinas Group. The land in the Report to which the objection relates is route sections SHE-1-S020 to SHE-1-S038 RD (Map 1c) and route sections SHE-1-S110 FP to SHE-1-S130 FW (Map 1i).
- The objection is made under paragraph 3(3)(a), (e) and (f) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in Report SHE1, specifically in respect to the trail sections SHE-1-S020 to SHE-1-S038 RD and trail sections SHE-1-S110 FP to SHE-1-S130, do not fail to strike a fair balance.

Procedural and Preliminary Matters

1. The Coastal Access Reports (SHE1 - 5), submitted to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State) by Natural England (NE), set out proposals for improved access to the coast between South Hayling and East Head.
2. The period for making formal representations and objections to the Reports closed on 28 November 2019. In relation to Report SHE1, two admissible objections were received from Tournerbury Woods Estate and MDL Marinas Group within the specified timescale. I have been appointed to report to the Secretary of State on the two objections (references MCA/SHE1/0/1 and MCA/SHE1/0/2) which relate to Report SHE1. In addition to the objections, a total of ten representations were received and these are considered where relevant.
3. I carried out site visits to view the route sections in each objection on 27 June 2023 in the company of the relevant objector, a representative of NE and Hampshire County Council.

4. At the Tournerbury Woods Estate site visit, the estate's representatives and advisors expressed concerns about public access rights in relation to the estate due to its inclusion within the coastal margin and the disturbance to wildlife and the business of the estate that this would cause. However, I explained that the purpose of the site visit was to view the features on the ground referred to by the parties in their submissions and was not an opportunity to make further representations. As a result, I have not addressed the matters raised at the site visit in this report.
5. NE has completed a Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals relating to South Hayling to East Head might have an adverse impact on the Chichester and Langstone Harbours Special Protection Area (SPA) and Ramsar, Solent Maritime Special Area of Conservation (SAC), and the Solent and Dorset coast potential SPA (pSPA). It has also produced a Nature Conservation Assessment (NCA) that covers the Chichester Harbour and Warblington Meadows Sites of Special Scientific Interest (SSSI) and which should be read alongside the HRA. Much of the coastal margin, and some of the sections of the trail covered by the objections in this report, lie within the international statutory designations covered by the Habitats Regulations Assessment.

Main Issues

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

This is referred to in the Act as the English coastal route and has been commonly described as the England Coast Path. To mark the coronation of His Majesty King Charles III, it has been renamed the 'King Charles III England Coast Path'. For ease of reference it 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 or otherwise. 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:
 - (a) the safety and convenience of those using the trail,
 - (b) the desirability of the trail adhering to the periphery of the coast and providing views of the sea, and
 - (c) the desirability of ensuring that so far as reasonably practicable interruptions to the trail 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. Section 301 of the Act applies to river estuaries and states that NE may exercise its functions as if the references to the sea included the relevant upstream waters of a river.
12. NE's Approved Scheme 2013 (the Scheme), which was adopted by the Secretary of State in July 2013, sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within the Report.
13. My role is to determine 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. I shall set out that determination and make a recommendation to the Secretary of State accordingly.

The Coastal Route

14. South Hayling and East Head lie on either side of the mouth to Chichester Harbour. The harbour is a sheltered, complex estuary system made up of four major channels: Emsworth, Thorney, Bosham and Chichester. A wide variety of habitats exist in the harbour including mud flats, saltmarsh, sand and shingle spits. Manmade flood defences are also present in certain areas. Almost the entire area of the harbour enclosed by the trail has been designated areas of nature conservation (e.g. SAC, SPA, SSSI, Ramsar).
15. NE proposes to exercise its functions as if the sea included the estuary system of the harbour. On this basis it proposes that the trail should follow the sides of the Emsworth, Thorney and Bosham channels and cross the Chichester Channel using the ferry between West Itchenor and Bosham. The ferry will not be operational Monday to Friday between October to the Easter bank holiday each year. On these days an alternative land route is proposed for use.
16. This report relates to objections received in relation to the eastern side of Hayling Island between South Hayling Beach and Langstone Bridge which connects the island to the mainland.
17. The proposed route that the objection A relates to is the whole of the land on Hayling Island covered by Report SHE-1, South Haying Beach to Langstone Bridge (Maps SHE1a to SHE1i) and Direction maps SHE 1A, SHE 1B and SHE 1C. Objection B relates to route sections SHE-1-S020 to SHE-1-S038 RD and route sections SHE-1-S110 FP to SHE-1-S130 FW. Given that all sections of the route referred to in this report have the prefix SHE-1, for ease of reference, I have referred to the trail sections by the S0 number only.
18. The proposed trail follows the southern shore and stays quite close to the shore in the south eastern corner of the island before moving away from the coast for much of the rest of its route up the eastern side of the island. Route sections S020 to S038 initially follow the shore before going inland away from the estuarial system into a housing estate where there are no views of the estuarial system. Sections S110 to S130 start off inland before ending by the estuary system. All three sections of the trail place the objector's land and facilities in Objections A and B in the coastal margin.

The Objections

19. Both objections have been made on the basis that the proposals in the report fail to strike a fair balance in relation to one or more of the grounds set out in paragraph 3(3) of Schedule 1A to the National Parks and Access to the Countryside Act 1949.

Objection A

20. For the reasons given below, the route of the proposed trail should be modified to exclude Hayling Island.

Unlawful interpretation of the Act

21. Hayling Island is not an accessible island in the sea because the majority of the island is in 'transitional water bodies' (Chichester and Langstone Harbours) defined by the Environment Agency under the Water Framework Directive (Directive 2000/60/EC of the European Parliament and Council) as shown on the maps submitted with the objection.
22. Hayling Island is an accessible island in a river estuary. It is not clear whether the references to the English coast in s.296 of the Act also apply to river estuaries. As islands in estuaries are not defined in the Act defining the whole of Hayling Island as coastal margin is not required.
23. As Itchenor Ferry is the first public foot crossing, Langstone bridge onto Hayling Island is the second public foot crossing. Other than in relation to the first public foot crossing, the Act makes no provision for the trail to follow such crossings.

Desirability of the route adhering to the periphery of the coast and providing views of the sea

24. Section 297 of the Act, amongst other matters, sets out that NE must have regard to the desirability of the trail adhering to the periphery of the coast and providing views of the sea. The path from Langstone Bridge to the southern end of Hayling Island is predominantly inland. As a result, other than from the seafront, the views from the proposed trail of Chichester Harbour are limited and are of a 'transitional water body' not the sea. The views that do exist for half of the day, every day, are of mudflats.

Objection B

Inconsistency of trail route in relation to river estuaries

25. The approach of the trail at estuaries is inconsistent. In some cases the trail follows the estuary to the first crossing point, in others the use of ferries is included, even when the alternative of following the estuary is a better alternative. Examples of this can be seen at Southampton, Itchen and Portsmouth.
26. In relation to South Hayling to East Head, use of a seasonal foot ferry is proposed with a trail route to be used as an alternative at other times of the year which diverts inland away from the coast. The route of the trail does not provide the fullest extent of coastal access that could be secured.

Marinas and boatyards should become 'excepted' land

27. Marinas and boatyards are potentially dangerous places with hazardous activity, and high value assets such as yachts. They may provide an apparently publicly accessible route or recreation venue but access is often via permissive rights. As aerodromes and racecourses within the coastal margin are classified by the Act as excepted land public access rights do not apply. However, marinas, boatyards and boat parks are not classified in this manner, even though they present similar issues in terms of ownership and risk.
28. Sparkes Marina and Northney Marina are both located within the coastal margin which is land to which the public in principle would have access. Unsupervised and uncontrolled access is not acceptable and is dangerous. By virtue of public access rights to the coastal margin trail users may believe that they have the right to climb structures in the boatyards and marinas.
29. There needs to be clearer differentiation between coastal margin and private land. The coastal margin is shown in a broad-brush annotation on the Ordnance Survey maps which do not show excepted land, so it would be difficult for the public to know what they are able to access.
30. Public access forced upon the objector's marinas would raise significant additional liability and indemnity issues, in respect of which the objector may have to seek to recover compensation from NE.
31. It is unclear in the seaward direction where the coastal margin stops. It is presumed it is the landward side of the foreshore and excludes any pontoons or other structures attached to the land but which project beyond the mean high water mark. This matter requires clarification.
32. The proposed trail would place both marinas within the coastal margin which would create new public access rights. This may result in conflict if we temporarily close areas and charge access when events occur. The trail will be a material consideration in determining planning applications and could constrain development to the detriment of an important and growing sector. The objector is also concerned that applications for temporary planning permission may be refused if it conflicts with the route of the trail.
33. The objector requests that both marinas are classified as excepted land to avoid the problems that are outlined above.

Representations

34. The Solent Recreation Mitigation Partnership (SRMP) comprises the fifteen Solent local authorities, NE, the Royal Society for the Protection of Birds, the Hampshire and Isle of Wight Wildlife Trust and Chichester Harbour Conservancy. The SRMP welcomes the concept of the trail but is concerned that the increased visitor numbers will increase disturbance to overwintering birds in the SPA. It is understood that on Ordnance Survey maps spreading room including excepted land and land subject to a direction will be shown by a magenta wash. The SMRP is concerned that this will result in trail users believing that they are allowed to walk on intertidal areas which would cause great damage to these protected habitats and enormous disturbance to vulnerable wintering birds. Representations from members of the public refer to the disturbance that people's dogs can cause to birds and resulting harm.

35. The Ramblers' Association is disappointed that a lot of the proposed trail along the eastern side of Hayling Island is away from the coast and so has no views of it. There are a number of opportunities where the trail could follow the coast. The Association also points out that this will potentially cause issues due to the wide coastal margin that would be created. The Disabled Ramblers request that infrastructure along the trail does not present access problems for those with a disability, including those using scooters.
36. Clarification was also sought by Mengeham Rythe Sailing Club regarding the extent of the coastal margin, directions preventing public access and excepted land in relation to their premises and ramp.

Natural England's comments on the objections and representations

Objection A

37. England's coastline is regularly characterised by bays, coves and natural or man-made harbours. Some of these areas consist wholly or partly of estuarial (transitional) waters, containing a mix of fresh and salt water. In reality, it is only estuarial waters that are excluded from the definition of 'sea' at section 309 of the Act. Section 301 then gives NE discretion to treat such rivers as part of the sea as far upstream as the first publicly accessible bridge or tunnel by means of which the river can be crossed.
38. Whether or not our route proposal around harbour systems such as Chichester Harbour in fact relied legally on the use of the estuary discretion, the effect is the same in relation to Hayling Island, to which the objection relates. This is that for the purposes of section 300 of the Act:
 - The island is 'in the sea' – either because the harbours themselves form part of the sea, or because our use of the estuary discretion treats them as if they formed part of the sea; and,
 - It is connected to the mainland by a bridge that makes it possible for the public to walk to it.
39. As a result, Hayling Island forms part of the English Coast around which both the legislation and section 7.16 of the Scheme expect the trail to be aligned around given that it is not 'a very small island' (paragraph 7.16.4 of the Scheme.)
40. As a number of estuarial rivers may discharge into the same harbour, the section 301 discretion to treat the relevant part of the river as part of the sea applies separately to each in turn of the individual rivers or tributaries. Consequently, the position of the first public foot crossing necessarily falls to be separately assessed for each river or tributary in turn.
41. Section 297 of the Act requires NE to have regard to the desirability of the trail adhering to the periphery of the coast and providing views of the sea. In this context 'the sea' includes any estuarial waters treated as sea by the use of our estuary discretion; and includes land exposed by the sea at low tide, such as mudflats. However, the section 297 principles still allow the trail to be diverted inland where on balance this proves necessary. For the reasons given in the report, it was impractical to propose aligning the trail along some of the eastern shore and this would result in reduced views over Chichester Harbour from this part of the trail.

42. As Langstone Bridge is not a means by which the public cross a river estuary, reference to the first public foot crossing in section 301 of the Act is not relevant to it. Section 301 defines a public foot crossing in relation to a river as a 'bridge over which, or tunnel through which, there is a public right of way'. Since this definition does not include ferries, the objector's arguments that the Itchenor Ferry is the first public crossing for this purpose is not correct.

NE Summary:

43. Hayling Island is in the sea and the Coastal Access Duty applies to it because the public can walk to it across the connecting bridge. Alignment of the trail around the island relies on normal coastal access alignment powers. It does not rely on the use of the estuary discretion. The diversions inland from the eastern shore are necessary and consistent with those proposed in comparable situations elsewhere in the country. No modification is proposed by NE.

