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

by [redacted] BSc(Hons) DipTP DMS MA MRTPI

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

Date 5 June 2024

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Marine and Coastal Access Act 2009

Objection by Priory Bay Hotel Ltd

Regarding Coastal Access Proposals by Natural England

Relating to Wootton Bridge to Culver Down

Site visit made on 18 April 2024

File Ref: MCA/IOW/01

**Objection Reference: MCA/IOW/01**

**Wootton Bridge to Culver Down**

- On 18 March 2020 Natural England submitted Coastal Access Reports to the Secretary of State for Environment, Food and Rural Affairs setting out proposals for improved access to the coast on the Isle of Wight 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.
- The objections concern Natural England's Report IOW 2 for land between Wootton Bridge to Culver Down. The land in the Report to which the objection relates is specifically route sections IOW-2-S079 to S091, as shown on Map IOW 2g.
- The objection is made under paragraphs 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 IOW 2, in respect to the trail sections IOW-2-S079 to S091, do not fail to strike a fair balance in respect to the objections considered herein.

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**Preliminary Matters**

1. On 18 March 2020 Natural England (NE) submitted Coastal Access Reports to the Secretary of State setting out proposals for improved access to the coast on the Isle of Wight. The period for making formal representations and objections to the reports closed on 13 May 2020. I have been appointed to report to the Secretary of State on the objections.
2. There are other admissible objections to the Reports concerning improved access to the coast on the Isle of Wight. Although some of these other objections also relate to Report IOW 2, they concern different route sections and, as such I have considered it expedient to address them separately in other reports to the Secretary of State.
3. Since Priory Bay Hotel Ltd made its objection as owner and occupier of the Hotel and site, the property has been sold. The current owners, Redgrave Luxury Limited, have adopted Priory Bay Hotel Ltd's objection.
4. I conducted a site inspection on 18 April 2024. I was accompanied by [redacted] on behalf of the new owners, as well as by representatives from NE and from Isle of Wight Council (IoWC).

**Main Issues**

5. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (2009 Act) and requires NE and the Secretary of State to exercise their relevant functions to secure two objectives.
6. The first objective is to secure a route for the whole of the English coast which:
  - (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 2009 Act as the English coastal route and is now known as the King Charles III England Coast Path. For ease of reference, it is referred to as 'the trail' or 'the England Coast Path' in this report.

7. The second objective is that, in association with the England Coast Path, 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 coastal route or otherwise. This is referred to as the coastal margin.
8. Section 297 of the 2009 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 that route adhering to the periphery of the coast and providing views of the sea, and
  - (c) The desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
9. They must also aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land.
10. Section 300 of the 2009 Act provides that the coast includes the coast of any island other than an excluded island. An island is excluded if it is not accessible; that is, that it is not possible to walk to it from the mainland. The Secretary of State may include other islands by order, if satisfied that their coasts are long enough to provide a long-distance walk. That is the case with the Isle of Wight.
11. NE's Approved Scheme 2013, as approved by the Secretary of State on 9 July 2013, (the Scheme) is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report. Section 7.16 of the Scheme concerns islands and states at 7.16.5 that the trail "will broadly follow the periphery of any island which it includes, following the same principles as for the mainland coast. People will normally be able to choose when they arrive at the bridge or causeway whether to use the trail to reach the island or to continue along the mainland coast." In the case of the Isle of Wight, access to the island is via seacraft or aircraft.
12. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

13. Forming part of the England Coast Path for the Isle of Wight, the length of path under consideration is contained within Report IOW 2: Wootton Bridge to Culver Down and includes sections of path as shown on Map IOW 2g Horestone to The Duver.
14. The objection relates to routes IOW-2-S079 to IOW-2-S091 inclusive. Individual sections are referred to in the form 'S079', 'S080' and so on, or collectively as 'S079-S091' henceforth.
15. The Secretary of State should note that there is a revised version of Map IOW 2g, which can be found at Annexes 2 and 6 to NE's *Representations*

on IOW 2: Wootton Bridge to Culver Down and Natural England's comments document, February 2024. NE has expressly asked the Secretary of State to approve the relevant amendments as shown on that Map. The Secretary of State may also wish to note that there are revised entries for Table 2.3.1 of the Report at those Annexes. The revisions relate to section IOW-2-S075 and to sections IOW-2-S092 to IOW-2-S097 only. They do not, therefore, affect the section of the trail under consideration herein. Nonetheless, for easy of reference and to show S079-S091 in the correct context, the revised Map and other associated revisions can also be found at Annex B hereto.

16. Along S079-S091 and to each side of these sections the proposed trail would follow existing walked routes, including a public footpath between S083 and S091 inclusive. Here at Priory Bay, the trail largely follows the coastline closely and maintains good views of the sea.
17. A series of steps, which form part of the existing public footpath that allow movement between the sand beach and Priory Woods at Priory Bay, are proposed to be improved, so as to make them easier to use. Further establishment work proposed include replacement boardwalks at Priory Woods, where most of the existing infrastructure is undercut or has been affected by slumping due to the high amount of clay here. Additionally, significant surface upgrades and the addition of handrails are proposed to enhance the convenience of the trail at Priory Woods, again, due to erosion and slumping to the current route of the Isle of Wight coast path.
18. An optional alternative route is proposed to operate as an optional diversion from the ordinary route between IOW-2-S066 and IOW-2-S107 for when it is subject to high tides. It would not have the effect of creating any additional spreading room on either the seaward or the landward side. No objections have been made in respect to this optional alternative route.
19. Parts of the Solent and Southampton Water Special Protection Area (SPA) and Ramsar, and of Brading Marshes to St Helen's Ledges Site of Special Scientific Interest (SSSI) are located immediately to the west. Part of Priory Woods through, which a length of the trail would run, is Priory Woods SSSI. The relevant section of the trail is located outside of and some considerable distance away from the nearest part of the Isle of Wight National Landscape.
20. The landward margin to S079-S091 contains barriers at S079 and S080; beach at S081, S082 and S086-S088; and no coastal land type at S083-S085 and S089-S091. For S079-S091, where it is not the trail itself, the landward boundary of margin is shown on Map IOW 2g.
21. In respect to roll-back, Priory Woods SSSI, Brading Marshes and St Helens Ledges SSSI and Solent and Southampton Water SPA and Ramsar are identified as potentially affected features / sites along S085 to S098. Furthermore, Priory Bay Hotel & Golf Course and Nodes Point Holiday Centre and Camping / Caravan Site are identified as potentially affected features / sites along S078 to S107.

## The Objections

22. The objection states that the proposed trail between the slipway south of S079 and the southern boundary of the objector's title crossing Priory Woods between S090 and S091 includes property in the ownership of the objector. It adds that the land forms part of Priory Bay Hotel, which it maintains is a substantial tourism venture.
23. The objection refers to the 'restrictions and exclusions' under section 2.2.16 of the Report. It adds that despite the case that the objector has put to NE (as set out in full in the correspondence attached to the objection), no exclusion has been made with respect to spreading room here.
24. It states that the whole of the Priory Bay Hotel site at large is used as a hotel and tourism venture, which historically and practically have traded around a unique selling point of a 'private beach'. In the objector's view, this is evidenced widely and clearly on third party opinion, and the privacy of the beach is obviously valued as a key feature by those using the Hotel and its facilities. The objection adds that this is highlighted further by those using the Hotel for weddings and events, who value the setting of Priory Bay beach as a defining and unique feature. The objection states that these third-party opinions are listed within embedded website links under the document titled 'Priory Bay Third Party reference', which is attached to the objection.
25. The objection states that the Hotel was sold in May 2017 and is not currently trading as it is in the process of considerable redevelopment and investment. As outlined above, it has subsequently changed ownership. The objection adds that the sales particulars at that time, details of which are attached to the objection, list the private beach as an integral asset of the whole property and central to the Hotel's previous and future trading success.
26. The objection also says that the redevelopment of the Hotel revolves around enhancing and highlighting the property's natural assets, including what it describes as the rare position of being able to provide guests the opportunity to enjoy a private beach. A link to what is described as a relevant planning application, Ref [P/01132/18](#), is also included in the objection. Nonetheless, the link and this application reference appears to relate to an application for Listed Building consent rather than for planning permission. There is, though, a related planning application Ref P/01131/18.
27. The objection goes on to say that, while at that time the Hotel had not traded since 2017 such that recent trading history was not available, the owners supported their redevelopment plans with a well-tested and comprehensive business plan. It adds that this business plan was commercially sensitive but, to frame the potential loss from weddings alone, it was predicted to offer exclusive weddings at £20,000 to £30,000, depending on weekday / weekend etc. It says that a proportion of this would be room hire, with almost no associated cost, and the balance was food and board, so "circa £70% gross margin".
28. On this basis, the objection states that each wedding, after deducting VAT and staff costs, would yield some £11,000 to £16,000 of earnings before interest, taxes, depreciation, and amortization. It adds that based on similar venues, there would be two weddings per week during the peak months and one every

fortnight off-peak, amounting to around 55 weddings per year. On this basis there would be £600k to £800k profit per annum.

29. The objection maintains that the implementation of the trail and its spreading room here would be to effectively extinguish the private nature of the beach and the owner / operator would have no ability to provide guests with exclusive use of the central asset of the Hotel. It adds that the trail proposals would oblige the owner / operator to remove the description “private” from advertising and marketing material thereby removing its unique selling point, eroding its competitiveness.
30. The objection says that the justification for the redevelopment was set out in application Ref P/01132/18. In this regard it refers to the associated Planning Statement dated August 2018 and a IoWC Committee paper, which are both attached to the objection. The objection maintains that these documents explain and highlight the competitive nature of the hotel sector and the need to define the Hotel as a niche destination defined largely by its location adjacent to Priory Bay enhanced by the privacy of the beach. Removing the privacy of the beach would, the objection states, clearly erode the Hotel’s competitive advantage and reduce its ability to attract visitors.
31. The objection acknowledges that the beach has historically been accessible by a linear footpath but adds that there has been no direct vehicular access to the beach. It adds that significant problems have occurred historically with large numbers of people arriving on the beach by boat and disrespecting the private status. While some tolerance has been exercised, it goes on to say that it is essential for the owner/operator to have the ability to disperse uninvited visitors from this private property should their presence pose a danger to Hotel guests or more generally.
32. In respect of the proposed alternative temporary route, the objection welcomes these including that there would be no spreading room associated with it such that the Hotel would not be commercially compromised. The objection adds, regarding the main trail route, that any rollback of the path should ensure that land on the seaward side and landward side is totally excluded from spreading room for the reasons outlined above. It goes on to say that, equally, any new route for the trail as a result of roll-back needs to respect that the Hotel site is an exempted use, requiring commensurate routing of the path to ensure no impact.
33. Regarding modifications to the trail’s route, the objection refers to the guidance notes from the Scheme, most specifically paras 8.18.10 to 8.18.20 inclusive. It adds that the problems outlined above are already recognised by NE and asserts that a range of solutions are available.
34. The objection says that it is clear that the Hotel charges guests and visitors for the use of the Hotel’s facilities, including a private beach; the privacy of the beach is an asset of value that allows income to be earned - for example for weddings and parties where exclusive use is the key requirement. It adds that it would seem logical that the new coast path follows the existing public footpath here. Indeed, it says that a linear right of way is not, in itself, an issue. The objection says that it would, therefore, appear that the preferred mechanism to address the issue relates to the exclusion of spreading room.



35. The objection goes on to say that legislation allows NE to exclude spreading room where there is a commercial disadvantage and adds that in this case a clear commercial disadvantage exists. On this basis it says that the proposal should be amended to make a total exclusion of spreading room with respect to the proposed trail here. It also says that a time-limited or partial exclusion of spreading room would not be practical to implement and would also disallow the Hotel owner/operator to undertake the management of the spreading room area.

### **Representations**

36. The Ramblers expressly support the proposed route, including S079-S091, and are particularly pleased to see the infrastructure improvements proposed at Priory Wood.
37. IoWC, in respect to proposed sections IOW-2-S067 to S107, states that it fully supports this section as it will provide a route in very close proximity to the sea providing exceptional sea views at all times other than at high tide, at which time the alternative proposed route will be available. It adds that the proposed infrastructure works in Priory Woods to National Trail standards will enable use of this trail to become a very rewarding coastal woodland experience.
38. Bird Aware Solent / Solent Recreation Mitigation Partnership (SRMP) has commented on Report IOW 2 at large, without specific reference to S079-S091. It welcomes the concept of the England Coast Path as something of value to local people and residents but has concerns that it would like to be addressed and refers to its mitigation programme, identified in its Strategy as formally adopted by PUSH in December 2017. It raises two specific areas of concern; increasing visitor numbers and mapping of spreading zones.
39. SRMP says that a rise in the number of visitors to sensitive parts of the coast will cause increased disturbance to the overwintering birds that journey to SPAs, many of which are red and amber listed. Whilst the SRMP employs a range of measures to mitigate against disturbance from increasing housing numbers, it does not have the resources to deal with any further elevation in visitor numbers as a result of the England Coast Path. It adds, therefore, there is a real concern of a conflict between these two initiatives and that any rise in visitor numbers has the potential to diminish the effectiveness of the SRMP measures. SRMP also states that the trail will need its own mitigation package to protect against the impact of increased visitor numbers it creates.
40. Furthermore, SRMP is concerned regarding Ordnance Survey's plans to depict the 'spreading zone' as a magenta wash, making no exceptions for excepted areas as this may lead to users of the trail straying into excepted intertidal areas. It adds that these can be extremely large, support fragile habitats and be a huge food resource for birds and other species. Increased footfall through these areas would, in SRMP's view, cause great damage to these fragile habitats and enormous disturbance to vulnerable wintering bird populations. Although exceptions to the spreading zone will be sign posted on the ground and listed on NE's website, SRMP says that enforcement would seem to fall to the landowner/occupier. It adds that if it is not possible to depict the spreading zone accurately on Ordnance Survey maps, SRMP would urge NE to reconsider its inclusion on the map entirely.

41. The Isle of Wight Local Access Forum comment that due to circumstances, chiefly associated with the pandemic at the time of the consultation, it was unable to coordinate a response on behalf of the Forum. It adds, though, it has consistently been able to put its views across during the pre-consultation phase and has encouraged Forum members to comment at all stages.
42. The Open Spaces Society fully supports the Ramblers representations in respect to Report IOW 2.
43. Disabled Ramblers comment that modern mobility vehicles can be very large, and many man-made barriers that will allow a manual wheelchair through are not large enough for all-terrain mobility vehicles, or for 'pavement' scooters, and prevent legitimate access even though users of mobility vehicles have the same rights of access that walkers do. They add that man-made structures along the trail should not be a barrier to access for users of mobility vehicles and also acknowledge the replacement of stiles with gates as a positive step.
44. Disabled Ramblers, though, request that the proposed measures go further by ensuring that all new structures allow convenient access to mobility vehicles as standard, complying with BS5709: 2018 Gaps Gates and Stiles. They also request that all existing structures on the trail are removed and replaced if they prevent access to users of mobility vehicles. They add that the suitability of all structures should be considered on the basis that a person with reduced mobility will operate the structure themselves alone, seated on their mobility vehicle.
45. Disabled Ramblers also request compliance with the Equality Act 2010 (and the Public Sector Equality Duty within this act) and with the Countryside and Rights of Way Act 2000 (2000 Act), and adherence to the advice from Disabled Ramblers as set out in the Man-made Barriers and Least Restrictive Access document [copy at Annex 13 to NE's *Representations on IOW 2: Wootton Bridge to Culver Down and Natural England's comments* document, February 2024].
46. Southern Gas states that NE should be aware that groundworks that take place in the vicinity of gas infrastructure could result in personal injury or damage to the gas infrastructure. As such NE will be expected to consult with Southern Gas in relation to said points of interaction and any groundworks that might be required. It adds that it has provided a bundle of plans that show the locations of the relevant infrastructure situated on or within 50m of the trail.
47. Isle of Wight Gardens Trust states that The Priory is on the Local List due to its designed landscape importance. It adds the proposed route would use current public rights of way through Priory Woods partly within the boundary of the Local List site. The Trust maintains that to date these have been an alternate and fair-weather route for the Isle of Wight Coastal Path due to difficulties of maintaining a path through this clay based coastal landscape which is subject to movement. It understands that the proposal would see capital investment in path improvements and adds that this will no doubt result in increased usage. It adds that as the paths concerned are already public rights of way, it raises no objection to this proposal.
48. Solent Protection Society makes comments specifically in respect to sections IOW-2-S089 to S092, inclusive, stating that it strongly supports the proposals



through Priory Woods. It adds that the path at high level becomes very muddy and sticky during the winter, so a board walk is needed.

49. [redacted] has made what he describes as 'general comments on the report'. They largely relate to how the overview report and respective chapter reports are set out and cross referenced, and how the criteria used as a basis of route planning were applied to inform the proposed trail. He adds that the complex and long nature of the whole document plus the representations form that needs to be used may deter some people from making a representation. No specific comments are made in respect to S079-S091. [redacted]'s comments are included in full at Annex 16 to NE's *Representations on IOW 2: Wootton Bridge to Culver Down and Natural England's comments* document, February 2024.
50. [redacted] objections to the alignment of the trail and the identification and management of spreading room on the basis that, in his view, it does not properly consider nature conservation issues and, specifically, it is incompatible with statutory obligations under the Habitats Regulations. His representation includes a formal complaint as to the adequacy of the Habitats Regulation Assessment and the process by which it was drafted. His representation and the associated complaint correspondence are contained within Annexes 17 and 18 to NE's *Representations on IOW 2: Wootton Bridge to Culver Down and Natural England's comments* document, February 2024. I would note that these all appear to predate NE's updated shadow Habitats Regulation Assessment for the Isle of Wight trail proposals produced in response to objections and representations, as published in June 2022.
51. NE has provided comprehensive responses to each of the representations. These are set out in NE's *Representations on IOW 2: Wootton Bridge to Culver Down and Natural England's comments* document, February 2024.

### **Natural England's Response to the Objections**

52. NE maintains that throughout the development of its proposals it engaged extensively with Priory Bay Hotel Ltd to reach a fair balance between public and private interests. At the time of its response, NE stated that it appears that since the objection was submitted, the site has changed hands and that the Hotel is closed and under redevelopment. NE also refers to the Hotel's 'noticeboard' via an online [link](#). NE provides another [link](#), which it says outlines the recent history of the Hotel.



53. NE states that the proposed trail between S083 to S091 follows an existing public right of way, which runs either along the beach or just behind it through Priory Woods. It adds that the beach is well used and popular with walkers, sunbathers and other recreational users. In this regard NE refers to a photograph of the beach taken on 22 July 2020, which is reproduced on the preceding page.
54. NE adds that the landward coastal margin between S086 and S088 would extend to the top of the beach, as the Access to the Countryside (Coastal Margin) (England) Order 2010 stipulates that certain specific coastal land types, such as a beach, are included automatically in the coastal margin where they fall landward of the trail.
55. When assessing the need for a direction to exclude access, NE says that it considers the existing levels of public access, whether access would be newly created, and whether it intends to significantly improve access. In this case, NE adds that there is an existing public footpath on the beach and the beach itself is already well-used by the public. NE does not intend to carry out any significant access infrastructure improvements in this area aside from waymarking the route, so it does not expect that interventions by NE, apart from the existing public right of way's designation as a National Trail, will greatly affect the area's use by the public. NE goes on to say that this level of de facto beach use is unlikely to change significantly following the introduction of new coastal access rights, even if a direction to exclude access were to be put in place.
56. NE also states that, whilst it understands the Hotel's plan to utilise the beach around 55 times per year as a wedding venue, and market it as a private beach, the reality on the ground is that the beach is already well-used by the public, including a legal right of way on the footpath.
57. NE adds that in May 2019, its England Coast Path team visited the site to assess the need for the direction. Having done so and given the circumstances described above, it concluded that the least restrictive option Scheme on public access that would strike an appropriate balance, would be to advise the Hotel to put temporary notices up asking the public to respect the privacy of the wedding party when in operation. NE also states that, additionally, the trail proposals would provide new route waymarking on the ground as well as a new trail information sign advising walkers to use the inland Optional Alternative Route during high tides, to be installed as part of the establishment works.
58. Although NE considers that there is insufficient evidence to propose a direction at present, it would be willing to reassess the situation in the future once the Hotel is open, if further evidence comes to light, or if experience of the operation of the coastal access rights on the ground indicate that intervention may be necessary.
59. In the event that the route needs to be rolled-back and it is no longer possible to find a viable route seaward of the Hotel, golf course, holiday and camping site, NE says that it would choose a new route after detailed discussions with all relevant interests either to pass through the site/course, or if this is not practicable, to pass somewhere on the landward side of it. NE also maintains that in reaching a judgement on this matter, it would have full regard to the need to seek a fair balance between the interests of potentially affected owners and

occupiers and those of the public. Any such roll-back arrangements, it states, would relate solely to the England Coast Path, and would not change the line of the public right of way.

60. While acknowledging the objection regarding roll-back, NE states that although all land on the seaward side of any new trail alignment would automatically become coastal margin, not all of that land would become accessible to the public. NE explains that land is 'excepted' from the right of access if it falls within one of the categories set out in Schedule 1 to the 2000 Act, for instance golf courses or land that is covered by buildings or the curtilage of such land.
61. NE advises, nonetheless, that it is not able to provide further comment to the objector given the uncertainty over where erosion will occur and the location of any roll-back route. It adds, though, that should the trail be repositioned in the future it would want to speak to the Hotel owners about any concerns they might have relating to the introduction of access rights. At that point, NE says that it would be able to consider the need for any new access management measures, including the use of directions to exclude or restrict access.

### **Analysis**

62. Bearing in mind that it is an existing walked route, much of which is a public footpath, located very close to the coast, offering excellent views of the sea, the trail route along S079-S091 appears to be a good proposal in terms of alignment. Indeed, no objection has been made to the proposed routing of the trail here as such. Rather, the objector's concerns are largely focused on use of the beach associated with the trail and how this might affect their business plans, particularly in terms of the private beach being a unique selling point, including for weddings.
63. During my visit, amongst other things, I walked down from the main buildings of the Hotel to the beach and back. The site was not in use as a hotel. It was very apparent that it has not been in such use for some time and was in no condition to return to hotel use in the near future. Nonetheless, the current owners intend to bring it back into use as a hotel at some point, with weddings as an important element of the business. Their wish to prevent people from roaming along the beach is entirely understandable in the circumstances.
64. Nonetheless, NE submits that the beach is well-used and popular with walkers, sunbathers and other recreational users. There is no substantiated evidence to the contrary, notwithstanding that the beach is private property and referred to as being 'private' within the various documents and weblinks provided with the objection. Moreover, although it only amounts to a fairly brief 'snapshot', during my site visit I observed numerous people walking along the beach, deviating substantially from the alignment of the public footpath, consistent with NE's comments.
65. Given the apparent existing levels of public access, it seems unlikely that the creation of the trail here as proposed, taking account of the improvement works, would significantly alter the area's use by the public. Nor, indeed, does it seem likely that this type and level of use of the beach would change significantly if a direction to exclude access were to be put in place as requested by the objector.

66. Amongst other things, the Scheme (at para 8.18.15) states that *many accommodation businesses already experience low-key public access to beaches and other land used by their guests*. It adds that *the introduction of coastal access rights is unlikely to have any significant effect in these cases*. Nonetheless, it acknowledges that *there may be exceptional cases, where land has previously been reserved for the exclusive enjoyment of hotel guests or people staying in holiday accommodation, in which intervention may be necessary to prevent any significant loss of income to the business concerned as a result of introduction of the coastal access rights*. Given the apparent existing public use of the Hotel's beach, however, it is not considered that such 'exceptional circumstances' exist in this case.
67. Bearing in mind that parts of the trail along S079-S091 are liable to erosion and landslides, the proposals in respect to roll-back of the trail route appear to be appropriate. In this regard and as NE has identified, while all land on the seaward side of any new trail alignment would automatically become coastal margin, not all of that land would become accessible to the public due to the provisions of Schedule 1 to the 2000 Act. So, for instance, golf courses and land that is covered by buildings or the curtilage of such land would be excepted from the right of access.

### **Conclusion**

68. For the foregoing reasons, therefore, the relevant proposed sections of the England Coast Path would be unlikely to have any significant additional detrimental effects in the terms suggested by the objector beyond the existing situation. Moreover, it is also unlikely that the measures suggested by the objector to address their concerns would have any significant effects in practice.

### **Recommendation**

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

*[redacted]*

APPOINTED PERSON

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

### **Introduction**

1. The Conservation of Habitats and Species Regulations 2017 (as amended) requires that where a plan or project is likely to have a significant effect on a European site, such as the Solent and Southampton Water Special Protection Area (the SPA), either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an appropriate assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.

### **Project Location**

2. The proposed section of path in question forms part of the England Coast Path on the Isle of Wight. In terms of the objections considered here, IOW-2-S079 to IOW-2-S091, inclusive, are the relevant sections. They are collectively referred to henceforth as 'S079-S091', as shown on Map IOW 2g. S079-S091 is in proximity to the Solent and Southampton SPA and Ramsar site.
3. The Solent and Southampton SPA and Ramsar site (the SPA and Ramsar site) at large is one of the only major sheltered channels in Europe, lying between the Isle of Wight and the mainland on the south coast of England, stretching from Hurst Spit to Hill Head and on the North Coast of the Isle of Wight from Yarmouth to Whitecliff Bay. It is composed of extensive intertidal mudflats and sandbanks, saltmarsh, coastal lagoons, shingle banks and grazing marsh. The estuarine sediments support rich populations of invertebrates which provide an important food source for overwintering birds. The shingle banks also provide important breeding ground for terns. This also supports approximately 10% of the world's dark-bellied brent geese. This species will use the mudflats and grazing marsh to feed but also make use of farmland and grassland outside of the SPA boundaries.

### **Habitats Regulations Assessment Implications of the Project**

4. S079-S091, as part of the England Coast Path on the Isle of Wight, would increase access to this area for recreational activities, including by walkers and those accompanied by dogs, whose presence have the potential to affect the SPA and Ramsar site, as does disturbance by construction activities necessary for the physical establishment of the path and access management infrastructure. The qualifying features of these designated sites are:
  - Breeding Terns (Common, Little, Roseate and Sandwich terns);
  - Breeding Mediterranean Gull;
  - Non-breeding waterbirds (Black-Tailed Godwit; Ringed Plover; Dark-Bellied Brent Geese; Teal; and water bird assemblage);
  - Subtidal features (estuaries - subtidal coarse sediment, subtidal mixed sediment; subtidal sand, subtidal seagrass beds; and sheltered channel between island/mainland);
  - Wetland plant and invertebrate assemblages; and



- Intertidal habitats (estuaries - intertidal seagrass beds, intertidal sand and muddy sand, intertidal mud, intertidal mixed sediments, intertidal coarse sediment).
5. In 2020 Natural England (NE) undertook a shadow Habitats Regulation Assessment of the Isle of Wight proposals for the England Coast Path. It was revised and updated in response to additional information gathered after the Reports for IOW2 to IOW10 were published, and in response to objections and representations received during the consultation process on the published proposals. This latter, updated version was published in June 2022 and is the version referred to herein. Henceforth, it is referred to as the 'sHRA'.
  6. The sHRA provides the information to inform the Competent Authority's appropriate assessment, in accordance with the assessment and review provisions of the Habitats Regulations. The sHRA is recorded separately in the suite of reports. It considered the potential impacts of the coastal access proposals on the designated sites identified above as well as others which are distant from S079-S091, including likely significant effects.
  7. Initial screening set out that as the plan or project is not either directly connected or necessary to the management of all of the European sites' qualifying features, a Habitats Regulation Assessment was required. The overall Screening Decision found that the plan or project at large would be likely to, or may, have significant effects on some or all of the qualifying features of the European Sites alone in the absence of mitigation measures. Accordingly, the sHRA considered the potential for the project to give rise to Adverse Effects on the Integrity (AEol) of the designated sites.
  8. The scope of the assessment is set out in Table 7 of the sHRA (pages 34 to 37) and identifies the sites and qualifying features for which significant effects, 'alone' or 'in combination', would be likely or could not be excluded beyond reasonable scientific doubt. 'Key Locations' are summarised in Table 9 of the sHRA (pages 57-58) for the entirety of the England Coastal Path proposals on the Isle of Wight. None are identified for S079-S091.
  9. The assessment of AEol for the project alone takes account of measures to avoid or reduce effects incorporated into the design of the access proposal, as set out in sub-section D3.3 (from page 155). The assessment, which covers the entire length of the England Coast Path proposed for the Isle of Wight, not just S079-S091, identifies that the measures incorporated into the design of the scheme are sufficient to ensure no AEol in light of the sites' conservation. Those where there is some residual risk of insignificant impacts are:
    - Disturbance to feeding and roosting non-breeding waterbirds, 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 feature within the site.
  10. In section D4 of the sHRA (from page 171), NE assessed the appreciable effects that are not themselves considered to be adverse alone to determine whether they could give rise to an AEol in combination with other plans or projects. Insignificant and combinable effects likely to arise, and with the potential to act in-combination with the access proposals, were identified in relation to the



implementation of coastal access on the Isle of Wight and on the mainland from Highcliffe to Calshot, from Calshot to Gosport and from Portsmouth to South Hayling. Nonetheless, as set out in Table 14 of the sHRA (pages 176 to 177) assessing the risk of in-combination effects, NE concluded that, in view of site conservation objectives, the access proposal (taking into account any incorporated avoidance and mitigation measures) would not have an adverse effect on the integrity of the relevant designated sites either alone or in combination with other plans and projects.