Objection B

Inconsistency regarding river estuaries and duplication

44. Section 301 of the Act provides the discretion to extend the trail up any river estuary as far as the first bridge or tunnel with pedestrian access, or as far as any point between the two. Each estuary is considered on its own merits having regard to the criteria set out in the Scheme.
45. In the case of South Hayling to East Head, NE considers that the presence of much excepted land between Bosham Hoe and the foot crossing at Fishbourne means that the trail between these points would provide limited views of the sea. As a result, NE proposes use of the foot ferry between Bosham Hoe and West Itchenor which avoids these problems, with an alternative trail route for use on weekdays in the winter months when the ferry service is not operating. The ferry service would be improved from a service that only operates during the warmer half of the year (daily service) to a service that also operates during the colder months of the year (weekends only). The ferry service would be improved to this year round service by using a capital grant from NE and funds raised by a community levy (see section 5 of the Overview Report and Report SHE 4).

Specific marina operator concerns - marinas and boatyards to be 'excepted' land

46. The seaward coastal margin extends from the trail to the mean low water mark. Both Northney Marina and Sparkes Marina are therefore located within the coastal margin. The public have access to land within the coastal margin unless it is excepted land. NE does not have the power to amend categories of land excepted from coastal access rights under Schedule 1 to the Countryside and Rights of Way Act 2000 (CROW). However, portions of marinas, boat parks and boatyards may be excepted land to which the public would not have access under other categories such as buildings and their curtilage. Whilst the definition of building does not include any slipway, hard or quay on the coastal margin, it is NE's opinion that jetties and pontoons would be excepted land by virtue of both being structures.
47. Northney Marina has a café and Sparkes Marina has a restaurant, both of which are open to the public. The objector therefore currently successfully manages public access to the marinas and we believe would continue to do so if the route of the

- proposed trail is confirmed. Similarly, both marinas have busy yards and boat handling facilities, but NE considers informal management measures are in place to protect workers and the visiting public. Such measures are often highly effective and are the most flexible and least bureaucratic way to manage access. This includes policing the unlikely eventuality of people trying to climb machinery, timber props and yachts. NE believes these objects constitute structures and so would be excepted land. However, only the courts can give an authoritative interpretation.
48. The objector is within its rights to place signs indicating the extent of excepted land where there may otherwise be doubt, so long as those signs are not misleading. Certain other areas within the marinas are separated off by fences and security gates. It is NE's view that these measures are likely to be effective management measures, and this is why NE have not proposed a direction to exclude access. Should evidence indicate that a direction is necessary NE would be able to take such action.
 49. As to whether private car parks would be excepted land, this will depend on whether it can be considered to form part of its curtilage which will vary according to the circumstances in each case. As noted earlier, only the courts can give an authoritative interpretation as to what constitutes excepted land.
 50. On liability concerns, it is understood that the coast can be a dangerous environment and visitors should take responsibility for their own safety and others in their care. Land subject to coastal access rights benefits from the lowest level of occupiers' liability, making it extremely unlikely for occupiers to be successfully sued in relation to injury on land with coastal access rights.
 51. Unlike the position with CROW 'open access land', the magenta wash identifying the coastal margin on Ordnance Survey (OS) maps does not show 'access land' per se but rather depicts the status of the land. Coastal margin in some areas has much land not subject to these rights either because it is excepted land or subject to a statutory direction. Magenta wash has been used to identify the coastal margin on OS maps since 2014 and despite significant built development covered by it on the Isle of Portland, and a mixture of development and areas where access rights are excluded to protect wintering birds on the Tees estuary, NE is unaware of any issues that have occurred in practice. It would not be feasible to remove the magenta wash from excepted land within the coastal margin.
 52. In relation to the trail and coastal margin conflicting with the development plan, coastal access rights do not prevent any land from being developed or re-developed in the future. Should events occur on the marinas, in accordance with the Scheme (section 8.16), NE will consider special measures to manage access, varying from informal measures through to the use of directions to exclude access for the duration of the event.
 53. In relation to the section 25A direction on land surrounding Northney Marina, this is a long term direction that has been put in place on safety grounds due to the saltmarshes and mudflats being unsuitable for public access. The direction would be in place for a period of 6 years and would be reviewed by NE every 5 years.
 54. No alternative modification is therefore proposed by NE.

Representations

SRMP

Increased visitor numbers

55. The potential impacts of increased visitor numbers on European sites are considered in the Habitats Regulations Assessment that SRMP have carried out. NE's programme to establish the trail is complementary to SRMP's strategy; it seeks to enable responsible access to the Solent coast and inform visitors about the ecological sensitivities. A key feature of the programme is the provision of coastal rangers to educate and inform visitors about the sensitivities of wintering birds so that they may enjoy the trail without causing disturbance to them.

Mapping of the coastal margin

56. The mapping of coastal margin on OS digital and paper maps with a magenta wash comes with a clear, concise explanation in the key which explains that not all coastal margin land is subject to access rights. The explanation gives examples of such land types and advises that the coastal margin is often steep, unstable and not readily accessible. It also advises that trail users should take careful note of conditions and local signage on the ground. This approach has been in use on OS maps since 2014 and NE is unaware of any issues that have occurred in practice.

Ramblers Association

57. One of the key reasons the proposed route was chosen was to reduce the likelihood of disturbance to sensitive wildlife by not encouraging new or increased access in sensitive areas. The proposed route does bring a significant area on the eastern side of the island into the coastal margin. However, not all of this land would be subject to access rights. The spreading room created by our proposals therefore is likely to be significantly smaller than the coastal margin shown on the map. In addition, areas of particular nature conservation sensitivity that would otherwise be subject to coastal access rights have been excluded by direction. In relation to specific areas, there were other considerations, such as public safety and highway safety, which meant that the proposed trail was routed away from the coast.

Disabled Ramblers

58. In our proposals NE has endeavoured to follow the approved scheme (section 4.3) to make the trail as easy to use as can reasonably be achieved for people with disabilities. When NE begins to establish this section of the trail NE will re-examine where it might be possible for targeted adjustments to be made to improve accessibility.

Mengeham Rythe Sailing Club

59. In this location the trail follows the existing public footpath which is well used. Given the small size of the slipway, and the ease of managing access informally here, NE's position is that a direction to exclude access under land management grounds (section 24) is not warranted in this location.

Discussion and Conclusions

Objection A

60. The trail between South Hayling and East Head largely follows the outline of most of Chichester Harbour which is a complex estuary system involving a number of channels. Hayling Island is accessible on foot across Langstone Bridge and sits with the estuarial waters of Chichester Harbour on its eastern side and the waters of Langstone Harbour on its western side. These waters meet on its northern side and the sea abuts the southern side of the island.
61. For the purposes of the Act, estuarial (transitional) waters do not fall within the definition of 'sea'. However, section 301 of the Act, which applies to river estuaries, states that NE may exercise its functions as if the references to the sea included the relevant upstream waters of a river as far as the first public foot crossing, or upstream to a point before the first public foot crossing.
62. As explained in section 5 of NE's Overview Report, NE has exercised this discretion in relation to Chichester Harbour with the proposed trail passing around each channel and across each channel tributary. The only exception to this approach is in relation to the Chichester Channel where it is proposed that use is made of a ferry. The ferry would operate throughout the year, except on winter weekdays, when an alternative land route around the channel and across the first public foot crossing of its tributary would be used.
63. For these reasons, by virtue of section 301, for the purposes of section 300 of the Act, Hayling Island is treated as being within the sea. It therefore forms part of the English coast around which the trail should pass.
64. Along significant parts of the eastern side of the island the trail has been routed inland away from the coast and makes use of available infrastructure. This is in order to prevent disturbance to sensitive wildlife and to address safety concerns regarding sections of the coast which can become inundated at high tide. Where views of Chichester Harbour do exist along the proposed trail route on the eastern side of the island, the views are of the estuarial waters and mudflats. For the purposes of the Act though such waters can be considered to be sea views because the estuarial discretion has been exercised by NE. Given the features of interest of the harbour, which include its natural beauty, wildlife and historic settlements, the recreational benefits of the trail including Chichester Harbour strongly support such discretion being exercised.
65. I am aware that concerns exist that the route of the proposed trail would create a wide coastal margin to which the public would have access. However, buildings and their curtilages within the coastal margin constitute excepted land to which such rights do not exist. For the purposes of the Coastal Access duty, buildings include dwellings, marquees and tents as found on Tournurbury Woods Estate. Section 6.5 of the Scheme outlines informal management techniques that can be used to steer people away from such land.
66. For the reasons given above, the route of the proposed trail should therefore not be modified to exclude Hayling Island as requested by the objection.

Objection B

67. Only the courts can authoritatively determine whether land is excepted land within the meaning of the legislation. However, there are clearly significant portions of the marinas that would fall within one or more of the excepted land categories, such as land covered by buildings and their curtilages. Unless more formal means of exclusion are deployed by direction, care should be exercised not to mislead the public when using informal management measures to discourage access from all areas of the marinas outside of the café and restaurant.
68. On the basis of the site visit, the layout of both marinas would not entice trail users and other members of the public to enter the industrial work areas and boat yards, and there is no reason to suppose they would seek conflict with landowners. Permissive routes allow the public to enter Northney and Sparkes Marinas to access the café and restaurant. Providing formal access rights over such quasi-public areas would not make it any more or less likely that anti-social behaviour would occur. In any event, no right of access would exist where structures fall within the buildings and curtilage exception under paragraph 2 of Schedule 1 to CROW.
69. The busy yards and boat handling facilities of both marinas present particular hazards. As previously described, the proposals for the trail are unable to alter categories of excepted land. However, I note NE's willingness to consider, if needed, a public safety direction to exclude access to some or all of the marinas. This should satisfy the objector's concerns, whilst not restricting its ability to manage its land as it does now.
70. Given the current access restrictions to the pontoons, moored boats and jetties at both marinas and certain gated and fenced boat storage areas at Northney Marina, I agree it is unlikely that formal action would be necessary to secure public entry into these areas. However, it is both necessary and desirable, in my view, that NE should respond to landowners' valid concerns and be prepared to issue formal directions to control access should circumstances alter and it proves necessary to take formal action.
71. The staging of commercial events at the marinas is an issue for the objector. I note that NE is willing to discuss the need for a direction to exclude or restrict access at times where these events take place. The Scheme explains how special measures may be used for a variety of events and temporary uses, for example music festivals. In my assessment, the use of informal management measures and directions to exclude access during events would satisfactorily address these concerns.
72. Given that the extent of excepted land is open to interpretation and will change over time as development occurs, difficulty exists in identifying excluded land within the coastal margin. As a result, the use of a magenta wash to illustrate the coastal margin on OS Maps is understandable and an approach that has been used now for almost ten years without any evidence that it is causing problems in practice.
73. On the issues of insurance and liability, the liability of owners of coastal access land towards visitors is reduced due to s306 of the 2009 Act and under the Occupiers' Liability Act 1984 as amended, so that the occupier's liability is excluded for "*a risk resulting from the existence of any physical feature (whether of the landscape or*

otherwise)". As set out in paragraphs 4.2.1 and 4.2.2 of the Scheme visitors have primary responsibility for their own safety.

74. The legislation does not provide for compensation to an owner who incurs loss resulting from the actions, accidental or otherwise, of a trail user who has gained access to potentially hazardous areas. Therefore liability insurance would remain an issue and the government has signposted further guidance on liability in coastal margins developed specifically for landowners. This guidance can be found by searching for '*open-access-land-management-rights-and-responsibilities*' on the www.gov.uk website. Taking all these matters into account, no modifications to the proposed trail and categorisation of land are necessary.

Representations

75. In preparing the route of the proposed trail, NE has needed to reconcile the desirability of it adhering to the periphery of the coast and providing views of the sea with other considerations. In addition to those listed earlier in this report in paragraphs 7 to 9, this included the need to minimise the potential impacts of increased visitor numbers on ecology.
76. Where the route of the proposed trail passes close to wildlife areas NE is proposing to use informal management techniques, such as signage and coastal rangers, to educate and inform visitors so that they and their dogs may enjoy the trail without causing disturbance to the birds. In relation to the concerns regarding the highlighted coastal margin on OS maps resulting in the public accessing sensitive wildlife sites between the trail and coast, this matter will be dealt with through the use of Directions and signage to restrict access.
77. Along the eastern side of Hayling Island, in locations such as Tournier Bury and Northney Marshes, NE assessed that the disturbance to wildlife would be such that the trail should be routed inland to avoid these areas. Safety considerations have also played their part in deciding that sections of the coast which could become inundated at high tide should not be followed. Although the route of the proposed trail would create a wide coastal margin to which the public would have access, where this could cause harm to important wildlife sites directions would be used to prevent access. In relation to people with disabilities and the use of scooters, at implementation stage NE have committed re-examining where, in accordance with the Approved Scheme, it might be possible for adjustments to be made to improve accessibility.
78. With regard to Mengeham Rythe Sailing Club, the potential for problems with the public accessing its slipway appear to be limited and should be capable of being dealt with by the club through informal management techniques.

Ecology

79. In terms of ecology and wildlife, the HRA carried out by NE concludes that the coastal access proposals would not have an adverse effect on the integrity of any European site. Similarly, the NCA finds that an appropriate balance has been struck between NE's conservation and access duties. In Annex A this information has been assessed in accordance with the relevant regulations.

Overall Conclusion

80. For the reasons given above, and having regard to all other matters raised, I conclude that the proposals 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.

Recommendation

81. On the basis of my conclusion, I therefore recommend that the Secretary of State makes a determination to the same effect as my conclusion.

Ian Radcliffe

APPOINTED PERSON

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

Habitats Regulation Assessment

0. 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).
1. If the AA concludes that an adverse effect on the integrity of a European site cannot be excluded beyond reasonable scientific doubt then, in accordance with the precautionary principle established in Court of Justice of the European Union Case C-127/02 Waddenzee 7 September 2004, consent for the plan or project can only be granted if: there are no alternative, less harmful, solutions; the plan or project must be carried out for imperative reasons of overriding public interest; and compensatory measures can be secured which maintain the ecological coherence of the UK National Site Network.
2. A 'shadow' HRA, dated 3 October 2019, 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. This shadow HRA (referred to hereafter as 'the HRA') was provided to inform the Competent Authority's AA and has been considered in making this recommendation.
3. The HRA considered the potential impacts of the coastal access proposals on the following European sites: the Chichester and Langstone Harbours Special Protection Area (SPA) and Ramsar, Solent Maritime Special Area of Conservation (SAC) and Solent and Dorset coast potential SPA (pSPA). The HRA is considered to have identified the relevant sites affected by the proposals. As the proposed trail is not directly connected to or necessary to the management of the European sites, a HRA is required.
4. The HRA screening exercise found that, in the absence of mitigation measures, the proposals could have significant effects on some of the Qualifying Features of the European Sites 'alone' through, for example, trampling and disturbance. On this basis, the HRA considered the potential for the proposals to give rise to Adverse Effects on the Integrity (AEol) of the designated sites.
5. The scope of the assessment is set out in Section B1 of the HRA and identifies the sites and qualifying features for which likely significant effects (LSE) 'alone' or 'in combination' could occur. Table 4 sets out the assessment of AEol for the identified LSE. Section B2 identifies the conservation objectives for the sites considered.
6. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to give rise to AEol from the proposals alone to determine whether they could give rise to an AEol in combination with other plans or projects. In these circumstances, no AEol was identified. NE has therefore concluded that the access proposal would not have an adverse effect on the integrity of any of the

- European sites considered either alone or in combination with other plans and projects.
7. The assessment of AEol for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Section D3). 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.
 8. Those relevant to this report where there is some residual risk of insignificant (i.e. unlikely to undermine integrity) effects are:
 - Repeated disturbance to foraging or resting non breeding water birds, 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.
 - Disturbance to breeding ringed plover, redshank, shelduck, oystercatcher, black-headed gulls, lapwing and little egret following changes in recreational activities as a result of the access proposal, leads to reduction in the abundance and distribution of the qualifying features within the site and a resultant reduction in the non-breeding population.
 9. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between South Hayling to East Head 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 Coastal Access: NE's Approved Scheme 2013. 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.
 10. Taking all these matters and the information provided in the HRA into account, reliance can be placed on the conclusions reached that the proposals would not adversely affect the integrity of the European sites assessed. It is noted that, if minded to modify the proposals, further assessment may be needed.

Nature Conservation Assessment

11. The NCA, dated 3 October 2019, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest and an undesignated site where Grey and Harbour Seals haul out of the water. These sites are not subject to consideration in the HRA.
12. Relevant to this report are the Chichester Harbour SSSI, Warblington Meadows SSSI and Oare Rithe. NE were satisfied that, consistent with the proper exercise of their functions, the proposals to improve access to the English coast between South Hayling to East Head were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs. In respect of the Harbour and Grey Seals, the appropriate balance has been struck between NE's conservation and access objectives, duties and purposes.



The Planning Inspectorate

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

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Date 9 February 2024

Marine and Coastal Access Act 2009

Objections by [redacted], the Parochial Church Council of Southbourne

With West Thorney and [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to South Hayling to East Head

Objection A - Ref: MCA/SHE2/0/1

Land along the rear boundary of 49 Maisemore Gardens, Emsworth

- On 3 October 2019 Natural England submitted Coastal Access Reports 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 23 November 2019 to Report SHE 2, Langstone Bridge to Prinsted, has been made by [redacted]. The land in the Report to which the objection relates is route sections SHE-2-SO23 to SHE-2-SO26 (Map 2b).
- The objection is made under paragraph 3(3)(a) and (c) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in Report SHE2, specifically in respect to the trail section SHE-2-S023 to SHE-2-S026, as proposed to be modified, do not fail to strike a fair balance.

Objection B - Ref: MCA/SHE2/0/2

Land within the churchyard of St Nicholas Church, Thorney Island

- On 3 October 2019 Natural England submitted Coastal Access Reports 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 28 October 2019 to Report SHE2, Langstone Bridge to Prinsted, has been made by the Parochial Church Council of Southbourne with West Thorney. The land in the Report to which the objection relates is route section SHE-2-S078 FP (Map 2g).
- The objection is made under paragraph 3(3)(a), (c) and (d) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in Report SHE2, specifically in respect to the trail section SHE-2-S078, do not fail to strike a fair balance.

Objection C - Ref: MCA/SHE3/0/1

Land running adjacent to Marsh Farm

- On 3 October 2019 Natural England submitted Coastal Access Reports 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 18 November 2019 to Report SHE3, Prinsted to Bosham, has been made by [redacted]. The land in the Report to which the objection relates is route sections SHE-3-S006 and SHE-3-S007 (Map 3a).
- The objection is made under paragraph 3(3)(b) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in Report SHE3, specifically in respect to the trail

sections SHE-3-S006 to SHE-3-S007, as proposed to be modified, do not fail to strike a fair balance.

Procedural and Preliminary Matters

13. The Coastal Access Reports (SHE1 - 5), submitted to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State) by Natural England (NE), set out proposals for improved access to the coast between South Hayling and East Head.
14. The period for making formal representations and objections to the Reports closed on 28 November 2019. Within the relevant timescales, as detailed above, two admissible objections were received within the specified timescale in relation to Report SHE2 and one admissible objection was received in relation to Report SHE3. I have been appointed to report to the Secretary of State on these objections.
15. Prior to the site visits in 2023, the objectors in objection A wrote to explain that their opposition was partly based on an infrastructure plan for the footway and proposed boardwalk that NE had subsequently changed and that their objection had been made before the Supreme Court judgement in 2023 regarding the Tate Modern viewing gallery and privacy (Fearn and others (Appellants) v Board of Trustees of the Tate Gallery (Respondent) [2023] UKSC 4). As a result, they wished to comment on the revised plans and asked that this judgement was taken into account. In the interests of natural justice, I agreed to these requests. The comments received, NE's response to them and the judgement have therefore been considered in this report.
16. The changes between the original infrastructure proposal (between trail sections S021 and S026) for the footway and the revised plans to which objection A relates are relatively minor, and the concerns of those who made formal representations on the original proposals are clear. As a result, their interests would not be disadvantaged if the proposed trail was assessed on the basis of the amendments proposed. I have therefore proceeded to assess the proposal on the basis of the amended plans which are attached to the end of this report in Appendix B.
17. In addition to the objections, representations were received. After the site visit, NE shared the revised infrastructure plan with an interested neighbour at [redacted] whose rear garden would be adjacent to the eastern end of the proposed boardwalk. I have considered the representation she subsequently made together with, where relevant, the many other representations that were made previously.
18. I carried out the site visits to view the route sections in relation to the objections on 27 and 28 June 2023 respectively. The site visits were carried out in the company of the relevant objector, a representative of NE and the relevant county council. The relevant county council in relation to [redacted] was Hampshire and in relation to [redacted] and the Parochial Church Council of Southbourne with West Thorney it was West Sussex County Council (WSSCC).
19. NE has completed a Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals relating to South Hayling to East Head might have an adverse impact on the Chichester and Langstone Harbours Special Protection Area (SPA) and Ramsar, Solent Maritime Special Area of Conservation (SAC), Solent and Dorset coast potential SPA (pSPA). It has also produced a Nature Conservation Assessment (NCA) that covers the Chichester Harbour and Warblington Meadows

Sites of Special Scientific Interest (SSSI) and which should be read alongside the HRA. The coastal margin and sections of the trail covered by the objections in this report lie within the international statutory designations covered by the HRA.

20. Main Issues

21. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (the Act) and requires NE and the Secretary of State to exercise their relevant functions to secure 2 objectives.

22. The first objective is that there is a route for the whole of the English coast which: consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and (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 and has been commonly described as the England Coast Path. To mark the coronation of His Majesty King Charles III, it has been renamed the 'King Charles III England Coast Path'. For ease of reference it is referred to as "the trail" in this report.

23. 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 or otherwise. This is referred to as the coastal margin.

24. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:

the safety and convenience of those using the trail,

the desirability of the trail adhering to the periphery of the coast and providing views of the sea, and

the desirability of ensuring that so far as reasonably practicable interruptions to the trail are kept to a minimum.

25. The achievement of a fair balance must also be sought 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.

26. Section 301 of the Act applies to river estuaries and states that NE may exercise its functions as if the references to the sea included the relevant upstream waters of a river.

27. NE's Approved Scheme 2013 (the Scheme), which was adopted by the Secretary of State in July 2013, sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within the Report.

28. 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. I shall set out that determination and make a recommendation to the Secretary of State accordingly.

The Coastal Route

29. South Hayling and East Head lie on either side of the mouth to Chichester Harbour. The harbour is a sheltered, complex estuary system made up of four major channels: Emsworth, Thorney, Bosham and Chichester. A wide variety of habitats exist in the

- harbour including shingle beaches, spits, sand dunes and mud flats. Manmade flood defences are also present in certain areas. The extensive areas of soft mud attract thousands of wintering water birds to the area. Almost the entire area of the harbour enclosed by the trail has been designated as areas of nature conservation.
30. NE proposes to exercise its functions as if the sea included the estuary system of the harbour. On this basis it proposes that the trail should follow the sides of the Emsworth, Thorney and Bosham channels and cross the Chichester Channel using the ferry between West Itchenor and Bosham. The ferry would not be operational Monday to Friday between October to March each year. On these days an alternative land route is proposed for use.
 31. This report relates to objections received in relation to the route of the proposed trail between Langstone Bridge, which connects Hayling Island to the mainland, and Prinsted to the east. The proposed trail follows the periphery of Thorney Island to Prinsted with an alternative route available as a diversion from the ordinary route around Thorney Island when the Ministry of Defence restricts access for security reasons.
 32. Route sections S023 to S026 follow an existing path and public right of way along the landward edge of the foreshore. Route section S078 passes through the grounds of St Nicholas Church. Route sections S006 and S007 follow the existing public right of way along the top of the seawall and place the objector's land in objection C in the coastal margin. Given that all sections of the route referred to in this report have the prefix SHE-2 or SHE-3, for ease of reference, I have referred to the trail sections by the S0 number only.