11. Part E of the sHRA sets out that NE is satisfied that the proposals to improve access to the English coast for the Isle of Wight, including S079-S091, are fully compatible with the relevant European site conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Scheme. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the sHRA that the proposals would not adversely affect the integrity of the relevant European sites. It is noted that, if minded to modify the proposals, further assessment may be needed.

### **Nature Conservation Assessment**

12. Although not forming part of the sHRA, NE has also undertaken a Nature Conservation Assessment, which should be read alongside the sHRA. The Nature Conservation Assessment covers matters relating to Sites of Special Scientific Interest (SSSI), Marine Conservation Zones and undesignated but locally important sites and features, which are not already addressed in the sHRA. Relevant to S079-S091 are Priory Woods SSSI and Brading Marshes to St Helen's Ledges SSSI, and possibly White tailed sea eagles.
13. NE was satisfied that the proposals to improve access to the English coast around the Isle of Wight, including to S079-S091, were fully compatible with its duty to further the conservation and enhancement of the notified features of Priory Woods SSSI and Brading Marshes to St Helen's Ledges SSSI consistent with the proper exercise of their functions.
14. In respect to the White tailed sea eagle, NE concludes that the appropriate balance has been struck between its conservation and access objectives, duties and purposes.

## ANNEX B: REVISED VERSION OF MAP IOW 2G NATURAL ENGLAND HAS EXPRESSLY ASKED THE SECRETARY OF STATE TO APPROVE AND OTHER ASSOCIATED REVISIONS

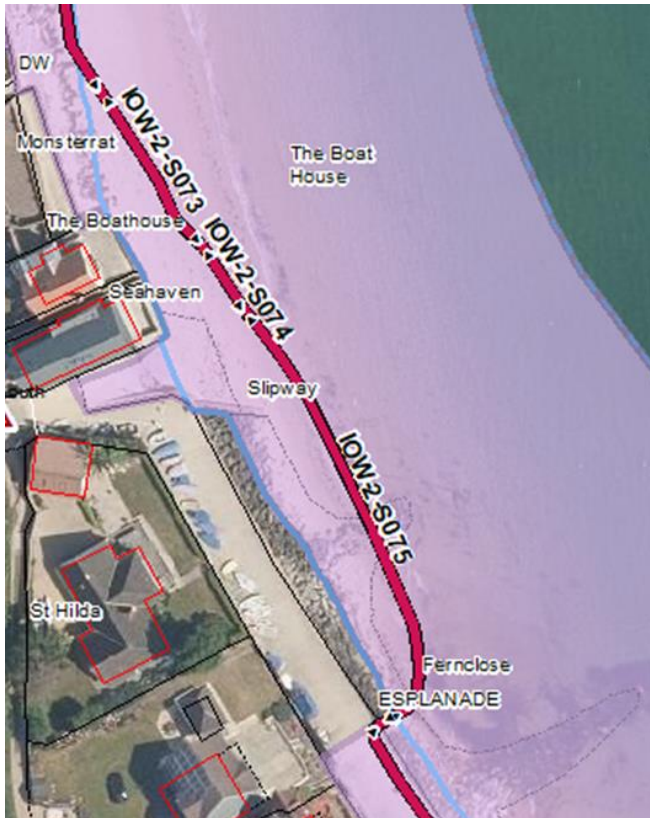


Coastal Access - Isle of Wight - Natural England's Proposals  
Report IOW 2: Wootton Bridge to Culver Down

Map IOW 2g v1: Horstone Point to The Duver (NT)



Map IOW 2g v1: Horstone Point to The Duver (NT)



1	2	3	4	5a	5b	5c	6
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
IOW 2g	IOW-2-S075	Other existing walked route	Yes- See table 2.3.4	Yes- Beach	Landward extent of the Isle of Wight Council's landholdings	Additional Landward Margin	

1	2	3	4	5a	5b	5c	6
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
IOW 2g	IOW-2-S092	Other existing walked route	Yes- See table 2.3.4	No			

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

**by [redacted] BSc(Hons) DipTP DMS MA MRTPI**

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

**Date 5 June 2024**

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Marine and Coastal Access Act 2009

Objection by [redacted] on behalf of Bembridge Angling Club

Regarding Coastal Access Proposals by Natural England

Relating to Wootton Bridge to Culver Down



**Objection Reference: MCA/IOW/02**

**Wootton Bridge to Culver Down**

- On 18 March 2020 Natural England submitted Coastal Access Reports to the Secretary of State for Environment, Food and Rural Affairs setting out proposals for improved access to the coast on the Isle of Wight 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.
- The objections concern Natural England's Report IOW 2 for land between Wootton Bridge to Culver Down. The land in the Report to which the objection relates is specifically route sections IOW-2-S122 to S124, as shown on Map IOW 2h.
- The objection is made under paragraphs 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 IOW 2, in respect to the trail sections IOW-2-S122 to S124, do not fail to strike a fair balance in respect to the objections considered herein.

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**Preliminary Matters**

15. On 18 March 2020 Natural England (NE) submitted Coastal Access Reports to the Secretary of State setting out proposals for improved access to the coast on the Isle of Wight. The period for making formal representations and objections to the reports closed on 13 May 2020. I have been appointed to report to the Secretary of State on the objections.
16. There are other admissible objections to the Reports concerning improved access to the coast on the Isle of Wight. Although some of these other objections also relate to Report IOW 2, they concern different route sections and, as such I have considered it expedient to address them separately in other reports to the Secretary of State.
17. I conducted a site inspection on 18 April 2024. I was accompanied by representatives from NE and from Isle of Wight Council (IoWC). As I was not accompanied by a representative of Bembridge Angling Club (BAC) I did not enter the Club's premises. Nonetheless, I was able to see all that I needed to see from the nearby public domain.

**Main Issues**

18. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (2009 Act) and requires NE and the Secretary of State to exercise their relevant functions to secure two objectives.
19. The first objective is to secure a route for the whole of the English coast which:
  - (c) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
  - (d) (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 2009 Act as the English coastal route and is now known as the King Charles III England Coast Path. For ease of reference, it is referred to as 'the trail' or 'the England Coast Path' in this report.

20. The second objective is that, in association with the England Coast Path, 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 coastal route or otherwise. This is referred to as the coastal margin.
21. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
  - (d) The safety and convenience of those using the trail,
  - (e) The desirability of that route adhering to the periphery of the coast and providing views of the sea, and
  - (f) The desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
22. 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.
23. Section 300 of the 2009 Act provides that the coast includes the coast of any island other than an excluded island. An island is excluded if it is not accessible; that is, that it is not possible to walk to it from the mainland. The Secretary of State may include other islands by order, if satisfied that their coasts are long enough to provide a long-distance walk. That is the case with the Isle of Wight.
24. Section 301 of the 2009 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.
25. NE's Approved Scheme 2013, as approved by the Secretary of State on 9 July 2013, (the Scheme) is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report. Section 7.16 of the Scheme concerns islands and states at 7.16.5 that the trail "will broadly follow the periphery of any island which it includes, following the same principles as for the mainland coast. People will normally be able to choose when they arrive at the bridge or causeway whether to use the trail to reach the island or to continue along the mainland coast." In the case of the Isle of Wight, access to the island is via seacraft or aircraft.
26. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

## **The Coastal Route**

27. Forming part of the England Coast Path for the Isle of Wight, the length of path under consideration is contained within Report IOW 2: Wootton Bridge to Culver Down and includes sections of path as shown on Map IOW 2h. The objection relates to routes IOW-2-S122, IOW-2-S123 and IOW-2-S124, referred to as 'S122', 'S123' and 'S124' or collectively as 'S122-S124' henceforth.



28. Along S122-S124 and to each side of these sections the proposed trail would follow existing walked routes, including public rights of way or highway. Between The Duver and Bembridge Point, as shown on Map 2h, it generally follows the coastline closely with views of the sea and of Bembridge Harbour. Nonetheless, along S122-S124 the trail would divert a short distance inland away from the Harbour, skirting around the BAC's waterfront premises and a small residential development.
29. Bembridge Harbour a little to the east of S122-S124 and wetlands a little further to the south form part of the Solent and Southampton Water Special Protection Area (SPA) and Ramsar as well as part of Brading Marshes to St Helen's Ledges Site of Special Scientific Interest (SSSI). The relevant section of the trail is located outside of and some considerable distance away from the nearest part of the Isle of Wight National Landscape.
30. The Solent and Isle of Wight Lagoons Special Area of Conservation (SAC) is located to the south of Bembridge Harbour, while the South Wight Maritime SAC is located beyond the Harbour to the east. Bembridge Marine Conservation Zone (MCZ) is located immediately to the east of the Harbour. S122-S124 is, nonetheless, located some distance away from both SACs and the MCZ.
31. Access to the mudflat and saltmarsh in the coastal margin seaward of trail sections IOW-2-S114 to IOW-2-S131, which includes S122-S124, is proposed to be excluded all year round by direction under Section 25A of the Countryside and Rights of Way Act 2000 (2000 Act) as this land is unsuitable for public access. The mudflat is soft and sinking, does not provide a safe walking surface and is subject to frequent tidal inundation. The exclusion would not affect the trail itself here, nor would it have legal effect on land where coastal access rights do not apply.
32. For S122 the wall line here would be the landward boundary of margin for clarity and cohesion, while for S123 and S124 it would be the pavement edge, again for clarity and cohesion. No roll-back is proposed for any part of S122-S124.

### **The Objections**

33. BAC is the tenant of the land. It states that land between S122-S124 and the edge of the quay bordering on the harbour consists of two separate sections: that containing attached dwellings, collectively called Selwin Court, and the associated grounds; and that containing the clubhouse and enclosed compound of BAC, which is the specific area BAC is concerned with. BAC is clear that it has no problem with the current proposed path route, which would run outside its compound. However, it would wish to see a permanent public access exclusion put on its premises and suggests a similar approach to the proposed direction to exclude access to boatyards at Bembridge Harbour, as referred to in para 2.2.21 of the Report IOW 2.
34. BAC adds that its compound is enclosed, and public access denied by way of locked access gates, and that its boundary with the harbour consists of a raised quay wall which is not protected by railings over some distance and has a potential to allow unwary persons to fall into the water, which could be a distance of 4m plus at low tide. BAC says that the compound is used daily by members' vehicles as well as other Club related works being undertaken. Insurance cover

is only provided for Club members and official guests. Restricted access for members only is, in BAC's view, also essential for security of property within the compound, including dinghies.

## **Representations**

35. The Ramblers expressly support the proposed route, including S122-S124.
36. IoWC, regarding proposed sections IOW-2-S123 to S126, states it fully supports this section using what has previously been a private footbridge. Use of the footbridge at Bembridge Marina will provide very good views of the Harbour and avoid a section of walking alongside a road in an urban environment.
37. Bird Aware Solent / Solent Recreation Mitigation Partnership (SRMP) has commented on Report IOW 2 at large, without specific reference to S122-S124. It welcomes the concept of the England Coast Path as something of value to local people and residents but has concerns that it would like to be addressed and refers to its mitigation programme, identified in its Strategy as formally adopted by PUSH in December 2017. It raises two specific areas of concern; increasing visitor numbers and mapping of spreading zones.
38. SRMP says that a rise in the number of visitors to sensitive parts of the coast will cause increased disturbance to the overwintering birds that journey to SPAs, many of which are red and amber listed. Whilst the SRMP employs a range of measures to mitigate against disturbance from increasing housing numbers, it does not have the resources to deal with any further elevation in visitor numbers as a result of the England Coast Path. It adds, therefore, there is a real concern of a conflict between these two initiatives and that any rise in visitor numbers has the potential to diminish the effectiveness of the SRMP measures. SRMP also states that the trail will need its own mitigation package to protect against the impact of increased visitor numbers it creates.
39. Furthermore, SRMP is concerned regarding Ordnance Survey's plans to depict the 'spreading zone' as a magenta wash, making no exceptions for excepted areas as this may lead to users of the trail straying into excepted intertidal areas. It adds that these can be extremely large, support fragile habitats and be a huge food resource for birds and other species. Increased footfall through these areas would, in SRMP's view, cause great damage to these fragile habitats and enormous disturbance to vulnerable wintering bird populations. Although exceptions to the spreading zone will be sign posted on the ground and listed on NE's website, SRMP says that enforcement would seem to fall to the landowner/occupier. It adds that if it is not possible to depict the spreading zone accurately on Ordnance Survey maps, SRMP would urge NE to reconsider its inclusion on the map entirely.
40. The Isle of Wight Local Access Forum comment that due to circumstances, chiefly associated with the pandemic, at the time of the constitution, it was unable to coordinate a response on behalf of the Forum. It adds, though, it has consistently been able to put its views across during the pre-consultation phase and has encouraged Forum members to comment at all stages.
41. The Open Spaces Society fully supports the Ramblers representations in respect to Report IOW 2.

42. Disabled Ramblers comment that modern mobility vehicles can be very large, and many man-made barriers that will allow a manual wheelchair through are not large enough for all-terrain mobility vehicles, or for 'pavement' scooters, and prevent legitimate access even though users of mobility vehicles have the same rights of access that walkers do. They add that man-made structures along the trail should not be a barrier to access for users of mobility vehicles and also acknowledge the replacement of stiles with gates as a positive step.
43. Disabled Ramblers, though, requests that the proposed measures go further by ensuring that all new structures allow convenient access to mobility vehicles as standard, complying with BS5709: 2018 Gaps Gates and Stiles. They also request that all existing structures on the trail are removed and replaced if they prevent access to users of mobility vehicles. They add that the suitability of all structures should be considered on the basis that a person with reduced mobility will operate the structure themselves alone, seated on their mobility vehicle.
44. Disabled Ramblers also request compliance with the Equality Act 2010 (and the Public Sector Equality Duty within this act) and with the Act 2000, and adherence to the advice from Disabled Ramblers as set out in the Man-made Barriers and Least Restrictive Access document [copy at Annex 13 to NE's *Representations on IOW 2: Wootton Bridge to Culver Down and Natural England's comments* document, February 2024].
45. Southern Gas states that NE should be aware that groundworks that take place in the vicinity of gas infrastructure could result in personal injury or damage to the gas infrastructure. As such NE will be expected to consult with Southern Gas in relation to said points of interaction and any groundworks that might be required. It adds that it has provided a bundle of plans that show the locations of the relevant infrastructure situated on or within 50m of the trail.
46. Solent Protection Society makes comments regarding certain sections of the proposed trail, but none are made in respect to S122-S124. Nonetheless, in respect to the adjoining IOW-2-S125 and S126 sections it draws attention to a planning application Ref P/00637/14 for nine houses to be built on IOW-2-S126 and suggests that the trail follows the current route to join the B3395 unless a route past the housing can be agreed.
47. [redacted] has made what he describes as 'general comments on the report'. They largely relate to how the overview report and respective chapter reports are set out and cross referenced, and how the criteria used as a basis of route planning were applied to inform the proposed trail. He adds that the complex and long nature of the whole document plus the representations form that needs to be used may deter some people from making a representation. No specific comments are made in respect to S122-S124. [redacted]'s comments are included in full at Annex 16 to NE's *Representations on IOW 2: Wootton Bridge to Culver Down and Natural England's comments* document, February 2024.
48. [redacted] objections to the alignment of the trail and the identification and management of spreading room on the basis that, in his view, it does not properly consider nature conservation issues and, specifically, it is incompatible with statutory obligations under the Habitats Regulations. His representation includes a formal complaint as to the adequacy of the Habitats Regulation Assessment and the process by which it was drafted. His representation and the

associated complaint correspondence are contained within Annexes 17 and 18 to NE's *Representations on IOW 2: Wootton Bridge to Culver Down and Natural England's comments* document, February 2024. I would note that these all appear to predate NE's updated shadow Habitats Regulation Assessment for the Isle of Wight trail proposals produced in response to objections and representations, as published in June 2022.

49. NE has provided comprehensive responses to each of the representations. These are set out in NE's *Representations on IOW 2: Wootton Bridge to Culver Down and Natural England's comments* document, February 2024.

### **Natural England's Response to the Objections**

50. NE does not believe it is necessary to give a formal direction to exclude access to BAC's property because:
- (a) The objection states that the compound sits behind locked access gates, which currently prevent the public from entering the site. There is no reason why this current access management measure should not continue to be employed;
  - (b) Whilst only the Courts can give a definitive ruling on what constitutes excepted land, the land in question appears to be excepted land under para 2 of Schedule 1 to the 2000 Act, as 'land covered by buildings or the curtilage of such land'. Therefore, no new access rights will be created over BAC's premises, and the Club would be able to place signs to that effect should it wish to; and
  - (c) Directions to restrict or exclude access are not necessary on excepted land as there is no access right to exclude or restrict.

### **Analysis and Conclusion**

51. I have found no good reasons to come to different conclusions to NE on the matters raised by BAC, as summarised in the preceding section. Indeed, when I conducted my site visit, I observed that the only landward means of access to BAC's site is via a gated vehicular access. During the initial part of the visit the gates were closed and locked, consistent with BAC's objection.
52. Given their evident height and integrity, the gates could be used to prevent the public from entering the site in tandem with the existing substantial boundary treatment to the premises at large. Accordingly, even if their premises were not excepted land under para 2 of Schedule 1 to the 2000 Act, BAC has and would continue to have the means to prevent third parties from entering its site.
53. For these reasons, therefore, the relevant proposed sections of the England Coast Path would be highly unlikely to have any of the detrimental effects suggested by BAC.

### **Recommendation**

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

*[redacted]*

APPOINTED PERSON

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

### **Introduction**

55. The Conservation of Habitats and Species Regulations 2017 (as amended) requires that where a plan or project is likely to have a significant effect on a European site, such as the Solent and Southampton Water Special Protection Area (the SPA), either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an appropriate assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.

### **Project Location**

56. The proposed section of path in question forms part of the England Coast Path on the Isle of Wight. In terms of the objections considered here, IOW-2-S122, IOW-2-S123 and IOW-2-S124 are the relevant sections. They are collectively referred to henceforth as 'S122-S124', as shown on Map IOW 2h.
57. S122-S124 is in proximity to the Solent and Southampton SPA and Ramsar site, the Solent and Isle of Wight Lagoons Special Area of Conservation (SAC) and the South Wight Maritime SAC.
58. The Solent and Southampton SPA and Ramsar site at large is one of the only major sheltered channels in Europe, lying between the Isle of Wight and the mainland on the south coast of England, stretching from Hurst Spit to Hill Head and on the North Coast of the Isle of Wight from Yarmouth to Whitecliff Bay. It is composed of extensive intertidal mudflats and sandbanks, saltmarsh, coastal lagoons, shingle banks and grazing marsh. The estuarine sediments support rich populations of invertebrates which provide an important food source for overwintering birds. The shingle banks also provide important breeding ground for terns. This also supports approximately 10% of the world's dark-bellied brent geese. This species will use the mudflats and grazing marsh to feed but also make use of farmland and grassland outside of the SPA boundaries.
59. The Solent and Isle of Wight Lagoons SAC encompasses fourteen coastal lagoons, four of which are on the Isle of Wight, each with its own unique conditions and recognised for both nationally scarce species and high species diversity. The four Bembridge Harbour lagoons are located behind a sea wall, the sea water enters by percolation and man-made culverts. It supports a high species diversity, including the nationally scarce starlet sea anemone.
60. The South Wight Maritime SAC is located along the south coast of the Island. The eastern side is more sheltered with areas of limestone and sandstone. The reef systems support a diverse range of seaweeds and sponges. Bembridge, alongside The Needles and Freshwater Bay, represent some of the best areas in Britain for chalk cliffs and limestones ledges.



## **Habitats Regulations Assessment Implications of the Project**

61. S122-S124, as part of the England Coast Path on the Isle of Wight, would increase access to this area for recreational activities, including by walkers and those accompanied by dogs, whose presence have the potential to affect the SPA, the Ramsar site and the two SACs, as does disturbance by construction activities necessary for the physical establishment of the path and access management infrastructure. The qualifying features of these designated sites are:
- Breeding Terns (Common, Little, Roseate and Sandwich terns);
  - Breeding Mediterranean Gull;
  - Non-breeding waterbirds (Black-Tailed Godwit; Ringed Plover; Dark-Bellied Brent Geese; Teal; and water bird assemblage);
  - Subtidal features (estuaries - subtidal coarse sediment, subtidal mixed sediment; subtidal sand, subtidal seagrass beds; and sheltered channel between island/mainland);
  - Reefs;
  - Coastal lagoons;
  - Wetland plant and invertebrate assemblages;
  - Intertidal habitats (estuaries - intertidal seagrass beds, intertidal sand and muddy sand, intertidal mud, intertidal mixed sediments, intertidal coarse sediment; and submerged or partially submerged sea caves); and
  - Vegetated maritime cliffs (vegetated sea cliffs of the Atlantic and Baltic coasts).
62. In 2020 Natural England (NE) undertook a shadow Habitats Regulation Assessment of the Isle of Wight proposals for the England Coast Path. It was revised and updated in response to additional information gathered after the Reports for IOW2 to IOW10 were published, and in response to objections and representations received during the consultation process on the published proposals. This latter, updated version was published in June 2022 and is the version referred to herein. Henceforth, it is referred to as the 'sHRA'.
63. The sHRA provides the information to inform the Competent Authority's appropriate assessment, in accordance with the assessment and review provisions of the Habitats Regulations. The sHRA is recorded separately in the suite of reports. It considered the potential impacts of the coastal access proposals on the designated sites identified above as well as others which are distant from S122-S124, including likely significant effects.
64. Initial screening set out that as the plan or project is not either directly connected or necessary to the management of all of the European sites' qualifying features, a Habitats Regulation Assessment was required. The overall Screening Decision found that the plan or project at large would be likely to, or may, have significant effects on some or all of the qualifying features of the European Sites alone in the absence of mitigation measures. Accordingly, the sHRA considered the potential for the project to give rise to Adverse Effects on the Integrity (AEol) of the designated sites.

65. The scope of the assessment is set out in Table 7 of the sHRA (pages 34 to 37) and identifies the sites and qualifying features for which significant effects, 'alone' or 'in combination', would be likely or could not be excluded beyond reasonable scientific doubt. The relevant information for S122-S124 is identified in the second row of Table 9 of the sHRA (page 57) and discussed in D3.2B Bembridge Harbour (pages 63 to 69); note that this covers the entirety of this part of the coastal path, not just S122-S124.
66. The assessment of AEoI for the project alone takes account of measures to avoid or reduce effects incorporated into the design of the access proposal, as set out in sub-section D3.3 (from page 155). The assessment, which covers the entire length of the England Coast Path proposed for the Isle of Wight, not just S122-S124, identifies that the measures incorporated into the design of the scheme are sufficient to ensure no AEoI in light of the sites' conservation. Those where there is some residual risk of insignificant impacts are:
- Disturbance to feeding and roosting non-breeding waterbirds, 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 feature within the site.
67. In section D4 of the sHRA (from page 171), NE assessed the appreciable effects that are not themselves considered to be adverse alone to determine whether they could give rise to an AEoI in combination with other plans or projects. Insignificant and combinable effects likely to arise, and with the potential to act in-combination with the access proposals, were identified in relation to the implementation of coastal access on the Isle of Wight and on the mainland from Highcliffe to Calshot, from Calshot to Gosport and from Portsmouth to South Hayling. Nonetheless, as set out in Table 14 of the sHRA (pages 176 to 177) assessing the risk of in-combination effects, NE concluded that, in view of site conservation objectives, the access proposal (taking into account any incorporated avoidance and mitigation measures) would not have an adverse effect on the integrity of the relevant designated sites either alone or in combination with other plans and projects.
68. Part E of the sHRA sets out that NE is satisfied that the proposals to improve access to the English coast for the Isle of Wight, including S122-S124, are fully compatible with the relevant European site conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Scheme. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the sHRA that the proposals would not adversely affect the integrity of the relevant European sites. It is noted that, if minded to modify the proposals, further assessment may be needed.

## **Nature Conservation Assessment**

69. Although not forming part of the sHRA, NE has also undertaken a Nature Conservation Assessment, which should be read alongside the sHRA. The Nature Conservation Assessment covers matters relating to Sites of Special

Scientific Interest (SSSI), Marine Conservation Zones (MCZ) and undesignated but locally important sites and features, which are not already addressed in the sHRA. Relevant to S122-S124 are Brading Marshes to St Helen's Ledges SSSI and Bembridge MCZ, and possibly White tailed sea eagles.

70. NE was satisfied that the proposals to improve access to the English coast around the Isle of Wight, including to S122-S124, were fully compatible with its duty to further the conservation and enhancement of the notified feature of Brading Marshes to St Helen's Ledges SSSI consistent with the proper exercise of their functions.
71. Bembridge MCZ is not included in the Nature Conservation Assessment on the basis that the associated features are subtidal and therefore NE does not consider that the access proposals would impact them in any way.
72. In respect to the White tailed sea eagle, NE concludes that the appropriate balance has been struck between its conservation and access objectives, duties and purposes.

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

**by [redacted] BSc(Hons) DipTP DMS MA MRTPI**

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

**Date 21 June 2024**

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Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Hamstead Point to Thorness Bay

**Objection Reference: MCA/IOW/08**

**Hamstead Point to Thorness Bay**

- On 18 March 2020 Natural England submitted Coastal Access Reports to the Secretary of State for Environment, Food and Rural Affairs setting out proposals for improved access to the coast on the Isle of Wight 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.
- The objections concern Natural England's Report IOW 7 for land between Hamstead Point to Thorness Bay. The land in the Report to which the objection relates is specifically route sections IOW-7-S099 to S103, as shown on Map IOW 7e.
- The objection is made under paragraphs 3(3)(a), 3(3)(b), 3(3)(c) and 3(3)(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 IOW 7, in respect to the trail sections IOW-7-S099 to S103, do not fail to strike a fair balance in respect to the objections considered herein.

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**Preliminary Matters**

73. On 18 March 2020 Natural England (NE) submitted Coastal Access Reports to the Secretary of State setting out proposals for improved access to the coast on the Isle of Wight. The period for making formal representations and objections to the reports closed on 13 May 2020. I have been appointed to report to the Secretary of State on the objections.
74. There are other admissible objections to the Reports concerning improved access to the coast on the Isle of Wight. Although some of these other objections also relate to Report IOW 10, they concern different route sections and, as such I have considered it expedient to address them separately in other reports to the Secretary of State.
75. I conducted a site inspection on 17 April 2024. I was accompanied by representatives from NE and from Isle of Wight Council (IoWC). As I was not accompanied by [redacted] (the objector) or anyone acting on his behalf, I did not enter his property. Nonetheless, I was able to see all that I needed to see from the nearby public domain.

**Main Issues**

76. The coastal access duty arises under Section 296 of the Marine and Coastal Access Act 2009 (2009 Act) and requires NE and the Secretary of State to exercise their relevant functions to secure two objectives.
77. The first objective is to secure a route for the whole of the English coast which:
- (e) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
  - (f) (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 2009 Act as the English coastal route and is now known as the King Charles III England Coast Path. For ease of reference, it is referred to as 'the trail' or 'the England Coast Path' in this report.

78. The second objective is that, in association with the England Coast Path, 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 coastal route or otherwise. This is referred to as the coastal margin.
79. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
  - (g) The safety and convenience of those using the trail,
  - (h) The desirability of that route adhering to the periphery of the coast and providing views of the sea, and
  - (i) The desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
80. 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.
81. Section 300 of the 2009 Act provides that the coast includes the coast of any island other than an excluded island. An island is excluded if it is not accessible; that is, that it is not possible to walk to it from the mainland. The Secretary of State may include other islands by order, if satisfied that their coasts are long enough to provide a long-distance walk. That is the case with the Isle of Wight.
82. Section 301 of the 2009 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.
83. NE's Approved Scheme 2013, as approved by the Secretary of State on 9 July 2013, (the Scheme) is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report. Section 7.16 of the Scheme concerns islands and states at 7.16.5 that the trail "will broadly follow the periphery of any island which it includes, following the same principles as for the mainland coast. People will normally be able to choose when they arrive at the bridge or causeway whether to use the trail to reach the island or to continue along the mainland coast." In the case of the Isle of Wight, access to the island is via seacraft or aircraft.
84. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

85. Forming part of the England Coast Path for the Isle of Wight, the length of path under consideration is contained within Report IOW 7: Hamstead Point to Thorness Bay and includes sections of path as shown on Map IOW 7e Walter's Copse to Porchfield.



86. The objection relates to routes IOW-7-S099 to IOW-7-S103 inclusive. Individual sections are referred to in the form 'S099', 'S0100' and so on, or collectively as 'S099-S103' henceforth.
87. Along S099-S103, although it would run within or run parallel to the highway, most of the proposed route would not follow an existing walked route. Between sections S101 to IOW-7-S125 a significant inland diversion is necessary to take the trail past a MoD Danger Area.
88. Along S103 a new footbridge and associate steps are proposed to allow the trail to cross Clamerkin Brook to the south of the existing road bridge. Two new kissing gates are proposed along S099-S103. As this section would be new, access, surface clearing and upgrades are also proposed.
89. Parts of the Solent and Southampton Water Special Protection Area (the SPA) and Ramsar, the Solent Maritime Special Area of Conservation (the SAC) and the Newtown Harbour Site of Special Scientific Interest (the SSSI) are located immediately to the north of a section of the highway where it would run parallel to all of S102 and much of S101 and S103.
90. The boundary of the closest part of the Isle of Wight National Landscape (the IoWNL), formerly known as the Area of Outstanding Natural Beauty (AONB), is also located immediately to the north of the road. Consequently, the proposed trail here would not pass through the IoWNL. However, given its proximity, S099-S103 would be within the IoWNL's setting.
91. No roll-back is proposed associated with S099-S103.
92. Access to land in the coastal margin covered by sections IOW-7-S001 to IOW-7-S126 is to be excluded all year-round by direction under Section 25A of the Countryside and Rights of Way Act 2000 (2000 Act). This is because it is mudflat and saltmarsh that is unsuitable for public access as it does not provide a safe walking surface and is subject to frequent tidal inundation. The exclusion does not affect the route itself and will have no legal effect on land where coastal access rights do not apply.