The Objections

33. All of the objections have been made on the basis that the proposals in the report fail to strike a fair balance in relation to one or more of the grounds set out in paragraph 3(3) of Schedule 1A to the National Parks and Access to the Countryside Act 1949.
34. Objection A
35. When the tide is high the proposed boardwalk and improvements to the walkway over the culvert would provide a dry route across the shore for only a very few extra hours each year when compared to the current situation. The proposed boardwalk would harm the privacy of the objectors and devalue their property. The harm they would experience would exceed the public benefits of the proposed infrastructure.
36. Land Registry documents show that the seawall crosses the land of [redacted] where the objectors live. They can therefore object and they have the right to refuse permission for the boardwalk to be attached to the seawall.
37. In stating that the raised path would be available at all states of the tide NE has made a misleading and untrue statement. The tide would rise above the height of the boardwalk on occasion. Given that the path along the shore is dry on average 98.4% of annual daylight tides there is no need for an elevated path.
38. The elevated height of the boardwalk would be approximately 7m from the living room window of the objectors. The trail would attract significant numbers of walkers who would look down upon the objectors. The noise of footsteps on the boardwalk and people talking would also be disturbing. The objectors' lease prevents them from planting shrubs to screen views from the proposed boardwalk. An estate agent has advised the objectors that the boardwalk could result in a moderate devaluation of

- their house. Given the value of the house, this could be a significant financial loss. The objectors have not been given any assurances that the proposed works would not undermine the stability of strata protected by the sea wall.
39. The objections received after the site visit consisted of the following additional points. Based upon the 2023 tide chart, the revised infrastructure proposed would increase the dry shod access for walkers along these sections of the trail by just over 1% to 99.5%. When the shore by the objectors' property is currently inundated during a tide of 4.7m or above it can be easily waded through using wellington boots and does not last long. The revised plans for a boardwalk not attached to the seawall do not include details of how it would be dismantled when work needs to be carried out to the sea wall or who would pay for this. Seaweed would be caught by the boardwalk when the tide retreats and would smell. Storm surges could destroy the boardwalk with debris damaging the seawall.
40. For the reasons given above, infrastructure in the form of an improved pathway and then boardwalk along the seawall to the rear of the objectors' house is not warranted. The public benefits are outweighed by the harm that the objectors would experience as owners and occupiers of the house.
41. Objection B
42. The proposed trail section S078 passes through the eastern fringe of St Nicholas churchyard before proceeding down the slope of an existing unmade path to the top of the low seawall. The path then steps down the seawall to the shore.
43. The path passes through an ancient burial ground and the landward boundary for the path has not been defined in the relevant table in Report SHE2 published by NE. The proposed trail should be modified by replacing the slope with steps and providing a handrail in order to improve access from the churchyard to the shore.
44. Objection C
45. The coastal margin proposed to trail sections S006 and S007 in Report SHE3 would include the landward slope of the seawall and the access track at its base. There is no need for the proposed coastal margin to include these features as the flat top of the sea wall at approximately 5m in width is wide enough for several people to walk side by side. Creating the coastal margin proposed without the provision of steps and a handrail would risk walkers falling and injuring themselves when descending the slope. It would also result in conflict on the access track between walkers and tractors and disturb wildlife in the adjacent drainage marshes. As the access track is often flooded it is not suitable for walking. The proposed trail should be modified by reducing the coastal margin to the width of the existing public footpath along the top of the seawall.

Representations

46. Reports SHE2 & SHE3
47. Full representations, namely those that must be sent in full to the Secretary of State, were made by 10 organisations in relation to Report SHE2 and by 5 organisations in relation to Report SHE3. Those that made points of note which were not repeated in other representations are summarised in the following 3 paragraphs.
48. The Solent Recreation Mitigation Partnership (SRMP) comprises the fifteen Solent local authorities, NE, the Royal Society for the Protection of Birds, the Hampshire and

- Isle of Wight Wildlife Trust and Chichester Harbour Conservancy. The SRMP welcomes the concept of the trail but is concerned that the increased visitor numbers would increase disturbance to overwintering birds in the Special Protection Area (SPA). It is understood that on Ordnance Survey maps spreading room including excepted land and land subject to a direction would be shown by a magenta wash. The SMRP is concerned that this would result in trail users believing that they are allowed to walk on intertidal areas which would cause great damage to these protected habitats and enormous disturbance to vulnerable wintering birds. Representations from members of the public refer to the disturbance that people's dogs can cause to birds and resulting harm.
49. WSCC takes over as the local access authority and the local highway authority from Hampshire Council at trail section SHE-2-S056. Work is required to establish and maintain the trail. WSCC expects NE to establish the trail. The establishment and maintenance costs quoted in the report require reviewing. Further details are sought on the Bosham – Itchenor Ferry. Errors have also been made in places in the report in terms of the status of the route that the proposed trail follows.
 50. The Ramblers' Association is disappointed that the section of the coast around Conigar Point has been excluded (Report SHE2, sections S013 to S022). The proposals for spreading room and excluded land seaward of the trail are unclear. Land on the seaward side of the trail is in frequent use by nearby residents. To justify directions restricting access to such land, supporting evidence would be required.
 51. 67 other representations were received in relation to Report SHE2. In relation to Report SHE3, 6 other representations were made. Most of those made in relation to Report SHE2 relate to the proposal to improve the trail between trail sections S022 to S026 by providing infrastructure. These representations therefore are relevant to Objection A.
 52. In support of infrastructure provision between sections S022 to S026, current access problems at high tide, especially for those with mobility issues were cited, together with the comfort, convenience and improved safety of walkers not having to wade through water and navigate a submerged, culverted footbridge. It was also stated that this bridge required repairs and that the proposed improvements would prevent reeds from being trampled at high tide. In opposition to the proposed infrastructure, it was stated that the infrastructure would still be inundated by tides at times, that it would be expensive with very little gain, that its design would not be in keeping the rural feel of the area and that an alternative route exists.
 53. In the interests of protecting the character and appearance of the area, the representation received from the occupier of [redacted] in relation to the amended infrastructure proposal (between trail sections S022 and S026) wished to see the extent of hand rails minimised. The representation also expressed a preference for a solid path, rather than the proposed boardwalk, immediately to the rear of the houses at [redacted] as this would better complement the existing raised path to the east.
 54. No other representations made specific to Report SHE3 raised points that were not raised in full representations. In relation to both Reports, the Disabled Ramblers requested that infrastructure along the trail provides access for those with a disability, including those using scooters.

Natural England's comments on the objections and representations

55. Objection A

56. The objection was deemed admissible by the Appointed Person, subject to clarification as to whether the objectors' leasehold ownership extends to include land crossed by the route. The objectors state that they have a conveyancing plan which shows that they own the land under the seawall. NE twice accepted the objectors' offer to view the document. However, the document was not provided.
57. The information obtained from the Land Registry by NE appears to show the objectors' ownership ending landward of the seawall. The original proposal of a walkway attached to the seawall has been replaced with a free standing boardwalk that is not attached to the seawall. The boardwalk would follow the route of a well-used public right of way.
58. In terms of consultation, discussions were held with the objectors on multiple occasions from 2016 onwards. The time between some of this correspondence was significant due to the time taken to develop proposals on this complicated stretch of the trail.
59. NE is no longer proposing to remove the existing culverted bridge structure to the west of the objector's dwelling. Instead, following conversations with the Environment Agency, local authorities, Chichester Harbour Authority and internally, NE has modified its proposals. These changes mean that the existing culverted bridge structure would be retained, strengthened and raised in height to the same height as the existing walkway along the seawall. A boardwalk would also be constructed in front of the seawall behind which are the rear gardens to residential properties along [redacted]. The design of the boardwalk would ensure that the route remains dry for all predicted tides. Unlike the original proposal the boardwalk would not touch the seawall.
60. NE acknowledge that in the original published report it incorrectly stated that the trail would be available at all states of the tide. The modified infrastructure plans proposed would enable the route to be available at all stages of astronomically predicted tides.
61. NE have not provided an optional alternative route. This is because the proposed trail would be available at all stages of predicted tides. If the trail is inundated in extreme tidal events users would be able to avoid it by walking along the A529. No modification is therefore proposed.
62. In relation to privacy, the objectors have referred to NE's report on the first statutory review of the Coastal Access Scheme 2013. This report is not the same as the approved statutory document, the Scheme, which sets out NE's approach to implementing the England Coastal Path. Section 5.4 of the Scheme sets out how privacy is approached. NE accept that the option of using a boardwalk would be likely to be more popular than walking on the shore. NE discussed privacy concerns with the objectors and notes that the screening NE initially offered could be contrary to a restrictive clause relating to the property. NE considers screening though to be unnecessary because the boardwalk would be set at a lower level some distance from the rear elevation of the house with only taller walkers' heads being visible.
63. NE does not accept the objectors' claim that that walkers are able to walk along the shore on average for between 98% and 99% of annual daylight tides without getting their feet wet, and choose to walk through the water for the remaining time. In order to stay dry, it is likely that users of the public right of way already walk in close proximity to the objectors' property at the top of the beach behind the seawall. The

- proposed boardwalk would provide access at all states of predicted tides throughout the year.
64. In relation to concerns about the boardwalk devaluing the objectors' property due to its effect on privacy, NE does not share these concerns because of the presence of existing access along the line of the proposed route. NE is required to strike a fair balance between the interests of landowners and the interest of the public and NE believes it has done so. Compensation is not available in relation to the implementation of the trail and NE is not aware of any circumstances where the introduction of coastal access rights had harmed property prices.
 65. The refurbishment of the culverted bridge and the installation of the boardwalk would not have a significant impact on the erosion of the seawall. The boardwalk is likely to provide some protection to the seawall from wave action. At the detailed design stage in depth assessments of the proposals would be provided. The Coastal Partnership, who have a thorough understanding of the area, would inspect the designs and work would not commence until the necessary licences and permits are obtained from relevant regulatory bodies.
 66. In relation to notices advising people to wait at high tide, tidal information is already provided at the end of Warblington Lane. As the proposed infrastructure would enable the route to be available at all stages of predicted tides, NE would only add notices to provide information about what to do if unusually there is inundation during extreme weather events and unpredicted tidal events.
 67. In summary, in relation to objection A, NE wish the proposed trail to be assessed on the basis of their amended plans. No further modifications are proposed by NE.
 68. Objection B
 69. NE acknowledges that trail section S078 was wrongly recorded as a public footpath in the published proposals. Table 2.3.1 of the report has now been amended and NE asks the Secretary of State to note that it is now shown as an existing permissive path.
 70. Burial grounds are excepted land for the purposes of the Act. Coastal access rights do not normally apply to excepted land. However, NE has the power to recommend that the trail crosses a burial ground on an access strip and is proposing to do so in this case. The landward boundary of the coastal margin for trail section S078 in Report SHE2 was aligned with the edge of the permissive path so that the extent of access to trail users would be clear on the ground. Whilst the access strip would normally be 4m wide, NE would vary the width as necessary so that the trail does not impinge on features within the churchyard.
 71. No modification, other than the amendment to the table referred to above, is therefore proposed by NE.
 72. Objection C
 73. The trail sections S006 to S007 would follow the existing footpath. For clarity NE sought to include the landward slope of the seawall and adjacent access track as landward coastal margin. As requested, NE propose to modify the landward edge of the coastal margin so that it is reduced in depth and moved to the landward edge of the top of the seawall. On trail section S007 this would correspond with the existing fence line.

74. Representations

75. *SRMP*

76. *Increased visitor numbers*

77. The potential impacts of increased visitor numbers on European sites are considered in the HRA that NE have carried out. NE's programme to establish the trail is complementary to SRMP's strategy; it seeks to enable responsible access to the Solent coast and inform visitors about its ecological sensitivities. A key feature of the programme is the provision of coastal rangers to educate and inform visitors about the sensitivities of wintering birds so that they may enjoy the trail without causing disturbance to them.

78. *Mapping of the coastal margin*

79. The mapping of coastal margin on OS digital and paper maps with a magenta wash comes with a clear, concise explanation in the key which explains that not all coastal margin land is subject to the right of access. The explanation gives examples of such land types and advises that the coastal margin is often steep, unstable and not readily accessible. It also advises that trail users should take careful note of conditions and local signage on the ground. This approach has been in use on OS maps since 2014 and NE is unaware of any issues that have occurred in practice.

80. *WSCC*

81. NE and WSCC have been involved in lengthy discussions regarding the establishment and maintenance of the trail. This has resulted in the formation of a Trail Partnership. NE has supported WSCC recruiting a dedicated project officer for the trail. This post was filled in October 2021.

82. NE recognises that variations to the estimated cost may occur if the situation on the ground changes by the time the establishment works take place. NE does not dispute WSCC's assertion that NE funding to support National Trails in practice is falling. At the time of NE's response in March 2021, NE continues to offer funding for ongoing maintenance of established trail at a NE: local authority ratio of 3:1.