## **The Objections**

93. By way of context, the objector makes a number of points, as summarised below:
  - I have obtained the original conveyance plan from the County Archivists office showing that the strip of land some 15 metres wide on the north side of the road was never conveyed to the military.
  - The existing boundary 15 metres back is marked by the old gate.
  - I have lived here for about 40 years and the verge land has never been used by the military.
  - The byelaw map from 1935 clearly shows the land was never used.
  - Thus the 15 metres verge land on the north, seaward side, is all available for a coastal path. The land on the south side has a shoot and is environmentally identical to the land on the north side.

- Disturbance of wildlife already occurs in the military land adjacent to and behind the 15 metres strip.
  - The military train cadets in their land and a bit further to the north have their firing range which obviously disturbs nesting birds and damages the flora and fauna. IoWC would have preferred to have the route on the north side but were incorrectly informed that the land was military land. Walkers along the south side would walk onto the bridge across the road traffic to see the view down the creek, as existing walkers and cyclists do.
  - NE suggests the bridge is a hazard point, and that if the walkers have a strip 15 metres wide on the north side, they would not cross onto the bridge and there would be no danger. The proposal would create a danger point at the bridge.
  - NE says it is more practical and cost effective to construct a footbridge on the southern side of the bridge. That is wrong as the cost and the environmental impact on either side of the highway would be the same. Indeed, if the southern side is used, a raised footbridge would be needed as the area below the existing bridge floods against the bridge on the way to the north side, creating a danger for users at times of heavy rain.
94. With reference to the foregoing points, objections are made on a number of grounds as follows:
- 1) The land on the seaward side (north) is not military land for the first 15 metres. It has never been used by the military and as they do not own it either they cannot start to use it or move their fence.
  - 2) The route proposed by NE is on land where there is a shoot.
  - 3) The military disturb land on their side of the road with a firing range and cadet training disturbing the flora and fauna and wildlife thus meaning there is no justifiable environmental reason not to use the 15 metre wide roadside verge land.
  - 4) The roadside to the north is all available up to the point where NE proposes to cross the road. NE has said that the copse to the west side of Clamerkin bridge is spreading land and the roadside further up to Clamerkin and beyond is highway verge land adjacent to National Trust land.
  - 5) The south side opposite Clamerkin is farmed with livestock and annual cropping which will be disturbed by the NE proposal (NE could run the path along the roadside verge but for no good reason it has decided to cut into the field hedges and run a path inside the fields on the southern side. Existing cyclists and riders will still use the road. NE have received a submission from the farm tenant as to the difficulties faced by farming and did not investigate it.
  - 6) NE propose to cross the road to the north side on the basis of visibility lines. However, the point where they have chosen is the only overtaking place on the road from Shalfleet to Gurnard and as a result cars travel their fastest at that point. I also gave an example and informed them that is where my daughter's dog was killed. However, highway standard sight lines are easily met at the entry to the 15 metre strip, where the old gate shows the long existing road entrance.

95. The objector maintains that the net effect of the proposals would be to create a hazard at the bridge where walkers on the south side would cross to stand on the bridge, which he considers to be too narrow for both cars and pedestrians. He adds that this could be avoided on safety grounds by using the verge on the north side. He adds that, as all the verges are available, NE fails to strike a fair balance.
96. The objector also states that NE has failed to take account of the shoot on the south side or make any proposals at all except for NE's representative saying at a short meeting on 25 February 2020 "you should not shoot close to the path."
97. He adds that NE has not costed a footbridge, has not carried out a survey of the land on the south side nor assessed the impact on the wildlife nesting as described to NE in February 2020.
98. The objector also states that a free without prejudice offer has been made to dedicate Copse Hat copse for picnic land for walkers along the coastal path adjacent to the 15 metre strip and between Colemans Lane and the 15 metre strip. This, he says, is on the condition that a memorial to his deceased wife is erected there if the pathway uses the 15 metre strip on the north side of the road. He considers that this would be a significant enhancement to walkers but adds that the offer has not been accepted by NE.
99. The objector states that IoWC's Rights of Way Manager / Directorate of Neighbourhoods / Public Rights of Way wrote him on 28 February 2020 as follows:
- The situation with the England Coastal Path at Clamerkin is far from satisfactory. When the scheme was first introduced most were hoping (and expecting) a true "coastal" path but the exclusion of the MoD land from the Scheme and the complete lack of co-operation from the MoD (and its partners) in allowing any sort of access through its land has forced the path inland.*
- I would like to reassure you that every effort has been made by the Isle of Wight Council to gain access through MoD land including meeting with Bob Seely MP and asking for his assistance at minister level.*
- Natural England have also used their best endeavours and there has been a campaign by the IW Ramblers Association. Unfortunately, all attempts have hit a brick wall.*
- This of course means that the path has to remain inland in this area and as a consequence I believe that a northern strip of your land is proposed for use. I can fully understand your frustration with this.*
100. The objector concludes that it is clear, therefore, that the only reason NE has chosen to put forward a route on the south side is because it assumed the military own the 15 metres wide strip. He, however, maintains that the MoD does not.
101. He adds that he had difficulties getting information from the MoD also and only got its byelaw plan via a Freedom Of Information request. He goes on to say that he only got the conveyance plan by asking the Isle of Wight County Archivists office to search for it.

102. The objector also maintains that even if the MoD did own the strip of land to the north of the road, there is a presumption of public access to military land in any event. Accordingly, in his view, it would be difficult to see any justification for the MoD to refuse it for the 15 metre wide strip of land which has never been used since its acquisition in 1911. He adds that this strip of land stands outside the land boundary and that it has never been fenced in during the 40 years he has lived in the area.
103. The objector also makes what he describes as 'law submissions'. In this regard he states that in the case of *Prest v Secretary of State for Wales* (1982) 81 LGR 193 Lord Denning MR said:

"It is clear that no minister or public authority can acquire any land compulsorily except the power to do so be given by Parliament: and Parliament only grants it, or should only grant it, when it is necessary in the public interest. In any case, therefore, where the scales are evenly balanced – for or against compulsory acquisition – the decision – by whomsoever it is made – should come down against compulsory acquisition. I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands."

104. In the context of the foregoing judgment, the objector states:

*Thus the fact that the land on the north side of the road is not owned by the military and also not used by the military (and change of use would be subject to review before it confirmed in respect of which I have written to the MoD several times and had no response) and the fact that NE have sent me the wrong plans supplied to them by the MoD as to their land and the presumption in favour of public access to military lands, means that NE cannot yet make out a case after a short meeting on 25 February 2020 when the correct plans as to ownership had not been supplied to them and the fact they have not investigated the environmental impact on the land either side of the road and balanced the same, nor investigated the cost of a foot bridge either side of the bridge and the fact that the route they propose is not the one the Isle of Wight Council would prefer, in total must mean that NE have not made out their case 'decisively'.*

105. The objector adds that the result is that NE should now amend its plan and proceed on the north, seaward, side of the road. He adds that the military land beyond the 15 metres wide strip of land is spreading land, so the public can use that side without restriction in any event. On that basis he says that there is no need for any route on the south side of the road. He requests that NE's proposals are modified accordingly.

## **Representations**

106. The Ramblers, in respect to IOW-7-S095 to S112, welcome the improved access and spreading room to be provided near Clamerkin Lake and the safety feature of a pedestrian bridge proposed across Porchfield Brook. It adds that other aspects of the proposals are an acceptable alternative to other viable options so long as the trail is set well back from the busy narrow Porchfield Road.

107. The Open Spaces Society fully supports the Ramblers representations in respect to Report IOW 7.
108. IoWC, regarding proposed sections IOW-7-S097 to S124, comments in respect to two matters. Firstly, the possible failure on the part of NE to ascertain the exact extent of land subject to military land byelaws, and secondly, non-compliance by NE and the MoD with the 2009 Act and with the Scheme.
109. On the first of these matters, IoWC states that its representation is based on a concern that the exact extent of the MoD land at Porchfield regulated by byelaws under Section 14 of the Military Lands Act 1882 or Section 2 of the Military Lands Act 1990 was not ascertained by NE either prior to publication of its Report or at a very late stage, resulting in a lack of consideration as to whether coastal access rights could be introduced on land not subject to the byelaw. IoWC provide a map (7.2.1 and 2) showing boundaries / land it believes to be subject to the Isle of Wight Newtown Rifle Ranges Byelaws dated 18 April 1935. This map, in two parts, can be found on pages 11 and 12 of NE's *Representations on IOW 7: Hamstead Point to Thorness Bay and Natural England's comments* document, March 2024.
110. IoWC requests that all land outside of that boundary is assessed for potential inclusion of coastal access rights pursuant to the 2009 Act. This, it considers, is essential due to the potential of additional land, closer to the coast and with sea views, being available for the benefit of the public to enjoy in accordance with the 2009 Act. IoWC adds that, if such land is available then, this may avoid the land of adjacent and nearby owners being subject to coastal access rights. IoWC says that it would be inequitable for this process not to occur for the benefit of those inland landowners.
111. On the second matter, IoWC states that irrespective of the extent of land subject to the foregoing byelaw, many provisions of section 8.22 of the Scheme have not been followed or satisfied. It says that this section provides that public access is compatible with some types of defence activity and that there is already managed access to a significant proportion of military training land on the coast, either alongside defence activities or at times when it is not in use for such purposes. It adds that some of this access even occurs when subject to military byelaws.
112. IoWC goes on to say that there are 47 MoD sites in Great Britain where there is managed public access and this includes major sites at Lulworth, Aldershot and Salisbury Plain. It says that notification of temporary path closures (e.g. red warning flags) and diversionary routes are widely and routinely used. IoWC adds that section 8.22.3 clearly states that NE and the MoD have agreed to work closely together to improve the current position and achieve the best possible "fit". This, IoWC says, has not occurred at Porchfield. No public access at all has been achieved on the MoD land here such that NE and the MoD have failed to comply with this section. Further, it says, IoWC is not aware of any "close working" between the two organisations.
113. Section 8.22.4 of the Scheme refers to the potential for routes on the seaward side of MoD land or along other routes in keeping with defence needs. IoWC says that no public access at all has been achieved on the MoD land at Porchfield, so that both parties have also failed to comply with this section.



Section 8.22.5 refers to the potential for 'managed' routes near to the coast in places where a significant detour inland would be necessary for defence reasons. IoWC states that there has been a failure to comply with this as no attempt appears to have been made to achieve managed access.

114. Section 8.22.6 of the Scheme refers to the acceptance of temporary breaks in continuity if a coastal route can be provided at times when land is not used for defence purposes. IoWC states that there has also been a failure to comply with this as no attempt appears to have been made to provide a trail with temporary breaks. Section 8.22.10 "Potential issues and likely range of solutions" provides that where land is currently used for defence purposes, NE will reach agreement with the MoD on the alignment and management of coastal access rights. IoWC says that there has also been a failure to comply with this section as no agreement has been reached - no public access has been achieved at all.
115. IoWC also states that, additionally, it is dismayed that a 1.4km section of an existing public right of way, recorded on the Definitive Map as CB10a, has not been used as part of the trail. This footpath is shown on Map 7.2 MOD land / Public Footpath CB10a, which can be found on page 10 of NE's *Representations on IOW 7: Hamstead Point to Thorness Bay and Natural England's comments* document, March 2024. IoWC says that this is the only public access through and in the vicinity of the MoD land.
116. IoWC adds that this public footpath provides access to the shore and views of the sea, being a primary aim of the 2009 Act. It also says that at the northern end of the public right of way, a trail could easily head east through the seaward side of Burnt Wood, which is not subject to the MoD byelaw, and continue through fields to re-join trail section IOW-7-S122 or IOW-7-S124. This, IoWC maintains, would comply with the requirement of the 2009 Act in that the trail should follow the periphery of the coast.
117. In view of the above, IoWC requests that this whole area be reassessed by senior management within DEFRA and MoD and by the Secretary of State with a view to reasonable coastal access rights being introduced. It considers that a review / inquiry should be undertaken to ascertain why no coastal access rights have been achieved and why the MoD has failed to work with NE and to agree to such rights.
118. The Isle of Wight Local Access Forum comments that due to circumstances, chiefly associated with the pandemic at the time of the consultation, it was unable to coordinate a response on behalf of the Forum. It adds, though, it has consistently been able to put its views across during the pre-consultation phase and has encouraged Forum members to comment at all stages.
119. Bird Aware Solent / Solent Recreation Mitigation Partnership (SRMP) has commented on Report IOW 7 at large, without specific reference to S099-S103. It welcomes the concept of the England Coast Path as something of value to local people and residents but has concerns that it would like to be addressed and refers to its mitigation programme, identified in its Strategy as formally adopted by PUSH in December 2017. It raises two specific areas of concern; increasing visitor numbers and mapping of spreading zones.

120. SRMP says that a rise in the number of visitors to sensitive parts of the coast will cause increased disturbance to the overwintering birds that journey to SPAs, many of which are red and amber listed. Whilst the SRMP employs a range of measures to mitigate against disturbance from increasing housing numbers, it does not have the resources to deal with any further elevation in visitor numbers as a result of the England Coast Path. It adds, therefore, there is a real concern of a conflict between these two initiatives and that any rise in visitor numbers has the potential to diminish the effectiveness of the SRMP measures. SRMP also states that the trail will need its own mitigation package to protect against the impact of increased visitor numbers it creates.
121. Furthermore, SRMP is concerned regarding Ordnance Survey's plans to depict the 'spreading zone' as a magenta wash, making no exceptions for excepted areas as this may lead to users of the trail straying into excepted intertidal areas. It adds that these can be extremely large, support fragile habitats and be a huge food resource for birds and other species. Increased footfall through these areas would, in SRMP's view, cause great damage to these fragile habitats and enormous disturbance to vulnerable wintering bird populations. Although exceptions to the spreading zone will be sign posted on the ground and listed on NE's website, SRMP says that enforcement would seem to fall to the landowner/occupier. It adds that if it is not possible to depict the spreading zone accurately on Ordnance Survey maps, SRMP would urge NE to reconsider its inclusion on the map entirely.
122. The National Farmers Union (NFU) has made comments regarding S100 to S106 inclusive. It states that while the report and maps are not fully clear on the exact alignment of the path, Part 7.3 (Proposals Table) identifies S100-S104 as "not an existing walked route". It maintains that Map IOW 7e is misleading as it appears to show S100-104 located on Coleman Lane, however the route is actually within the fields to the south of the lane. The NFU adds that there is no further supporting information within the Report about the land use within these fields, which it regards as a major shortcoming, giving an incomplete assessment of this section.
123. The NFU states that its members have indicated that the route is mapped in very close proximity to a dense hedgerow. The NFU says that although this may be an Important hedgerow for the purposes of the Hedgerows Regulations 1997, its nature conservation value has not been considered or assessed. I note that those Regulations have been superseded by the 2024 Regulations. The NFU says that the landowner also reports regular sightings of barn owls along this section, a species listed under Schedule 1 of the Wildlife and Countryside Act 1981 (as amended). It adds that this means that the proposal could entail a degree of bird disturbance and licensable habitat disturbance, which has not been considered.
124. The NFU goes on to say that the excepted land directly to the south of S100 and S101 is an integral part of its members' farming enterprise. The NFU says that they use these fields to graze a beef suckler herd within an arable and temporary grass rotation. The herd in question is being slowly bred from dairy (Friesian/ Holstein) to Herefordshire beef cattle. It adds that this transition is taking place over several years, where at the present time the herd consists of many cross bred animals with both Herefordshire beef and dairy genetics.

These cross bred animals are kept in the fields in question as bullocks / steers up to approximately three years of age. The beef bull is also frequently run with the herd in these fields. These animals can be large in size, inquisitive and erratic in behaviour and are not therefore, in the view of the NFU, compatible with frequent public access.

125. As detailed in Chapter 8 of the Scheme, the NFU says that there are both health and safety concerns and animal disease considerations that need to be addressed in situations where the public come into contact with cattle.
126. The NFU states that the most straightforward means of dealing with these risks would be to install a fence to maintain separation between the public and the cattle in these fields. It is the NFU's understanding that this matter was discussed with NE during a site meeting with the landowner and that NE agreed to install a fence. However, the NFU adds that the proposals appear not to include any details to suggest that a fence would be installed in this location.
127. The NFU says that the lack of consistency shown undermines faith in the process. It says there is a genuine management issue that needs to be resolved to prevent the public straying on to excepted land with potentially dangerous risks attached. In this circumstance, it believes it would be reasonable for a fence to be installed and maintained as part of the proposed scheme.
128. The NFU states that, at present, there are no boundaries on the landward side of this section, except at S104 where a fence line is noted in Part 7.3 of the Report. The NFU is concerned there is a risk that the public may use the fields without realising they are outside of the designated right of way and spreading room. It is also concerned that the public may mistakenly consider the land as spreading room and come into unplanned contact with boisterous and potentially dangerous cattle. In this context it is concerned that:
- A. The farm may not always be able to fully mitigate risks if members of the public mistakenly stray on to the land; and
  - B. The landowners would not benefit from any reduced liability due to the fact that the land is outside of the proposed England Coast Path designation.
129. Taken together, the NFU says that it seems there is a foreseeable risk of public contact with relatively boisterous farm animals, but very little in the way of mitigation giving the landowners/tenants any security around these risks. On the basis that these risks do not seem to have been considered, the NFU says this potentially calls into question whether an appropriate balance has been met with reference to Paragraph 3(3) of the 1949 Act, in particular:
- 3(3)(a) "the position of any part of the proposed route" where there are significant risks posed to public health and safety as a result of the proposed alignment; and by implication severe continuity risks to its members' farm business as they rely heavily on the use of this land for cattle breeding. The proposed route does not take account of these risks, such that a fair balance may not have been struck.
  - 3(3)(b) "the inclusion of, or failure to include, proposals for an alternative route" under Section 55C (2). It would have been entirely possible for NE to specify an alternative route for periods of time when bulls and other dangerous animals use these fields. No such alternative route option has

been offered, such that a fair balance may not have been struck in relation to the legitimate business needs of the farmer here.

130. In relation to this latter point regarding alternative routes, the NFU notes that in Section 7.3.3, NE considered aligning the trail along the verge on the north side of the road but opted not to due to uneven terrain, the risk of trampling and bird disturbance, and better sight lines for oncoming traffic. However, in the NFU's opinion the Report is relatively silent on the risks and impacts posed by the proposed route. In relation to these three points the NFU says:
- a. Uneven terrain – the proposed route passes through similar terrain to the alternative option within woodland to the south of Porchfield Road, so the NFU question the relevance of this distinction;
  - b. Trampling and Bird Disturbance – the proposed route passes through largely similar habitat to the alternative route and is likely to present similar risks to wildlife. The NFU has not seen any balanced assessment concerning the nature conservation value on the southern side of the road; and
  - c. Road safety – the NFU says that its members here report that sections of this road are extremely dangerous, highlighting in particular the crossing place proposed at Coleman's Lane at S106 where one of their dogs was killed by fast traffic. This, the NFU says, calls into question the balance of risks assumed in the report, as the proposed route seems to be just as dangerous in terms of road safety compared to the alternative route.
131. Finally, the NFU says, given that none of the risks and impacts seem to have been fully taken into account on the proposed sections, it is very concerned that the appropriate balance may not have been struck in this instance. It, therefore, believes that this section of the path needs to be reviewed by the Inspector, with a view to specifying either an alternative route or fence to maintain public health and safety.
132. The National Trust (NT) has made comments regarding S098 to S103 inclusive and states that it is the landowner of substantial parts of Newtown Harbour SSSI and Newtown National Nature Reserve. It adds that it has worked closely with NE in planning the route where it crosses NT land. The NT is pleased that adjustments have been made to the route and infrastructure to both gain better views of the coast and to avoid some estuary margins and spits that are important for sensitive habitat features including saltmarsh, vegetated shingle, wetland breeding birds sites and wintering wetland and wildfowl bird populations.
133. The NT says that it was not fully consulted on the parts of the path that are adjacent to its land. Now, having had the opportunity to read the whole report, it says that it has reservations on the appropriateness of the parts of the route (other than on existing public rights of way around Newtown Quay), that are close to the estuary and parts of the route where the mapped spreading room would compromise the SPA and SSSI features of interest. The NT has particular concerns over some sections of the proposed route, but these do not relate to S099-S103. It adds that the control measures proposed are not adequate to prevent disturbance to these habitat features, which NE has a duty to ensure.

134. The NT maintains that the perception of access at all times created by the mapping of spreading room on Ordnance Survey maps is unacceptable for land adjacent to such sensitive habitats and the restrictions are unenforceable. This presumption of access, it says, is likely to extend to kayakers and paddle boarders approaching this land from the water and already causes unacceptable wildlife disturbance at times. In its view this situation will only be exacerbated.
135. The evidence and data used to assess the level of disturbance to birds as a result of the England Coast Path route and spreading room is, the NT maintains, significantly lacking in detail and specifics. It adds that it does not adequately take into account the highly significant bird populations, both breeding birds and particularly wintering birds, which are already significantly disturbed by the current levels of public access on land and water around the estuary. The NT also makes comments regarding the proposed trail section through Clamerkin. However, these concern other sections nearby, but not within, S099-S103.
136. South East Reserve Forces & Cadets Association (SERFCA) states in respect to S103 that it is happy with the NE's proposal and believes that an amicable solution for all has been found. In its view, the proposed route allows ramblers to walk along the footpath instead of along a busy country road and also allows for minimal crossings. Any other proposed route to the north could, it says, be dangerous and is also precluded further by the close proximity of the byelaw area and numerous nature conservation designations.
137. SERFCA adds that the land to the north of S103 is owned by them such that it has tri service personnel as well as cadets and youths conducting training. It goes on to say that there is also military accommodation that can accommodate up to 120. It maintains that any encroachment onto the estate would cause numerous management and dangerous safety concerns due to the close proximity of both the accommodation and training area and could cause a significant concern regarding the safety and well-being of cadets and youths.
138. [redacted] refers to S098 to S103 inclusive. Nonetheless, her comments appear to relate primarily to the sections IOW-7-S025 to IOW-7-S039 inclusive. Regarding NE's original Habitats Regulations Assessment, with reference to page 63, she queries how high the proposed kissing gates which would close off the trail August-March would be, and whether they would be high enough to prevent people climbing over and lifting bikes over. She adds that the existing private road and public footpath is used by cyclists in spite of 'no bikes' signs, and that a four metre wide path would invite exploration by cyclists.
139. [redacted] also queries how the keeping of dogs on leads would be enforced or supervised and says that she has little faith in this being observed from her experience on the National Nature Reserve, where she says dogs are frequently exercised loose on the saltmarsh in spite of signage.
140. In respect to NE's Nature Conservation Assessment [redacted] says that many bird species commonly occurring at Newtown have been omitted, including Mediterranean Gull, Curlew, Shelduck, Breeding Redshank, Little Grebe, Lapwing, Ringed Plover Bar-tailed Godwit, Dunlin, Grey Plover Teal, Turnstone, Wigeon. She goes on to say that a water-based NT Breeding Bird Survey concentrates on the area from Shalfleet Quay to the West and East Spits, inshore and offshore, and up Clamerkin Lake. The survey is, in her view, limited



to this route due to access, time and tide restrictions. Western Haven is, she adds, not routinely recorded.

141. Regarding the current Isle of Wight Coast Path, [redacted] says that NE's reference to an A road is an error. She says that the current Coast Path is not along an A road and that this should not be used as an argument for directing the path through Walters Copse and Clamerkin. The Newtown to Porchfield road west of S098 and continuing to S116 is not, she says, an A road or a B road. It is, in her view, a minor road which is part of the Round the Island Cycle Route. She adds that it is used by Duke of Edinburgh Award groups and Army cadets on foot.
142. Moreover, [redacted] does not recognise a "local desire" for a round harbour walk which NE mentions in the Overview document.
143. Solent Protection Society makes comments regarding sections IOW-7-S025 to S112. It states that it is clear that NE has tried hard to improve the Coastal Path around the highly sensitive waterside at Newtown and this is welcomed. It adds that the section through Walters Copse, past Clamerkin and through to Porchfield, which includes S099-S103, removes a long section of road walking.
144. [redacted] says, in respect to the proposals shown on Maps IOW 7a to 7g, the particular joy of Newtown Creek is that it is so unspoilt. He adds that the route of the path, where not the existing Coastal Path, has been well chosen. He also says that he just hopes that most of the 'suburbanisation/Disneyfication' set out in 7.2.39, including excess signage and display panels, will be abandoned on grounds of unsightliness, upfront cost and maintenance requirements. He concludes by saying, "You only have to look at the state of the current signage to know why this should be avoided."
145. [redacted] maintains, with reference to the proposals shown on Maps IOW 7a to 7g, that the Habitats Regulations Assessment's conclusion of no adverse effect is flawed due to the following:
  1. The baseline data upon which the assessment has been based is incomplete and fails to identify the features of the Newtown Harbour estuary that are particularly at risk.
  2. NE has failed to acknowledge the significance of recent judgments of the European Court of Justice and in particular the 'Holohan Case'. This clarifies both the level of information required to make a Habitats Regulations Assessment and the level of certainty needed to rely upon mitigation measures.
  3. NE proposes to control access to small parts of Coastal Margin around Newtown Harbour through the use of a direction under Section 26(3)(a) of the 2000 Act. The areas chosen for the use of Section 26 Directions are inconsistent and do not protect the most important areas of the Harbour.
  4. The Ordnance Survey intend to depict the entire Coastal Margin, between the trail and the low water mark, as Access Land. This will be shown on the OS maps with a magenta wash but will not show the extensive areas of the Coastal Margin to which there is not access, for example, due to directions under Section 25A or Section 26 or land within private gardens, houses and

buildings or cultivated land. The depiction of the entire Coastal Margin as Access Land undermines the potential effectiveness of NE's mitigation measures to manage the impacts of public access.

5. The Solent Recreation Mitigation Partnership has been formed to assess and manage the impact of proposed housing development around the Solent on the internationally designated wildlife sites. The predicted impacts from increased recreation pressure arising from housing development should be assessed in combination with those of the trail as the combined effect of increased accessibility provided by the trail and growing recreational use resulting from housing development will place even greater pressure on coastal habitats and wildlife.
146. [redacted] would like to see more mitigation (such as directions under Section 26(3)(a) of 2000 Act) or preventive measures as he believes this will enable an appropriate assessment to conclude the trail will not have adverse effects on these sites. He says that these measures need to be backed with a commitment to long-term wardening to ensure these restrictions are enforced. In addition, he says that the proposed route along the Western Haven and around Clamerkin Creek needs to be amended to avoid disturbance to these sensitive and undisturbed areas of the harbour.
147. Isle of Wight Area of Outstanding Natural Beauty (now designated as a National Landscape) Steering Committee says that the trail on the island at large has the potential to provide both positive and negative impacts on the designated area and the communities that live and work within the designation. On this basis, it believes there is sufficient reason to comment on the proposed route as it impacts the purposes of the designation to conserve and enhance natural beauty.
148. The Steering Committee adds that the Isle of Wight AONB Partnership welcomes the establishment of the trail on the island's coast and applauds the work of the IoWC's Rights of Way team in its long-term promotion and maintenance of the existing coastal path. It says that the extra resources made available to IoWC to maintain the path are particularly welcomed in the light of the reduction in funding to local authorities in recent years.
149. The Steering Committee also states that it discussed expressions of disappointment and satisfaction regarding the details of the route, but no specific reference is made to the trail in the vicinity of S099-S103. It adds that it was felt that photography would have both improved interpretation and illustrated the issues that were highlighted in the report. As such it recommends that a fixed point photography scheme is established as an aid for subsequent monitoring of the effects of the proposed mitigation on the coastal environment and landscape.
150. With regard to the Isle of Wight AONB designation, the Steering Committee asks that two specific matters are considered:
  - 1) The apparent conflict between the provisions of the Conservation of Habitats and Species Regulations 2017 (CHSR 2017) with regard to the establishment of the Solent Recreation and Mitigation Project (SRMP) and the provisions of the 2009 Act and the promotion of the trail. NE is asked to clarify the hierarchy of legislation that seeks to allow increased recreational

pressure to Natura 2000 sites under the 2009 Act whilst seeking to reduce it under the CHSR 2017. NE, in its response to the evidence used to establish the SRMP, agreed that signage was inadequate to mitigate adverse impacts to internationally designated sites by the potential disturbance to foraging and roosting overwintering birds by people and dogs. NE agreed with the conclusion that the SRMP wardens would be far more effective in this regard. NE is, therefore, asked whether its opinion has changed, and clarification is sought. In any case, due to the national importance of the AONB designation [now known as National Landscapes], NE is asked to commission an evaluation programme to determine the success of the mitigation measures outlined in the reports.

- 2) A reduction in the amount of signage and other clutter that detracts from the scenic beauty which the trail is enabling people to enjoy. In light of the reports on the efficacy of signage noted above, it is requested that the level of required signage and associated infrastructure is reviewed.
151. In conclusion, the Steering Committee states that the provisions of the 2009 Act seem to have been satisfactorily addressed by the proposed route given the constraints and having to consider the needs and aspirations of all parties concerned.
152. Disabled Ramblers comment that modern mobility vehicles can be very large, and many man-made barriers that will allow a manual wheelchair through are not large enough for all-terrain mobility vehicles, or for 'pavement' scooters, and prevent legitimate access even though users of mobility vehicles have the same rights of access that walkers do. They add that man-made structures along the trail should not be a barrier to access for users of mobility vehicles and also acknowledge the replacement of stiles with gates as a positive step.
153. Disabled Ramblers, though, request that the proposed measures go further by ensuring that all new structures allow convenient access to mobility vehicles as standard, complying with BS5709: 2018 Gaps Gates and Stiles. They also request that all existing structures on the trail are removed and replaced if they prevent access to users of mobility vehicles. They add that the suitability of all structures should be considered on the basis that a person with reduced mobility will operate the structure themselves alone, seated on their mobility vehicle.
154. Disabled Ramblers also request compliance with the Equality Act 2010 (and the Public Sector Equality Duty within this act) and with the 2000 Act, and adherence to the advice from Disabled Ramblers as set out in the Man-made Barriers and Least Restrictive Access document [copy at Annex 6 to NE's *Representations on IOW 7: Hamstead Point to Thorness Bay and Natural England's comments* document, March 2024].
155. Southern Gas states that NE should be aware that groundworks that take place in the vicinity of gas infrastructure could result in personal injury or damage to the gas infrastructure. As such NE will be expected to consult with Southern Gas in relation to said points of interaction and any groundworks that might be required. It adds that it has provided a bundle of plans that show the locations of the relevant infrastructure situated on or within 50m of the trail.

156. [redacted] has made what he describes as ‘general comments on the report’. They largely relate to how the overview report and respective chapter reports are set out and cross referenced, and how the criteria used as a basis of route planning were applied to inform the proposed trail. He adds that the complex and long nature of the whole document plus the representations form that needs to be used may deter some people from making a representation. No specific comments are made in respect to S099-S103. [redacted]’s comments are included in full at Annex 5 to NE’s *Representations on IOW 7: Hamstead Point to Thorness Bay and Natural England’s comments* document, March 2024.
157. [redacted] objections to the alignment of the trail and the identification and management of spreading room on the basis that, in his view, it does not properly consider nature conservation issues and, specifically, it is incompatible with statutory obligations under the Habitats Regulations. His representation includes a formal complaint as to the adequacy of the Habitats Regulation Assessment and the process by which it was drafted. His representation and the associated complaint correspondence are contained within Annexes 7 and 8 to NE’s *Representations on IOW 7: Hamstead Point to Thorness Bay and Natural England’s comments* document, March 2024. I would note that these all appear to predate NE’s updated shadow Habitats Regulation Assessment for the Isle of Wight trail proposals produced in response to objections and representations, as published in June 2022.
158. NE has provided comprehensive responses to each of the representations. These are set out in NE’s *Representations on IOW 7: Hamstead Point to Thorness Bay and Natural England’s comments* document, March 2024.

### **Natural England’s Response to the Objections**

159. NE’s response to the objections is set out under a series of headings, which I duplicate below.

#### *The land is not within the Byelaw Area and is not Actively Used as Part of It*

160. NE says that in order to inform its military lands byelaw review process, the MoD publishes its byelaws online. The IOW Newton Rifle Ranges byelaw is published on the site. The byelaw was introduced in 1935 and it includes a description of the boundaries. NE considers that it seems likely that a map was produced to support this document as the text talks about the boundaries in relation to marked points, for instance “By a line drawn in a Westerly direction along the rear of the 600 yards Firing Point of “B” Range.”
161. The map provided by the IoWC seems, in NE’s view, to originate from a similar time, although it is dated a year prior to the production date of the byelaw. This map is reproduced in two parts on page 3 of NE’s objection response document, ID: MCA/IOW7/O/1/IOW4100 (NE’s objection response). NE has sought the advice of James Nevitt, Senior Access and Recreation Officer, DIO/MoD, who said:
- “I believe the plan to which you refer namely the one dated 14 Sept 1934 (as attached), is the plan to which the Byelaws refer, i.e. the “Byelaw Plan”. The reason I say this is because after studying the map and cross referring the Byelaw document, all Firing Flags match up alongside description. For example, Firing Flag 1 being located at Shepherds Hill as described in Para 3(i). The

orange line on the plan is the extent of the ownership and the red-line is the danger area as mapped and drawn by hand in 1934.

“Whilst this is useful I continue to not consider this a definitive answer. I will request further scrutiny be undertaken, but appreciate this does not fit your timescales.”

162. Whilst it seems likely in NE’s view, NE says that it cannot confidently conclude that the map is associated with the byelaw.
163. NE goes on to say that it cannot propose that the trail is aligned to the north of Porchfield Road, through the MoD’s land where:
- It is excepted land under the terms of Schedule 1 to the 2000 Act because it is subject to a military lands byelaw.
  - It is not land that is ‘accessible to the public’ by virtue of Section 296(5)(c) of the 2009 Act.
164. In addition, even if there was an appetite from the MoD to allow access across the land using a flag system, NE says that the terms of the military lands byelaw would not currently allow it. It adds that this will remain the situation until such time that the byelaw is amended or removed from the land in question by the MoD. NE also says that it has had no indication from the MoD that this is its intention.
165. NE says that the objector is especially interested in a strip of land that runs adjacent to the road on its northern side. NE adds that it should be noted that whilst relevant, the presence of the byelaw is not the only factor that was under consideration when making its alignment decision. It says that it did not feel able to align the trail on the northern side of the road for a number of other reasons that are set out under other headings below. NE adds that the presence or absence of the byelaw over the strip of land to the north of the road, does not alter its recommendation.

#### *The Land is not Owned by the MoD*

166. The Land Registry data that NE holds shows that the freehold is owned by the SERFCA (see the map and data on page 4 of NE’s objection response). NE says that the data shows that land to the edge of the road is within SERFCA’s ownership. NE adds that when it spoke to the MoD, it was advised that this is the MoD’s understanding of the ownership situation too. In situations like this and in the absence of strong evidence to the contrary, NE says that it must take the landowner at their word.
167. NE thanks the objector for sending the map showing the ownership boundaries (see page 5 of NE’s objection response), and it concedes that the pen line does not appear to coincide with the road edge. NE adds, though, that because this appears to be an old map, which does not benefit from the high level of accuracy of modern GI mapping programmes, unless the Land Registry advises otherwise, NE must assume that the Land Registry’s data is correct and use their dataset to inform its decisions. NE also says that, in any case, it does not believe that the objector’s map materially affects this piece of casework for the reasons set out under the other headings of NE’s response.



168. NE also states that it should be noted that the Land Registry's records form the definitive record of land ownership, where said land has been officially registered. Such registration is, it adds, a legal requirement under the Land Registration Rules 2003.

#### *MoD Fence*

169. NE says that at the time of making its proposals, the MoD said that it was considering moving the fence further towards the road to allow more space for its activities. NE understands that this has not happened but adds that it makes little material difference to its ability to align the trail on the northern side of the road, as any such alignment would be incompatible with the sensitive features of the European site, especially as it would involve a bridge construction.
170. NE says that it spoke to the Range Site Manager in February 2024, who confirmed that he has recently resubmitted an application for consent for the fence to the Responsible Officer and will proceed with the work upon confirmation of the budgets.

#### *Conservation*

171. Notwithstanding the objector's assertion that the land on the south side of the road is environmentally identical to that on the north side, NE confirms that the land to the north of the road is within the Newtown Harbour SSSI, South Wight Maritime SAC and the Solent and Southampton Water SPA whereas the land to the south is not designated, so it does not form part of the Habitats Regulations Assessment. NE states that, as noted on page 111 of its updated Habitats Regulations Assessment of June 2022, aligning the route to the south of the road is necessary to avoid additional disturbance to the SSSI, SAC and SPA.
172. NE stresses that during establishment works, all relevant legislation, including the Wildlife and Countryside Act 1981 (as amended), will be complied with. Specifically, it adds, vegetation removal will be minimised and where necessary it shall be undertaken outside the bird breeding season, to ensure that there is no disturbance to Schedule 1 birds, and that no active wild bird nests are affected.

#### *Creating a danger point at the Clamerkin Bridge.*

173. NE refers to paragraph 4.2.1 of the Scheme, which states that "Most people already understand that the coast can be a dangerous environment and are aware of many of the inherent risks. Our key principle is that visitors should take primary responsibility for their own safety when visiting the coast and for the safety of any children or other people in their care and should be able to decide for themselves the level of personal risk they wish to take."
174. NE says that although there is a good view from the bridge, north, towards the sea, the trail here would not take walkers onto the bridge and would be clearly waymarked and easy to follow. NE believes that the vast majority of people would wish to stay on the path.
175. NE refers to Google Street View which shows the view from the road bridge along the creek and in both directions along Porchfield Road. NE maintains that this shows that there are good sight lines for both pedestrians and cars.

### *Footbridge*

176. Regarding the objector's assertions in respect to the construction and cost of the proposed footbridge to the south of the highway, NE states that he had ignored / refused its numerous documented offers to visit the land with him. NE says that it became clear that he was not willing to allow access to survey the land, and as such it informed him that it would visit with IoWC's Rights of Way Manager and the Council's Senior Maintenance & Protection Officer. The aim of the visit, NE says, was to identify the best options for a footbridge adjacent to the existing Clamerkin Road Bridge, as well as the appropriate alignment for the trail. As the objector had not responded to any of NE's requests for a meeting, it says it had to conduct the visit from the adjacent highway. NE advises, nonetheless, that this visit provided adequate views of the land in question.
177. NE states that IoWC officers were invited to the site visit due to their engineering experience and because it will be their responsibility to manage the establishment and maintenance of any infrastructure. NE says that it was advised of the likely cost of a new bridge by IoWC. NE refers to page 13 of the Report in respect to the estimated costings for the bridge.
178. NE advises that the other option it considered was a bridge on the north side of the road. This, it says, would have had more environmental issues to overcome as set out on page 7 of the Report, given that the land north of the road is within an SPA, SAC and SSSI. NE says that aligning the trail, including a bridge construction, in the European sites would mean direct habitat loss that could not be mitigated. Where there are several ways to achieve the objectives of a proposal, the Habitats Regulations and Government policy in the form of the National Planning Policy Framework require NE to take the least damaging option.
179. NE says that, notwithstanding the environmental concerns associated with the trail passing through the European site, including whether assent would be forthcoming to construct the bridge, it also concluded that the southern side of the road is the better option for a footbridge due to the relative steepness of the creek's banks. NE maintains that this would likely mean that any new footbridge installation to the north of the road bridge would involve a structure attached to the side of the existing road bridge. In the opinion of IoWC officers, this would be significantly more complex and expensive.

### *Shoot*

180. The objector mentions that the south side of the road has a shoot. NE says, as outlined above, it has found it extremely difficult to get the objector to engage regarding land management issues and he did not agree to NE visiting his land. NE says that he has not provided it with dates of any shoot, stocking procedures, location of pens and so on. Nonetheless, NE states:
- No evidence of shoot infrastructure was observed during its site visit with IoWC officers;
  - In the unlikely circumstances that the shoot would take place in the woodland, it would not be in the direction of the proposed trail as that would be immediately adjacent to the public highway. Those managing or participating

in any shooting activity would have a responsibility to ensure public safety at all times; and

- It is likely that the shoot takes place near the surrounding fields which are more open in character, with the feeding stations / pens and so on located nearby.

#### *Opposite Clamerkin*

181. NE acknowledges the objector's submissions regarding use of the fields to the south side of the road, to the west of Clamerkin Bridge, farmed with livestock and annual cropping, including the potential disturbance of these activities. NE states that the land / verge on the northside of the road opposite S101 is in a European Site and would be sensitive to new public access. It adds that if the northern strip of land were to be used for the trail, it would have to incorporate between four and six road crossings, as opposed to the two crossings that are currently proposed.

182. NE says it has agreed to install a fence to separate walkers and dogs from the land management activities. It adds that the ownership and ongoing maintenance liability of the fence would pass to the landowner. Details are contained in NE's response to the NFU's representation as set out on pages 17 to 19 of the *Representations on IOW 7: Hamstead Point to Thorness Bay and Natural England's comments* document, March 2024.

#### *Crossing the road*

183. Although the objector refers to a proposed road crossing point that is said to be the only overtaking place on the road from Shalfleet to Gurnard, NE says that it is unsure about which crossing he is referring. NE suggest that it might be at S109. NE says that it chose this point because it is where the proposed line of the trail must cross the road to meet with the public right of way. It adds that in making the proposals it worked closely with Island Roads who provided a highways safety report to make sure that crossing points are safe in terms of sight lines and so on.

184. NE says, alternatively, if the objector is referring to the S099 crossing, it considers that this is the correct place to cross because of the good sight lines for both pedestrians and drivers. It adds, given the rural nature of this road, it is unsuitable for overtaking such that very few drivers would attempt to do so.

185. NE, again, advises that its proposals would reduce the number of necessary road crossings compared with a route on the northern side of the road, from anywhere between 4 and 6 to 2 depending on the alignment chosen.

#### *Cocked Hat Copse*

186. NE states that it is not entirely sure which land the objector is referring to in terms of potentially dedicating land at Cocked Hat Copse as no maps or plans have been provided. Nonetheless, NE believes that it is the triangle of land bound by roads, immediately to the west of the 'Downsview' annotation on Map IOW 7e.

187. In relation to any trail alignment option in the area that falls landward of the military land's byelaw, including the objector's preferred option of aligning the

trail on the northern side of the road, NE's view is that Cocked Hat Copse would be in the default seaward coastal margin anyway, as it lies between the proposed trail and the seaward extent of the foreshore. Therefore, it would be subject to the new coastal access rights.

*Prest v Secretary of State for Wales (1982)*

188. NE maintains that this Court judgment is of no relevance to its proposals as it relates to the compulsory acquisition of land. It adds that no compulsory purchase of land occurs in relation to the England Coast Path. The coastal access provisions, NE says, secure a right of access only over land and do not have any effect on land ownership.

**Analysis**

189. For ease of reference, similar themes and headings to those used by NE in its response to the objections are employed in the analysis below. To those I have added a further subsection in order to consider the statutory duty to *seek to further* the purposes of the Isle of Wight National Landscape.

*The Byelaw Area*

190. The evidence on this matter is inconclusive. While it is not possible to definitively conclude that the map provided by the IoWC is associated with the byelaw, it seems likely that it is, particularly in light of James Nevitt's comments.

191. Nonetheless, whether or not the military byelaw does apply to the strip of land immediately to the north of the highway, on the opposite side of the road to the proposed route, is somewhat academic. This is because there are other good reasons why the trail should not be aligned there in preference to S099-S103. These are addressed below.

*Ownership of the Land*

192. In contrast to the foregoing matter, the Land Registry information unambiguously shows that strip of land to the north of the road to be in the freehold ownership of the SERFCA. This is also consistent with the MoD's understanding of its ownership. In situations like this and in the absence of strong evidence to the contrary, NE says that it must take the landowners at their word. Notwithstanding the map provided by the objector along with his wider submissions on the matter, as the Land Registry's records form the definitive record of land ownership, it is those records that should be preferred.

193. In any event, however, there are other good reasons why the trail should not be aligned within that strip of land to the north of the road. Accordingly, like the preceding theme, this matter does not alter my overall recommendation and should not, therefore, delay the Secretary of State's decision.

*MoD Fence*

194. NE's dialogue / correspondence with the MoD regarding the latter's plans to erect a fence to enclose all, or parts, of the strip of land to the north of the road supports the notion that this land is in SERFCA's ownership. Like the foregoing matters, though, this has no influence on my overall recommendation.

### *Nature Conservation*

195. Notwithstanding the objector's comments regarding the relative environmental quality of the land to the north and to the south of the road here, the reality is that the land to the north, including the strip immediately to the north of the highway, forms part of the Newtown Harbour SSSI, the South Wight Maritime SAC and the Solent and Southampton Water SPA. In contrast the land to the south does not. Moreover, no substantiated evidence has been submitted to suggest that the land over which S099-S103 would run is of equal or superior biodiversity value than the designated sites to the north, including where the objector has suggested the route should be located.
196. Accordingly, the conclusion of NE's Habitats Regulations Assessment that the trail should be routed to the south of the road in order to avoid additional disturbance to the SSSI, SAC and SPA appears wholly appropriate. I also note NE's comments that during establishment works, all relevant legislation will be complied with, and that vegetation removal will be minimised and undertaken outside the bird breeding season where necessary to ensure no disturbance to Schedule 1 birds and that no active wild bird nests are affected.
197. There are, therefore, sound biodiversity based reasons why the trail should not pass to the north of the road here. Moreover, there are no evidence-based reasons why it should not pass along the proposed route having regard to biodiversity.

### *Creating a danger point at the Clamerkin Bridge.*

198. In my opinion, the views of the coast would be better from the existing road bridge northwards than from the proposed trail route. Consequently, there is at least a prospect that some users of the trail might be drawn onto the bridge away from the proposed trail alignment to the south.
199. Nonetheless, there would be other good opportunities to view the coast elsewhere along this stretch of the trail. Furthermore, although the view northwards from the bridge is pleasant, it is not particularly attractive by comparison to other sections of the coast in the wider area. Nor would it be particularly obvious for users of the trail here, who are more likely to be focussed on making progress along the designated route, which would be clearly waymarked and easy to follow. Accordingly, the likelihood that trail users would stray onto the road bridge would be limited.
200. Were anyone to stray onto the bridge, as NE's submissions illustrate, intervisibility between drivers and pedestrians here is reasonably good. Moreover, as paragraph 4.2.1 of the Scheme suggests, most trail users will take care and take primary responsibility for their safety. This is especially likely to be the case when leaving the trail and entering onto a highway used by vehicles.

### *Footbridge*

201. NE appears to have gone to reasonable lengths to engage with the landowner, to assess the land in question and to secure input from the appropriate IoWC officers regarding the proposed footbridge and its estimated costing. The brook's banks to the south of the road do appear to be less steep compared to those to the north. Accordingly, the reported view from IoWC



officers that establishing the footbridge to the north of the road would be significantly more complex and expensive than what is proposed, appears reasonable.

202. In any event, routing the trail, including a footbridge, to the north of the existing road bridge would, for the reasons outlined above under the *Nature Conservation* subheading, cause habitat loss within the SPA, SAC and SSSI and give rise to more environmental issues to overcome compared to what has been proposed.

#### *Shoot*

203. No details have been provided of a shoot on the land to the south of the road in the vicinity of S099-S103. Nonetheless, with reasonable management there is no good reason to believe that the proposed trail alignment would be incompatible with a shoot, particularly bearing in mind the proximity of the existing public road.

#### *Opposite Clamerkin*

204. S099-S103 would be aligned to the perimeter of the farm here such that the fields adjacent to the trail could continue to be grazed and used to produce crops. This sort of arrangement, where a right of way follows the fringes of farm fields and / or is routed through woodland, is a common feature of the countryside. I see no good reason why use of this proposed length of the trail would be incompatible with the farm use / business, particularly bearing in mind NE's proposal to install a fence to separate walkers and dogs from the land management activities.

#### *Crossing the road*

205. As with the road bridge, intervisibility between pedestrians and drivers appears to be reasonably good at the road crossing point around S099. It is also reasonable to assume that trail users would take care when crossing the road. The route options have been risk assessed in terms of pedestrian highway safety, as set out in the document *Coastal Path Route Risk Assessments December 2023*. The Secretary of State may wish to note that the most relevant sections of that document to this part of the proposed trail are Sections 4.2 and 6.4. NE appears to have had due regard to the assessments and recommendations of that document.
206. Overall, there are no substantiated reasons to believe that the proposal here, including in respect to the road crossing at S099, would have a significant effect on highway safety, including for pedestrians.

#### *Cocked Hat Copse*

207. Although it is not clear, the land referred to by the objector seems likely to be the triangle of land identified by NE. In any case, the offer of dedicating this land has no bearing on the acceptability or otherwise of the proposed trail route along S099-S103, which for the reasons I have outlined elsewhere has not been seriously called into question.

*Prest v Secretary of State for Wales (1982)*

208. The Court judgment cited by the objector relates to the compulsory acquisition of land. However, no land acquisition is proposed. The England Coast Path shall secure right of access only over land without directly effecting land ownership. Accordingly, this Court judgment has no bearing on the Secretary of State's decision.

*Isle of Wight National Landscape*

209. A new statutory duty to seek to further the purposes of National Landscapes came in to force on 26 December 2023 via Section 245 of the Levelling-up and Regeneration Act 2023. It replaces the previous duty to have regard to those purposes. The views of NE were sought on this change. In response NE advised that it does not propose any changes to its proposals or to the comments it has already made on objections and representations as summarised above.
210. The purpose of a National Landscape is to protect and enhance the natural beauty of the area. By aligning the route here to the south of the road, beyond the boundary of the IoWNL, although the proposals would be within its setting, S099-S103 would avoid directly effecting the IoWNL, while remaining in proximity to the coast. Moreover, the proposed new infrastructure to support the trail here would be reasonably modest and in keeping with a national trail within the vicinity of a designated National Landscape. Consequently, the proposals would further the protection and conservation of the IoWNL in accordance with the statutory duty.

**Conclusion**

211. For the reasons outlined above, the proposed section S099-S103 of the England Coast Path would be unlikely to have any significant detrimental effects on farming, land management and the business activities at the land owned by the objector here, nor on highway/pedestrian safety, including in respect to the matters raised by interested parties such as the NFU. Moreover, NE appears to have appropriately and reasonably identified and costed a means of crossing Clamerkin Brook as part of the proposed trail.
212. The alternative route to the north of the road put forward by the objector would - regardless of the MoD related matters raised, including those made by interested parties such as IoWC - be unacceptable due to the effects it would be likely to have on the SPA, SAC and SSSI. Furthermore, the proposals would accord with the statutory duty to seek to further the purposes of the IoWNL.

**Recommendation**

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

*[redacted]*

APPOINTED PERSON

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

### **Introduction**

214. The Conservation of Habitats and Species Regulations 2017 (as amended) requires that where a plan or project is likely to have a significant effect on a European site, such as the Solent and Southampton Water Special Protection Area (SPA), either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an appropriate assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.

### **Project Location**

215. The proposed section of path in question forms part of the England Coast Path on the Isle of Wight. In terms of the objections considered here, IOW-7-S099 to IOW-7-S130, inclusive, are the relevant sections. They are collectively referred to henceforth as 'S099-S103', as shown on Map IOW 7e. S099-S103 is in proximity to the Solent and Southampton SPA and Ramsar site (the SPA and Ramsar site) as well as to the Solent Maritime Special Area of Conservation (the SAC).
216. The SPA and Ramsar site at large is one of the only major sheltered channels in Europe, lying between the Isle of Wight and the mainland on the south coast of England, stretching from Hurst Spit to Hill Head and on the North Coast of the Isle of Wight from Yarmouth to Whitecliff Bay. It is composed of extensive intertidal mudflats and sandbanks, saltmarsh, coastal lagoons, shingle banks and grazing marsh. The estuarine sediments support rich populations of invertebrates which provide an important food source for overwintering birds. The shingle banks also provide important breeding ground for terns. This also supports approximately 10% of the world's dark-bellied brent geese. This species will use the mudflats and grazing marsh to feed but also make use of farmland and grassland outside of the SPA boundaries.
217. The Solent Maritime SAC is a unique suite of functionally linked estuaries and dynamic marine and estuarine habitats, which result from the Solent and its inlets being unique in Britain and Europe for their unusual tidal regime, including double tides and long periods of tidal stand at high and low tide. Within it there are extensive areas of intertidal mudflats and sandflats, often supporting eelgrass (*Zostera* species), subtidal sandbanks, saltmarsh and natural shoreline transitions such as drift line vegetation. The SAC is of particular interest as it is the only site to support all four species of cordgrass (*Spartina*) found in the UK, including the rare native small cordgrass (*Spartina maritima*). At the time of designation, the SAC also supported a population of the rare Desmoulin's whorl snail (*Vertigo moulinsiana*).

### **Habitats Regulations Assessment Implications of the Project**

218. S099-S103, as part of the England Coast Path on the Isle of Wight, would increase access to this area for recreational activities, including by walkers and

those accompanied by dogs, whose presence have the potential to affect the SPA and Ramsar site and the SAC, as does disturbance by construction activities necessary for the physical establishment of the path and access management infrastructure. The qualifying features of these designated sites are:

- Breeding Terns (Common, Little, Roseate and Sandwich terns);
- Non-breeding waterbirds (Black-Tailed Godwit; Ringed Plover; Dark-Bellied Brent Geese; Teal; and water bird assemblage);
- Subtidal features (estuaries - subtidal coarse sediment, subtidal mixed sediment; subtidal sand, subtidal seagrass beds);
- Desmoulin's whorl snail, *Vertigo moulinsiana*;
- Coastal lagoons;
- Wetland plant and invertebrate assemblages;
- Intertidal habitats (estuaries - intertidal seagrass beds, intertidal sand and muddy sand, intertidal mud, intertidal mixed sediments, intertidal coarse sediment; *Salicornia* and other annuals colonising mud and sand; Atlantic salt meadows; *Spartina* swards);
- Vegetated shingle (Annual vegetation of drift lines; Perennial vegetation of stony banks); and
- Sand dunes (Shifting dunes along the shoreline with *Ammophila arenaria* – “White dunes”).

219. In 2020 Natural England (NE) undertook a shadow Habitats Regulation Assessment of the Isle of Wight proposals for the England Coast Path. It was revised and updated in response to additional information gathered after the Reports for IOW2 to IOW10 were published, and in response to objections and representations received during the consultation process on the published proposals. This latter, updated version was published in June 2022 and is the version referred to herein. Henceforth, it is referred to as the ‘sHRA’.

220. The sHRA provides the information to inform the Competent Authority’s appropriate assessment, in accordance with the assessment and review provisions of the Habitats Regulations. The sHRA is recorded separately in the suite of reports. It considered the potential impacts of the coastal access proposals on the designated sites identified above as well as others which are distant from S099-S103, including likely significant effects.

221. Initial screening set out that as the plan or project is not either directly connected or necessary to the management of all of the European sites’ qualifying features, a Habitats Regulation Assessment was required. The overall Screening Decision found that the plan or project at large would be likely to, or may, have significant effects on some or all of the qualifying features of the European Sites alone in the absence of mitigation measures. Accordingly, the sHRA considered the potential for the project to give rise to Adverse Effects on the Integrity (AEol) of the designated sites.

222. The scope of the assessment is set out in Table 7 of the sHRA (pages 34 to 37) and identifies the sites and qualifying features for which significant effects, ‘alone’ or ‘in combination’, would be likely or could not be excluded beyond reasonable scientific doubt. ‘Key Locations’ are summarised in Table 9 of the

sHRA (pages 57-58) for the entirety of the England Coastal Path proposals on the Isle of Wight. Although they are for the preceding sections from IOW-7-S093 to IOW-7-S098, none are identified for S099-S103.

223. The assessment of AEol for the project alone takes account of measures to avoid or reduce effects incorporated into the design of the access proposal, as set out in sub-section D3.3 (from page 155). The assessment, which covers the entire length of the England Coast Path proposed for the Isle of Wight, not just S099-S103, identifies that the measures incorporated into the design of the scheme are sufficient to ensure no AEol in light of the sites' conservation. Those where there is some residual risk of insignificant impacts are:
- Disturbance to feeding and roosting non-breeding waterbirds, 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 feature within the site.
224. In section D4 of the sHRA (from page 171), NE assessed the appreciable effects that are not themselves considered to be adverse alone to determine whether they could give rise to an AEol in combination with other plans or projects. Insignificant and combinable effects likely to arise, and with the potential to act in-combination with the access proposals, were identified in relation to the implementation of coastal access on the Isle of Wight and on the mainland from Highcliffe to Calshot, from Calshot to Gosport and from Portsmouth to South Hayling. Nonetheless, as set out in Table 14 of the sHRA (pages 176 to 177) assessing the risk of in-combination effects, NE concluded that, in view of site conservation objectives, the access proposal (taking into account any incorporated avoidance and mitigation measures) would not have an adverse effect on the integrity of the relevant designated sites either alone or in combination with other plans and projects.
225. Part E of the sHRA sets out that NE is satisfied that the proposals to improve access to the English coast for the Isle of Wight, including S099-S103, are fully compatible with the relevant European site conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Scheme. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the sHRA that the proposals would not adversely affect the integrity of the relevant European sites. It is noted that, if minded to modify the proposals, further assessment may be needed.

### **Nature Conservation Assessment**

226. Although not forming part of the sHRA, NE has also undertaken a Nature Conservation Assessment, which should be read alongside the sHRA. The Nature Conservation Assessment covers matters relating to Sites of Special Scientific Interest (SSSI), Marine Conservation Zones and undesignated but locally important sites and features, which are not already addressed in the sHRA. Relevant to S099-S103 is the Newtown Harbour SSSI, and possibly White tailed sea eagles and Red squirrels.