83. The Bosham – Itchenor ferry service would operate year round with the service between the end of October and the Easter bank holiday restricted to weekends only. Should the ferry service cease, NE would prepare a variation report to the SoS to ensure that the trail is not interrupted along this part of the coast. NE recognises that there are several mapping errors in the proposals map. NE would work with WSCC to update its mapping data where required.

84. *Ramblers Association*

85. NE has chosen to propose aligning the trail inland of Conigar Point as currently the beach route is impassable at some stages of the tide. Additionally, the conservation assessments NE have carried out identified that although there is existing access at Conigar Point, aligning the trail here would be likely to increase the disturbance of birds to an unacceptable level.

86. To confirm there are no restrictions proposed to be imposed on the beach area adjacent to the shoreline. The Section 25A restriction proposed would be placed on the mudflats which is seaward of the well-used coastal route around Conigar Point and is intended to protect the safety of trail users from the hidden dangers present.

87. *Disabled Ramblers*

88. In our proposals NE has endeavoured to follow the Scheme (section 4.3) to make the trail as easy to use as can reasonably be achieved for people with disabilities. When NE begins to establish this section of the trail NE would re-examine where it might be possible for targeted adjustments to be made to improve accessibility.

89. Discussion and Conclusions

90. Objection A

91. The objectors seek the deletion of the proposed boardwalk on trail section S025 to the rear of their house.

92. It was determined that the objection made by [redacted] should be treated as being admissible subject to clarification of the extent of the leasehold ownership. The determination refers to [redacted] claiming ownership of the land crossed by the route and the coastal margin. However, this is not stated in the objection that was made. Instead, the claimed leasehold ownership extends as far as the seawall at the bottom of their garden. This is relevant as the proposals contained in the published report included creating a raised boardwalk that would be attached to the seawall.

93. The most important evidence in relation to ownership that has been submitted is Land Registry data provided by NE which shows the title to [redacted]'s house, [redacted] either touching the landward side of the seawall or set a few centimetres behind it. Given that the accuracy of the dataset is not stated in relation to the overlaid aerial photography and the low resolution of the pictures, I find, on balance, that it has not been demonstrated that the seawall is not within their ownership. I have therefore proceeded on the basis that the objection is admissible.

94. Since NE's report was published amendments have been proposed to the design of the proposed infrastructure between trail sections S023 to S026 which include the boardwalk being freestanding and the walkway no longer being attached to the seawall. As explained in the preliminary matters to this report, it is on the basis of the revised plans attached in Appendix B that I have assessed objection A.

95. The rear garden to the objectors' dwelling is significantly higher than the beach. Its triangular shape means that the rear facing ground floor windows of the house are between approximately 7m and 11m from the property's rear boundary along the seawall. A low, close boarded, wooden fence has been erected on top of the seawall and for most of its length small plants and shrubs within the objectors' garden protrude above it by a similar height again as the fence itself. As the proposed boardwalk would be at a similar height to the existing raised walkway nearby to the eastern side of the house, other than for the briefest of moments when passing gaps in the planting, users of the proposed boardwalk would not be able to see into the garden or have views of the rear ground floor rooms. Moreover, with panoramic views of the open coast and its natural beauty in the opposite direction, it is reasonable to expect that trail users would be looking away from the house rather than towards it.

96. Footfall along the boardwalk, along with the conversation of users, would generate some noise that would be audible within the rear garden. However, this is likely to be currently the case with people using the existing public right of way along the shingle beach. Furthermore, the noise moderating effect of the seawall and close boarded fence above would serve to reduce noise levels. Therefore, whilst I can appreciate

- the objectors concerns regarding the effects of the proposed boardwalk on their privacy and peaceful enjoyment of their property, I find these concerns to be poorly founded.
97. Reference has been made to the Supreme Court's decision of February 2023 in relation to a viewing platform at the Tate Modern and its adverse effect on the privacy of the occupiers of nearby flats. However, in that case it was found that a significant loss of privacy was occurring as a result of the viewing platform providing direct views into the flats whose external walls are constructed mainly of glass. For the reasons given above, that is not the case here. As a result, I attach little weight to this case in favour of the objectors' proposed modification.
 98. Concerns have been expressed that the loss of privacy resulting from the elevated boardwalk could result in a fall in the value of the objectors' house. The Act and Scheme though does not provide for the payment of compensation. Moreover, even if this was not the case, given the presence of the existing public right of way along the foreshore and my findings in relation to privacy, such payment would not be warranted in this case.
 99. In combination with the work to improve the bridge over the culvert to the west which is in need of repair (trail section S024), the boardwalk (trail section S025) has been designed to provide a route that would remain dry for all predicted tides throughout the year. Also factored in to its design is an allowance for increased tide levels as a result of climate change. Even so, on occasion, storms would raise levels above the height of the boardwalk, but the evidence is that such events are not predictable. Nevertheless, the objectors have attempted to estimate when the trail would be inundated in comparison to the trail following the foreshore. In their view, the current shoreline path is dry 98.5% of the year and the proposed infrastructure would only increase this by 1% to 99.5%.
 100. The designer of the infrastructure scheme advises that because of the unpredictability of meteorological conditions it is not possible to calculate for how much of the year the proposed path would be inundated. There is no good reason to disagree with that assessment. Furthermore, there are significant public benefits to improving upon the existing public right of way to provide a route that is accessible for all and safer at high tide.
 101. During storm events, when tides could exceed predicted levels, warnings would be publicised via the media and it would be the responsibility of trail users to heed such warnings and exercise caution, by either not using the trail or diverting inland along highways and public rights of way, as necessary, to avoid the flooded section.
 102. Work in relation to footbridges and walkways between Langstone Bridge and Prinsted was estimated to cost £70,000 in 2019 when the NE published its reports on the proposed trail between South Hayling and East Head. Since then prices would have increased. However, once installed the infrastructure would allow the trail in the vicinity of Emsworth to be enjoyed by all and the works are supported by local community groups. Furthermore, if well-chosen materials and methods of construction are used, once in place the infrastructure should last for a significant number of years. I therefore attach little weight to the argument that the infrastructure does not offer value for money.
 103. The proposed raised walkway would also minimise the risk that currently exists when waters are rising of walkers veering off course and trampling reeds or falling

into the submerged culvert. In terms of accessibility for the public with impaired mobility and for the safety of all users, these are real benefits to which significant weight should be attached. This is especially so given that this part of the proposed trail on the suburban edge of Emsworth is easy to access and therefore likely to be in frequent use.

104. Seaweed is a feature of the shore. As a result, I do not find that if seaweed is caught around the feet of the boardwalk it would result in an accumulation that would smell materially more than the current situation. The effect of the boardwalk on the performance of the seawall would also be considered at detailed design stage when relevant regulatory bodies, such as the Environment Agency, would have to be satisfied as to its suitability.
105. Objection B
106. It is noted that trail section S078 was wrongly recorded in the published report as a public right of way rather than a permissive path. The report has now been corrected and the landward boundary of the access strip will be varied as necessary to accommodate the features of the churchyard.
107. In terms of the slope down from the churchyard and modest step down over the seawall onto the shore, land subject to coastal access rights benefits from the lowest level of occupier liability in English law. As a result, along more remote sections of the trail where fewer walkers are anticipated, such as here where section S078 proceeds down a slope and steps over the low seawall to join section S079 on the shore, trail users would need to proceed sensibly and take responsibility for their own safety. No modification to the trail in terms of the addition of steps or a handrail is necessary.
108. Objection C
109. NE has not contested the points made by the objector. However, as the 1.5m default width for a public footpath is considerably less than the 4m default width for the coastal path, limiting the width of the trail to that of the public footpath as requested would not be acceptable. NE's proposed alternative modification would allow trail users to make use of the full width of the seawall, which the objector estimates is approximately 5m in width, and is therefore to be preferred.
110. This modification has not been advertised. However, as it is minor and provides clarity, no party would be prejudiced if this modification was considered as part of this report.
111. *Representations*
112. In preparing the route of the proposed trail, NE has needed to reconcile the desirability of it adhering to the periphery of the coast and providing views of the sea with other considerations. In addition to those listed earlier in the preamble to the main issues in this report, this included the need to minimise the potential impacts of increased visitor numbers on ecology.
113. Where the route of the proposed trail passes close to wildlife areas NE is proposing to use informal management techniques such as signage and coastal rangers to educate and inform visitors so that they and their dogs may enjoy the trail without causing disturbance to the birds. In relation to the concerns regarding the highlighted coastal margin on OS maps resulting in the public accessing sensitive wildlife sites between the trail and close to the coast, this matter would be dealt with through the use of directions and signage to restrict access.

114. The proposed trail (sections S013 to S022) would be routed inland of Conigar Point rather than following the beach route around it. In opting to follow the footpath which is a public right of way the increase in walkers to the area that the trail would attract would not add to the disturbance caused to birds on the foreshore. The proposed route would also avoid situations where the trail is cut off by the tide. As the land between the trail route and the waters of Emsworth Channel would form coastal margin, trail users would be able to use the coastal route in the same way as existing walkers in the area if they wished. The proposed section 25A direction is to protect trail users from the dangers of walking on the mudflats.
115. It is clear that through the creation of the Trail Partnership and the recruitment of a project officer NE and WSCC have worked together closely to address concerns regarding the establishment and maintenance of the trail. Given that over four years have passed since the publication of the proposals for the route of the trail between South Hayling and East Head, the estimated costs contained in the report would need to be reviewed to take account of inflation and any changes on the ground. Any mismatch between the revised cost estimation and funding available would have to be reconciled to enable the establishment and maintenance of the trail.
116. NE have provided further details regarding the Bosham – Itchenor ferry service. NE also acknowledge that in places in the report errors have been made regarding the status of the route and have agreed to work with WSCC to rectify this.
117. In relation to people with disabilities and the use of all-terrain mobility scooters, at implementation stage NE have committed to re-examining where, in accordance with the Scheme, it might be possible for adjustments to be made to improve accessibility.
118. In terms of design, subject to the use of appropriate materials that are in keeping with development in the area, I see no reason why the boardwalk and raised walkway with handrails on the trail sections to which objection A relates would not fit in and blend with the existing character and appearance of its location.
119. For the reasons given in the discussion of the objections and representations above, the infrastructure needed to create the proposed accessible trail route would provide value for the money spent.
120. *Ecology*
121. In terms of ecology and wildlife, the HRA carried out by NE concludes that the coastal access proposals, subject to the very minor changes proposed by NE, would not have an adverse effect on the integrity of any European site. Similarly, the NCA finds that an appropriate balance has been struck between NE's conservation and access duties. Appendix A attached to the end of this report provides further details on this matter.
122. **Overall Conclusion**
123. In relation to report SHE2 'Langstone Bridge to Prinsted', minor modifications, including the provision of handrails to improve access and a boardwalk unattached to the seawall have been proposed by NE. These modifications are shown on the plans at Appendix B. With regard to Report SHE3 'Prinsted to Bosham', a minor modification changing the landward boundary of the coastal margin for trail sections S006 to S007 from 'ditch' to 'landward edge of the top of the seawall' in the relevant cells of 'Table 3.3.1 Section Details – Maps SHE 3a to SHE 3e: Prinsted to Bosham' has been proposed by NE. Appendix C shows the relevant modifications to this table.

These changes would also require Map3a: Prinsted to Chidham Point to be modified by deleting the coastal margin, marked by a magenta wash, beyond the landward edge of the top of the seawall, as shown on the map in Appendix D. No new potential objectors have been identified in consequence of these minor modifications.

124. For the reasons given above, and having regard to all other matters raised, I conclude that the proposals, with the minor modifications described, would 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.

Recommendation

125. On the basis of my conclusion, I therefore recommend that the Secretary of State makes a determination to the same effect as my conclusion, making use of the revised infrastructure proposals described in the conclusion to clarify matters.