227. NE was satisfied that the proposals to improve access to the English coast around the Isle of Wight, including to S099-S103, were fully compatible with its duty to further the conservation and enhancement of the notified features of Newtown Harbour SSSI consistent with the proper exercise of their functions.
228. In respect to the White tailed sea eagle and to Red squirrels, NE concludes that the appropriate balance has been struck between its conservation and access objectives, duties and purposes.

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

**by [redacted] BSc(Hons) DipTP DMS MA MRTPI**

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

**Date 21 June 2024**

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Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to Hamstead Point to Thorness Bay

**Objection Reference: MCA/IOW/09**

**Hamstead Point to Thorness Bay**

- On 18 March 2020 Natural England submitted Coastal Access Reports to the Secretary of State for Environment, Food and Rural Affairs setting out proposals for improved access to the coast on the Isle of Wight 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.
- The objections concern Natural England's Report IOW 7 for land between Hamstead Point to Thorness Bay. The land in the Report to which the objection relates is specifically route sections IOW-7-S089 and IOW-7-S090, as shown on Map IOW 7d.
- 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 IOW 7, in respect to the trail sections IOW-7-S089 and IOW-7-S090, do not fail to strike a fair balance in respect to the objections considered herein.

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**Preliminary Matters**

229. On 18 March 2020 Natural England (NE) submitted Coastal Access Reports to the Secretary of State setting out proposals for improved access to the coast on the Isle of Wight. The period for making formal representations and objections to the reports closed on 13 May 2020. I have been appointed to report to the Secretary of State on the objections.
230. There are other admissible objections to the Reports concerning improved access to the coast on the Isle of Wight. Although some of these other objections also relate to Report IOW 7, they concern different route sections and, as such I have considered it expedient to address them separately in other reports to the Secretary of State.
231. I conducted a site inspection on 17 April 2024. I was accompanied by [redacted] and his wife, as well as by representatives from NE and from Isle of Wight Council (IoWC).

**Main Issues**

232. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (2009 Act) and requires NE and the Secretary of State to exercise their relevant functions to secure two objectives.
233. The first objective is to secure a route for the whole of the English coast which:
- (g) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
  - (h) (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 2009 Act as the English coastal route and is now known as the King Charles III England Coast Path. For ease of reference, it is referred to as 'the trail' or 'the England Coast Path' in this report.

234. The second objective is that, in association with the England Coast Path, 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 coastal route or otherwise. This is referred to as the coastal margin.
235. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (j) The safety and convenience of those using the trail,
  - (k) The desirability of that route adhering to the periphery of the coast and providing views of the sea, and
  - (l) The desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
236. 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.
237. Section 300 of the 2009 Act provides that the coast includes the coast of any island other than an excluded island. An island is excluded if it is not accessible; that is, that it is not possible to walk to it from the mainland. The Secretary of State may include other islands by order, if satisfied that their coasts are long enough to provide a long-distance walk. That is the case with the Isle of Wight.
238. Section 301 of the 2009 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.
239. NE's Approved Scheme 2013, as approved by the Secretary of State on 9 July 2013 (the Scheme), is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report. Section 7.16 of the Scheme concerns islands and states at 7.16.5 that the trail "will broadly follow the periphery of any island which it includes, following the same principles as for the mainland coast. People will normally be able to choose when they arrive at the bridge or causeway whether to use the trail to reach the island or to continue along the mainland coast." In the case of the Isle of Wight, access to the island is via seacraft or aircraft.
240. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

241. Forming part of the England Coast Path for the Isle of Wight, the length of path under consideration is contained within Report IOW 7: Hamstead Point to Thorness Bay and includes sections of path as shown on Map IOW 7d Newtown Bridge to Walter's Copse.
242. The objection relates to routes IOW-7-S089 and IOW-7-S090. Individual sections are referred to in the form 'S089' and 'S090', or collectively as 'S089 & S090' henceforth.
243. The proposed route at S089 is an existing public footpath. Along S090 the trail would be aligned along the verge adjacent to the road Town Lane and is

described in the Report as 'other existing walked route'. A new kissing gate is proposed where these two sections would meet.

244. Parts of the Solent and Southampton Water Special Protection Area (the SPA) and Ramsar, the Solent Maritime Special Area of Conservation and the Newtown Harbour Site of Special Scientific Interest (the SSSI) are all located in the vicinity of S089 & S090, to the north, west and south. The proposed trail here would not, though, pass through any of these designated sites. S089 & S090 would, nonetheless, be located entirely within part of the Isle of Wight National Landscape, formerly known as the Area of Outstanding Natural Beauty (AONB).
245. The landward boundary of margin to S089 would be the hedge and to S090 it would be the verge. Both are for clarity and cohesion.
246. No roll-back is proposed at S090. The existing public footpath, which S089 would follow, crosses part of a Scheduled Ancient Monument (SAM), which also extends into the fields immediately to the north of S089. If it is no longer possible to find a viable route seaward of the SAM, the proposed likely approach to roll-back here would be a new route after detailed discussions with the relevant experts and with any potentially affected owners or occupiers. This would either be to pass through the site, if appropriate, or if necessary, be routed landward of it.
247. Access to land in the coastal margin covered by sections IOW-7-S001 to IOW-7-S126 is to be excluded all year-round by direction under Section 25A of the Countryside and Rights of Way Act 2000 (2000 Act). This is because it is mudflat and saltmarsh that is unsuitable for public access as it does not provide a safe walking surface and is subject to frequent tidal inundation. The exclusion does not affect the route itself and will have no legal effect on land where coastal access rights do not apply.
248. Moreover, as set out in paragraph 7.2.23 of the Report, access is to be excluded on the near shore pasture fields in this area of coastal margin between S089 to S090 under Section 26(3)(a) of the 2000 Act, all year-round, to protect sensitive wildlife (breeding, passage and overwintering birds). The fields affected are shown on Directions Map 7A within the Report. Not all of the fields to the north of S089 & S090 would be affected by this exclusion. Those that would not be included, include the fields immediately to the north of S089 that contain the SAM as well as the land to the west where part of the SSSI is located. All of the fields to the north of roughly the eastern half of S090 would also be excluded. The exclusion would not affect the route itself and would have no legal effect on land where coastal access rights do not apply.
249. In respect to the foregoing proposed exclusion, at paragraph 7.2.24 the Report states:
- Hart's Farm fields are adjacent to Newtown Harbour, a large estuarine National Trust-managed National Nature Reserve within the Solent and Southampton Water SPA. Redshank use these fields for nesting and breeding. The fields and adjacent saltmarsh is also an important winter high tide roost for designated birds. Counts point to Black-tailed Godwit, Lapwing, Redshank, Curlew, Dark-bellied Brent Goose and water bird assemblages using the site.*



*Allowing access to this area would likely have caused a detrimental effect on the internationally-protected bird species using the site.*

## **The Objections**

250. The objector is clear that he has no objections to the trail running through part of the land he manages as a tenant farmer at Hart's Farm. Nonetheless, he does object to the inclusion of the entire farm in the 'coastal margin', and what he describes as the inevitable nature of the open access land that it would bring. He adds that while he is very grateful indeed that the central fields would be 'excluded' from public access as outlined above, well over half of the farm would still be classed as 'open access land'.

251. The objector goes on to say that he has worked hard over the last 7 years to increase biodiversity within these fields, leaving areas for nesting wildfowl, keeping sheep off the flower meadows until they have seeded. Allowing people access to these currently undisturbed and 'protected' areas would, in his view, be counterproductive and detrimental to wildlife whilst impairing his ability to manage the farm in accordance with his obligations under AG00522057. He states that this is a very small farm, barely profitable, and the Higher Level Stewardship (HLS) agreement under which he manages it, is a vital component of the farm's income.

252. He adds that he has the following further concerns:

### *"Ancient monument – Heritage Preservation*

1. I cannot fulfil my legal obligation to maintain and protect the scheduled ancient monument (1019196), if it were to be trampled by thousands of visitors, year-round. It says in the NE official ECP document that Heritage preservation: Section 26(3)(b) should be used to "preserve any Scheduled Monument as defined by section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979"

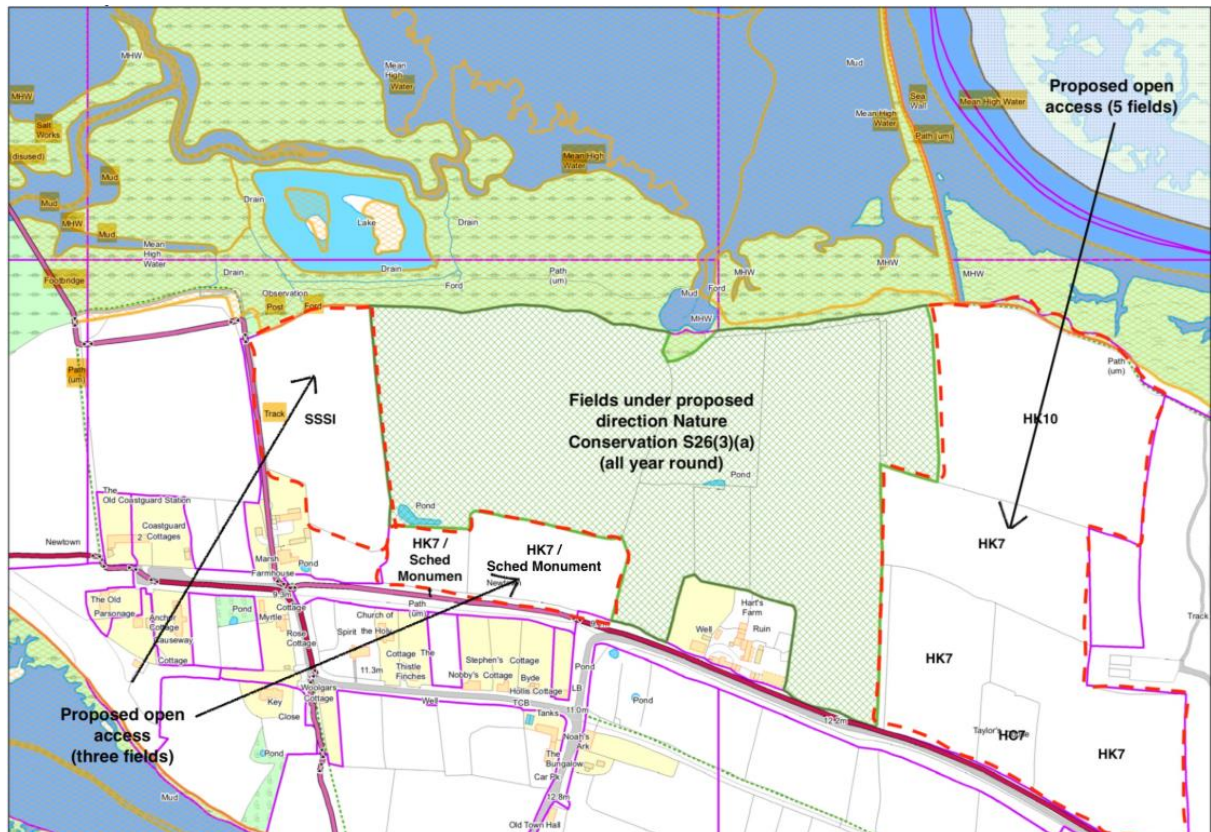
*"(In addition, these fields sit under HLS designation HK7)*

### *"HLS designations HK7/HK10 – Nature Conservation and Land Management*

1. To adhere to my management prescriptions I am prohibited from topping, rolling or harrowing my fields for many months every year. This is to prevent disturbance of nesting birds and wildflower species, yet the ECP coastal margin will allow any visitor to disturb the flora and fauna uninhibited.
2. The recently released Sea Eagles have spent a significant period of time on our farm. I have given regular access to our land to the warden looking after the Eagles for monitoring purposes, and I would like to continue to protect them from disturbance.
3. Having people pass over the fields is also a management risk. Dog excrement leads to significant loss of value of livestock through disease. Gates left open are a livestock risk, and my working sheepdogs are regularly out in the fields.
4. In recent months, due to the release of the sea eagles and the COVID-19 epidemic, visitor numbers have significantly increased. Having part of the

farm open access, and other fields excluded will bring much confusion to the general public as to exactly where they can, and cannot go, and I believe this will therefore jeopardise the benefits of the current exclusions.

“The proposed open access (non-excluded) fields to the west are under both Scheduled Ancient Monument and HK7 (HLS) designations, and the proposed open access (non-excluded) fields to the east are HK7 and HK10 (HLS) designations.” [The objector refers here to a plan he appended to his objection, which is reproduced below].



“The fields at Harts Farm go down to 123 acres of mud for the most part of the day, and access to them, in my opinion, is not in the ‘spirit’ of the [trail]. Access to the un-excluded fields does not give access to the coast, as such, nor indeed any beaches (the entire intertidal zone within the estuary is excluded in any case).

“[NE] guidance relating to the second duty of creating a coastal margin, explicitly states “a margin of coastal land associated with the route which, in appropriate places, people will also be able to enjoy on foot.” I do not believe that in the case of the small farm which I manage that having public access in my fields is appropriate. Newtown Nature Reserve is comprised mainly of land owned, managed, and given public access to by the National Trust. The existing over-provision of public access land around my farm surely must eliminate any need to expropriate my property rights without my consent to create even more public access.

“It is said in your documentation that [NE] should aim to strike a “fair balance” between your property interests and the public’s rights to enjoy open-air

recreation on coastal land. In my opinion, in the case of this farm in Newtown, a fair balance is not being met.”

253. The objector concludes by saying that he would appreciate hugely the exclusion of all Hart’s Farm fields from the coastal margin using directions which sit within the delegated powers of NE.

254. Further to the foregoing matters, during my site visit the objector raised concerns regarding privacy in light of which he was provided with a further opportunity to formally raise any concerns he might have in that regard. In response he added the following points:

“As the husband of a high-profile figure, I would like to raise the concerns that both myself and my family have for the changes in access rights this will bring. Our home is a small working farm, we have a young family and have had significant media intrusion over recent years.

“When we purchased our home in 2011 we chose a place in which our children can run, work and play with freedom and most importantly, in privacy. These proposals make us feel incredibly vulnerable, and we are seriously concerned for our family.

“I object to my property becoming public access land without my consent or recompense as it would result in a significant loss to our personal privacy and security. The Act in question stipulates that (Natural England) “must aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land.” We do not consider this loss to our privacy to be in any way fair.

“We are grateful that Natural England already considers part of our farm to be excepted land, however we would like them to consider the inclusion of the whole property.”

255. A note the objector appended to this latter submission refers to his wife having written to the Secretary of State on 11 June 2020 raising similar concerns. He adds that he has re-sent that letter direct to the Secretary of State. The objector has, however, opted not to submit it to me for my consideration.

## **Representations**

256. The Ramblers, while not referring directly to S089 & S090, express support for the proposed route and highlighting how and where national trail standards can be achieved.

257. The Open Spaces Society fully supports the Ramblers representations in respect to Report IOW 7.

258. The Isle of Wight Local Access Forum comments that due to circumstances, chiefly associated with the pandemic at the time of the consultation, it was unable to coordinate a response on behalf of the Forum. It adds, though, it has consistently been able to put its views across during the pre-consultation phase and has encouraged Forum members to comment at all stages.

259. Bird Aware Solent / Solent Recreation Mitigation Partnership (SRMP) has commented on Report IOW 7 at large, without specific reference to S089 &

S090. It welcomes the concept of the England Coast Path as something of value to local people and residents but has concerns that it would like to be addressed and refers to its mitigation programme, identified in its Strategy as formally adopted by PUSH in December 2017. It raises two specific areas of concern; increasing visitor numbers and mapping of spreading zones.

260. SRMP says that a rise in the number of visitors to sensitive parts of the coast will cause increased disturbance to the overwintering birds that journey to SPAs, many of which are red and amber listed. Whilst the SRMP employs a range of measures to mitigate against disturbance from increasing housing numbers, it does not have the resources to deal with any further elevation in visitor numbers as a result of the England Coast Path. It adds, therefore, there is a real concern of a conflict between these two initiatives and that any rise in visitor numbers has the potential to diminish the effectiveness of the SRMP measures. SRMP also states that the trail will need its own mitigation package to protect against the impact of increased visitor numbers it creates.
261. Furthermore, SRMP is concerned regarding Ordnance Survey's (OS) plans to depict the 'spreading zone' as a magenta wash, making no exceptions for excepted areas as this may lead to users of the trail straying into excepted intertidal areas. It adds that these can be extremely large, support fragile habitats and be a huge food resource for birds and other species. Increased footfall through these areas would, in SRMP's view, cause great damage to these fragile habitats and enormous disturbance to vulnerable wintering bird populations. Although exceptions to the spreading zone will be sign posted on the ground and listed on NE's website, SRMP says that enforcement would seem to fall to the landowner/occupier. It adds that if it is not possible to depict the spreading zone accurately on OS maps, SRMP would urge NE to reconsider its inclusion on the map entirely.
262. In addition to his objection, [redacted] has also made a representation in which he states that he supports the route of the England Coastal Path along the road adjacent to Hart's Farm at S089 & S090. He adds that the proposed route would help to protect the fields under his management, and help to maintain and enhance the levels of Environmental Stewardship which he has undertaken through an HLS scheme in partnership with NE.
263. [redacted] goes on to say that as Newtown is a National Nature Reserve, it has become a busy place, and that taking the route along the existing footpath at S089 will preserve the Flora and Fauna, rare species, butterflies, and nesting birds he has been trying to encourage over the past 7 years over the adjacent fields on the farm. In addition, he states that he manages the field to the north of Marsh Farmhouse, (east of sections IOW-7-S086 to IOW-7-S088) which is a SSSI. He adds that he is grateful that the proposed coastal path does not pass through this part of the SSSI. He says this simplifies greatly his day-to-day management of livestock, and in addition will help considerably in achieving success for his HLS prescriptions.
264. Solent Protection Society makes comments regarding sections IOW-7-S025 to S112. It states that it is clear that NE has tried hard to improve the Coastal Path around the highly sensitive waterside at Newtown and this is welcomed.



265. [redacted] says, in respect to the proposals shown on Maps IOW 7a to 7g, the particular joy of Newtown Creek is that it is so unspoilt. He adds that the route of the path, where not the existing Coastal Path, has been well chosen. He also says that he just hopes that most of the 'suburbanisation/Disneyfication' set out in 7.2.39 of the Report, including excess signage and display panels, will be abandoned on grounds of unsightliness, upfront cost and maintenance requirements. He concludes by saying, "You only have to look at the state of the current signage to know why this should be avoided."
266. [redacted] maintains, with reference to the proposals shown on Maps IOW 7a to 7g, that the Habitats Regulations Assessment's conclusion of no adverse effect is flawed due to the following:
6. The baseline data upon which the assessment has been based is incomplete and fails to identify the features of the Newtown Harbour estuary that are particularly at risk.
  7. NE has failed to acknowledge the significance of recent judgments of the European Court of Justice and in particular the 'Holohan Case'. This clarifies both the level of information required to make a Habitats Regulations Assessment and the level of certainty needed to rely upon mitigation measures.
  8. NE proposes to control access to small parts of Coastal Margin around Newtown Harbour through the use of a direction under Section 26(3)(a) of the 2000 Act. The areas chosen for the use of Section 26 Directions are inconsistent and do not protect the most important areas of the Harbour.
  9. The OS intend to depict the entire Coastal Margin, between the trail and the low water mark, as Access Land. This will be shown on the OS maps with a magenta wash but will not show the extensive areas of the Coastal Margin to which there is not access, for example, due to directions under Section 25A or Section 26 or land within private gardens, houses and buildings or cultivated land. The depiction of the entire Coastal Margin as Access Land undermines the potential effectiveness of NE's mitigation measures to manage the impacts of public access.
  10. The Solent Recreation Mitigation Partnership has been formed to assess and manage the impact of proposed housing development around the Solent on the internationally designated wildlife sites. The predicted impacts from increased recreation pressure arising from housing development should be assessed in combination with those of the trail as the combined effect of increased accessibility provided by the trail and growing recreational use resulting from housing development will place even greater pressure on coastal habitats and wildlife.
267. [redacted] would like to see more mitigation (such as directions under Section 26(3)(a) of 2000 Act) or preventive measures as he believes this will enable an appropriate assessment to conclude the trail will not have adverse effects on these sites. He says that these measures need to be backed with a commitment to long-term wardening to ensure these restrictions are enforced. In addition, he says that the proposed route along the Western Haven and around Clamerkin



Creek needs to be amended to avoid disturbance to these sensitive and undisturbed areas of the harbour.

268. Isle of Wight Area of Outstanding Natural Beauty (now designated as a National Landscape) Steering Committee says that the trail on the island at large has the potential to provide both positive and negative impacts on the designated area and the communities that live and work within the designation. On this basis, it believes there is sufficient reason to comment on the proposed route as it impacts the purposes of the designation to conserve and enhance natural beauty.
269. The Steering Committee adds that the Isle of Wight AONB Partnership welcomes the establishment of the trail on the island's coast and applauds the work of the IoWC's Rights of Way team in its long-term promotion and maintenance of the existing coastal path. It says that the extra resources made available to IoWC to maintain the path are particularly welcomed in the light of the reduction in funding to local authorities in recent years.
270. The Steering Committee also states that it discussed expressions of disappointment and satisfaction regarding the details of the route, but no specific reference is made to the trail in the vicinity of S089-S090. It adds that it was felt that photography would have both improved interpretation and illustrated the issues that were highlighted in the report. As such it recommends that a fixed point photography scheme is established as an aid for subsequent monitoring of the effects of the proposed mitigation on the coastal environment and landscape.
271. With regard to the Isle of Wight AONB designation, the Steering Committee asks that two specific matters are considered:
- 1) The apparent conflict between the provisions of the Conservation of Habitats and Species Regulations 2017 (CHSR 2017) with regard to the establishment of the Solent Recreation and Mitigation Project (SRMP) and the provisions of the 2009 Act and the promotion of the trail. NE is asked to clarify the hierarchy of legislation that seeks to allow increased recreational pressure to Natura 2000 sites under the 2009 Act whilst seeking to reduce it under the CHSR 2017. NE, in its response to the evidence used to establish the SRMP, agreed that signage was inadequate to mitigate adverse impacts to internationally designated sites by the potential disturbance to foraging and roosting overwintering birds by people and dogs. NE agreed with the conclusion that the SRMP wardens would be far more effective in this regard. NE is, therefore, asked whether its opinion has changed, and clarification is sought. In any case, due to the national importance of the AONB designation [now known as National Landscapes], NE is asked to commission an evaluation programme to determine the success of the mitigation measures outlined in the reports.
  - 2) A reduction in the amount of signage and other clutter that detracts from the scenic beauty which the trail is enabling people to enjoy. In light of the reports on the efficacy of signage noted above, it is requested that the level of required signage and associated infrastructure is reviewed.
272. In conclusion, the Steering Committee states that the provisions of the 2009 Act seem to have been satisfactorily addressed by the proposed route given the

constraints and having to consider the needs and aspirations of all parties concerned.

273. Disabled Ramblers comment that modern mobility vehicles can be very large, and many man-made barriers that will allow a manual wheelchair through are not large enough for all-terrain mobility vehicles, or for 'pavement' scooters, and prevent legitimate access even though users of mobility vehicles have the same rights of access that walkers do. They add that man-made structures along the trail should not be a barrier to access for users of mobility vehicles and also acknowledge the replacement of stiles with gates as a positive step.
274. Disabled Ramblers, though, request that the proposed measures go further by ensuring that all new structures allow convenient access to mobility vehicles as standard, complying with BS5709: 2018 Gaps Gates and Stiles. They also request that all existing structures on the trail are removed and replaced if they prevent access to users of mobility vehicles. They add that the suitability of all structures should be considered on the basis that a person with reduced mobility will operate the structure themselves alone, seated on their mobility vehicle.
275. Disabled Ramblers also request compliance with the Equality Act 2010 (and the Public Sector Equality Duty within this Act) and with the 2000 Act, and adherence to the advice from Disabled Ramblers as set out in the Man-made Barriers and Least Restrictive Access document [copy at Annex 6 to NE's *Representations on IOW 7: Hamstead Point to Thorness Bay and Natural England's comments* document, March 2024].
276. Southern Gas states that NE should be aware that groundworks that take place in the vicinity of gas infrastructure could result in personal injury or damage to the gas infrastructure. As such NE will be expected to consult with Southern Gas in relation to said points of interaction and any groundworks that might be required. It adds that it has provided a bundle of plans that show the locations of the relevant infrastructure situated on or within 50m of the trail.
277. [redacted] has made what he describes as 'general comments on the report'. They largely relate to how the overview report and respective chapter reports are set out and cross referenced, and how the criteria used as a basis of route planning were applied to inform the proposed trail. He adds that the complex and long nature of the whole document plus the representations form that needs to be used may deter some people from making a representation. No specific comments are made in respect to S089 & S090. [redacted]'s comments are included in full at Annex 5 to NE's *Representations on IOW 7: Hamstead Point to Thorness Bay and Natural England's comments* document, March 2024.
278. [redacted] objects to the alignment of the trail and the identification and management of spreading room on the basis that, in his view, it does not properly consider nature conservation issues and, specifically, it is incompatible with statutory obligations under the Habitats Regulations. His representation includes a formal complaint as to the adequacy of the Habitats Regulation Assessment and the process by which it was drafted. His representation and the associated complaint correspondence are contained within Annexes 7 and 8 to NE's *Representations on IOW 7: Hamstead Point to Thorness Bay and Natural England's comments* document, March 2024. I would note that these all appear to predate NE's updated shadow Habitats Regulation Assessment for the Isle of

Wight trail proposals produced in response to objections and representations, as published in June 2022 (the sHRA).

279. NE has provided comprehensive responses to each of the representations. These are set out in NE's *Representations on IOW 7: Hamstead Point to Thorness Bay and Natural England's comments* document, March 2024.

### **Natural England's Response to the Objections**

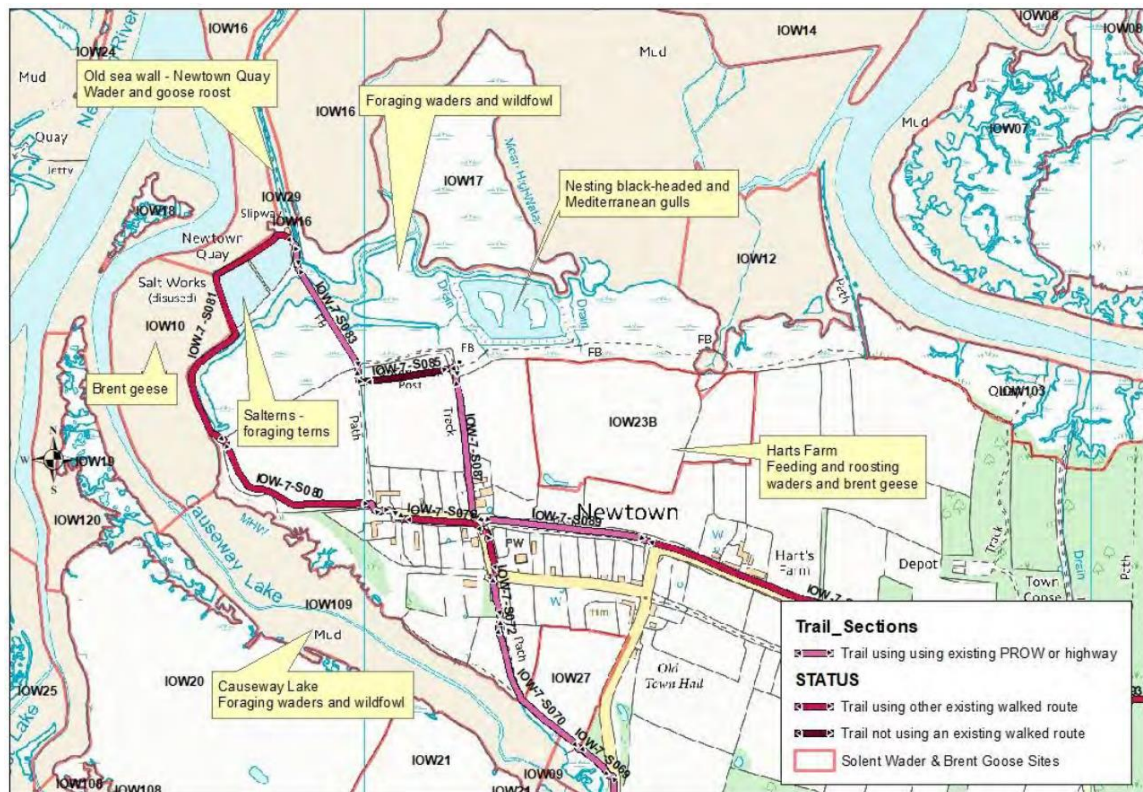
280. With reference to [redacted]'s map, as reproduced above on page 6, NE states that on two fields to the southwest of the farm is a Scheduled Ancient Monument (1019196) - Medieval settlement and cultivation remains at Newtown, Calbourne, Newtown and Porchfield - 1019196 | Historic England. NE adds that these fields are not covered by its proposed Section 26(3)(a) direction to exclude access. NE also provides an aerial view of the farm via Google Maps.
281. NE confirms that it has proposed two directions to exclude access in the vicinity:
1. Under Section 25A of the 2000 Act, access is to be excluded from the intertidal area as it is mudflat or saltmarsh that is unsuitable for public access – as shown on Directions Map 7A and 7B within the Report; and
  2. Access is to be excluded on the near shore pasture fields in this area of coastal margin between S089 to S090 under Section 26(3)(a) of the 2000 Act, all year-round, to protect sensitive wildlife (breeding, passage and overwintering birds) – as also shown on those Directions Maps.
282. NE's response to the objections is set out under a series of headings / themes, which I duplicate below.