Ian Radcliffe

APPOINTED PERSON

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

Habitats Regulation Assessment

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).
2. If the AA concludes that an adverse effect on the integrity of a European site cannot be excluded beyond reasonable scientific doubt then, in accordance with the precautionary principle established in Court of Justice of the European Union Case C-127/02 Waddenzee 7 September 2004, consent for the plan or project can only be granted if: there are no alternative, less harmful, solutions; the plan or project must be carried out for imperative reasons of overriding public interest; and compensatory measures can be secured which maintain the ecological coherence of the UK National Site Network.
3. A 'shadow' HRA, dated 3 October 2019, 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. This shadow HRA (referred to hereafter as 'the HRA') was provided to inform the Competent Authority's AA and has been considered in making this recommendation.
4. The HRA considered the potential impacts of the coastal access proposals on the following European sites: the Chichester and Langstone Harbours Special Protection Area (SPA) and Ramsar, Solent Maritime Special Area of Conservation (SAC) and Solent and Dorset coast potential SPA (pSPA). The HRA is considered to have identified the relevant sites affected by the proposals. As the proposed trail is not directly connected to or necessary to the management of the European sites, a HRA is required.
5. The HRA screening exercise found that, in the absence of mitigation measures, the proposals could have significant effects on some of the Qualifying Features of the European Sites 'alone' through, for example, trampling and disturbance. On this basis, the HRA considered the potential for the proposals to give rise to Adverse Effects on the Integrity (AEol) of the designated sites.
6. The scope of the assessment is set out in Section B1 of the HRA and identifies the sites and qualifying features for which likely significant effects (LSE) 'alone' or 'in combination' could occur. Table 4 sets out the assessment of AEol for the identified LSE. Section B2 identifies the conservation objectives for the sites considered.
7. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to give rise to AEol from the proposals alone to determine whether they could give rise to an AEol in combination with other plans or projects. In these circumstances, no AEol was identified. NE has therefore concluded that the access proposal would not have an adverse effect on the integrity of any of the European sites considered either alone or in combination with other plans and projects.
8. The assessment of AEol for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Section D3). 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.
9. Those relevant to this report where there is some residual risk of insignificant (i.e. unlikely to undermine integrity) effects are:

- Repeated disturbance to foraging or resting non breeding water birds, 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.
 - Disturbance to breeding ringed plover, redshank, shelduck, oystercatcher, black-headed gulls, lapwing and little egret following changes in recreational activities as a result of the access proposal, leads to reduction in the abundance and distribution of the qualifying features within the site and a resultant reduction in the non-breeding population.
10. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between South Hayling to East Head 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 Coastal Access: NE's Approved Scheme 2013. 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.
11. Taking all these matters and the information provided in the HRA into account, reliance can be placed on the conclusions reached that the proposals would not adversely affect the integrity of the European sites assessed. It is noted that, if minded to modify the proposals, further assessment may be needed.

Nature Conservation Assessment

12. The NCA, dated 3 October 2019, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest and an undesignated site where Grey and Harbour Seals haul out of the water. These sites are not subject to consideration in the HRA.
13. Relevant to this report are the Chichester Harbour SSSI, Warblington Meadows SSSI and Oare Rithe. NE were satisfied that, consistent with the proper exercise of their functions, the proposals to improve access to the English coast between South Hayling to East Head were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs. In respect of the Harbour and Grey Seals, the appropriate balance has been struck between NE's conservation and access objectives, duties and purposes.

APPENDIX B: Modification between sections SHE-2- S023 and SHE-2- S026

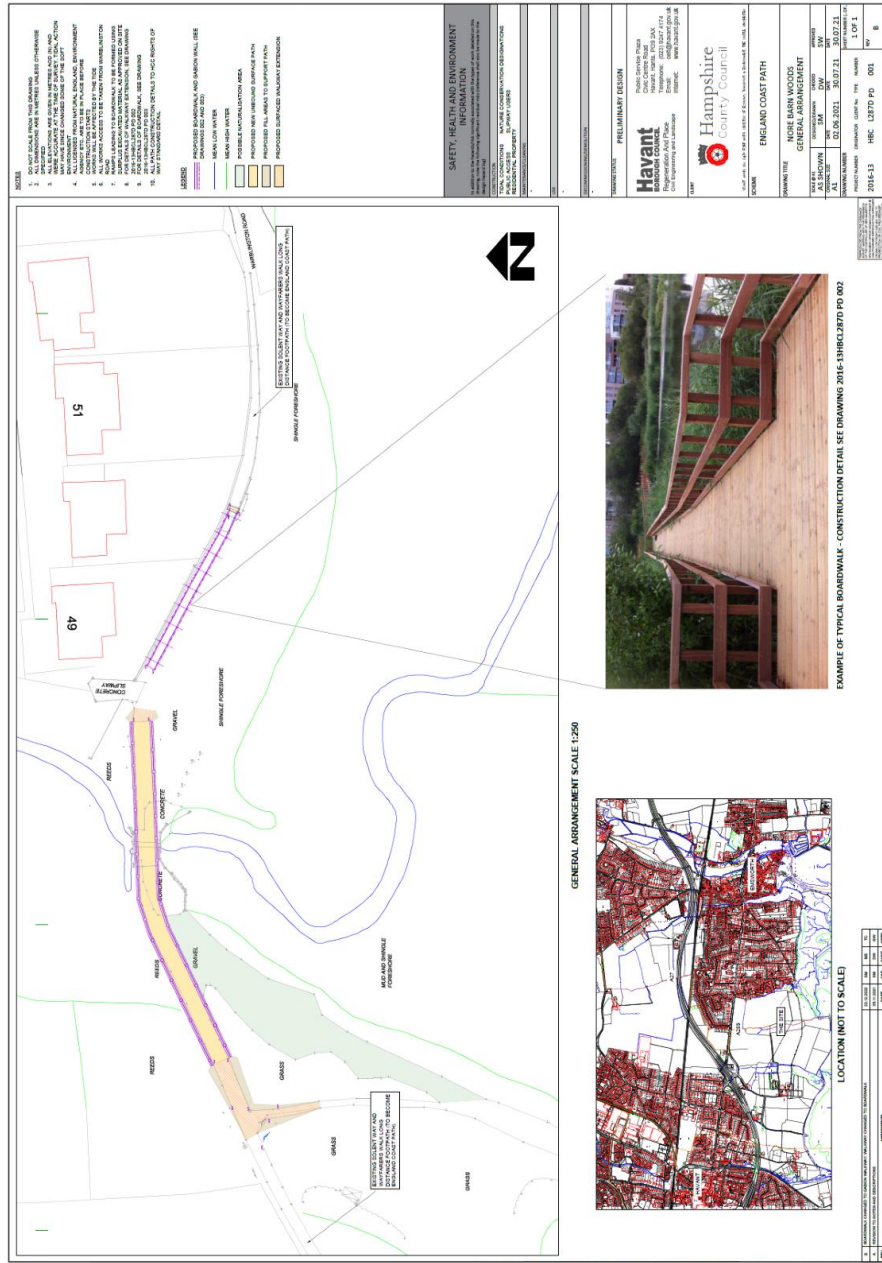
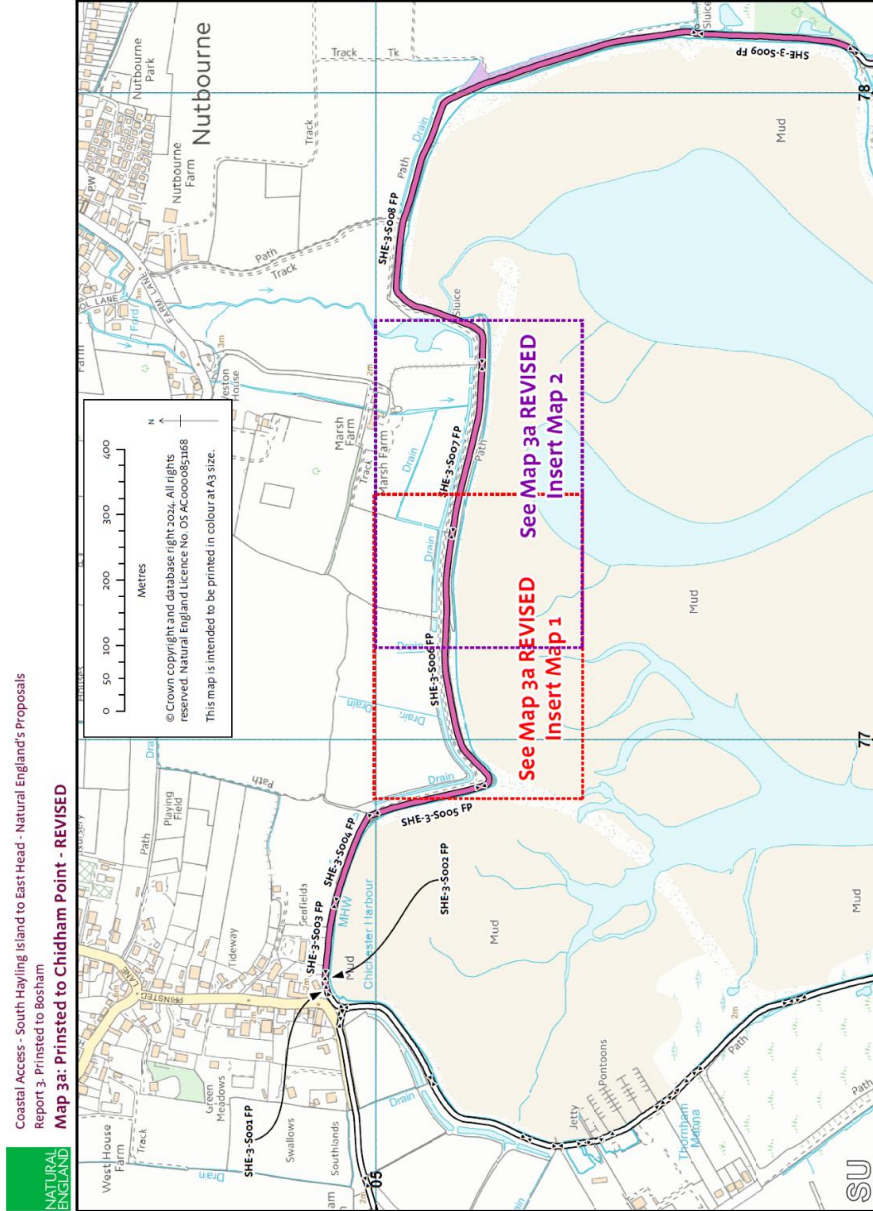


Table 3.3.1 Section Details – Maps SHE 3a to SHE 3e: Prinsted to Bosham

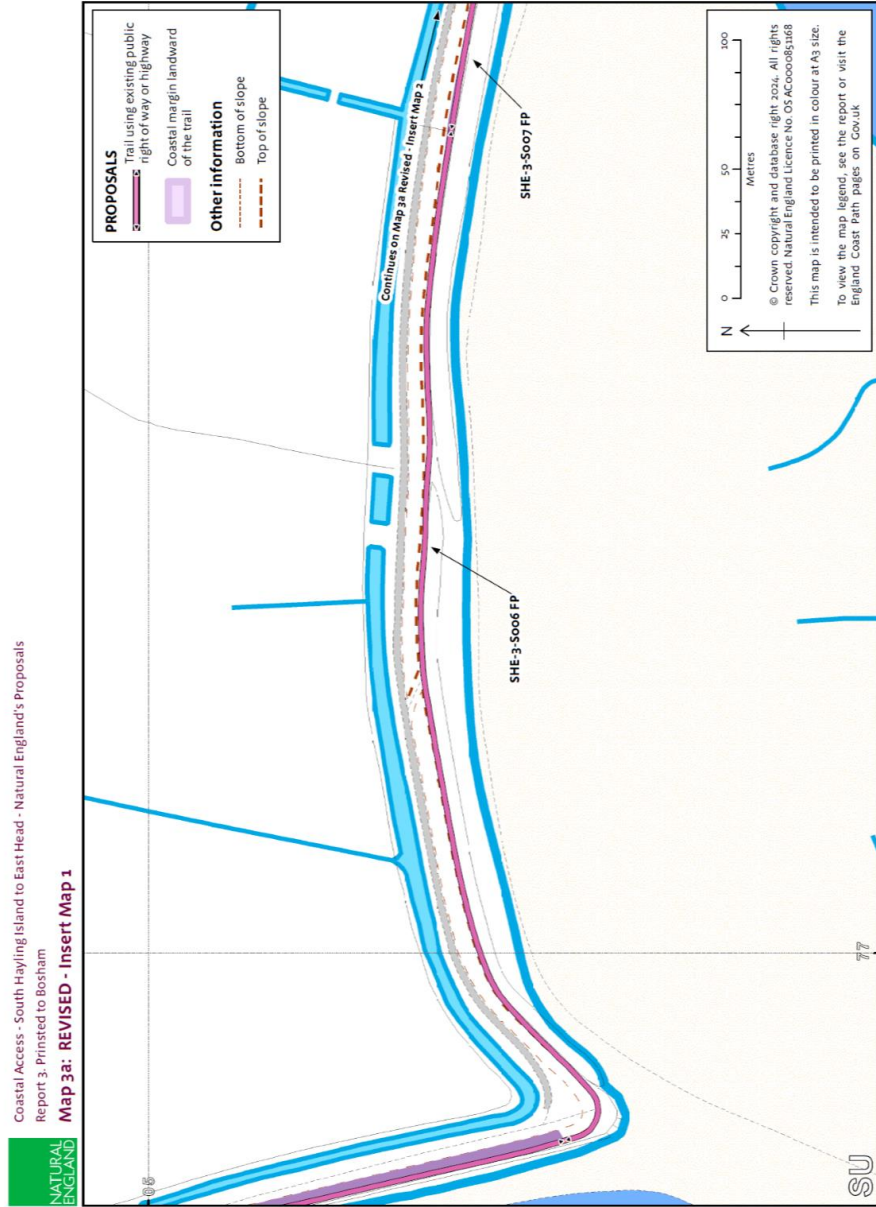
Map(s)	Route section number(s)	Current status of route section(s)	Roll-back proposed? (See Part 7 of Overview)	Landward margin contains coastal land type?	Proposal to specify landward boundary of margin (See maps)	Reason for landward boundary proposal	Explanatory notes
SHE 3a	SHE-3-S006	Public footpath	Yes – See table 3.3.3	Yes - bank	Landward edge of the path	Clarity and cohesion	
SHE 3a	SHE-3-S007	Public footpath	Yes – See table 3.3.3	Yes - bank	Fence line	Clarity and cohesion	To the first fence line landward of the trail

126. APPENDIX D: Modification to trail sections S006 and S007 on Map3a: Prinsted to Chidham Point

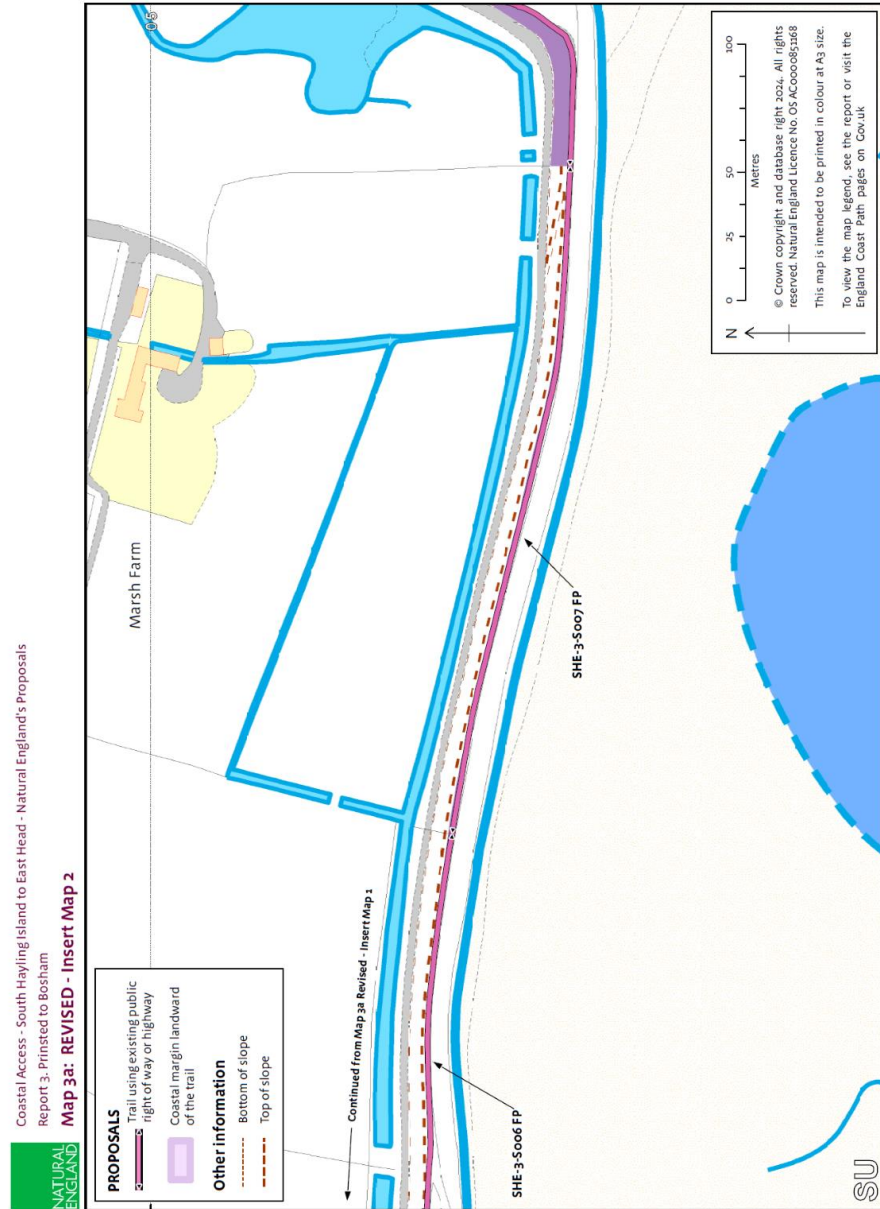
Map 3a: Printed to Chidham Point - REVISED



Map 3a: REVISED - Insert Map 1



Map 3a: REVISED - Insert Map 2



Coastal Access - South Hayling Island to East Head - Natural England's Proposals
Report 3 - Printed to Bosham

Map 3a: REVISED - Insert Map 2





The Planning Inspectorate

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

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Date 9 February 2024

Marine and Coastal Access Act 2009

Objections by [redacted] and [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to South Hayling to East Head

Objection A - Ref: MCA/SHE5/0/1

Land on the northern side of Wyke House, Ellanore Lane, West Wittering

- On 3 October 2019 Natural England submitted Coastal Access Reports 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 28 November 2019 to Report SHE 5, West Itchenor to West Wittering Beach, has been made by [redacted]. The land in the Report to which the objection relates is route sections SHE-5-S037 FP to SHE-5-S038 FP (Map 5c).
- The objection is made under paragraph 3(3)(c) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in Report SHE5, specifically in respect to the trail section SHE-5-S037 FP to SHE-5-S038 FP, do not fail to strike a fair balance.

Objection B - Ref: MCA/SHE5/0/2

Small area of land bounded by wooden sea defences on the seaward side of footpath SHE-5-S040 FP and small area of garden on the eastern side of footpath SHE-5-S041 FP at Lane End House, Ellanore Lane, West Wittering

- On 3 October 2019 Natural England submitted Coastal Access Reports 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 28 November 2019 to Report SHE 5, West Itchenor to West Wittering Beach, has been made by [redacted]. The land in the Report to which the objection relates is route sections SHE-5-S040 FP to SHE-5-S041 FP (Map 5c).
- The objection is made under paragraph 3(3)(e) of Schedule 1A to the 1949 Act on the grounds that the proposal fails to strike a fair balance in such respects as set out in the objection.

Summary of Recommendation: I recommend that the Secretary of State makes a determination that the proposals set out in Report SHE5, specifically in respect to the trail section SHE-5-S040 FP to SHE-5-S041 FP, do not fail to strike a fair balance.

Procedural and Preliminary Matters

127. The Coastal Access Reports (SHE1 - 5), submitted to the Secretary of State for Environment, Food and Rural Affairs (the Secretary of State) by Natural England (NE), set out proposals for improved access to the coast between South Hayling and East Head.

128. The period for making formal representations and objections to the Reports closed on 28 November 2019. In relation to Report SHE5, two admissible objections were received from [redacted] and [redacted] within the specified timescale. I have been appointed to report to the Secretary of State on the two objections (references

MCA/SHE5/0/1, MCA/SHE5/0/2) which relate to Report SHE5. In addition to the objections, representations were received and these are considered where relevant.

129. I carried out site visits to view the route sections in the objections on 28 June 2023 in the company of the relevant objector, a representative of NE and West Sussex County Council (WSCC).
130. NE has completed a Habitats Regulation Assessment (HRA) in respect of whether its coastal access proposals relating to South Hayling to East Head might have an adverse impact on the Chichester and Langstone Harbours Special Protection Area (SPA) and Ramsar, Solent Maritime Special Area of Conservation (SAC), Solent and Dorset coast potential SPA (pSPA). It has also produced a Nature Conservation Assessment (NCA) that covers the Chichester Harbour and Warblington Meadows Sites of Special Scientific Interest (SSSI) and which should be read alongside the HRA. Much of the coastal margin, and some of the sections of the trail covered by the objections in this report, lie within the international statutory designations covered by the HRA.

131. Main Issues

132. 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.
133. The first objective is that there is a route for the whole of the English coast which:
consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
(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 and has been commonly described as the England Coast Path. To mark the coronation of His Majesty King Charles III, it has been renamed the 'King Charles III England Coast Path'. For ease of reference is referred to as "the trail" in this report.

134. 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 or otherwise. This is referred to as the coastal margin.
135. Section 297 of the Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
the safety and convenience of those using the trail,
the desirability of the trail adhering to the periphery of the coast and providing views of the sea, and
the desirability of ensuring that so far as reasonably practicable interruptions to the trail are kept to a minimum.

136. 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.
137. Section 301 of the Act applies to river estuaries and states that NE may exercise its functions as if the references to the sea included the relevant upstream waters of a river.
138. NE's Approved Scheme 2013 (the Scheme), which was adopted by the Secretary of State in July 2013, sets out the approach NE must take when discharging the coastal access duty. It forms the basis of NE's proposals within the Report.
139. My role is to determine 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. I shall set out that determination and make a recommendation to the Secretary of State accordingly.

The Coastal Route

140. South Hayling and East Head lie on either side of the mouth to Chichester Harbour. The harbour is a sheltered, complex estuary system made up of four major channels: Emsworth, Thorney, Bosham and Chichester. A wide variety of habitats exist in the harbour including mud flats, saltmarsh, sand and shingle spits. Human made flood defences are also present in certain areas. Almost the entire area of the harbour enclosed by the trail has been designated as areas of nature conservation (e.g. SAC, SPA, RAMSAR, SSSI).
141. NE proposes to exercise its functions as if the sea included the estuary system of the harbour. On this basis it proposes that the trail should follow the sides of the Emsworth, Thorney and Bosham channels and cross the Chichester Channel using the ferry between West Itchenor and Bosham. The ferry will only operate at the weekends between October and Easter bank holiday each year. On Monday through to Friday during these months an alternative land route is proposed.
142. This report relates to objections received in relation to the trail between West Itchenor and West Wittering Beach slightly beyond East Head. The sections of the proposed route that the objections relate to are SHE-5-S037 FP to SHE-5-S038 FP and SHE-5-S040 FP to SHE-5-S041 FP. Given that all sections of the route referred to in this report have the prefix SHE-5, for ease of reference, I have referred to the trail sections by the S0 number only.
143. The route sections cited in the objections follow the line of a public right of way in the form of a footpath along the edge of land overlooking the shore and estuary system to the rear of the objectors' houses.

The Objections

144. The objections have been made on the basis that the proposals in the report fail to strike a fair balance in relation to one or more of the grounds set out in paragraph 3(3) of Schedule 1A to the National Parks and Access to the Countryside Act 1949.
145. Objection A
146. NE seeks the power at any time in the future to determine a new route without further reference to the Secretary of State or anyone else. This is a hugely draconian

power that could result in the trail following a 4m wide strip through land to the rear of West Wyke, our house. NE state that they had contacted all landowners about their proposals. This is untrue because I was not contacted.

147. The trail would therefore fail to strike a fair balance as in the future if the trail had to be moved landwards this would occur without reference to landowners or anyone else.

148. Objection B

149. We consider the small area of rough grass on the seaward side of section S040 of the proposed trail to be part of our garden. It should not be included in the coastal margin as land that the public have access to. As trail section S041 turns the corner it is adjacent to the ditch and fence line of our garden, but not exactly as shown on the inset to proposals map 5c. I am concerned that this area should be shown correctly as also being excluded from public access rights.

Representations

150. The Solent Recreation Mitigation Partnership (SRMP) comprises the fifteen Solent local authorities, NE, the Royal Society for the Protection of Birds, the Hampshire and Isle of Wight Wildlife Trust and Chichester Harbour Conservancy. The SRMP welcomes the concept of the trail but is concerned that the increased visitor numbers will increase disturbance to overwintering birds in the SPA. It is understood that on Ordnance Survey maps spreading room including excepted land and land subject to a direction will be shown by a magenta wash. The SMRP is concerned that this will result in trail users believing that they are allowed to walk on intertidal areas. This would cause great damage to these protected habitats and enormous disturbance to vulnerable wintering birds. Representations from members of the public refer to the disturbance that people's dogs can cause to birds and the resulting harm.