#### *Wildlife*

283. NE says that Hart's Farm fields are adjacent to Newtown Harbour, a large estuarine National Trust-managed National Nature Reserve within the SPA. NE adds that waders potentially nest in these fields. It also says that the fields and adjacent saltmarsh are also an important winter high tide roost for designated birds. NE states that counts point to Black-tailed Godwit, Lapwing, Redshank, Curlew, Dark-bellied Brent Goose and water bird assemblages using the site.
284. NE maintains that allowing access to this area would be likely to harm the internationally protected bird species using the site. It refers to section 'D3.2G - Causeway Lake to Harts Farm' of its sHRA. On this basis it has proposed all year-round Section 26(3)(a) exclusion at Hart's Farm for nature conservation reasons. The exclusion is, in NE's view, reinforced by the existing wall / hedge alongside the road which it says makes it unlikely that trail users would attempt to access the margin in this location.
285. NE refers to Figure 29 in the sHRA, which it says illustrates where important populations of birds are found. Figure 29 is reproduced over the page for ease of reference. NE adds that the proposed Section 26(3)(a) exclusion at Hart's Farm covers the area known to be used by feeding and roosting brent geese and waders, and potentially used by waders in the breeding season. Further



exclusions were not considered necessary by NE as count data does not show significant numbers of waterbirds using any other fields in the area.



286. NE goes on to say that the intertidal area, which would be the most attractive feature for walkers in the vicinity, would be excluded from new public access rights under a S25A direction. NE maintains that walkers who are minded to ignore that legal prohibition, would most likely use the nearby footpath through Walters Copse to reach the bird hides and the intertidal area. This, in NE's opinion, would be a much more obvious route for walkers to take and, therefore, more attractive to them. NE adds that it is also possible to walk west to east along a track - albeit a track that is not in great condition - from IOW-7-S084. Because of these other existing routes and because [redacted]'s fields are behind a hedge and clearly in agricultural use, NE does not consider that many, if any visitors would wish to use his fields for recreation or to access the intertidal area.

287. In addition, NE says that its sHRA notes that, "From Newtown, the trail follows the road verge past Hart's Farm to Walter's Copse. As the trail is over 200m from the intertidal habitats, there is no risk of additional disturbance to birds". It also notes that, "Between Cassey Bridge, over Causeway Lake, and Hart's Farm, the trail follows existing PRoW or other walked routes, including a walking route promoted by the National Trust. As this is already a popular destination for visitors to the harbour and no particular improvements are proposed that might attract people to the area, it is not expected that the establishment of the ECP will significantly add to the number of people using the footpaths."

#### *Scheduled Ancient Monument*

288. NE states that it does not consider that the remains of the medieval settlement SAM would attract many, if any visitors, on the basis that there is

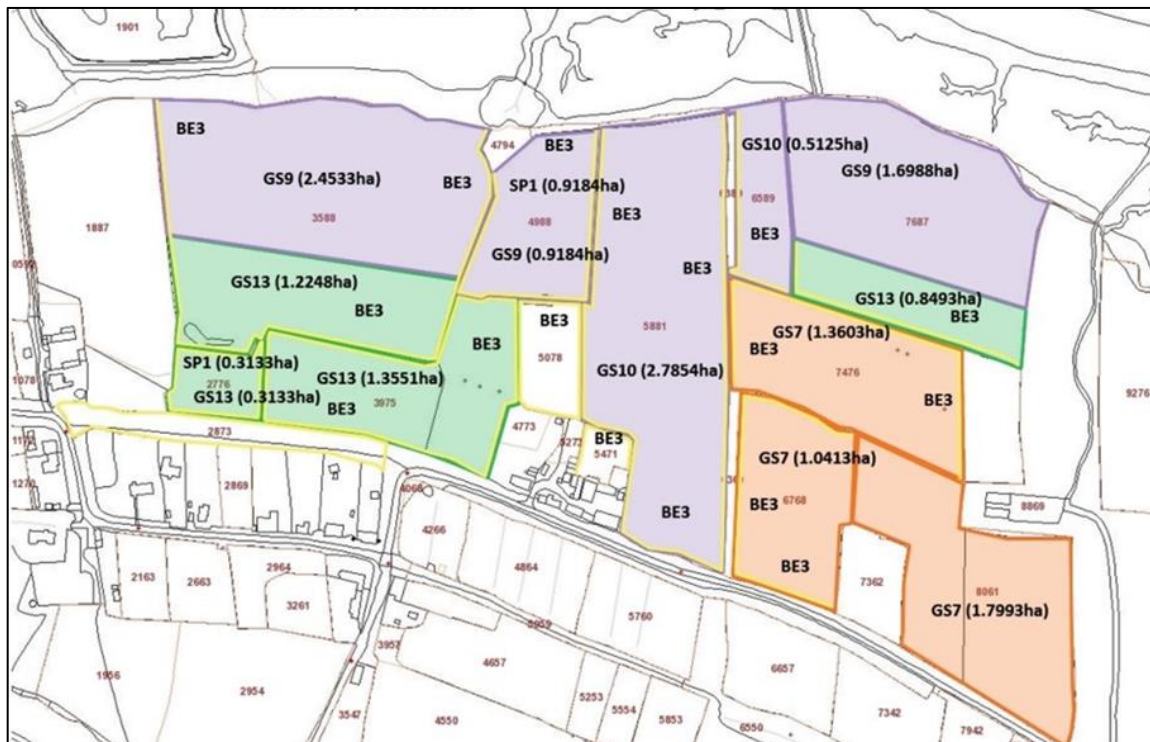
much to see for the untrained eye, given that the archaeology forming the site seems to be buried, which in itself would mean that the features are not likely to be vulnerable.

289. In giving directions for heritage preservation reasons, NE states that the 2000 Act requires at Section 26(4) that it “should have regard to any advice given to them by the relevant advisory body”; in this case the relevant body is Historic England. NE adds that Historic England raised no concerns about the SAM’s inclusion in the coastal margin. On this basis, it concluded that at Section 26(3)(b) was not required in this instance.

### *Higher Level Stewardship*

290. NE states that Hart’s Farm has recently entered into a new Countryside Stewardship arrangement. The Rural Payments Agency is currently processing the agreements which will have a backdated start of 1st January 2024. With reference to a plan reproduced over the page, the option codes are now as follows:

- GS7 – restoration to species rich grassland.
- GS9 – management of wet grassland for breeding waders.
- GS10 – management of wet grassland for wintering waders & wildfowl.
- GS13 – management of grassland for target features.
- BE3 - normal sensitive hedge management.
- SP1 – difficult site supplement (as those parcels are small and need more compact machinery to manage).



291. For reasons set out under the foregoing headings / themes, NE considers that there would be extremely low level, if any, take-up of the coastal access rights over Hart’s Farm. It adds, though, that the Secretary of State should note that there is no requirement in any of the vast range of agri-environment options



open to land managers that requires them to restrict public access to their land. Fields with public rights of way passing through them can be entered into any scheme option, as can those relevant habitats that fall within the significant areas of open access lands, such as moors, heathlands, chalk and limestone grasslands and all coastal habitats, as well as any habitat type within a common. On this basis, NE maintains there is no conflict with the scheme obligations.

292. NE adds that of the above-mentioned options, GS9 and GS10 contain the words, "P441 - Only carry out mechanical operations or allow other activities that may cause disturbance to [breeding and/or non-breeding birds] [between 1 July and 31 October]".
293. NE goes on to say that the option is a legal agreement between Defra and an individual; neither can be held responsible for third party impacts. The key word, NE maintains, is "allow", as it means that the land manager must not allow any activity that may cause disturbance. NE adds that having a right of access over the land is not a choice, because it is a legal right given to the public by the coastal access legislation. Because of this formal right of access, NE asserts that the objector would not be in breach of his agreement.
294. NE notes that all the agri-environment schemes on offer to date are time limited agreements. They are, it says, optional for land managers to enter into, and they have control over the suite of options they choose that are right for them and their management of the land. The coastal access rights, as with the open access rights, are long-term. NE states that its experience over the last 20 years of managing the open access rights which overlap with its agri-environment schemes, has not revealed any conflicts of management or scheme outcomes.

## Analysis

295. For ease of reference, the themes and headings used by NE in its response to the objections are employed in the analysis below. To those I have added three further subsections. Firstly, to deal with the objector's additional submission regarding the effect of the proposals on his family's privacy and security. Secondly, to consider the statutory duty to *seek to further* the purposes of the Isle of Wight National Landscape. Thirdly, although not a matter raised by the objector, the depiction of coastal margin on OS mapping as raised within some of the representations.

## Wildlife

296. NE has set out a clear, evidence based case for the proposed all year-round Section 26(3)(a) exclusion of parts of Hart's Farm for nature conservation reasons. The objector would like the exclusion to be extended westwards and eastwards to cover all of the land to the north of S089 & S090. The proposed extent of the exclusion is based on the area that is known to be used by feeding and roosting brent geese and waders, and potentially used by waders in the breeding season. As NE has explained, further exclusions were not considered necessary as count data does not show significant numbers of waterbirds using any other fields in the area. Accordingly, in the absence of any substantiated evidence to the contrary, any extension to the exclusion would not be warranted.

297. In any event, given the local circumstances, as outlined by NE, it is also unlikely that users of the trail would stray from the proposed path alignment at S089 & S090 onto the land to the north. In particular, as I observed during my site visit, the boundary treatment immediately to the north of the trail here, principally a thick, high hedge, would function as a physical barrier to access. Given that the objector's fields are clearly in agricultural use there is no good reason to believe that they would be particularly attractive to users of the trail, especially as there would be other good opportunities to view and / or access the coast elsewhere in the wider area.
298. Consequently, it is most likely that trail users at S089 & S090 would be focussed on making progress along the designated route, which would be straight and easy to follow here. For all of the foregoing reasons, the likelihood that trail users would make use of any part of the objector's land, be it within the Section 26(3)(a) exclusion or not, seems very limited.

#### *Scheduled Ancient Monument*

299. Having visited the area, I agree with NE's assessment that the SAM would be unlikely to attract visitors on the basis that there is little to see / experience. For the reasons outlined under the *Wildlife* heading above, there are also wider reasons why trail users are unlikely to stray from the path at S089 & S090. However, if anyone were to do so, as the archaeology forming the SAM appears to be buried, its features seem unlikely to be vulnerable. Indeed, the existing public footpath already crosses the southern part of the SAM without any apparent harm arising. Had Historic England had any concerns over the proposals here there can be little doubt that it would have raised them to NE, yet it has not.

#### *Higher Level Stewardship*

300. For the reasons I have outlined above, NE's conclusion that there would be little or no take-up of the coastal access rights over Hart's Farm appears reasonable and well-founded. In any event, public access and agri-environment options are not necessarily incompatible. Indeed, NE's submissions indicate that they are compatible.
301. NE has explained that fields with public rights of way passing through them can be entered into any scheme option, as can those relevant habitats that fall within the significant areas of open access lands, such as moors, heathlands, chalk and limestone grasslands and all coastal habitats, as well as any habitat type within a common. Accordingly, in the absence of substantiated evidence to the contrary, there is no compelling reason to believe that there would be any conflict with the scheme obligations arising from the proposals here. Moreover, the objector could not be held responsible for third party impacts, such as any that might result from public access resulting from the coastal access legislation.

#### *Privacy & Security*

302. The reasons why users of the trail here are unlikely to venture on to the objector's land are set out under the foregoing headings. Nonetheless, in the event that anyone were to do so, it would most likely to be well removed from the family home, garden areas and other private domestic space, due to the effect of

the proposed Section 26(3)(a) exclusion and the exception of land under para 2 of Schedule 1 to the 2000 Act, as 'land covered by buildings or the curtilage of such land'. Consequently, although there is no doubt that the objector's concerns are very real and profound, in practice there is good reason to believe that the proposals here would have very little effect on the privacy and security of the objector and his family.

### *Isle of Wight National Landscape*

303. A new statutory duty to *seek to further* the purposes of National Landscapes came in to force on 26 December 2023 via Section 245 of the Levelling-up and Regeneration Act 2023. It replaces the previous duty to *have regard* to those purposes. The views of NE were sought on this change. In response NE advised that it does not propose any changes to its proposals or to the comments it has already made on objections and representations as summarised above.

304. The purpose of a National Landscape is to protect and enhance the natural beauty of the area. By aligning the route along existing walked routes, in the form of a public footpath and a highway verge, the proposals at S089 & S090 would minimise the effects of the England Coast Path here. Consequently, the proposals would further the protection and conservation of the Isle of Wight National Landscape in accordance with the statutory duty.

305. Furthermore, for the foregoing reasons and with reference to the comments of the AONB Steering Committee as summarised at paragraph 43 above, the proposals are compatible with the biodiversity statutory duties, and signage and other proposed trail infrastructure here would have no detrimental effect on the Isle of Wight National Landscape.

### *Coastal margin on OS mapping*

306. How coastal margin is to be mapped on the OS maps does not form part of its proposals – it was a decision taking by other parties. The depiction of the coastal margin on OS maps, via a magenta wash, is simply a depiction of the status of the land, rather than a depiction of 'access land' as such. It is evidently impractical to omit the magenta wash from the assorted areas of excepted land within the coastal margin. Moreover, the depiction of coastal margin on OS digital and paper products with a magenta wash comes with a clear explanation in the map's key. Consequently, the matter is likely to be unambiguous for the most, if not all, OS users.

## **Conclusion**

307. For the reasons outlined above, the proposed section S089 & S090 of the England Coast Path would be unlikely to have any significant detrimental effects on biodiversity, on the SAM, on any Countryside Stewardship arrangements or on the privacy and security of the objector and of his family.

### **Recommendation**

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

*[redacted]*

APPOINTED PERSON

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

### **Introduction**

309. The Conservation of Habitats and Species Regulations 2017 (as amended) requires that where a plan or project is likely to have a significant effect on a European site, such as the Solent and Southampton Water Special Protection Area (SPA), either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an appropriate assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.

### **Project Location**

310. The proposed section of path in question forms part of the England Coast Path on the Isle of Wight. In terms of the objections considered here, IOW-7-S089 and IOW-7-S090 are the relevant sections. They are collectively referred to henceforth as 'S089 & S090', as shown on Map IOW 7d. S089 & S090 are in proximity to the Solent and Southampton SPA and Ramsar site (the SPA and Ramsar site) as well as to the Solent Maritime Special Area of Conservation (the SAC).

311. The SPA and Ramsar site at large is one of the only major sheltered channels in Europe, lying between the Isle of Wight and the mainland on the south coast of England, stretching from Hurst Spit to Hill Head and on the North Coast of the Isle of Wight from Yarmouth to Whitecliff Bay. It is composed of extensive intertidal mudflats and sandbanks, saltmarsh, coastal lagoons, shingle banks and grazing marsh. The estuarine sediments support rich populations of invertebrates which provide an important food source for overwintering birds. The shingle banks also provide important breeding ground for terns. This also supports approximately 10% of the world's dark-bellied brent geese. This species will use the mudflats and grazing marsh to feed but also make use of farmland and grassland outside of the SPA boundaries.

312. The Solent Maritime SAC is a unique suite of functionally linked estuaries and dynamic marine and estuarine habitats, which result from the Solent and its inlets being unique in Britain and Europe for their unusual tidal regime, including double tides and long periods of tidal stand at high and low tide. Within it there are extensive areas of intertidal mudflats and sandflats, often supporting eelgrass (*Zostera* species), subtidal sandbanks, saltmarsh and natural shoreline transitions such as drift line vegetation. The SAC is of particular interest as it is the only site to support all four species of cordgrass (*Spartina*) found in the UK, including the rare native small cordgrass (*Spartina maritima*). At the time of designation, the SAC also supported a population of the rare Desmoulin's whorl snail (*Vertigo moulinsiana*).

### **Habitats Regulations Assessment Implications of the Project**

313. S089 & S090, as part of the England Coast Path on the Isle of Wight, would increase access to this area for recreational activities, including by walkers and



those accompanied by dogs, whose presence have the potential to affect the SPA and Ramsar site and the SAC, as does disturbance by construction activities necessary for the physical establishment of the path and access management infrastructure. The qualifying features of these designated sites are:

- Breeding Terns (Common, Little, Roseate and Sandwich terns);
- Non-breeding waterbirds (Black-Tailed Godwit; Ringed Plover; Dark-Bellied Brent Geese; Teal; and water bird assemblage);
- Subtidal features (estuaries - subtidal coarse sediment, subtidal mixed sediment; subtidal sand, subtidal seagrass beds);
- Desmoulin's whorl snail, *Vertigo moulinsiana*;
- Coastal lagoons;
- Wetland plant and invertebrate assemblages;
- Intertidal habitats (estuaries - intertidal seagrass beds, intertidal sand and muddy sand, intertidal mud, intertidal mixed sediments, intertidal coarse sediment; *Salicornia* and other annuals colonising mud and sand; Atlantic salt meadows; *Spartina* swards);
- Vegetated shingle (Annual vegetation of drift lines; Perennial vegetation of stony banks); and
- Sand dunes (Shifting dunes along the shoreline with *Ammophila arenaria* – “White dunes”).

314. In 2020 Natural England (NE) undertook a shadow Habitats Regulation Assessment of the Isle of Wight proposals for the England Coast Path. It was revised and updated in response to additional information gathered after the Reports for IOW2 to IOW10 were published, and in response to objections and representations received during the consultation process on the published proposals. This latter, updated version was published in June 2022 and is the version referred to herein. Henceforth, it is referred to as the ‘sHRA’.

315. The sHRA provides the information to inform the Competent Authority’s appropriate assessment, in accordance with the assessment and review provisions of the Habitats Regulations. The sHRA is recorded separately in the suite of reports. It considered the potential impacts of the coastal access proposals on the designated sites identified above as well as others which are distant from S089 & S090, including likely significant effects.

316. Initial screening set out that as the plan or project is not either directly connected or necessary to the management of all of the European sites’ qualifying features, a Habitats Regulation Assessment was required. The overall Screening Decision found that the plan or project at large would be likely to, or may, have significant effects on some or all of the qualifying features of the European Sites alone in the absence of mitigation measures. Accordingly, the sHRA considered the potential for the project to give rise to Adverse Effects on the Integrity (AEol) of the designated sites.

317. The scope of the assessment is set out in Table 7 of the sHRA (pages 34 to 37) and identifies the sites and qualifying features for which significant effects, ‘alone’ or ‘in combination’, would be likely or could not be excluded beyond reasonable scientific doubt. ‘Key Locations’ are summarised in Table 9 of the

sHRA (pages 57-58), with relevant information for S089 & S090 identified in the seventh row of the Table and discussed in 'D3.2G - Causeway Lake to Harts Farm' (pages 98 to 105).

318. The assessment of AEol for the project alone takes account of measures to avoid or reduce effects incorporated into the design of the access proposal, as set out in sub-section D3.3 (from page 155). The assessment, which covers the entire length of the England Coast Path proposed for the Isle of Wight, not just S089 & S090, identifies that the measures incorporated into the design of the scheme are sufficient to ensure no AEol in light of the sites' conservation. Those where there is some residual risk of insignificant impacts are:
- Disturbance to feeding and roosting non-breeding waterbirds, 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 feature within the site.
319. In section D4 of the sHRA (from page 171), NE assessed the appreciable effects that are not themselves considered to be adverse alone to determine whether they could give rise to an AEol in combination with other plans or projects. Insignificant and combinable effects likely to arise, and with the potential to act in-combination with the access proposals, were identified in relation to the implementation of coastal access on the Isle of Wight and on the mainland from Highcliffe to Calshot, from Calshot to Gosport and from Portsmouth to South Hayling. Nonetheless, as set out in Table 14 of the sHRA (pages 176 to 177) assessing the risk of in-combination effects, NE concluded that, in view of site conservation objectives, the access proposal (taking into account any incorporated avoidance and mitigation measures) would not have an adverse effect on the integrity of the relevant designated sites either alone or in combination with other plans and projects.
320. Part E of the sHRA sets out that NE is satisfied that the proposals to improve access to the English coast for the Isle of Wight, including S089 & S090, are fully compatible with the relevant European site conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Scheme. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the sHRA that the proposals would not adversely affect the integrity of the relevant European sites. It is noted that, if minded to modify the proposals, further assessment may be needed.

## **Nature Conservation Assessment**

321. Although not forming part of the sHRA, NE has also undertaken a Nature Conservation Assessment, which should be read alongside the sHRA. The Nature Conservation Assessment covers matters relating to Sites of Special Scientific Interest (SSSI), Marine Conservation Zones and undesignated but locally important sites and features, which are not already addressed in the sHRA. Relevant to S089 & S090 is the Newtown Harbour SSSI, and possibly White tailed sea eagles.

322. NE was satisfied that the proposals to improve access to the English coast around the Isle of Wight, including to S089 & S090, were fully compatible with its duty to further the conservation and enhancement of the notified features of Newtown Harbour SSSI consistent with the proper exercise of their functions.
323. In respect to the White tailed sea eagle, NE concludes that the appropriate balance has been struck between its conservation and access objectives, duties and purposes.

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

by [redacted] BSc(Hons) DipTP DMS MA MRTPI

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

Date 1 July 2024

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Marine and Coastal Access Act 2009

Objection by [redacted] of Hampshire & Isle of Wight Wildlife Trust

Regarding Coastal Access Proposals by Natural England

Relating to The Medina

**Objection Reference: MCA/IOW/10**

**The Medina**

- On 18 March 2020 Natural England submitted Coastal Access Reports to the Secretary of State for Environment, Food and Rural Affairs setting out proposals for improved access to the coast on the Isle of Wight 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.
- The objections concern Natural England's Report IOW 10 for The Medina. The land in the Report to which the objection relates is specifically route section IOW-10-S014 FP, as shown on Map IOW 10b.
- 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 IOW 10, in respect to the trail section IOW-10-S014 FP, do not fail to strike a fair balance in respect to the objections considered herein.

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**Preliminary Matters**

324. On 18 March 2020 Natural England (NE) submitted Coastal Access Reports to the Secretary of State setting out proposals for improved access to the coast on the Isle of Wight. The period for making formal representations and objections to the reports closed on 13 May 2020. I have been appointed to report to the Secretary of State on the objections.

325. There are other admissible objections to the Reports concerning improved access to the coast on the Isle of Wight. Although some of these other objections also relate to Report IOW 10, they concern different route sections and, as such I have considered it expedient to address them separately in other reports to the Secretary of State.

326. I conducted a site inspection on 17 April 2024. I was accompanied by representatives from NE and from Isle of Wight Council (IoWC). As I was not accompanied by [redacted] or anyone representing of Hampshire & Isle of Wight Wildlife Trust (the Trust), I did not enter its property. Nonetheless, I was able to see all that I needed to see from the nearby public domain.

**Main Issues**

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

328. The first objective is to secure a route for the whole of the English coast which:

- (i) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
- (j) (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 2009 Act as the English coastal route and is now known as the King Charles III England Coast Path. For ease of reference, it is referred to as 'the trail' or 'the England Coast Path' in this report.

329. The second objective is that, in association with the England Coast Path, 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 coastal route or otherwise. This is referred to as the coastal margin.
330. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (m) The safety and convenience of those using the trail,
  - (n) The desirability of that route adhering to the periphery of the coast and providing views of the sea, and
  - (o) The desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
331. 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.
332. Section 300 of the 2009 Act provides that the coast includes the coast of any island other than an excluded island. An island is excluded if it is not accessible; that is, that it is not possible to walk to it from the mainland. The Secretary of State may include other islands by order, if satisfied that their coasts are long enough to provide a long-distance walk. That is the case with the Isle of Wight.
333. Section 301 of the 2009 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.
334. NE's Approved Scheme 2013, as approved by the Secretary of State on 9 July 2013, (the Scheme) is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report. Section 7.16 of the Scheme concerns islands and states at 7.16.5 that the trail "will broadly follow the periphery of any island which it includes, following the same principles as for the mainland coast. People will normally be able to choose when they arrive at the bridge or causeway whether to use the trail to reach the island or to continue along the mainland coast." In the case of the Isle of Wight, access to the island is via seacraft or aircraft.
335. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

336. Forming part of the England Coast Path for the Isle of Wight, the length of path under consideration is contained within Report IOW 10: The Medina and includes sections of path as shown on Map IOW 10b Bottom Copse to Little Werrar Wood. The objection relates to route IOW-10-S014 FP, henceforth referred to as 'S014'. Although S014 is also shown in part on the adjoining Maps

to each side, only Map IOW 10b is referred to in the objection, such that I have considered only the section of S014 shown on that Map herein.

337. S014 would follow an existing public footpath. During my site visit I observed that it is also a well-maintained and apparently well-used cycleway. The landward margin is proposed to be the edge of the path in the interests of clarity and cohesion. The adjoining proposed trail sections to each side of S013 are existing public highway. Normal roll-back is proposed associated with S014.
338. The Solent and Southampton Water Special Protection Area (the SPA) and Ramsar, the Solent Maritime Special Area of Conservation (the SAC) and the Medina Estuary Site of Special Scientific Interest (the SSSI) are immediately to the east of the majority of S014 and a short a distance to the east along its southern portion. The trail here is located outside of and some distance away from the nearest part of the Isle of Wight National Landscape, formerly known as the Area of Outstanding Natural Beauty.
339. Access to the land in the coastal margin adjacent to route sections IOW-10-S001 to IOW-10-S095, including S014, is to be excluded all year-round by direction under section 25A of the Countryside and Rights of Way Act 2000 (2000 Act). This is because it is mudflat and saltmarsh that is unsuitable for public access as it does not provide a safe walking surface and is subject to frequent tidal inundation. The exclusion does not affect the route itself and will have no legal effect on land where coastal access rights do not apply.

### **The Objections**

340. The objection states that the proposals are opposed for three main reasons:
1. The Trust does not accept the conclusions of the Habitats Regulations Assessment that, on the basis of the suggested mitigation measures, the proposals will not cause a significant adverse effect on the features of the Natura 2000 network. The plan appears to rely on the use of signage and fencing / path works as a means of managing behaviour and in our experience, and that of many others, this cannot be relied upon to prevent recreational disturbance. As such no certainty can be provided that the proposed mitigation measures will be effective and therefore the Trust does not feel that, when applying the precautionary principle, a conclusion of no likely significant (adverse) effect can be reached. The principle that a high degree of certainty regarding the effectiveness of mitigation measures must be present is well established and the Trust believes that the mitigation measures contained within these proposals do not fulfil this test;
  2. It is opposed to the treatment of coastal margin as a 'magenta wash' on Ordnance Survey (OS) mapping, whether the land is excluded / excepted or not. It considers that to depict coastal margin in such a way sends out a confusing message and conflicts with the aims of the other strategies (notably Bird Aware Solent). The Trust feels that it is highly unlikely that users of the trail who are in possession of an up to date OS map will in reality refer to an online resource and it therefore concludes that the misleading information presented by the OS will lead to significantly increased pressure on designated sites, potential conflict with coastal

landowners / managers and an increase in the likelihood that users of the trail will access areas that are unsafe; and

3. Direct access of the coastal margin through perceived or actual right to spreading room will increase recreational access to our tenanted area directly adjacent to the SPA and within the sightlines of SPA features using adjacent sites identified as Primary Support Area in the Solent Waders and Brent Goose Strategy.
341. Given that a substantive amount of land on the seaward side of the trail will be excluded or excepted land, the Trust consider that the coastal margin should not be shown on OS maps as a magenta wash and that signage should be used to indicate where the coastal margin is accessible rather than where it is not. It adds that this 'sensible approach' would ensure that, in areas that are excluded using directions under sections 25A and / or 26 of the 2000 Act, the users of the trail will not assume that a right of access prevails, striking a fair balance between public amenity and nature conservation objectives. Furthermore, the Trust believes that the section 26 direction exclusion should overlay, if feasible, section 25A direction exclusions.
342. The Trust emphasises that it is not content that signage and fencing / path works are suitable mitigation for the England Coast Path. In addition, it says that Bird Aware Solent's Definitive Mitigation Strategy provides a mitigation package including a range of measures which, according to what it describes as expert opinion and subject to robust monitoring, are required to offset the impacts of recreation arising from new housing.
343. For these mitigation measures to succeed, the Trust says that any new project, as this, should integrate with the Bird Aware Solent suite of mitigation measures, which includes site-based projects as well as provision of a team of rangers. It considers, therefore, that mitigation measures should go further than proposed and fully complement the Bird Aware Solent measures - if relevant making contributions for delivery - in order that there is a framework for delivery and a higher certainty that the measures will be effective.

## **Representations**

344. The Ramblers state that they are very pleased to see The Medina estuary included in the England Coast Path. Along S014 they make suggestions to move parts of the proposed trail alignment closer to the estuary to improve views of the coast and to improve segregation between cyclists and trail users. These do not include the Trust's Chawton Field Nature Reserve, which they say should simply be designated as spreading room from the cycle track.
345. IoWC does not make any specific comments regarding S014. Nonetheless, it does say that there was overwhelming and unprecedented local support for the inclusion of the Medina estuary in the scheme, such that it fully supports its inclusion which will add significant value not only for the England Coast Path itself but for the Isle of Wight as a whole. It adds that the Medina is a significant body of water being wide and approximately 4 miles in length between Cowes/East Cowes and Newport and will therefore provide the public with an additional 8 miles of coast to enjoy. IoWC goes on to say that walking along the east and west banks provides a diverse range of environments and experiences

from wonderful coastal scenery in rural areas to the industrial/marine uses (both past and present) in Cowes and East Cowes along with the historic interest of Newport Harbour.

346. Additionally, IoWC says that a number of attractions, facilities, businesses and organisations also exist along the route. It adds that the route would also take in Newport, being the capital town of the Island with all its facilities, and most importantly, transport links, such that the recreational benefit and enjoyment for the public will be very great.
347. IoWC considers that the chain ferry connecting the towns of Cowes and East Cowes at the mouth of the river does provide a pedestrian link but this is not a free service and is not available 24 hours a day, seven days a week. It adds that the river at this point would constitute the one and only physical interruption in the trail on the Island, which would be disappointing. IoWC, therefore, fully supports NE's discretion to extend the trail as far as the first bridge, which in this case is at Newport Quay.
348. Not including the Medina estuary in the scheme would, in IoWC's view, be a huge loss of public enjoyment and recreation. The Medina is not only a significant feature of the Island, it adds, but also an important part of its history being once the main route for deliveries and exports to/from Newport. IoWC maintains that it is these historic and maritime interests along with the beautiful scenery and rural experiences which makes its inclusion a necessity and in full compliance with the aims of the Marine and Coastal Access Act 2009.
349. Bird Aware Solent / Solent Recreation Mitigation Partnership (SRMP) has commented on Report IOW 10 at large, without specific reference to S014. It welcomes the concept of the England Coast Path as something of value to local people and residents but has concerns that it would like to be addressed and refers to its mitigation programme, identified in its Strategy as formally adopted by PUSH in December 2017. It raises two specific areas of concern; increasing visitor numbers and mapping of spreading zones.
350. SRMP says that a rise in the number of visitors to sensitive parts of the coast will cause increased disturbance to the overwintering birds that journey to SPAs, many of which are red and amber listed. Whilst the SRMP employs a range of measures to mitigate against disturbance from increasing housing numbers, it does not have the resources to deal with any further elevation in visitor numbers as a result of the England Coast Path. It adds, therefore, there is a real concern of a conflict between these two initiatives and that any rise in visitor numbers has the potential to diminish the effectiveness of the SRMP measures. SRMP also states that the trail will need its own mitigation package to protect against the impact of increased visitor numbers it creates.
351. Furthermore, SRMP is concerned regarding OS's plans to depict the 'spreading zone' as a magenta wash, making no exceptions for excepted areas as this may lead to users of the trail straying into excepted intertidal areas. It adds that these can be extremely large, support fragile habitats and be a huge food resource for birds and other species. Increased footfall through these areas would, in SRMP's view, cause great damage to these fragile habitats and enormous disturbance to vulnerable wintering bird populations. Although exceptions to the spreading zone will be sign posted on the ground and listed on

NE's website, SRMP says that enforcement would seem to fall to the landowner/occupier. It adds that if it is not possible to depict the spreading zone accurately on OS maps, SRMP would urge NE to reconsider its inclusion on the map entirely.

352. The Isle of Wight Local Access Forum comments that due to circumstances, chiefly associated with the pandemic at the time of the consultation, it was unable to coordinate a response on behalf of the Forum. It adds, though, it has consistently been able to put its views across during the pre-consultation phase and has encouraged Forum members to comment at all stages.
353. The Open Spaces Society fully supports the Ramblers representations in respect to Report IOW 10.
354. Disabled Ramblers comment that modern mobility vehicles can be very large, and many man-made barriers that will allow a manual wheelchair through are not large enough for all-terrain mobility vehicles, or for 'pavement' scooters, and prevent legitimate access even though users of mobility vehicles have the same rights of access that walkers do. They add that man-made structures along the trail should not be a barrier to access for users of mobility vehicles and also acknowledge the replacement of stiles with gates as a positive step.
355. Disabled Ramblers, though, request that the proposed measures go further by ensuring that all new structures allow convenient access to mobility vehicles as standard, complying with BS5709: 2018 Gaps Gates and Stiles. They also request that all existing structures on the trail are removed and replaced if they prevent access to users of mobility vehicles. They add that the suitability of all structures should be considered on the basis that a person with reduced mobility will operate the structure themselves alone, seated on their mobility vehicle.
356. Disabled Ramblers also request compliance with the Equality Act 2010 (and the Public Sector Equality Duty within this act) and with the 2000 Act, and adherence to the advice from Disabled Ramblers as set out in the Man-made Barriers and Least Restrictive Access document [copy at Annex 5 to NE's *Representations on IOW 10: The Medina and Natural England's comments* document, April 2023 (NE's Comments on Representations)].
357. Southern Gas states that NE should be aware that groundworks that take place in the vicinity of gas infrastructure could result in personal injury or damage to the gas infrastructure. As such NE will be expected to consult with Southern Gas in relation to said points of interaction and any groundworks that might be required. It adds that it has provided a bundle of plans that show the locations of the relevant infrastructure situated on or within 50m of the trail.
358. Cllr [redacted] of Cowes Town Council has expressed his awareness of the issues surrounding the inclusion of the Medina and gives his full support for the route.
359. [redacted] objections to the alignment of the trail and the identification and management of spreading room on the basis that, in his view, it does not properly consider nature conservation issues and, specifically, it is incompatible with statutory obligations under the Habitats Regulations. His representation includes a formal complaint as to the adequacy of the Habitats Regulation



Assessment and the process by which it was drafted. His representation and the associated complaint correspondence are contained within Annexes 7 and 8 to NE's Comments on Representations. I would note that these all appear to predate NE's updated shadow Habitats Regulation Assessment for the Isle of Wight trail proposals produced in response to objections and representations, as published in June 2022.

360. NE has provided comprehensive responses to each of the representations. These are set out in NE's Comments on Representations.

### **Natural England's Response to the Objections**

361. NE's response to the objections is set out under a series of headings, which I duplicate below.

#### *Habitats Regulations Assessment mitigation measures*

362. As outlined above, NE has updated its shadow Habitats Regulation Assessment for the Isle of Wight trail proposals produced in response to objections and representations, as published in June 2022 (the sHRA). It says that it updated the ecological evidence base in the light of additional data supplied by stakeholders, reviewed the assessments of current access patterns, and sought external advice where new access in potentially sensitive areas is proposed. It adds that this additional information has been used to review the implications of the trail for the Conservation Objectives of the European sites.
363. As a result of this work, NE's view is that the revised sHRA is more robust in its conclusions than the original, particularly in relation to the impact of the introduction of the coastal margin. No alignment changes resulted, but the revised sHRA has recommended additional directions to exclude or restrict access to the coastal margin. NE adds that some additional infrastructure has also been added to support the trail alignment and directions. A summary of the mitigation measures is set out at Table 2 of the sHRA. The conclusion of the sHRA, NE says, is that there will be no adverse effect on the European sites from the trail and associated margin.
364. While this is the same conclusion as the original document, NE states that it has added some mitigation measures. These include directions and informal management measures to reduce the likelihood of people and dogs adding significant disturbance pressure to sites. These can also be found in Table 2, as well as in sections D3.2A to J of the updated sHRA.
365. NE asserts that it has followed the approach in the Scheme at Chapter 6, which sets out how it will determine the need for intervention, for example in relation to concerns regarding nature conservation interests, and the principle of the least restrictive option, where intervention is needed. It also describes the solutions available where interventions are necessary: alignment of the trail; and / or management techniques; and / or directions to restrict or exclude access.
366. NE says that it knows that not all coastal margin is suitable for public access. In areas where informal management measures are not likely to work, it adds that it has then used directions to exclude access to parts of the coastal margin, where necessary, to avoid impacts on designated nature conservation sites.

367. Whilst baseline visitor survey data is not available for all sites, NE states that it does not believe this is necessary to be able to design and assess mitigation measures. It considers that it is quite possible using available information, site visits and input from local access managers to form a sufficiently comprehensive understanding of the current distribution, intensity and types of recreational activity currently taking place around the Isle of Wight.
368. NE maintains that, for the purposes of assessing potential impacts of the access proposals, it is necessary to predict how interventions designed into the proposals are likely to impact on the distribution, intensity and types of recreational activity undertaken. Its general approach to assessing the patterns and levels of public access locally is outlined in the Scheme within Figure 16 on page 46.
369. NE says that Coastal access rights are a new form of access rights and there are some minor differences in the limitations that apply, but that they are very similar to other statutory access rights from which reasonable assumptions can be made about how they are likely to affect recreational activities at a given location. Members of the public rarely, if ever, in NE's view, distinguish between the many forms public access can take beyond whether access is or is not allowed at a particular location and any advertised limitations that apply.
370. NE goes on to say that monitoring of such space confirms the strong tendency of people in open spaces to follow defined paths and tracks and that this tendency is not generally affected by the creation of open access rights. More important for predicting how a site might be used for recreation are, in NE's opinion, the types of factors listed in the method outlined in Chapter 6 of the Scheme. On this basis NE says that it has made its assessments at the local level considering factors such as existing use, terrain, physical barriers, access points, proximity to settlements, alternatives, legal limitations, and other factors, as well as the detailed design of specific interventions proposed, such as the position of the path, any improvements to the path and any other physical interventions.
371. NE adds that it also has a good understanding of the relative use of different sections of the coastline from modelling work undertaken for Bird Aware Solent. It says that it then compares this with the specific interventions proposed, such as the position of the path, any improvements to the path, other physical interventions, legal status of the path, and creation of coastal access rights, to assess the changes that might occur. These assessments at each sensitive location are, NE states, described in the Appropriate Assessment section of the sHRA, sections D3.2A to J. In addition, NE says that it commissioned advice from an independent expert on walkers with dogs to help it understand how people might use the new access.
372. For these reasons NE considers that there is generally a good evidential basis on which to make predictions about the impact of interventions, noting that there will be some variation in the degree of certainty depending on the circumstances.
373. NE states that the main way in which the trail avoids adverse effects on designated sites is via its alignment, away from sensitive features. In addition, NE says that it can design in a range of access management measures to proposals including:

- Manipulation of the physical environment (e.g. improving the surface of a path or installing barriers);
- Limiting access rights with local restrictions or exclusions where necessary; and
- Signs directing people to behave in particular ways.

374. NE says that details of any specific measures proposed are considered in the relevant section of the sHRA. It adds that these are tried and tested methods of managing access on nature reserves, in Open Access areas, and in the wider countryside.

375. The proposals reports and sHRA, in NE's view, clearly set out the infrastructure necessary to mitigate potential adverse effects. Given the evidence as to compliance with interventions elsewhere, NE says that it is confident of the efficacy of the measures in the context in which they are intended to be used.

376. NE maintains that it is working very closely with the IoWC, as access authority, to ensure effective implementation. Arrangements for the long-term delivery of the trail and associated access management are, NE states, secured through ongoing management and funding of the route as a designated National Trail and associated statutory duties and powers.

377. Regarding the SRMP, NE states that its programme to establish the England Coast Path is complementary to its strategy (of which the Trust and Bird Aware Solent are members); it seeks to enable responsible access to the Solent coast and inform visitors about the ecological sensitivities. NE adds that through meetings and a series of workshops it has developed its proposals in close liaison with Bird Aware Solent and has fully considered the Bird Aware Solent evidence base and both the interim and definitive mitigation strategy.

378. NE says that a key feature of the Bird Aware Solent strategy is the provision of coastal rangers to educate and inform coastal visitors about the wintering bird sensitivities and how to enjoy the site, whilst avoiding disturbing the feeding and roosting birds. NE adds that its proposals for the alignment and detailed design of the England Coast Path complement the work of the rangers. The definitive strategy aims, in NE's view, to widen the range of mitigation from the interim strategy through providing on-the-ground access management projects specific to each site, including measures such as interpretation panels. NE states that, although a definitive list of these projects has yet to be finalised, Bird Aware Solent and NE have liaised to identify the likely projects that would be effective to reduce recreational disturbance in the Solent based on evidence.

#### *Coastal margin on OS mapping*

379. Regarding the case for more than one direction, NE says that its policy, where there may be a case for more than one type of exclusion or restriction, is to make a direction according to the need that is most restrictive. Where NE decides that an area of salt marsh or mud flat is substantially unsuitable to be used by the general public, it excludes access all year round. In most cases, NE contends that this need is the most restrictive and will be the grounds cited in the direction. NE adds that it has a detailed sHRA that records the designated

features and the conservation objectives associated with them. Should circumstances change resulting in the revocation of the section 25A direction, NE says that it would have a responsibility to carefully consider whether a different type of direction is needed in its place.

380. Regarding the OS mapping and magenta wash point, NE says that how coastal margin is to be mapped on OS maps does not form part of its proposals.

381. The decision as to how to depict on OS 1:25,000 maps the England Coast Path and the 'coastal margin' created on approved stretches by the Access to the Countryside (Coastal Margin) (England) Order 2010 resulted from detailed discussions with the Coastal Access National Stakeholder Group. This group, representing a balance of interests including user, conservation and land manager representative organisations, considered it imperative that the route of the England Coast Path and the coastal margin should both be depicted. This decision reflected the importance afforded by the stakeholder group to acknowledge the statutory duty to establish both a 'long distance walking route' around the coast of England and to identify a margin of land within which the public will also have access, subject to what follows.

382. NE goes on to say that coastal margin will generally have, as a large component, land which is subject to coastal access rights but in some areas contains much land which is not subject to these rights. This, it adds, may be because either it is excepted land, as set out in Schedule 1 of the 2000 Act, or because it is subject to statutory restriction.

383. NE maintains that it follows that, in contrast to the position with the 2000 Act 'open access land', the depiction of coastal margin on OS maps is not a depiction of 'access land' as such, but a depiction of the status of the land, rather as national park boundaries are depicted on the maps. NE adds that this distinction was central to the decision to depict coastal margin uniquely on OS maps.

384. NE goes on to say that it was felt that because the existing open access 'yellow wash' is well-known by users and often perceived to mean that all areas within it are accessible, a different coloured wash and boundary to depict the coastal margin should be used in order to clearly reflect the different nature of this new designation. In deciding this, NE adds that the stakeholder group concluded that to show the coastal margin boundary only would not achieve the desired effect. NE also says that, where coastal access rights have superseded existing open access rights on the coast, showing the boundary only would mean removing the existing yellow access land wash in order to avoid confusion – but this might create the undesirable impression of a loss of public access rights. Because of OS operational needs, NE states that the colour chosen for depicting the coastal margin was magenta - a 10% magenta wash - bounded on its landward edge by distinctive magenta semi-circles.

385. NE states that it was decided that the England Coast Path itself would be depicted by a green diamond (lozenge) symbol placed along the route and named England Coast Path with the National Trail acorn symbol placed alongside the name. Alternative routes, it adds, will be shown by a hollow version of the green diamond (lozenge) symbol.

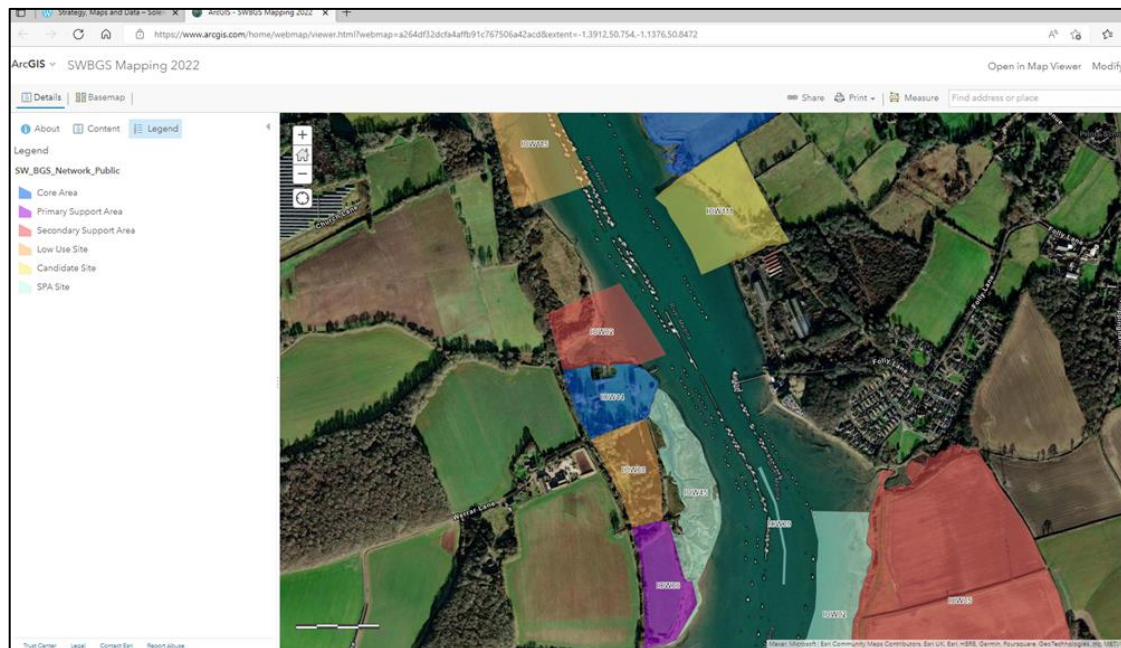
386. NE says that the depiction of coastal margin on OS digital and paper products with a magenta wash comes with a clear, concise explanation in the key: "All land within the 'coastal margin' (where it already exists) is associated with the England Coast Path and is by default access land, but in some areas it contains land not subject to access rights - for example cropped land, buildings and their curtilage, gardens and land subject to local restrictions including many areas of saltmarsh and flat that are not suitable for public access. The coastal margin is often steep, unstable and not readily accessible. Please take careful note of conditions and local signage on the ground."
387. It adds that the key also gives the link to the National Trails website <http://www.nationaltrail.co.uk/> which it says is the official source for information on the England Coast Path.
388. NE states that the new coastal access arrangements bring greater clarity on the ground about the rights of public access to coastal land. It adds that it is in the interest of all parties that information regarding these new rights and about the new coastal margin designation is depicted accurately and consistently on OS maps, with appropriate explanation.
389. With regard to excepted land, NE goes on to say that the national stakeholder group acknowledged that it would not be feasible to remove the magenta wash from the myriad of excepted land parcels falling within the coastal margin. This, it says, was because even if it were practicable in a mapping sense, it would be impossible to identify all excepted land for consistent removal. As a result, NE maintains that taking this approach would be misleading as people would assume because some parts of the margin were magenta-shaded and some not, the shaded areas must have access rights. By having all the coastal margin depicted on OS maps with the magenta wash, NE says that it is obvious that this is not the case.
390. NE contends that a similar unintended consequence would result if single large areas of excepted land only were removed from the margin shown on OS maps. It adds that land use changes and as a result individual land parcels would move in or out of being excepted, often over a short period. NE uses agricultural land in rotation potentially moving from arable (excepted) to grass (not excepted) and vice versa as an example.
391. NE states that this approach to depicting the England Coast Path and coastal margin on OS maps has been in use since 2014. NE says that it is not aware of any issues that have resulted in practice. This, it maintains, is despite the inclusion of some very substantial areas of developed or other excepted land within the magenta wash – for example:
- On the Isle of Portland, because of the need for the approved route of the trail to cut across the northeast corner of the island, the mapped coastal margin includes Portland Port, the Verne prison, houses, other buildings and their curtilage.
  - On the Tees estuary, the coastal margin comprises extensive areas of industry and business interspersed with brownfield sites and areas where access rights are excluded to protect wintering birds.



392. NE says, in conclusion, it supports the OS approach to identifying and explaining the status of the English Coastal Margin on OS 1:25000 maps, and NE is not aware of any practical problems that have arisen from it. NE says that it understands why initial concerns may arise about the approach in areas that are new to it – but the best place for site-specific messaging is on the ground, and such local messaging needs to receive careful attention when NE conducts its alignment and establishment phases on each stretch of coast.

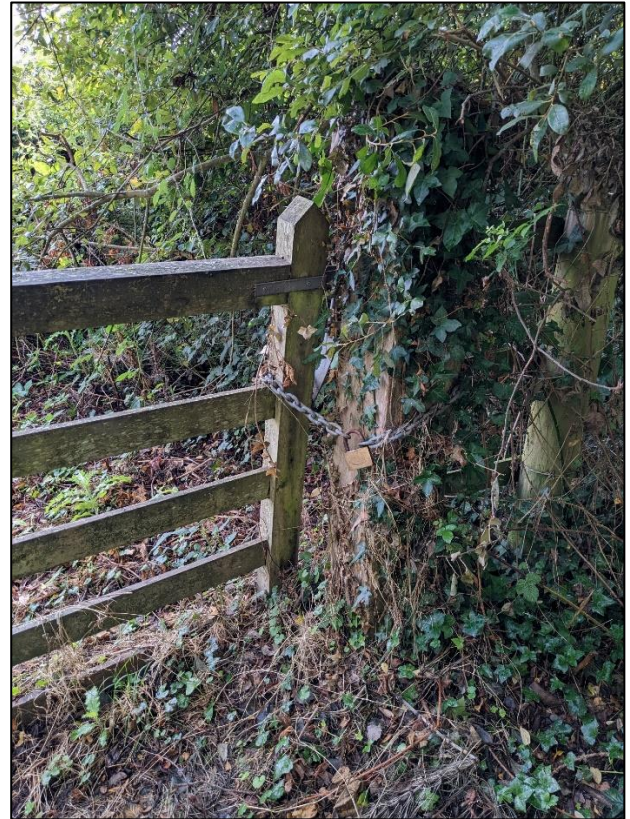
*Increased access to the coastal margin*

393. NE says that it considered aligning the route closer to the coast at Chawton Field Nature Reserve, following along the eastern edge of the field adjacent to the River Medina. However, in its view, the path did not lead to anywhere and the fenced field is managed as a nature reserve and coastal grazing marsh by the Trust. A small section of it - less than 50% - is also a Solent Wader and Brent Goose site, which is a 'secondary support area' as shown in Annex 1 to *Natural England's comments about an objection on a Coastal Access Report – IOW 10: The Medina* document (NE's objection comments). The image found there is reproduced below for ease of reference.



394. Instead, NE states, the proposed route follows the cycle path to Newport which provides continuity, is easier to walk on and it still offers views of the Medina. NE adds that, although Chawton Field will be in coastal margin and is not excepted land, it would be difficult for the public to access this area considering it is fenced and there is a thick hedge present. In respect to the access, NE makes reference to two photographs at Annex 3 to NE's objection comments, which are both reproduced here, over the page for ease of reference.
395. NE says that it does not signpost areas where coastal margin is accessible e.g., spreading room, and that it is confident that the vast majority of people will focus on the onward route rather than seeking to access the coastal margin in this location. It has not proposed to restrict or exclude access to this area as it believes, for the reasons mentioned above, that there will be extremely low (or no) levels of public access to the site. On this basis NE considers that the risk of

access and disturbance to birds is low due to fencing and hedges. In addition, NE says that the Trust does not show this reserve on their website, which implies there is no public access.



## Analysis

396. For ease of reference, similar headings to those used by NE in its response to the objections are employed in the analysis below.

### *Habitats Regulations Assessment mitigation measures*

397. The revised sHRA appears to be more robust than the original, particularly in relation to the impact of the introduction of the coastal margin. Both the original and the revised sHRA conclude that there would be no adverse effect on the SPA, Ramsar and SAC from the trail and associated margin.

398. In assessing and producing its proposals here, in terms of determining the need for intervention, NE appears to have followed the approach set out in Chapter 6 of the Scheme. NE's assertion that members of the public rarely, if ever, distinguish between the many forms of public access, beyond whether access is allowed or not, and any advertised limitations that apply seems reasonable. In coming to this view, I have been mindful of NE's submissions that open access monitoring indicates the strong tendency of people in open spaces to follow defined paths and tracks and that this is not generally affected by the creation of open access rights. I have also taken into account the local factors referred to by NE, including existing use, terrain, physical barriers and access points, many of which I was able to observe when I visited the area.

399. NE also appears to have a good understanding of the relative use of different sections of the coastline, including in this area. This also seems to have been



used to appropriately inform the trail proposals, as has the advice it sought from an independent expert on walkers with dogs.

400. Accordingly, there is a reasonable evidential base from which predictions may be drawn regarding the impact of interventions and, having regard to the Report, the sHRA and its comments on the objection, NE appears to have done so via its proposals for the England Coast Path here. The evidence also indicates that the evolution and implementation of the trail proposals is taking place in liaison with local stakeholders, including SRMP, Bird Aware Solent and IoWC.

#### *Coastal margin on OS mapping*

401. For the reasons outlined under the preceding subheading, there is no compelling justification for a direction beyond what has been proposed. As NE has identified, in the event that circumstances change resulting in the revocation of the section 25A direction, it would have a responsibility to consider whether a different type of direction would be needed in its place.
402. How coastal margin is to be mapped on the OS maps does not form part of its proposals – it was a decision taken by other parties. The depiction of the coastal margin on OS maps is simply a depiction of the status of the land, rather than a depiction of ‘access land’ as such. For numerous reasons, it is evidently impractical to omit the magenta wash from the assorted areas of excepted land within the coastal margin. Moreover, the depiction of coastal margin on OS digital and paper products with a magenta wash comes with a clear explanation in the key, as outlined in paragraph 63 above. Consequently, the matter is likely to be unambiguous for most, if not all, OS users. Furthermore, there is no evidence before me to suggest that any significant issues have resulted anywhere in England since this approach was adopted some 10 years ago.

#### *Increased access to the coastal margin*

403. The proposed route here is easier to follow and walk along. Although it does not immediately follow the Medina shore, it still offers reasonably good views of the estuary notwithstanding the presence of vegetation. Based on what I observed during my site visit, while it would not be impossible to access the Trust’s land and other areas of land to the east of the trail here, it would be difficult for the public to do so. This is principally due to boundary treatment and vegetation. The coastal margin would not be signposted as accessible. I also note that NE has advised that the Trust does not show its Reserve here on its website.
404. Given all of these circumstances, therefore, trail users are most likely to be focussed on making progress along the designated route, rather than seeking to make use of the accessible coastal margins along S014. Accordingly, NE’s conclusion that there would be extremely low, or no, levels of public access to the site appear well founded.

### **Conclusion**

405. For the foregoing reasons, therefore, the proposed section S014 of the England Coast Path would be unlikely to have any significant effects on biodiversity, including in respect to the SPA, Ramsar, SAC and SSSI, and to result in any significant additional access to the Trust’s property or other land

within the coastal margin here. Depiction of coastal margin on OS mapping does not form part of the trail proposals. As outlined above, it is unlikely to have a significant effect on the use of the coastal margin here in any event. Furthermore, as the trail here would be located some distance outside the Isle of Wight National Landscape and use an existing pedestrian route, these proposals would accord with the statutory duty to seek to further the purposes of this National Landscape.

### **Recommendation**

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

*[redacted]*

APPOINTED PERSON

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

### **Introduction**

407. The Conservation of Habitats and Species Regulations 2017 (as amended) requires that where a plan or project is likely to have a significant effect on a European site, such as the Solent and Southampton Water Special Protection Area (SPA), either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an appropriate assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.

### **Project Location**

408. The proposed section of path in question forms part of the England Coast Path on the Isle of Wight. In terms of the objections considered here, IOW-10-S014 FP is the relevant section, henceforth referred to 'S014', as shown on Map IOW 10b. S014 is in proximity to the Solent and Southampton SPA and Ramsar site (the SPA and Ramsar site) as well as to the Solent Maritime Special Area of Conservation (the SAC).

409. The SPA and Ramsar site at large is one of the only major sheltered channels in Europe, lying between the Isle of Wight and the mainland on the south coast of England, stretching from Hurst Spit to Hill Head and on the North Coast of the Isle of Wight from Yarmouth to Whitecliff Bay. It is composed of extensive intertidal mudflats and sandbanks, saltmarsh, coastal lagoons, shingle banks and grazing marsh. The estuarine sediments support rich populations of invertebrates which provide an important food source for overwintering birds. The shingle banks also provide important breeding ground for terns. This also supports approximately 10% of the world's dark-bellied brent geese. This species will use the mudflats and grazing marsh to feed but also make use of farmland and grassland outside of the SPA boundaries.

410. The Solent Maritime SAC is a unique suite of functionally linked estuaries and dynamic marine and estuarine habitats, which result from the Solent and its inlets being unique in Britain and Europe for their unusual tidal regime, including double tides and long periods of tidal stand at high and low tide. Within it there are extensive areas of intertidal mudflats and sandflats, often supporting eelgrass (*Zostera* species), subtidal sandbanks, saltmarsh and natural shoreline transitions such as drift line vegetation. The SAC is of particular interest as it is the only site to support all four species of cordgrass (*Spartina*) found in the UK, including the rare native small cordgrass (*Spartina maritima*). At the time of designation, the SAC also supported a population of the rare Desmoulin's whorl snail (*Vertigo moulinsiana*).

### **Habitats Regulations Assessment Implications of the Project**

411. S014, as part of the England Coast Path on the Isle of Wight, would increase access to this area for recreational activities, including by walkers and those accompanied by dogs, whose presence have the potential to affect the SPA and



Ramsar site and the SAC, as does disturbance by construction activities necessary for the physical establishment of the path and access management infrastructure. The qualifying features of these designated sites are:

- Breeding Terns (Common, Little, Roseate and Sandwich terns);
- Non-breeding waterbirds (Black-Tailed Godwit; Ringed Plover; Dark-Bellied Brent Geese; Teal; and water bird assemblage);
- Subtidal features (estuaries - subtidal coarse sediment, subtidal mixed sediment; subtidal sand, subtidal seagrass beds);
- Desmoulin's whorl snail, *Vertigo moulinsiana*;
- Coastal lagoons;
- Wetland plant and invertebrate assemblages;
- Intertidal habitats (estuaries - intertidal seagrass beds, intertidal sand and muddy sand, intertidal mud, intertidal mixed sediments, intertidal coarse sediment; *Salicornia* and other annuals colonising mud and sand; Atlantic salt meadows; *Spartina* swards);
- Vegetated shingle (Annual vegetation of drift lines; Perennial vegetation of stony banks); and
- Sand dunes (Shifting dunes along the shoreline with *Ammophila arenaria* – “White dunes”).

412. In 2020 Natural England (NE) undertook a shadow Habitats Regulation Assessment of the Isle of Wight proposals for the England Coast Path. It was revised and updated in response to additional information gathered after the Reports for IOW2 to IOW10 were published, and in response to objections and representations received during the consultation process on the published proposals. This latter, updated version was published in June 2022 and is the version referred to herein. Henceforth, it is referred to as the ‘sHRA’.

413. The sHRA provides the information to inform the Competent Authority’s appropriate assessment, in accordance with the assessment and review provisions of the Habitats Regulations. The sHRA is recorded separately in the suite of reports. It considered the potential impacts of the coastal access proposals on the designated sites identified above as well as others which are distant from S014, including likely significant effects.

414. Initial screening set out that as the plan or project is not either directly connected or necessary to the management of all of the European sites’ qualifying features, a Habitats Regulation Assessment was required. The overall Screening Decision found that the plan or project at large would be likely to, or may, have significant effects on some or all of the qualifying features of the European Sites alone in the absence of mitigation measures. Accordingly, the sHRA considered the potential for the project to give rise to Adverse Effects on the Integrity (AEol) of the designated sites.

415. The scope of the assessment is set out in Table 7 of the sHRA (pages 34 to 37) and identifies the sites and qualifying features for which significant effects, ‘alone’ or ‘in combination’, would be likely or could not be excluded beyond reasonable scientific doubt. ‘Key Locations’ are summarised in Table 9 of the sHRA (pages 57-58) with relevant information for S014 identified in the final row of the Table and discussed in ‘D3.2J – Medina Estuary’ (pages 123 to 133).

416. The assessment of AEoI for the project alone takes account of measures to avoid or reduce effects incorporated into the design of the access proposal, as set out in sub-section D3.3 (from page 155). The assessment, which covers the entire length of the England Coast Path proposed for the Isle of Wight, not just S014, identifies that the measures incorporated into the design of the scheme are sufficient to ensure no AEoI in light of the sites' conservation. Those where there is some residual risk of insignificant impacts are:
- Disturbance to feeding and roosting non-breeding waterbirds, 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 feature within the site.
417. In section D4 of the sHRA (from page 171), NE assessed the appreciable effects that are not themselves considered to be adverse alone to determine whether they could give rise to an AEoI in combination with other plans or projects. Insignificant and combinable effects likely to arise, and with the potential to act in-combination with the access proposals, were identified in relation to the implementation of coastal access on the Isle of Wight and on the mainland from Highcliffe to Calshot, from Calshot to Gosport and from Portsmouth to South Hayling. Nonetheless, as set out in Table 14 of the sHRA (pages 176 to 177) assessing the risk of in-combination effects, NE concluded that, in view of site conservation objectives, the access proposal (taking into account any incorporated avoidance and mitigation measures) would not have an adverse effect on the integrity of the relevant designated sites either alone or in combination with other plans and projects.
418. Part E of the sHRA sets out that NE is satisfied that the proposals to improve access to the English coast for the Isle of Wight, including S014, are fully compatible with the relevant European site conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Scheme. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the sHRA that the proposals would not adversely affect the integrity of the relevant European sites. It is noted that, if minded to modify the proposals, further assessment may be needed.

### **Nature Conservation Assessment**

419. Although not forming part of the sHRA, NE has also undertaken a Nature Conservation Assessment, which should be read alongside the sHRA. The Nature Conservation Assessment covers matters relating to Sites of Special Scientific Interest (SSSI), Marine Conservation Zones and undesignated but locally important sites and features, which are not already addressed in the sHRA. Relevant to S014 is the Medina Estuary SSSI, and possibly White tailed sea eagles and Red squirrels.
420. NE was satisfied that the proposals to improve access to the English coast around the Isle of Wight, including to S014, were fully compatible with its duty to

further the conservation and enhancement of the notified features of Medina Estuary SSSI consistent with the proper exercise of their functions.

421. In respect to the White tailed sea eagle and Red squirrels, NE concludes that the appropriate balance has been struck between its conservation and access objectives, duties and purposes.

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

**by [redacted] BSc(Hons) DipTP DMS MA MRTPI**

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

**Date 1 July 2024**

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Marine and Coastal Access Act 2009

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Relating to The Medina

**Objection Reference: MCA/IOW/11**

**The Medina**

- On 18 March 2020 Natural England submitted Coastal Access Reports to the Secretary of State for Environment, Food and Rural Affairs setting out proposals for improved access to the coast on the Isle of Wight 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.
- The objections concern Natural England's Report IOW 10 for The Medina. The land in the Report to which the objection relates is specifically route section IOW-10-S070-FP, as shown on Map IOW 10f.
- The objection is made under paragraphs 3(3)(c), 3(3)(e) and 3(3)(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 IOW 10, in respect to the trail section IOW-10-S070-FP, do not fail to strike a fair balance in respect to the objections considered herein.

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**Preliminary Matters**

422. On 18 March 2020 Natural England (NE) submitted Coastal Access Reports to the Secretary of State setting out proposals for improved access to the coast on the Isle of Wight. The period for making formal representations and objections to the reports closed on 13 May 2020. I have been appointed to report to the Secretary of State on the objections.
423. There are other admissible objections to the Reports concerning improved access to the coast on the Isle of Wight. Although some of these other objections also relate to Report IOW 10, they concern different route sections and, as such I have considered it expedient to address them separately in other reports to the Secretary of State.
424. I conducted a site inspection on 17 April 2024. I was accompanied by representatives from NE and from Isle of Wight Council (IoWC). It is understood that the objector, [redacted], has passed away and that his son James Rowell has adopted the objection. Although he was advised of the site visit, [redacted] did not attend. The site visit was conducted from a public footpath that currently runs along the proposed route, from which I was able to see all that I needed to see.

**Main Issues**

425. The coastal access duty arises under section 296 of the Marine and Coastal Access Act 2009 (2009 Act) and requires NE and the Secretary of State to exercise their relevant functions to secure two objectives.
426. The first objective is to secure a route for the whole of the English coast which:
- (k) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
  - (l) (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 2009 Act as the English coastal route and is now known as the King Charles III England Coast Path. For ease of reference, it is referred to as 'the trail' or 'the England Coast Path' in this report.

427. The second objective is that, in association with the England Coast Path, 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 coastal route or otherwise. This is referred to as the coastal margin.
428. Section 297 of the 2009 Act provides that in discharging the coastal access duty NE and the Secretary of State must have regard to:
- (p) The safety and convenience of those using the trail,
  - (q) The desirability of that route adhering to the periphery of the coast and providing views of the sea, and
  - (r) The desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
429. 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.
430. Section 300 of the 2009 Act provides that the coast includes the coast of any island other than an excluded island. An island is excluded if it is not accessible; that is, that it is not possible to walk to it from the mainland. The Secretary of State may include other islands by order, if satisfied that their coasts are long enough to provide a long-distance walk. That is the case with the Isle of Wight.
431. Section 301 of the 2009 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.
432. NE's Approved Scheme 2013, as approved by the Secretary of State on 9 July 2013, (the Scheme) is the methodology for implementation of the England Coast Path and associated coastal margin. It forms the basis of the proposals of NE within the Report. Section 7.16 of the Scheme concerns islands and states at 7.16.5 that the trail "will broadly follow the periphery of any island which it includes, following the same principles as for the mainland coast. People will normally be able to choose when they arrive at the bridge or causeway whether to use the trail to reach the island or to continue along the mainland coast." In the case of the Isle of Wight, access to the island is via seacraft or aircraft.
433. My role is to consider whether or not a fair balance has been struck. I shall make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

434. Forming part of the England Coast Path for the Isle of Wight, the length of path under consideration is contained within Report IOW 10: The Medina and includes sections of path as shown on Map IOW 10f Medina Park to Cowes Power Station. The objection relates to route IOW-10-S070-FP, henceforth referred to as 'S070'.

435. S070 would follow an existing public footpath. The adjoining proposed trail sections to each side of S070 are also existing public footpath. These sections form part of the trail between Folly Works and Saunders Way, which is proposed to be aligned along a wider existing Public Right of Way, landward of fields used as high tide roosts. This approach is intended to reduce the risk of disturbance to feeding birds on high tide roosts and feeding close to the shoreline.
436. Two new kissing gates are proposed:
- At the transition between S070 and IOW-10-S071 FP; and
  - Part way along S070 in the vicinity of an existing boardwalk, which is proposed to be retained.
437. Parts of the Solent and Southampton Water Special Protection Area (the SPA) and Ramsar, the Solent Maritime Special Area of Conservation (the SAC) and the Medina Estuary Site of Special Scientific Interest (the SSSI) are located a little to the west of S070. The trail here is located outside of and some distance away from the nearest part of the Isle of Wight National Landscape, formerly known as the Area of Outstanding Natural Beauty.
438. No roll-back is proposed associated with S070.
439. Access to the land in the coastal margin adjacent to route sections IOW-10-S001 to IOW-10-S095, including S070, is to be excluded all year-round by direction under section 25A of the Countryside and Rights of Way Act 2000 (2000 Act). This is because it is mudflat and saltmarsh that is unsuitable for public access as it does not provide a safe walking surface and is subject to frequent tidal inundation. The exclusion does not affect the route itself and will have no legal effect on land where coastal access rights do not apply.

## **The Objections**

440. The objection states that the route across the holding starts half a mile from the river and crosses two of its fields, which are permanent grassland. It adds that because the land, which amounts to roughly two-thirds of the holding, is farmed to produce hay and for sheep, it is not right that the public should have a right of access to it. The objection goes on to say that the land would become nothing less than a recreation ground for the public over which there would be no control and that this abrogates basic justice. Finally, it says that the farmland here should be made exempt from public access and not classified as 'spreading room'.

## **Representations**

441. The Ramblers state that they are very pleased to see The Medina estuary included in the England Coast Path but add that they think that the route can be improved. They state that an optimal route at S070 would be to follow the riverside and along the field edges to join an inlet north of the "SARO site and on to CS24". The Ramblers go on to say that, while there might be some concerns about nesting birds, their preferred route has the advantage of avoiding a road route and note that mitigation measures may be needed.
442. IoWC says, in general terms, that there was overwhelming and unprecedented local support for the inclusion of the Medina estuary in the

scheme, such that it fully supports its inclusion which will add significant value not only for the England Coast Path itself but for the Isle of Wight as a whole. It adds that the Medina is a significant body of water being wide and approximately 4 miles in length between Cowes/East Cowes and Newport and will therefore provide the public with an additional 8 miles of coast to enjoy. IoWC goes on to say that walking along the east and west banks provides a diverse range of environments and experiences from wonderful coastal scenery in rural areas to the industrial/marine uses (both past and present) in Cowes and East Cowes along with the historic interest of Newport Harbour.

443. Additionally, IoWC says that a number of attractions, facilities, businesses and organisations also exist along the route. It adds that the route would also take in Newport, being the capital town of the Island with all its facilities, and most importantly, transport links, such that the recreational benefit and enjoyment for the public will be very great.
444. IoWC considers that the chain ferry connecting the towns of Cowes and East Cowes at the mouth of the river does provide a pedestrian link but this is not a free service and is not available 24 hours a day, seven days a week. It adds that the river at this point would constitute the one and only physical interruption in the trail on the Island, which would be disappointing. IoWC, therefore, fully supports NE's discretion to extend the trail as far as the first bridge, which in this case is at Newport Quay.
445. Not including the Medina estuary in the scheme would, in IoWC's view, be a huge loss of public enjoyment and recreation. The Medina is not only a significant feature of the Island, it adds, but also an important part of its history being once the main route for deliveries and exports to/from Newport. IoWC maintains that it is these historic and maritime interests along with the beautiful scenery and rural experiences which makes its inclusion a necessity and in full compliance with the aims of the Marine and Coastal Access Act 2009.
446. More specifically, although IoWC had made details comments on ground conditions around the junction of IOW-10-S069 and S070 (Footbridge northeast of Folly Works), it is understood that that IoWC has withdrawn this part of its representation after receiving confirmation from NE that all reasonable works to bring the path up to standard will be funded at time of implementation.
447. Bird Aware Solent / Solent Recreation Mitigation Partnership (SRMP) has commented on Report IOW 10 at large, without specific reference to S070. It welcomes the concept of the England Coast Path as something of value to local people and residents but has concerns that it would like to be addressed and refers to its mitigation programme, identified in its Strategy as formally adopted by PUSH in December 2017. It raises two specific areas of concern; increasing visitor numbers and mapping of spreading zones.
448. SRMP says that a rise in the number of visitors to sensitive parts of the coast will cause increased disturbance to the overwintering birds that journey to SPAs, many of which are red and amber listed. Whilst the SRMP employs a range of measures to mitigate against disturbance from increasing housing numbers, it does not have the resources to deal with any further elevation in visitor numbers as a result of the England Coast Path. It adds, therefore, there is a real concern of a conflict between these two initiatives and that any rise in visitor numbers has

the potential to diminish the effectiveness of the SRMP measures. SRMP also states that the trail will need its own mitigation package to protect against the impact of increased visitor numbers it creates.

449. Furthermore, SRMP is concerned regarding Ordnance Survey's plans to depict the 'spreading zone' as a magenta wash, making no exceptions for excepted areas as this may lead to users of the trail straying into excepted intertidal areas. It adds that these can be extremely large, support fragile habitats and be a huge food resource for birds and other species. Increased footfall through these areas would, in SRMP's view, cause great damage to these fragile habitats and enormous disturbance to vulnerable wintering bird populations. Although exceptions to the spreading zone will be sign posted on the ground and listed on NE's website, SRMP says that enforcement would seem to fall to the landowner/occupier. It adds that if it is not possible to depict the spreading zone accurately on Ordnance Survey (OS) maps, SRMP would urge NE to reconsider its inclusion on the map entirely.
450. The Isle of Wight Local Access Forum comments that due to circumstances, chiefly associated with the pandemic at the time of the consultation, it was unable to coordinate a response on behalf of the Forum. It adds, though, it has consistently been able to put its views across during the pre-consultation phase and has encouraged Forum members to comment at all stages.
451. The Open Spaces Society fully supports the Ramblers representations in respect to Report IOW 10.
452. Disabled Ramblers comment that modern mobility vehicles can be very large, and many man-made barriers that will allow a manual wheelchair through are not large enough for all-terrain mobility vehicles, or for 'pavement' scooters, and prevent legitimate access even though users of mobility vehicles have the same rights of access that walkers do. They add that man-made structures along the trail should not be a barrier to access for users of mobility vehicles and also acknowledge the replacement of stiles with gates as a positive step.
453. Disabled Ramblers, though, request that the proposed measures go further by ensuring that all new structures allow convenient access to mobility vehicles as standard, complying with BS5709: 2018 Gaps Gates and Stiles. They also request that all existing structures on the trail are removed and replaced if they prevent access to users of mobility vehicles. They add that the suitability of all structures should be considered on the basis that a person with reduced mobility will operate the structure themselves alone, seated on their mobility vehicle.
454. Disabled Ramblers also request compliance with the Equality Act 2010 (and the Public Sector Equality Duty within this act) and with the 2000 Act, and adherence to the advice from Disabled Ramblers as set out in the Man-made Barriers and Least Restrictive Access document [copy at Annex 5 to NE's *Representations on IOW 10: The Medina and Natural England's comments* document, April 2023 (NE's Comments on Representations)].
455. Southern Gas states that NE should be aware that groundworks that take place in the vicinity of gas infrastructure could result in personal injury or damage to the gas infrastructure. As such NE will be expected to consult with Southern Gas in relation to said points of interaction and any groundworks that might be

required. It adds that it has provided a bundle of plans that show the locations of the relevant infrastructure situated on or within 50m of the trail.

456. [redacted] of Cowes Town Council has expressed his awareness of the issues surrounding the inclusion of the Medina and gives his full support for the route.
457. Alexander Lawson fully supports the England Coast Path objectives and expresses support for and necessity of a 'Medina greenway'. He also proposes that the route between S070 and IOW-10-S074 is aligned along existing field boundaries and made more accessible for cyclists. In his view this would also prevent the need to align the path through the field at S070, whilst also avoiding disturbance to protected bird species.
458. The Solent Protection Society supports the inclusion of the Medina within the proposals and the restriction of access to intertidal areas under the section 25A direction. It also proposes a new route aligned along field boundaries north of the boardwalk and kissing gate to join Saunders Way at S074 to create a route that is closer to the Medina and avoid Beatrice Avenue.
459. [redacted] objections to the alignment of the trail and the identification and management of spreading room on the basis that, in his view, it does not properly consider nature conservation issues and, specifically, it is incompatible with statutory obligations under the Habitats Regulations. His representation includes a formal complaint as to the adequacy of the Habitats Regulation Assessment and the process by which it was drafted. His representation and the associated complaint correspondence are contained within Annexes 7 and 8 to NE's Comments on Representations. I would note that these all appear to predate NE's updated shadow Habitats Regulation Assessment for the Isle of Wight trail proposals produced in response to objections and representations, as published in June 2022.
460. NE has provided comprehensive responses to each of the representations. These are set out in NE's Comments on Representations.

### **Natural England's Response to the Objections**

461. NE advised that it considered aligning the route closer to the coast (after the diversion inland around the industrial site at Folly Lane), following along the western edge of the fields adjacent to the Medina. This would have reduced the amount of coastal margin. NE says, however, that the environmental sensitivities (disturbance in the wintering season to feeding or roosting birds on fields, and those feeding on intertidal habitat close to the shoreline) meant that it was unable to do so, as both the coastline and some of the adjacent fields are supporting habitat for a variety of waterbirds associated with the SPA, including dark-bellied brent geese, lapwings and curlew. NE adds that there was also no scope for a direct onward route to East Cowes as Cowes Power Station is excepted land.
462. Instead, the proposed route follows the Public Right of Way to St Mildred's Church. NE says that evidence gathered on site and from discussion with the IoWC confirms this is a popular and well used route and that the landowner is used to access across this field.



463. NE states that it understands the concerns of the landowner here but, given the gradient of the land and that access to and views of the Medina are somewhat restricted by field boundaries, trees, and hedges, it is confident that the vast majority of people will focus on the onward route rather than seeking to access the coastal margin in this location. It adds that there is no scope to continue north on to East Cowes along the shoreline due to excepted land (in this case arable fields and a power station) and it is only a short walk south on to the Folly, where the route returns to the sea.
464. The Scheme, NE states, addresses concerns over disturbance to livestock (and in particular sheep) at section 8.4.2 where it states that several national provisions also help to reduce the potential for disturbance significantly:
- It is an offence under the Dogs (Protection of Livestock) Act 1953 to allow dogs to attack or chase livestock; and
  - On land with coastal access rights, people are required to keep their dogs under effective control. This includes a requirement to keep dogs on short leads in the vicinity of livestock.
465. NE goes on to say that where people follow predictable routes, as would be the case here with the existing public footpath, sheep habituate more easily to the presence of visitors. It adds that clear way-marking can be used to encourage visitors to use the trail. NE confirms that it would be happy to ensure suitable signage is in place for the public to reinforce those messages.
466. For the above reasons NE says that it does not feel that a direction to exclude access is required here.

### **Analysis and Conclusion**

467. Given the proximity of the SPA, SAC and SSSI and the comments of NE regarding the sensitivity of the associated habitat, there are good biodiversity based reasons not to align the trail closer to the Medina here. The existing public footpath where S070 would run and its use appears to sit comfortably with the agricultural use of the fields it crosses.
468. There are good, elevated views of estuary and coast from the existing footpath such that users of the trail here are unlikely to be drawn down, closer to the shore, particularly as access is somewhat restricted by existing field boundaries. Consequently, the significant majority of trail users are likely to be focussed on making progress along the designated route, which would be clearly waymarked and easy to follow, rather than make significant use of the coastal margin here. In any event, there are no substantiated reasons to believe that use of the coastal margin here would give rise to any significant detrimental effects in the terms suggested by the objection.
469. Although not a matter raised by the objector, the depiction of coastal margin on OS mapping has been raised within some of the representations. How coastal margin is to be mapped on the OS maps does not form part of its proposals – it was a decision taking by other parties. The depiction of the coastal margin on OS maps, via a magenta wash, is simply a depiction of the status of the land, rather than a depiction of ‘access land’ as such. It is evidently impractical to omit the magenta wash from the assorted areas of excepted land within the coastal margin. Moreover, the depiction of coastal margin on OS

digital and paper products with a magenta wash comes with a clear explanation in the map's key. Consequently, the matter is likely to be unambiguous for the most, if not all, OS users.

470. I also note, bearing in mind the representations of Disabled Ramblers, that kissing gates are proposed here. Ideally a less restrictive option would be employed. However, given the fields in question are used for grazing sheep, their proposed use here is considered to be justified.
471. For the foregoing reasons, therefore, the proposed section S070 of the England Coast Path would be unlikely to have any significant detrimental effects on farming and land management. Moreover, an alternative route closer to the Medina would be unacceptable due to the likely harmful biodiversity effects. Furthermore, as the trail here would be located some distance from the Isle of Wight National Landscape and use an existing pedestrian route, these proposals would accord with the statutory duty to seek to further the purposes of this National Landscape.

### **Recommendation**

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

*[redacted]*

APPOINTED PERSON

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

### **Introduction**

473. The Conservation of Habitats and Species Regulations 2017 (as amended) requires that where a plan or project is likely to have a significant effect on a European site, such as the Solent and Southampton Water Special Protection Area (SPA), either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an appropriate assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.

### **Project Location**

474. The proposed section of path in question forms part of the England Coast Path on the Isle of Wight. In terms of the objections considered here, IOW-10-S070 is the relevant section, henceforth referred to 'S070', as shown on Map IOW 10f. S070 is in proximity to the Solent and Southampton SPA and Ramsar site (the SPA and Ramsar site) as well as to the Solent Maritime Special Area of Conservation (the SAC).

475. The SPA and Ramsar site at large is one of the only major sheltered channels in Europe, lying between the Isle of Wight and the mainland on the south coast of England, stretching from Hurst Spit to Hill Head and on the North Coast of the Isle of Wight from Yarmouth to Whitecliff Bay. It is composed of extensive intertidal mudflats and sandbanks, saltmarsh, coastal lagoons, shingle banks and grazing marsh. The estuarine sediments support rich populations of invertebrates which provide an important food source for overwintering birds. The shingle banks also provide important breeding ground for terns. This also supports approximately 10% of the world's dark-bellied brent geese. This species will use the mudflats and grazing marsh to feed but also make use of farmland and grassland outside of the SPA boundaries.

476. The Solent Maritime SAC is a unique suite of functionally linked estuaries and dynamic marine and estuarine habitats, which result from the Solent and its inlets being unique in Britain and Europe for their unusual tidal regime, including double tides and long periods of tidal stand at high and low tide. Within it there are extensive areas of intertidal mudflats and sandflats, often supporting eelgrass (*Zostera* species), subtidal sandbanks, saltmarsh and natural shoreline transitions such as drift line vegetation. The SAC is of particular interest as it is the only site to support all four species of cordgrass (*Spartina*) found in the UK, including the rare native small cordgrass (*Spartina maritima*). At the time of designation, the SAC also supported a population of the rare Desmoulin's whorl snail (*Vertigo moulinsiana*).

### **Habitats Regulations Assessment Implications of the Project**

477. S070, as part of the England Coast Path on the Isle of Wight, would increase access to this area for recreational activities, including by walkers and those accompanied by dogs, whose presence have the potential to affect the SPA and

Ramsar site and the SAC, as does disturbance by construction activities necessary for the physical establishment of the path and access management infrastructure. The qualifying features of these designated sites are:

- Breeding Terns (Common, Little, Roseate and Sandwich terns);
- Non-breeding waterbirds (Black-Tailed Godwit; Ringed Plover; Dark-Bellied Brent Geese; Teal; and water bird assemblage);
- Subtidal features (estuaries - subtidal coarse sediment, subtidal mixed sediment; subtidal sand, subtidal seagrass beds);
- Desmoulin's whorl snail, *Vertigo moulinsiana*;
- Coastal lagoons;
- Wetland plant and invertebrate assemblages;
- Intertidal habitats (estuaries - intertidal seagrass beds, intertidal sand and muddy sand, intertidal mud, intertidal mixed sediments, intertidal coarse sediment; *Salicornia* and other annuals colonising mud and sand; Atlantic salt meadows; *Spartina* swards);
- Vegetated shingle (Annual vegetation of drift lines; Perennial vegetation of stony banks); and
- Sand dunes (Shifting dunes along the shoreline with *Ammophila arenaria* – “White dunes”).

478. In 2020 Natural England (NE) undertook a shadow Habitats Regulation Assessment of the Isle of Wight proposals for the England Coast Path. It was revised and updated in response to additional information gathered after the Reports for IOW2 to IOW10 were published, and in response to objections and representations received during the consultation process on the published proposals. This latter, updated version was published in June 2022 and is the version referred to herein. Henceforth, it is referred to as the ‘sHRA’.

479. The sHRA provides the information to inform the Competent Authority’s appropriate assessment, in accordance with the assessment and review provisions of the Habitats Regulations. The sHRA is recorded separately in the suite of reports. It considered the potential impacts of the coastal access proposals on the designated sites identified above as well as others which are distant from S070, including likely significant effects.

480. Initial screening set out that as the plan or project is not either directly connected or necessary to the management of all of the European sites’ qualifying features, a Habitats Regulation Assessment was required. The overall Screening Decision found that the plan or project at large would be likely to, or may, have significant effects on some or all of the qualifying features of the European Sites alone in the absence of mitigation measures. Accordingly, the sHRA considered the potential for the project to give rise to Adverse Effects on the Integrity (AEol) of the designated sites.

481. The scope of the assessment is set out in Table 7 of the sHRA (pages 34 to 37) and identifies the sites and qualifying features for which significant effects, ‘alone’ or ‘in combination’, would be likely or could not be excluded beyond reasonable scientific doubt. ‘Key Locations’ are summarised in Table 9 of the sHRA (pages 57-58) with relevant information for S070 identified in the final row of the Table and discussed in ‘D3.2J – Medina Estuary’ (pages 123 to 133).

482. The assessment of AEoI for the project alone takes account of measures to avoid or reduce effects incorporated into the design of the access proposal, as set out in sub-section D3.3 (from page 155). The assessment, which covers the entire length of the England Coast Path proposed for the Isle of Wight, not just S070, identifies that the measures incorporated into the design of the scheme are sufficient to ensure no AEoI in light of the sites' conservation. Those where there is some residual risk of insignificant impacts are:

- Disturbance to feeding and roosting non-breeding waterbirds, 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 feature within the site.

483. In section D4 of the sHRA (from page 171), NE assessed the appreciable effects that are not themselves considered to be adverse alone to determine whether they could give rise to an AEoI in combination with other plans or projects. Insignificant and combinable effects likely to arise, and with the potential to act in-combination with the access proposals, were identified in relation to the implementation of coastal access on the Isle of Wight and on the mainland from Highcliffe to Calshot, from Calshot to Gosport and from Portsmouth to South Hayling. Nonetheless, as set out in Table 14 of the sHRA (pages 176 to 177) assessing the risk of in-combination effects, NE concluded that, in view of site conservation objectives, the access proposal (taking into account any incorporated avoidance and mitigation measures) would not have an adverse effect on the integrity of the relevant designated sites either alone or in combination with other plans and projects.

484. Part E of the sHRA sets out that NE is satisfied that the proposals to improve access to the English coast for the Isle of Wight, including S070, are fully compatible with the relevant European site conservation objectives. NE's general approach to ensuring the protection of sensitive nature conservation features is set out in section 4.9 of the Scheme. To ensure appropriate separation of duties within NE, the assessment conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the sHRA that the proposals would not adversely affect the integrity of the relevant European sites. It is noted that, if minded to modify the proposals, further assessment may be needed.

### **Nature Conservation Assessment**

485. Although not forming part of the sHRA, NE has also undertaken a Nature Conservation Assessment, which should be read alongside the sHRA. The Nature Conservation Assessment covers matters relating to Sites of Special Scientific Interest (SSSI), Marine Conservation Zones and undesignated but locally important sites and features, which are not already addressed in the sHRA. Relevant to S070 is the Medina Estuary SSSI, and possibly White tailed sea eagles.

486. NE was satisfied that the proposals to improve access to the English coast around the Isle of Wight, including to S070, were fully compatible with its duty to



further the conservation and enhancement of the notified features of the Medina Estuary SSSI consistent with the proper exercise of their functions.

487. In respect to the White tailed sea eagle, NE concludes that the appropriate balance has been struck between its conservation and access objectives, duties and purposes.