151. WSCC is the local access authority and the local highway authority for the proposed trail between West Itchenor and West Wittering Beach. Work will be required to establish the trail and thereafter maintain it. WSCC expects NE to establish the trail. The costs of establishment and maintenance quoted in the report require reviewing. Further details are also sought on the Bosham – Itchenor ferry. In the report errors have been made in places regarding the status of the route that the proposed trail would follow.

152. Sussex Ramblers are supportive of the proposals. The Disabled Ramblers request that infrastructure along the trail does not present access problems for those with a disability, including those using all-terrain mobility scooters.

Natural England's comments on the objections and representations

153. Objection A

154. As an owner of a house on the landward side of the proposed trail route the objector is not affected by current proposals. If roll back is needed NE is likely to choose a route landward of the objector's land. If this should occur the objector will be contacted and consulted. NE will be bound in any decision it takes by the fair balance that the legislation requires must be struck between the public interest in having rights of access over land and the interests of landowners.

155. NE sent a letter to all persons considered to be an owner or occupier of land along the proposed trail in early 2016 to invite them to attend drop in sessions to discuss the coastal access scheme. The letter sent explained that in areas affected by coastal erosion legislation allows the route of the trail to be 'rolled back'. [redacted] replied to this letter by return of a response slip. NE concede that they should have contacted the objector regarding their proposals before they were published. This did not happen and NE apologises for this.
156. Objection B
157. All land seaward of the proposed trail route, such as the small area of rough grass referred to, automatically becomes coastal margin. However, certain types of land, such as dwellings and gardens within the coastal margin, are excepted from the right to public access.
158. NE does not have the power to decide whether land is excepted or not. Such a determination would be for the courts. Owners though could erect signs indicating the extent of what they consider to be excepted land to which the public do not have access, so long as these signs are not misleading.
159. Where the England Coast Path has been established Ordnance Survey (OS) uses a magenta wash to indicate the coastal margin on its maps. The key to its map explains that whilst all land in the coastal margin is by default coastal access land it contains land that is not subject to access rights e.g. cropped land, buildings and their curtilages, and land used as a garden.
160. In relation to land as the path turns the corner at trail section S041, the inset map to Map 5c no longer shows the area shaded by the objector on the 2017 map as within the landward coastal margin.
161. Representations
162. *SRMP*
163. *Increased visitor numbers*
164. The potential impacts of increased visitor numbers on European sites are considered in the HRA that we have carried out. NE's programme to establish the trail is complementary to SRMP's strategy; it seeks to enable responsible access to the Solent coast and to inform visitors about the ecological sensitivities. A key feature of the programme is the provision of coastal rangers to educate and inform visitors about the sensitivities of wintering birds so that they may enjoy the trail without causing disturbance to the birds.
165. *Mapping of the coastal margin*
166. The mapping of coastal margin on OS digital and paper maps with a magenta wash comes with a clear, concise explanation in the key which explains that not all coastal margin land is subject to access rights. The explanation gives examples of such land types and advises that the coastal margin is often steep, unstable and not readily accessible. It also advises that trail users should take careful note of conditions and local signage on the ground. This approach has been in use on OS maps since 2014 and NE is unaware of any issues that have occurred in practice.

167. *WSCC*

168. NE and WSCC have been involved in lengthy discussions regarding the establishment and maintenance of the trail. This has resulted in the formation of a Trail Partnership. NE has supported WSCC recruiting a dedicated project officer for the trail. This post was filled in October 2021.

169. NE recognises that variations to the estimated cost may occur if the situation on the ground changes by the time the establishment works take place. NE does not dispute WSCC's assertion that NE funding to support National Trails in practice is falling. At the time of NE's response in March 2021, NE continues to offer funding for ongoing maintenance of established trail at a NE: local authority ratio of 3:1.

170. The Bosham – Itchenor ferry service will operate year round with the service between the end of October and the Easter bank holiday restricted to weekends only. Should the ferry service cease, NE will prepare a variation report to the SoS to ensure that the trail is not interrupted along this part of the coast. NE recognises that there are several mapping errors in the proposals map. NE will work with WSCC to update its mapping data where required.

171. *Disabled Ramblers*

172. In our proposals NE has endeavoured to follow the approved scheme (section 4.3) to make the trail as easy to use as can reasonably be achieved for people with disabilities. When NE begins to establish this section of the trail NE will re-examine where it might be possible for targeted adjustments to be made to improve accessibility.

173. **Discussion and Conclusions**

174. The numbers quoted in brackets in this section indicate the source paragraphs in this report.

175. *Objection A*

176. The route of the proposed trail follows the public footpath along the land above the shore. As a result, it would provide good views of the estuary system of Chichester Harbour. If coastal erosion was to occur the land over which the proposed trail passes is likely to disappear. Should this happen provision exists within the Approved Scheme for the trail to be rolled back.

177. In this instance, the land adjacent to trail section S038 and the western end of trail section S037 forms part of the rear garden of Wyke House. As a consequence, the house and its curtilage would constitute excepted land under the Act and Approved Scheme. If the route was to be rolled back due to erosion, this means that unless the home owners along this stretch wanted to donate the end of their gardens to allow the trail to continue to follow the land's edge, the trail route would have to be moved inland in order to navigate around Wyke House and neighbouring properties. The Act and Approved Scheme does not give NE the power to route the trail over excepted land as feared by the objector.

178. As noted above [25], NE acknowledge that they did not contact the objector regarding its proposals before they were published and has apologised. However, as

I have addressed the concerns that have subsequently been made in the objection, I am satisfied no prejudice has arisen.

179. Objection B

180. As NE correctly notes, all land seaward of the proposed trail route, such as the small area of rough grass referred to, automatically becomes coastal margin to which the public have access unless the land is 'excepted land' or directions apply. Excepted land includes buildings, their curtilages and gardens.

181. The small area of rough grass on the seaward side of the proposed trail and the garden fence line did not appear to me to be garden land. However, if contested, ultimately this would be a matter for the courts to decide. As NE notes, the objector could erect signs to warn of no access to such land, so long as they were confident that such signs were not misleading.

182. In relation to portrayal of the coastal margin on maps, whilst all land seaward of the trail on OS maps will be highlighted by a magenta wash, the public would only have the right to access land within the coastal margin that is not excepted.

183. With regard to trail section S041, NE advise that this route and the landward margin are correctly shown on the inset map to Map 5c. Given the lack of features on the map corresponding with physical features I saw on the ground, it was difficult to be certain that this was the case. What is clear though is that in the vicinity of the junction of trail sections S040 and S041, the trail, which follows the public footpath, turns southwards to meet gates before heading south westwards. Should the purple wash used on the inset map to Map 5c to indicate the landward extent of the coastal margin include the ditch, as a narrow steep sided feature, it is highly unlikely that in practice it would be accessed by the public. Should it also include the garden fence or garden land beyond, as excepted land the public would have no right of access to it.

184. Given that the trail would follow the route of a well-established public right of way, I find that it is reasonable to expect that in practice little would change if the proposed route was approved.

185. Representations

186. In deciding the route of the proposed trail, NE has needed to reconcile the desirability of it adhering to the periphery of the coast and providing views of the sea with other considerations. In addition to those listed earlier in this report [7-9] this included the need to minimise the potential impacts of increased visitor numbers on ecology.

187. Where the route of the proposed trail passes close to wildlife areas NE is proposing to use informal management techniques such as signage and coastal rangers to educate and inform visitors so that they and their dogs may enjoy the trail without causing disturbance to birds. In relation to the concerns regarding the highlighted coastal margin on OS maps resulting in the public accessing sensitive wildlife sites between the trail and coast, this matter would be dealt with through the use of directions and signage to restrict access.

188. It is clear that through the creation of the Trail Partnership and the recruitment of a project officer NE and WSCC have worked together closely to address concerns regarding the establishment and maintenance of the trail. Given that over four years

have passed since the publication of the proposals for the trail route between South Hayling and East Head, the estimated costs contained in the report will need to be reviewed to take account of inflation and any changes on the ground. Any mismatch between the revised cost estimation and funding available will have to be reconciled to enable the establishment and maintenance of the trail.

189. NE have provided further details regarding the Bosham – Itchenor ferry service. NE also acknowledge that in places in the report errors have been made regarding the status of the route and have agreed to work with WSCC to rectify this.
190. In relation to people with disabilities and the use of all-terrain mobility scooters, at implementation stage NE have committed to re-examining where, in accordance with the Approved Scheme, it might be possible for adjustments to be made to improve accessibility.
191. Ecology
192. In terms of ecology and wildlife, the HRA carried out by NE concludes that the coastal access proposals would not have an adverse effect on the integrity of any European site. Similarly, the NCA finds that an appropriate balance has been struck between NE's conservation and access duties. Appendix A attached to the end of this report provides further details on this matter.
193. **Overall Conclusion**
194. For the reasons given above, and having regard to all other matters raised, I conclude that the proposals 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.

Recommendation

195. On the basis of my conclusion, I therefore recommend that the Secretary of State makes a determination to the same effect as my conclusion.

Ian Radcliffe

APPOINTED PERSON

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

Habitats Regulation Assessment

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).
2. If the AA concludes that an adverse effect on the integrity of a European site cannot be excluded beyond reasonable scientific doubt then, in accordance with the precautionary principle established in Court of Justice of the European Union Case C-127/02 Waddenzee 7 September 2004, consent for the plan or project can only be granted if: there are no alternative, less harmful, solutions; the plan or project must be carried out for imperative reasons of overriding public interest; and compensatory

- measures can be secured which maintain the ecological coherence of the UK National Site Network.
3. A 'shadow' HRA, dated 3 October 2019, 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. This shadow HRA (referred to hereafter as 'the HRA') was provided to inform the Competent Authority's AA and has been considered in making this recommendation.
 4. The HRA considered the potential impacts of the coastal access proposals on the following European sites: the Chichester and Langstone Harbours Special Protection Area (SPA) and Ramsar, Solent Maritime Special Area of Conservation (SAC) and Solent and Dorset coast potential SPA (pSPA). The HRA is considered to have identified the relevant sites affected by the proposals. As the proposed trail is not directly connected to or necessary to the management of the European sites, a HRA is required.
 5. The HRA screening exercise found that, in the absence of mitigation measures, the proposals could have significant effects on some of the Qualifying Features of the European Sites 'alone' through, for example, trampling and disturbance. On this basis, the HRA considered the potential for the proposals to give rise to Adverse Effects on the Integrity (AEol) of the designated sites.
 6. The scope of the assessment is set out in Section B1 of the HRA and identifies the sites and qualifying features for which likely significant effects (LSE) 'alone' or 'in combination' could occur. Table 4 sets out the assessment of AEol for the identified LSE. Section B2 identifies the conservation objectives for the sites considered.
 7. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to give rise to AEol from the proposals alone to determine whether they could give rise to an AEol in combination with other plans or projects. In these circumstances, no AEol was identified. NE has therefore concluded that the access proposal would not have an adverse effect on the integrity of any of the European sites considered either alone or in combination with other plans and projects.
 8. The assessment of AEol for the project takes account of measures to avoid or reduce effects incorporated into the design of the access proposal (Section D3). 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.
 9. Those relevant to this report where there is some residual risk of insignificant (i.e. unlikely to undermine integrity) effects are:
 - Repeated disturbance to foraging or resting non breeding water birds, 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.
 - Disturbance to breeding ringed plover, redshank, shelduck, oystercatcher, black-headed gulls, lapwing and little egret following changes in recreational activities as a result of the access proposal, leads to reduction in the abundance and distribution of the qualifying features within the site and a resultant reduction in the non-breeding population.
 10. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between South Hayling to East Head 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 Coastal Access: NE's Approved Scheme 2013. 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.

11. Taking all these matters and the information provided in the HRA into account, reliance can be placed on the conclusions reached that the proposals would not adversely affect the integrity of the European sites assessed. It is noted that, if minded to modify the proposals, further assessment may be needed.

Nature Conservation Assessment

12. The NCA, dated 3 October 2019, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest and an undesignated site where Grey and Harbour Seals haul out of the water. These sites are not subject to consideration in the HRA.
13. Relevant to this report is the Chichester Harbour SSSI. NE were satisfied that, consistent with the proper exercise of their functions, the proposals to improve access to the English coast between South Hayling to East Head were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs.