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

by [redacted] BA MSc MIPROW

A person appointed by the Secretary of State for Environment, Food and Rural Affairs

Date

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Marine and Coastal Access Act 2009

Objection by Holker Estates

Objection by [redacted]

Regarding Coastal Access Proposals by Natural England

Regarding Silecroft to Silverdale

Report SCS 5 Greenodd Footbridge to Kents Bank

SCS-5-S001 to SCS-5-S038, SCS-5-S046 and SCS-5-S047, SCS-5-S063 to SCS-5-S065, SCS-5-S069 and SCS-5-S070, SCS-5-S072, SCS-5-S074 to SCS-5-S077, SCS-5-S081 to SCS-5-S086 and SCS-5-OA006 to SCS-5-OA010

Site visits made on 29 June 2021

File Ref: MCA/SCS5/01 and 02

## **Objection Reference: MCA/SCS5/01 and 02**

### **Land comprising part of Holker Estate**

- On 8 January 2020 Natural England ('NE') submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silecroft and Silverdale. The period for making formal representations and objections to the reports closed on 4 March 2020.
- There are 3 admissible objections to report SCS5. Two of those objections relate to the same parcels of land and it is appropriate that they are considered in the same report. The third admissible objection is the subject of a separate report.
- Both objections referred to in this report are dated 3 March 2020 and are made under paragraphs 3(3)(a), (c), (d), (e) and (f) of Schedule 1A to the National Parks and Access to the Countryside Act 1949 on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objections.
- In addition to the objections, five representations were made in relation to the SCS5 report. Of these representations, those made on behalf of the Ramblers' (R4), the Open Spaces Society (R5) and United Utilities (R2) refer specifically to those sections subject to the objections.
- I carried out an inspection of those parts of the proposed line at issue accompanied by the objectors, representatives of NE, and a representative of Cumbria County Council.

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

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### **Procedural and Preliminary Matters**

1. I have been appointed to report to the Secretary of State on objections made to report SCS5. This report includes the gist of submissions made by the objectors and those making representations, the gist of the responses made by NE and my conclusions and recommendations.
2. In total, 16 separate grounds of objection were raised by the two objecting parties. Of these objections 9 – 16 (see below) were common between the two objectors; for brevity, these common objections have been considered together.

### **Main Issues**

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

4. The first objective is that there is a route ('the trail') 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.
5. The second objective is that, in association with the trail, a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the trail or otherwise. This is referred to as the coastal margin.
6. 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.
7. 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.
8. NE's Approved Scheme 2013 ('the Scheme') is the methodology for implementation of the trail and associated coastal margin and sets out the approach NE must take when discharging the coastal access duty. It forms the basis of the proposals of NE within the Report.
9. My role is to determine whether the proposals set out in NE's Report fail to strike a fair balance as a result of the matters specified in the objection. I shall set out that determination and make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

10. The trail, subject to the SCS5 report, runs from Greenodd Footbridge (SD 3163 8257) to Kents Bank (SD 3969 7526) as shown on maps SCS 5a to SCS 5l (points SCS-5-S001 to SCS-5-S092). The trail generally follows the coastline quite closely and maintains good views of the sea and estuary.
11. Four new sections of path are proposed: between Roudsea Wood and Mosses NNR to Low Frith; south of Old Park to Crook Wheel, Cark; Cark airfield to Holy Well Lane; and Allithwaite water treatment works to Kirkhead Road, Kents Bank. These proposed new sections are the subject of the objections considered in this report.

12. The proposed trail follows the line of the former Cumbria Coastal Way between Sand Gate Farm and West Plain Farm and for short sections from Holy Well Lane around Wyke Farm to Allithwaite water treatment works but departs from this route in other places to afford better views of the coast.

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

13. Holker Estates (the Estate) made 16 separate objections to the Report. Fourteen of those objections are site specific, whereas the two other objections relate to the discretion exercised by NE in pursuing the establishment of a trail along the estuary of the Leven. Objections 9 – 16 were repeated by [redacted] ('the Tenant') in his objection. The gist of these objections is set out below.
14. Objection 1: All the land affected by Report 5 lies upstream of the seaward limit of the estuarial waters; the proposed access is reliant upon the exercise by NE of its discretion under section 301 of the 2009 Act. For the proposed route between Cark and Greenodd Footbridge, recreational benefit cannot be delivered safely or without a detrimental impact upon wildlife, farming activity and land management. Consequently, a fair balance is not struck.
15. It is not considered that an alternative route between Cark and Greenodd Footbridge exists which would strike a fair balance. In such circumstances, the trail should stop at Cark with trail users catching a train to Ulverston to continue a journey round the coast.
16. In the alternative, the trail should not extend further upstream from SCS-5-S039 on the eastern side of the Leven estuary as the Byway Open to All Traffic between Cark and Canal Foot is the first '*public foot crossing*' (section 301 of the 2009 Act) of the Leven as it provides a '*right of access by which the public are able to cross the river on foot*'. The BOAT is therefore the level limit of NE's discretionary powers under section 301.
17. The proposed sections of the trail SCS-5-S001 to SCS-5-S038 should be removed and the trail only extend up the east side of the Leven estuary as far as Cark.
18. Objection 2: The inclusion of sections SCS-5-S001 to SCS-5-S038 fails to strike a fair balance, taking into account the specific criteria relating to estuaries. The railway between Cark and Ulverston sits on a raised embankment which prevents views of the sea from the north side of the railway. The land to the north of the railway is estuarine rather than coastal. The topography of the land makes public access unsafe or impractical requiring significant detours inland north of the railway and west of Roudsea Wood.
19. The recreational benefit of SCS-5-S001 to SCS-5-S038 is extremely limited. For around 57% of this section of the trail there is no view of the sea. Furthermore, the exclusions and restrictions proposed means there is very little land in the coastal margin where access will be

permitted. Those two areas where there will be significant spreading room already benefit from public access courtesy of the permission of the landowner.

20. The permitted access at Mearness Farm was created as part of an environmental stewardship scheme. As part of the proposed trail, that land will not be eligible for funding under any new stewardship scheme and may impact upon the viability of the farm, potentially reducing the number of rural jobs.
21. The proposal would have significant and detrimental impacts upon wildlife found in European designated sites. Morecambe Bay supports around 200,000 birds and is one of the most important areas in the UK for the range of habitats and bird interest. The arable fields along the east side of the Leven are also used by large numbers of waders and other wildfowl; NE has not undertaken any wintering bird surveys on this land whilst preparing its proposals. It is believed that the Habitats Regulations Assessment ('HRA') undertaken is flawed.
22. The Morecambe Bay Wader Roost Study (November 2012) identifies disturbance from recreational walkers with dogs as the most common cause of disturbance at roost sites and has a negative impact upon assemblages and breeding success. This is an increasing problem in many areas of Morecambe Bay, and it is important that there are some places without public access. The proposals create public access where there currently is none; sections SCS-5-S018 to SCS-5-S028 are in a remote part of the Estate where the owner or employees rarely venture as a decision has been made to retain it in a natural state for wildlife. Although restrictions are proposed, people do not always adhere to them; disturbance to wildlife is inevitable.
23. There is considerable potential for conflict between walkers and land managers in those areas where the trail will pass through livestock fields. The result is likely to be that the Estate or its tenants will be unable to keep certain livestock in certain fields, leading to impact upon land management and farm livelihoods.
24. There are concerns about the use of SCS-5-S030 and SCS-5-S031 as part of the trail. The public road is narrow at this point with no footway and limited verges to act as refuges from oncoming traffic. Vehicular traffic is likely to increase as the public seeks to access the trail, and there are concerns that the road will be used as a car park by those wishing to use the trail. It is understood that modelling of current or projected traffic flows on the highway has not been undertaken and it is considered that NE has not properly assessed how the proposal will impact on the Estate and other road users.
25. There are a number of ways to cross the Leven estuary from Cark to join the trail on the west side of the estuary; the BOAT between Cark and Canal Foot; the train from Cark to Ulverston or the existing public rights of way network north from Cark to Haverthwaite and then west to Greenodd Footbridge.

26. This last route is around 12Km and no less convenient than the proposed trail along the estuary. It provides equivalent sea views and would not incur establishment costs and would have little direct impact upon the wildlife of the estuary. The route north then west would provide a viable and convenient link between Cark and Greenodd Footbridge. The BOAT would provide a link at low tide, even if it did not officially form part of the trail.
27. There is a prospect of a new footbridge being attached to the seaward side of the existing railway line; a route to this footbridge would commence south of the railway at Cark. Whilst this proposal may not come to fruition, the merits of such a route are a relevant consideration in deciding whether to stop the trail at a point downstream of Greenodd Footbridge and where that point should be.
28. Either of these possible routes would achieve continuity of the trail. When the impact of the current proposals on wildlife, land management and the public purse are properly assessed, the balance is in favour of stopping the trail at Cark.
29. Objection 3: Sections SCS-5-S018 to SCS-5-S029 will create new public access rights where there currently are none. This will have a detrimental impact on wildlife which has not been properly assessed by NE. The saltmarsh, cliffs and fields are used extensively by breeding, wintering and ground nesting birds as well as providing roosts for waders and wildfowl. Wildlife will inevitably be disturbed by walkers and dogs.
30. Stockproof fencing should be erected landward of the trail on sections SCS-5-S018 to SCS-5-S027 and should be erected or replaced on the seaward side. If this is not feasible, there should be a direction to keep dogs on leads along SCS-5-S020 to SCS-5-S025 in addition to what is already proposed to reduce disturbance to wildlife.
31. Objection 4: Sections SCS-5-S020 to SCS-5-S025 are routed along the top of a cliff in two long, narrow pasture fields containing species rich grassland grazed by cattle as part of a Higher-Level Stewardship ('HLS') scheme. Cattle calve outside in the fields and there is a risk of disturbance to livestock and calves and injury to the public if cows with calves are upset by the presence of path users. This risk is heightened at SCS-5-S022 where the trail crosses a narrow culvert where cattle are likely to gather. The proposal is likely to make it very difficult for the Estate to continue with the current management strategy and to meet the stewardship scheme requirements.
32. Stock proof fencing should be erected on the landward side of the trail along SCS-5-S020 to SCS-5-S025 with access gates as necessary along with a direction to keep dogs on leads at all times.
33. Objection 5: The optional alternative route SCS-5-AO006 to SCS-5-AO010 is unnecessary and will create land management issues in relation to the movement of livestock, disturbance to livestock and game birds. The alternative route is not necessary as there is sufficient

space for SCS-5-S026 and SCS-5-S017 to follow the edge of the arable field at the top of the cliff; section SCS-5-S028 is protected by a sea wall and trail users will be able to walk this section at all states of the tide.

34. The optional alternative route should be removed with SCS-5-S026 and SCS-5-A027 running at the edge of the field at the top of the cliff then through the field gate to join SCS-5-SA028. This modification would remove the need for an optional alternative and maintain access closer to the estuary.
35. Objection 6: Sections SCS-5-S035 and SCS-5-S036 pass through a long, narrow pasture which is used for livestock with dairy sheep being milked to produce sheep's cheese. The tenant is particularly concerned regarding disturbance to ewes and lambs from walkers and dogs which will be in close proximity to livestock. The proposals would make it difficult for the tenant to manage his business efficiently and profitably and may result in the loss of rural jobs.
36. Stockproof fencing should be erected along the landward side of the trail along sections SCS-05-S035 and SCS-5-S036. Whilst this will make the western end of the field very narrow this is the tenant farmer's preference to reduce the risk of disturbance to livestock. The fence should be 4m from the top of the ditch to allow access for machinery to clean out the ditch. Field gates will be required for access.
37. Objection 7: Section SCS-5-S037 runs along the southern edge of an arable field which supports hundreds of waders and other wildfowl in the winter months. The southern edge of the field is sown with a wild bird seed or pollen and nectar mix as part of the HLS scheme. There are concerns regarding disturbance to wildlife by pedestrians and their dogs.
38. A stock proof fence should be erected on the landward side of the trail to minimise disturbance to roosting and feeding birdlife; the fence should be 4m from the top of the ditch bank to enable the clearing of the ditch by machine.
39. Objection 8: The land west of the trail at SCS-5-S046 to SCS-5-S048 is saltmarsh and unsuitable for public access; its inclusion in the coastal margin presents a risk to public safety. In addition, allowing access to this saltmarsh increases the risk of disturbance to birds and may result in grazing sheep moving further into the estuary to avoid people and becoming stuck when the tide comes in.
40. There should be a long-term access exclusion on all the land immediately west of SCS-5-S046 to SCS-5-S048 as it is unsuitable for public access. If the criteria for exclusion under section 25A is not met, then a direction should be made on land management or nature conservation grounds to reduce the risk of disturbance to feeding and roosting birds and grazing sheep.
41. Objection 9: Sections SCS-5-S063 to SCS-5-S065 should have a stock-proof fence landward of the trail to prevent disturbance to livestock. It had been agreed with NE that the existing stock fence would be



replaced, and an additional fence erected on the seaward side of the trail to prevent people straying on to the saltmarsh so that the trail would run through a fenced corridor. If it was not practicable to fence SCS-5-S064 due to the need to access the ditch with machinery, there should be a direction to require dogs to be on a lead at all times.

42. Objection 10: Section SCS-5-S070 runs along the top of a cliff with the cliff face being in the coastal margin. The cliff face has flora of high conservation interest which could be damaged by trampling. Birds nesting on the cliffs could also be disturbed by pedestrians and their dogs. The cliffs are occasionally used by rock climbers with access being controlled and managed by the Estate. It could be very dangerous for the public to access the cliffs without an experienced climber.
43. Stockproof fencing should be erected or renewed on the seaward side of the trail to minimise disturbance to wildlife and ensure public safety. The cliff face should be excluded from the coastal margin on nature conservation grounds. Alternatively, if the grounds for such an exclusion were no longer relevant, an exclusion for land management would be appropriate to ensure that access to the cliff face can be managed as it is at present.
44. Objection 11: The field through which SCS-5-S-069, SCS-5-S070 and SCS-5-S074 is species rich limestone grassland which is required to be grazed by cattle. The Estate and the Tenant is concerned about disturbance to livestock, particularly from dogs. These sections of the trail should have a direction to keep dogs on leads at all times.
45. Objection 12: The Estate and the Tenant are concerned that the pasture field between SCS-5-S072 and SCS-65-S076 is within the coastal margin as it is used for cattle grazing including for young stock and cows and calves. If the public were to exercise access rights or seek a short cut, there would be a high risk to livestock and injury to people.
46. A direction should be made to exclude access rights from the pasture field to the east of SCS-5-S073 and south of SCS-5-S075 on land management grounds to reduce disturbance to livestock or injury to the public.
47. Objection 13: Section SCS-5-S074 joins section SCS-5-S075 at a point part way along the access to Humphrey Head Outdoor Centre and part way along Pigeon Cote Lane. This would require breaking through an existing boundary wall and the installation of steps onto the bridleway. This will not be convenient for people and will create conflict between walkers and users of the Outdoor Centre. This proposed route is unnecessary as Pigeon Cote Lane can be easily accessed from Holy Well Lane.
48. The trail should return to Holy Well Lane at the same point as SCS-5-S069 starts and then enter Pigeon Cote Lane from the road. Pigeon Cote Lane is an existing public bridleway and routing the trail along it would not incur any establishment costs.



49. Objection 14: Section SCS-5-S076 and SCS-5-S077 runs along the edge of a saltmarsh which provides a roost for birds on Morecambe Bay; there is a significant risk of disturbance to birds from walkers and their dogs. Sheep graze the marsh and disturbance from people and dogs could force sheep further into the estuary and leave them exposed to incoming tides with consequences for the livelihood of the tenant.
50. A direction requiring dogs to be on leads at all times should be made for these sections of the trail to reduce the risk of disturbance.
51. Objection 15: Sections SCS-5-S081 to SCS-5-S086 run through small pasture fields grazed by livestock with lambs and calves. There are also ground nesting birds in the rush pasture near the railway line. There is a risk of disturbance to livestock and wildlife, particularly if dogs are free to roam.
52. A direction that dogs should be on leads at all times along these sections is necessary to reduce the risk of disturbance to ground nesting birds and livestock.
53. Objection 16: Sections SCS-5-S084 and SCS-5-S085 utilise a narrow, enclosed path which is used for the movement of cattle on a regular basis. Such dual use will create management issues for the tenant farmer and there will be a risk of injury to the public from cattle. However, there does not appear to be any other suitable alternative route.

#### **Representations by the Ramblers Association (R4) and the Open Spaces Society (R5)**

54. Section SCS-5-S003 to SCS-5-S017: the proposed route is strongly opposed as it is difficult to walk where the ground is rocky and most people walk on the sands below. There is a proposed directive precluding access to the sands. The saltmarsh at SCS-5-S004 has two gullies up which the tide creeps and has the potential to trap walkers.
55. There is likely to be conflict between walkers, cyclists, and vehicles if SCS-5-S015 and SCS-5-S016 forms part of the trail as the narrow and undulating road has poor sight lines. The alternative routes considered at section 5.3.3 of the report would have a minimal impact upon ground flora; there are no records of rare or unusual species in these locations and the alternative route is one that is already used. SCS-5-S012 to SCS-5-S017 cannot be considered to be a coastal route and therefore does not satisfy the criteria to be part of the trail.
56. Section SCS-5-S026 to SCS-5-S028: This section is affected by the tide, and it is noted that NE has proposed an Optional Alternative route. Consideration should be given to placing SCS-5-S026 and SCS-5-S027 on the seaward edge of the adjacent fields.
57. Section SCS-5-S031 to SCS-5-S032: the proposed route is strongly objected to and a route closer to the coast should be considered. A route which is already in use should be considered; whilst seasonal closures

may be required, NE's suggested route would be available as an alternative.

58. SCS-5-S059 to SCS-5-S068: the proposed route is strongly objected to and a route along the embankment top is suggested in the alternative. Confinement between fences is unacceptable and particularly so where the view is of a caravan park; the route proposed by NE also ignores the existing route around Rougholme Point and the route along the road is one which presents a risk to pedestrians from vehicles.
59. SCS-5-S073 to SCS-5-S075: It is considered that the trail should be direct between SCS-5-S073 and SCS-5-S076; the field to the west of the Outdoor Centre is small with limited grass and consequently rarely used for stock grazing whilst the proposed route would run over land grazed by cattle for much of the year.

### **Representation by United Utilities (R1)**

60. The representation suggests a modification to the proposed route of SCS-5-S080 to SCS-5-S083 away from the access track to the west of the sewage works and suggests a more direct route across the field to link SCS-5-S080 directly to SCS-5-S083. The alternative route is suggested to protect site assets.

### **The response by Natural England to the objections**

61. Objection 1: NE believes that a fair balance has been struck whilst exercising its discretion to extend the proposed route upstream from Cark to Greenodd Footbridge. The analysis conducted in terms of the options in relation to the Leven estuary makes the case in supporting this decision. A route extending only as far as Cark on the eastern side of the estuary would create a very significant break of around 10Km in the continuity of the trail. No objections had been received to the proposal to extend the trail along the western side of the estuary and several representations have been received in support of the proposed route around the estuary.
62. NE contends that the interpretation placed upon section 301 by the objector is incorrect. The objector misquotes part of section 301, omitting the comma after the word 'access'. This comma was inserted by the Parliamentary draftsman to make clear that the phrase '*or a public right of access*' relates not to the river itself, but to the bridge or tunnel that is referred to earlier in the definition. The area within which NE may propose to exercise its estuary discretion is therefore the area between the seaward limit of estuarial waters and the first publicly accessible bridge or tunnel that enables the public to cross the river.
63. This would not prevent NE from proposing an earlier crossing of the river by some means other than the first publicly accessible bridge or tunnel if it made practical sense to do so. It is considered that the BOAT between Cark and Canal Foot does not provide a practical or sensible option for the trail users to follow; the BOAT is unavailable for use for significant periods each day due to tidal inundation and would not therefore satisfy

the criteria found at 4.4.2 of the Scheme which says that users should be able to follow the trail at all states of the tide.

64. Furthermore, the BOAT is too hazardous to form part of a National Trail due to the continuous shifting of river channels, the presence of quicksand and the rapid pace of incoming tides as set out in paragraph 5.3.3 of the Report.
65. Objection 2: It is acknowledged that the railway presents a barrier to what might otherwise have been a more direct route for the trail to follow and in closer proximity to the coast. However, this is not an unusual situation, particularly in Cumbria. Paragraph 4.5.4 of the Scheme recognises that inland detours may sometimes be unavoidable. Paragraphs 4.6.3 and 4.6.4 recognise that views of the coast may be unavoidably lost in some places due to land use and on low-lying coast. However, this disadvantage is outweighed by the advantage of a continuous trail that allows users to access further parts of the trail which are in closer proximity of the coast.
66. NE considers that recreational benefit should be considered in relation to the estuary as a whole. Whilst sections of the trail are not particularly close to the coast, nor provide views of it, the trail would provide interest as it passes through a variety of habitats and landforms. There are however parts of the proposed route which do provide views over the estuary, and those areas without views provide a link between sections which do offer such views. There is also a benefit to be had from the continuity of the trail as a whole.
67. It is acknowledged that payments under any existing agri-environment scheme would cease with the commencement of coastal access rights. However, the existing scheme at Mearness is due to expire imminently and it is not known whether access payments will form part of any new environmental land management scheme which may be introduced. It is not accepted that the trail will have an adverse impact upon livelihoods.
68. The published HRA and Nature Conservation Assessment ('NCA') explain the conclusions reached in relation to the potential impacts on protected sites and features and have guided the additional mitigation measures being put forward. Reliance is not placed on directions alone to restrict access, and signs to inform and guide trail users in respect of nature conservation and the importance of keeping dogs under control. A mix of these measures will manage the risks identified whilst still allowing trail users to interact with the natural environment.
69. Parts 8.2 and 8.4 of the Scheme explain the approach taken with regard to land grazed by cattle and sheep. It is recognised that any interaction between trail users and livestock can be minimised by trail alignment and other measures to minimise the impact on the way the land is managed.
70. The roads at issue are minor and single track. However, it is not agreed that aligning the trail on these roads presents any significant risk to pedestrians or other road users. In general, the trail is not aligned on

roads unless this is the only or best option. There is no reason to expect an influx of cars to the area in question arising from the proposals.

71. The proposals put forward are consistent with the Scheme and are preferable to the informal inland diversion suggested or to the suggested short cut across the sands between Cark and Canal Foot. Part 5 of the Overview sets out the reasoning behind the proposal for the Leven estuary (and the Duddon and Kent estuaries). The railway service between Cark and Ulverston is not convenient, although it, and the route across the Bay would be available to those following the trail, but it is not considered that either would be consistent with the provisions of the Scheme.
72. NE is aware of the aspiration to provide a new walkway on the side of the existing railway viaduct. The projected costs are very high, and there is little likelihood of the project succeeding. There is a good case for establishing a continuous walking route around the Leven estuary given that the overall recreational benefits would be considerable. It would not be appropriate to leave a considerable gap in the trail on the basis that a new walkway might become available at an unspecified point in the future.
73. Objection 3: The potential impact upon wildlife which would arise from the proposals is set out in the published HRA and NCA. NE does not consider that stock-proof fencing is required at this location for the reasons described; a proposal to install stock-proof fencing alongside the trail will only be made where NE cannot be confident that lower key management measures would be adequate. Proposals have been made that dogs should be kept on leads in certain areas, but practical experience suggests that compliance with such directions is greater when restrictions are used sparingly and appropriately. Furthermore, dogs are required to be kept on leads at all times in the vicinity of livestock.
74. Objection 4: NE believes that the proposals in relation to SCS-5-S020 to SCS-5-S025 are consistent with the approach set out in paragraph 8.2.12 of the Scheme. The trail would follow the seaward edge of the fields and would be clearly waymarked to guide and direct trail users.
75. Sections SCS-5-S020 and SCS-5-S025 are aligned at the edge of reasonably large inclosures, and in normal circumstances it would not be considered necessary to segregate trail users from livestock. However, the conservation grazing requirements and the presence of cattle and calves introduces additional complexities in relation to land management. Further discussions with the Estate and its tenant can be held to consider how to alleviate the concerns raised, which may include the possibility of additional fencing.
76. Sections SCS-5-S021 to SCS-5-S024 pass through much narrower areas of land and it is acknowledged that it would be difficult for walkers and livestock to avoid each other. It may be possible to address these concerns without creating significant barriers to land management by realignment of the trail landwards. The ownership and responsibility for

any additional fencing would pass to the landowner; no direction for dogs to be kept on leads is necessary as this is a national requirement where livestock are present in fields.

77. Objection 5: NE agrees with the suggestion made by the Estate that the trail should run at the seaward edge of the fields above the marsh. This potential alignment had been discounted as it was understood that a path on the seaward edge of the field would interfere with game shooting in and around these fields. The route proposed by the Estate would be preferable and remove the need for the proposed Optional Available Route.
78. Objection 6: There is no requirement for a direction to be made for dogs to be on leads on sections SCS-5-S035 and SCS-5-S036 as it is a national requirement for dogs to be kept on leads in the vicinity of livestock. For the majority of the field in question, there is a distance of perhaps 65m between the proposed trail and the inland field boundary, which is considered to be sufficient to allow the separation of walkers and livestock.
79. In general, NE does not recommend fencing between the trail and the bulk of a grazing enclosure as this would hinder grazing and other management within the fenced corridor. It would be possible for the landowner to fence the trail if that would give additional reassurance, but such action is not considered necessary for the entirety of these sections.
80. However, it is recognised that there is a pinch point at the westernmost end of this section where the trail would be approximately 9 metres from the landward field boundary. NE would agree to install a fenced corridor of approximately 150 metres from the westernmost end of the section to segregate trail users from livestock with gated access for walkers and farm machinery as a practical solution to the potential issues identified.
81. Objection 7: The HRA and NCA do not suggest that there is likely to be a significant risk of disturbance to protected species at this location; the coastal margin does not extend landward at this location and additional fencing is not required.
82. Objection 8: NE's proposals will only include directions to exclude or restrict access where there is evidence to show that such restrictions are necessary. With regard to SCS-5-S046 to SCS-5-S048 the saltmarsh is considered suitable for public access and the HRA and NCA did not identify a requirement to restrict access on nature conservation grounds; it is considered likely that walkers will follow the trail rather than access the saltmarsh. A direction to keep dogs on leads on SCS-5-S047 has been proposed, but a restriction across the whole of the saltmarsh could not be justified.
83. Objection 9: It was agreed that the existing post and wire fence on the seaward side of the trail would be replaced with a new fence 2m seaward of the ditch on the landward side of the embankment along

SCS-5-S063, and that gates would be replaced, and a fingerpost and information board would be installed at the junction of SCS-5-S064 with SCS-5-S063. Prior to establishment of the trail, further discussions would be needed with the Estate and Tenant to agree the exact design and layout of the required infrastructure.

84. It is not believed that any commitment was made to fence on both sides of the trail at this location, however NE would consider making reasonable adjustments to the intended fencing works to ensure that there was no significant impact on farming operations, where this accords with the guidance provided by the Scheme.
85. Objection 10: The sea cliffs at Humphrey Head are common features of the coastal landscape. It is not necessary to exclude visitors from sea cliffs on safety grounds; such features are obvious and trail users are expected to be responsible for their own safety.
86. To prevent disturbance to nesting birds found on the sea cliffs the British Mountaineering Council currently operate a voluntary restriction on climbing the sea cliffs between March and June; it is understood that such voluntary restrictions have been successful for a number of years. The HRA and NCA did not suggest that the proposal would pose a risk of disturbance to protected species which required further mitigation.
87. Objection 11: National restrictions require path users to keep their dogs on a lead when crossing fields grazed by livestock so a direction to that effect is neither necessary nor possible. However, advisory notices can be posted at access points to the fields at issue to remind path users of their obligations and responsibilities.
88. Objection 12: NE does not believe that trail users will seek to access the field between SCS-5-S072 and SCS-5-S076 as part of the coastal margin especially when it is being used by livestock for grazing. Even if trail users were to access the field occasionally, it seems unlikely to create an issue which would warrant further access restrictions. NE would be happy to discuss any issues that might arise following commencement and would be able to implement or support those management measures (including access restrictions) which might be necessary in the light of experience.
89. Objection 13: The suggested modification would require a greater degree of back tracking than we believe is necessary given the modest works proposed at this location. Neither Pigeon Cote Lane nor the access to the Outdoor Centre are likely to be busy in terms of vehicular traffic and there is unlikely to be any conflict between trail users and users of the public bridleway or access track.
90. Objection 14: National restrictions require dogs to be kept on leads at all times when in the vicinity of livestock; a direction to that effect is therefore not possible or necessary. NE has proposed to exclude coastal access rights from the majority of the coastal margin in this area on the grounds that the saltmarsh is unsuitable for public access. NE does not consider that further restrictions are necessary on nature conservation



grounds but would be prepared to address any issues which may arise following the commencement of new access rights.

91. Objection 15: National restrictions require dogs to be kept on leads at all times when in the vicinity of livestock; no further restriction is necessary or possible. However, advisory notices can be posted at access points to the fields at issue to remind path users of their obligations and responsibilities.
92. Objection 16: It is not unusual for path users to encounter livestock being driven along access tracks and lanes which are also public rights of way. Informal management techniques and the exercise of common sense should mean that it would be possible to avoid conflict arising between trail users and land managers.

### ***NE's responses to the representations***

#### ***Representation R4 and R5***

93. NE is grateful for the messages of support for parts of the proposals. The proposed route in the vicinity of Mearness follows a popular existing path before turning inland to avoid areas likely to be impacted by new rights of access. It is acknowledged that Mearness Point is susceptible to coastal change and that roll-back may need to be considered in the future.
94. It is also acknowledged that the route towards and through Roudsea Wood and Mosses NNR is not close to the coast or offer views of the sea. However, it was concluded that this was the best option in the light of the HRA. Whilst the principle of a new route in the open corridor under the power lines was accepted, the work required to bring the route up to the required standard was not deemed acceptable.
95. South of the woodland, the only part of the proposed route that is likely to be tidally affected is SDC-5-S026 to SDC-5-S027; elsewhere, the trail would sit on dry land above the foreshore. All options were explored for a route closer to the coast around Barker Scar but concluded none of these were viable for reasons including land management and habitual standing water.
96. The alignment of the main route east of Cark airfield was guided by the conclusions of the HRA and NCA, taking into account the risk of disturbance to key bird species on the marsh and around the seaward flanks of the flood embankments.
97. East of Humphrey Head Outdoor Centre, a main route alignment close to the coast was ruled out on land management and safety grounds, given the relatively small size of the grazing enclosures.

#### **Representation R1**

98. NE is confident that there will be no significant risk posed to United Utilities' operations or assets as the proposed route would run over an existing access track which is outside the of the sewage works compound perimeter fence.



## **Further information sought by the Inspector following the site visit**

### *SCS-5-S020 to SCS-5-S025*

99. It was evident that the Estate considered additional fencing was required to segregate trail users for livestock within the narrow fields through which the route would pass. NE acknowledges the complexities of conservation land management and would be open to further discussion with the Estate regarding the possibility of minor path realignment or the provisional of additional fencing. Advice was sought as to the outcome of any further discussions which have taken place.

### *SCS-5-S063 and SCS-5-S064*

100. The Estate was under the impression that agreement had been reached for a fenced corridor to be provided along SCS-5-S063 to prevent public access to the saltmarsh grazed by the tenant's livestock. Could NE provide clarification as to whether the existing drainage ditch and the proposed new fence would form the '*fenced, walked corridor*' shown on the indicative plan? Would the '*fenced, walked corridor*' only require a fence on the on the landward side of the embankment due to the existence of a drainage ditch which runs parallel to it?

### *SCS-5-S072 to SCS-5-S076*

101. The fields to the east of the trail would become coastal margin by default; an objection has been made regarding the potential impact of the exercise of coastal access rights on this field for grazing and rearing of livestock. Although NE considers that coastal access rights would only be exercised occasionally, that does not appear to be the view of the Ramblers' and OSS which consider the trail should run over this field to make a direct link between the northern end of SCS-5-S072 and the southern end of SCS-5-S076. Whilst NE acknowledge there are land management and safety issues for not routing the trail across this field, no direction for exclusion has been proposed. Given the views expressed by the Ramblers and OSS, does NE consider that its initial view that a restriction on access for land management would only be considered post-commencement needs to be revisited?

## **NE's response to the Inspector**

102. Further to the Inspector's site visit, further discussions have taken place with Holker Estates with a view to agreeing amendments to the proposed trail and infrastructure along these sections. Indicative maps have been developed to illustrate the matters on which agreement has been reached.

### *SCS-5-S020*

103. Additional waymarking and signage is to be provided along this section to denote a clear route along the field's undulations; this was considered by the Estate to be preferable to additional fencing which would reduce the area available for grazing. NE do not consider the installation of a fence landward of the path along the limestone cliffs is required as this would also reduce the area available for grazing, but sufficient waymarks and fingerposts would be installed to ensure the trail route can be seen ahead when walking in either direction. The location of the proposed additional waymarking is indicated on the plan at Appendix 1.

#### *SCS-5-S021*

104. As suggested by the Estate, towards the eastern end of this section a new field gate with pedestrian/kissing gate alongside would be erected across the short lane leading to the culvert (about 15m from the bridge). The gates would be linked to a short section of new fence, designed to prevent stock from becoming 'trapped' in the oblique field corner adjacent to the culvert.

#### *SCS-5-S023 and SCS-5-S024*

105. For the full length of these sections, and perhaps for a short section of SCS-5-S025, the trail would be re-aligned slightly to place it on top of an existing low bund, alongside the agricultural track, before returning to the proposed trail further south. Works will be undertaken to provide a suitable surface on top of the bund and a new fence would be erected landward of it to separate the trail for the agricultural track and any livestock movements along it; pedestrian gates would provide access to the fenced section.

#### *SCS-5-S025*

106. To avoid a reduction in the quantity of land available for grazing, this section would not now be fenced, but sufficient waymarks will be installed to clearly indicate the route of the trail. The agreed changes to SCS-5-S026 & SCS-5-S027 which would remove the trail from the saltmarsh edge to the seaward edge of the field and the consequent removal of the optional alternative route would also require some minor modifications to the proposals. The southern end of section S025 would be extended to the southern boundary of the relevant field at which an accessible gate would be installed.

#### *SCS-5-S026 & SCS-5-S027*

107. As suggested by the Estate these two sections would be re-aligned to be on the seaward edge of the field which would remove the necessity for the alternative route (SCS-5-OA006 – SCS-5-OA010) to be provided. Some trimming of the field vegetation may be required to enable the trail to run at the very seaward edge of the field. At the southern end of the revised SCS-5-S027 an accessible gate would be provided.

#### *SCS-5-S063 & SCS-5-S064*

108. The intention has always been for the '*walked, fenced corridor*' to be comprised of the landward ditch and the replacement of the existing fence with a new fence to allow a greater gap between ditch and fence. The ditch appears to be sufficiently wide for it to serve as a landward barrier which would segregate trail users from grazing livestock.

*SCS-5-S072 to SCS-5-S076*

109. NE understands that when the initial plans for the trail at this location were developed the alignment west of the Humphrey Head Outdoor Centre was agreed as the type and number of livestock grazing the fields to the east were likely to be incompatible with a new right of access. It is believed that the seaward edge of the field is extremely wet underfoot and unsuitable for a national trail. For reasons that were not fully recorded by the staff involved at the time, a decision was taken to route the trail to the west and avoid the field completely. NE remains of the view that most trail users will follow the correct line of the path, rather than attempt to cross a field within the coastal margin.
110. The team responsible for agreeing and managing any directions to exclude or restrict access have recently spoken with the Tenant. That team has concluded that there may be a case for a direction depending on the outcome of an analysis of any evidence which the Tenant should wish to provide. This approach would accord with sections 8.2.17 to 8.2.20 of the Scheme. If evidence was provided which supported a direction, such a direction could be given either prior to commencement or at any other time post commencement.

## **Discussion and conclusions**

### Objection 1

111. The Estate submits that the trail should not extend further upstream from SCS-5-S039 as the BOAT between Cark and Canal Foot provides the first "*public foot crossing*" of the Leven upstream of Cark which provides "*a right of access by which the public are able to cross the river on foot*", and that the trail should therefore cross the Leven at this point. Reliance is placed on section 301 (8) of the 2009 Act in support of this contention.
112. NE disputes the interpretation placed upon the statute by the Estate which NE states is a misquotation as the comma after the word "access" has been omitted. NE's view is that "*a public right of access*" found in section 301 (8) relates to the bridge or tunnel referred to in the earlier part of the definition and not to the river itself.
113. Section 301 (2) of the 2009 Act makes provision for those instances where the coast is interrupted by a river whereby NE can exercise its functions as if the coastal access provisions to the sea included the relevant upstream waters of the river. The "*relevant upstream waters*" of a river are defined in section 301 (3) (a) as "*the waters from the seaward limit of the estuarial waters of the river to the first public foot crossing*".

114. Section 301 (8) defines "*public foot crossing*" in relation to the section: "*'public foot crossing' in relation to a river, means a bridge over which, or tunnel through which, there is a public right of way, or a public right of access, by virtue of which the public are able to cross the river on foot*".
115. Whilst the BOAT between Cark and Canal Foot is the first public right of way to cross the Leven north of Cark, it is not the first "*public foot crossing*" of the river as defined in relation to the estuarine provisions of section 301, as a public foot crossing "*means a bridge over which or tunnel through which*" the public have a right of way or access "*by virtue of which the public are able to cross the river*".
116. I concur with NE in its analysis of the Estate's mis-quotation of the latter part of the definition found in section 301 (8). If the parliamentary draftsman had omitted the comma between "access" and the words "*by virtue of*" from the section as enacted, then the latter part of the definition would have been capable of carrying the meaning for which the Estate contends. However, the inclusion of the comma after "access" qualifies that the public right of way or right of access by which the public can cross the river runs over a bridge or through a tunnel.
117. It follows therefore, that section 301 provides NE with the discretion to promote the trail along the upstream estuarine waters of the Leven to the first bridge over, or tunnel under, the river over or through which the public have a right of way or access. It is NE's case that in relation to the estuarial waters of the Leven, the first public foot crossing (as defined by section 301(8) of the 2009 Act is Greenodd Bridge; I concur with that view.
118. This is not to say that the BOAT between Cark and Canal Foot could not serve as a means of crossing the Leven. However, that crossing would not provide a sensible or practical means of crossing the river; the BOAT is unavailable for periods of the day due to tidal inundation, and the shifting channels of the river bed, quicksand and the speed of incoming tides make the BOAT unsuitable for a National Trail.
119. I conclude that NE has correctly exercised its discretion under section 301 of the 2009 Act in proposing that the trail runs along the estuarine waters of the Leven between Cark and Greenodd Bridge.

## Objection 2

120. It is accepted that the railway between Cark and Ulverston presents a barrier to views of the sea from points north of the railway bridge, and that in part, the proposed route detours inland away from the banks of the Leven with the result that views of the estuarine environment are not available. Although parts of the proposed route would not therefore offer views of the sea or the estuary or be reasonably close to the sea, the Scheme recognises that in some cases, proximity and views may be reduced. The proposed trail running along the eastern side of the Leven accords with the overall provisions of the Scheme.

121. Furthermore, the first objective of the Scheme is to establish a continuous trail around the English coast, and the disadvantages of part of the trail being inland and where views of the sea may be limited have to be balanced with the ability of users to travel to other parts of the trail where proximity to the sea and views of it are available.
122. The Estate submits that the recreational benefit of the trail would be limited (particularly in relation to SCS-5-S001 to SCS-5-S032 where the view of the sea would be limited and where access to spreading room would be limited by direction), however the recreational benefit of the trail has to be looked at as a whole and in the round. As noted above, the Scheme recognises that there may be occasions where the trail has to deviate inland, but those deviations provide links between other parts of the trail from which such views can be obtained. Whilst some sections of the trail may not be close to the coast, there is likely to be interest and enjoyment derived from passing through other land forms as part of a long-distance journey. The continuity of the route is also an important element in the recreational benefit which would arise from the establishment of the trail.
123. Whilst the Estate considers that the HRA undertaken by NE is flawed, no supporting evidence has been submitted to substantiate that claim. NE recognises that the establishment of the trail may have an adverse impact upon protected species and the HRA and NCA undertaken have influenced the design of the trail at this location and the mitigations which are necessary in order to limit those potential adverse impacts.
124. The Scheme also recognises that there is potential for conflict to arise between users and land managers where the trail would pass through fields grazed by livestock. Parts 8.2 and 8.4 of the Scheme set out the approach which will be taken where the trail would pass through fields grazed by cattle and sheep. The adjustments to the alignment of the trail suggested by NE in relation to specific parts of the trail over the Estate's land demonstrates that there are a number of techniques which can be employed to mitigate and minimise any conflict that might arise.
125. The Estate submits that that there are a number of possible options whereby trail users could pass between Cark and Ulverston without travelling along the east bank of the Leven and notes that there are proposals for a footbridge to be attached to the seaward side of the railway bridge which would provide such a link. Whilst the existence of these alternative routes is noted, none would be consistent with the provisions of the Scheme.
126. Although it would be possible for a new footbridge over the Leven to carry the trail, no details have been provided as to the likely timeframe of such a project, were it to become a realistic proposition; I concur with NE that it would be inappropriate to leave a gap in the trail on the basis that an alternative means of crossing the Leven would be available at some unspecified point in the future.

### Objection 3

127. Sections SCS-5-S018 to SCS-5-S029 will run around Skelwith Hill towards Low Frith. This part of the trail will run over land where there are no public rights of way nor any current public access. The route at this location will be in close proximity of the eastern bank of the Leven and will provide views downstream along the river and towards its western bank; the route would also be available at all states of the tide. Although the land over which the trail would run is estuarine and not coastal, the proposed route therefore satisfies the Scheme criteria set out in sections 4.4, 4.5 and 4.6.
128. The information provided by NE following its most recent discussions with the Estate suggests that fencing landward of the trail at SCS-5-S020 is no longer a requirement as fencing would have an adverse impact upon the area of land available for grazing. Lower key management techniques in the form of improved waymarking and signage of the route in this location will be provided to enable trail users to easily identify the route to be used and to mitigate potential interaction with livestock. Although the Estate requested a direction for dogs to be on leads at all times, such a direction would not negate the existing requirement for dogs to be kept under close control in the vicinity of livestock.

Objection 4: SCS-5-S020 to SCS-5-S025

129. The trail at this point would run through reasonably large inclosures where conservation grazing under the existing HLS scheme is practiced. Although SCS-5-S020 and SCS-5-S025 would run through reasonably large enclosures where the chance of interaction between trail users and livestock is reduced, the enclosures through which the eastern end of SCS-5-S021, the whole of SCS-5-S022, and the western end of SCS-5-S023 would pass are much narrower.
130. To mitigate the possible interaction between the public and grazing livestock, NE propose the re-alignment of the existing gates present at either end of the culvert together with the installation of new gates and fencing on the eastern end of section SCS-5-S021.
131. With regard to SCS-5-S023, SCS-5-S024 and part of SCS-5-S025, NE has proposed a minor re-alignment of the published route (see Map SCS 5c (Modified) at Appendix 2) to enable the segregation by fencing of trail users from grazing livestock in those areas where the trail would run through narrow enclosures and where the probability of interaction with livestock would be greatest. Installing additional fencing landward of the trail along SCS-5-S025 would reduce the area of land available for grazing; to enable users to follow the line of the trail and not wander over the wider enclosure, NE proposes to install waymarks and fingerposts along SCS-5-S025 so that the route can be identified clearly irrespective of the direction of travel.
132. Although the Estate requested a direction for dogs to be on leads at all times, such a direction would not negate the existing requirement for dogs to be kept under close control in the vicinity of livestock; the



proposed realignment and segregation of users from livestock is likely to mitigate any adverse impact upon grazing animals. The revised proposals accord with sections 8.2 and 8.4 of the Scheme.

Objection 5: SCS-5-S026 - S027 and SCS-5-OA007 - 010

133. In the light of the submissions made and further discussions between NE and the Objector, the issues raised by Objection 5 would be addressed if the amended proposals now being put forward by NE are accepted. The Optional Alternative Route was proposed on the basis that the trail would run on the landward edge of the saltmarsh and would be required during times of high tide. If the trail were to run on the seaward edge of the adjacent field, the route would be available at all states of the tide and provide views over the estuary.
134. Re-aligning the trail as now proposed by NE would require some additional minor changes to the position of the southern end of SCS-5-S025 and require the installation of a pedestrian gate at this point and at the southern end of the revised SCS-5-S027, together with any consequent adjustment of existing field boundary fences.
135. Re-aligning SCS-5-S026 and SCS-5-S027 as proposed by NE would remove the requirement for an Optional Alternative Route to be provided between Little Arrad and Frith Hall.

Objection 6: SCS-5-S035 and SCS-5-S036

136. The field through which these sections would run is narrow at its western end where the field is constrained to the north by the boundary of a former quarry and to the south by a ditch and the railway line. Beyond these constraining features, the majority of the field is around 65m in width and of sufficient size for trail users and grazing sheep to not be forced to interact.
137. The Estate is concerned about the impact of dogs on the sheep which graze this field and would prefer for the trail to be segregated from the field by a stock proof fence. However, to fence the entirety of the field crossed by the trail (at the objector's suggested width of 4m) would reduce the amount of land available within the enclosure for grazing. The route is aligned on the seaward edge of the field in accordance with Section 8.4.9 of the Scheme to minimise close contact between users and grazing sheep.
138. However, NE acknowledge that the western end of SCS-5-S036 and the whole of SCS-5-S035 present a particular problem due to the limited width of the field and propose to erect a fence landward of the trail at these points to provide the segregation between trail users and grazing animals.

Objection 7: SCS-5-S037

139. This section follows the seaward edge of the arable field through which it runs, and which is claimed to be frequented by waders and wildfowl during the winter months; the Estate considers that routing the



trail through this field will cause disturbance to roosting and feeding birds and suggests that this section should be fence landward of the trail.

140. The HRA and NCA undertaken by NE (see paragraphs 167 to 177 below) do not suggest that there would be a significant risk of disturbance to protected species at this location. It is doubtful whether the erection of a fence landward of the trail would result in a reduction of disturbance as birds are likely to be disturbed by the presence and movement of people. Those movements would remain visible irrespective of whether such movement took place behind the confines of a fence. Given the conclusions reached in the HRA and NCA, mitigation in the form of fencing is unlikely to be required at this location.

Objection 8: SCS-5-046 to SCS-5-S048

141. The trail along these sections would run over an existing track or path at the landward edge of the saltmarsh and would provide views over the saltmarsh and estuary and would be available at all states of the tide. The proposed route would accord with the sections 4.4, 4.5 and 4.6 of the Scheme. The Estate contends that the saltmarsh west of the proposed trail is unsuitable for public access, would lead to disturbance of wildlife and may have adverse impact of those sheep which graze the saltmarsh; it is submitted that access to the saltmarsh should be excluded under s25A of the 2009 Act.
142. From my observations on site, it was evident that the public habitually make their way along the access track over which the trail would run for exercise and for walking a dog. Any disturbance or adverse impact which might arise from use of the track as part of the trail is therefore likely to be present. Whilst numbers using the track may increase as a result of it becoming part of the trail, the sections at issue are immediately to the west of Cark and in all likelihood currently form part of a short circular walk from the village. In addition, there are a number of tracks over the saltmarsh which support vehicular use and are therefore capable of supporting pedestrian use.
143. A direction under s25A covering the salt marsh is unlikely to be appropriate when the saltmarsh is by its nature, suitable for public access. The NRA and NCA did not identify any nature conservation grounds which would justify a direction being made. NE have proposed a direction for dogs to be kept on leads along SCS-5-S047 where it is expected that the public will keep to the trail.
144. It would remain open to the Estate to put forward evidence to support a claim that a direction was required for reasons of land management. If evidence was provided which supported a direction, such a direction could be given either prior to commencement or at any other time post commencement.

Objection 9: SCS-5-S063 to SCS-5-S065

145. Clarification has been sought as to what was meant by '*walked, fenced corridor*' in relation to these sections. There may have been some degree of misunderstanding as to what works were proposed at this location, but it appears that it was not intended to constrain the trail between fences. NE propose to utilise the ditch landward of the trail and re-position the fence seaward of the ditch so that the trail ran between these two features landward of the flood embankment.
146. Repositioning the fence in this way would provide the segregation of the trail from the saltmarsh which the Estate seeks to ensure that access to and from the saltmarsh for grazing cattle is not hindered by users of the trail.
147. Section SCS-5-S064 would run adjacent to a drain on the edge of a grazing pasture, with gates and other infrastructure being erected to allow access between S064 and S063 without significantly impacting upon agricultural operations.

Objection 10: SCS-5-S070

148. The trail at this location would run along the western side of Humphrey Head above the saltmarsh with good views to the west of the estuary and would be available at all states of the tide. The proposed route therefore accords with the key elements of the Scheme.
149. As the trail would be located at the top of the sea cliff, the cliff itself would lie within the coastal margin. The Estate has concerns that the cliff top flora could be damaged by trampling, that birds nesting on the cliffs could be disturbed by trail users and their dogs, and that it would be dangerous for the public to access the cliffs without the assistance of an experienced climber. Long term exclusions on safety, nature conservation or land management grounds are suggested.
150. There is already *de facto* access along the sea cliffs at Humphrey Head as the numerous tracks and paths across the land demonstrate; such access does not appear to have given rise to the problems envisaged by the Estate. It is unlikely that the visiting public would need to be excluded from the sea cliffs on safety grounds; the risks posed by the cliffs are self-evident and trail users are required to be responsible for their own safety.
151. The HRA and NCA undertaken by NE did not suggest that there were protected species present along the sea cliffs which required further mitigation measures. Consequently, it is unlikely that access need to be restricted on the sea cliffs on nature conservation grounds.

Objection 11: SCS-5-S069, SCS-5-S070 and SCS-5-S074

152. These parts of the trail would pass through species rich limestone grassland which is grazed by livestock. The Estate has concerns regarding the possibility of disturbance to livestock by walkers and their dogs. It is submitted that a direction should be given for these sections that dogs to be kept on a lead at all times.

153. However, there is currently extensive public access across Humphrey Head and a number of well-worn paths in the close-cropped turf were evident at the time of my site visit; the trail would follow some of these well-worn tracks. It is likely therefore that the problems which the Estate envisages arising from the trail are already present, given the extent of public use of the headland. The public are already required to keep their dogs on a lead when amongst livestock; a direction to do so is therefore not appropriate at this location. Advisory notices reminding the public of their responsibilities would re-enforce that requirement.

Objection 12: SCS-5-S072 and SCS-5-S076

154. The pasture field east of the Outdoor Centre used for grazing by cows and calves would lie within the coastal margin; the Estate has concerns that there would be a danger to livestock and walkers should anyone seek to exercise coastal access rights on that field after commencement.

155. According to NE, the trail was not routed through the Tenant's field due to the wet conditions on the seaward edge of the field, and due to the use of the field for cattle rearing. NE submits that it considers that users are likely to follow the trail to the west of the outdoor centre and not seek to access the field at issue. However, NE is prepared to review the need for further access restrictions at this location in the light of experience and any evidence regarding the management of the field submitted by the Tenant. Whether further access restrictions are required should be kept under review.

Objection 13: SCS-5-S074 / SCS-5-S075 junction

156. The proposed junction of these two sections of path would require a breach to be made in the boundary wall between the Tenant's land and Pigeon Cote Lane, with the installation of steps on the north side to overcome to difference in surface ground levels. The Estate says such a route is unnecessary as users could return to SCS-5-S069 to access Pigeon Cote Lane; doing so would not incur establishment costs or lead to conflict between users of the trail or users of the Outdoor Centre.

157. The difference in ground levels would require the creation of a number of steps on the bridleway side of the boundary wall. The site inspection revealed that there would be sufficient space within the verge of the bridleway for the steps to be constructed without impinging upon the used width of the bridleway. The nature of any required works would be a matter for further discussion between the parties.

158. Although the Estate considers the proposed route would lead to conflict with users of the Outdoor Centre, no objection or representation has been received from the Outdoor Centre expressing such concerns.

159. The proposed route as shown in map SCS 5k would not require trail users to re-trace their steps along SCS-5-S069 as suggested by the Estate and would provide a convenient means of access to the trail to the north.

Objection 14: SCS-5-S076 and SCS-5-S076

160. The trail at these locations would run on the seaward edge of a field used for grazing livestock. The Estate submits that sheep also graze the saltmarsh and disturbance from people and dogs may drive the sheep further out into the estuary and put them at risk from incoming tides.
161. The Estate has requested a direction for dogs to be kept on leads at all times to reduced disturbance to birds and livestock. As in other areas where livestock are present, there is a requirement for trail users to keep their dogs on a lead. NE has proposed a direction for access to be restricted over the majority of the coastal margin as the saltmarsh at this location is not considered suitable for public access. The proposed direction would address the concerns the Estate has regarding disturbance of grazing sheep on the saltmarsh. The HRA and NCA did not suggest that a restriction over the saltmarsh on nature conservation grounds was required.

Objection 15: SCS-5-S081 to SCS-5-S086

162. The trail at these locations would run on the edges of fields used for grazing livestock; sections S081 to S083 would follow a hard surfaced track which runs outside the perimeter fence of the sewage works. The Estate submits that the fields are grazed by livestock including sheep with lambs and that there are ground nesting birds to be found within the rushy pasture near to the railway line.
163. The Estate has requested a direction for dogs to be kept on leads at all times to reduced disturbance to birds and livestock. As in other areas where livestock are present, there is a requirement for trail users to keep their dogs on a lead; a direction to that effect would therefore not be appropriate, but advisory notices could be placed on site to remind trail users of their obligations and responsibilities. The HRA and NCA did not suggest that there were nature conservation grounds to make a direction for dogs to be on leads over these fields.

Objection 16: SCS-5-S-S084 and SCS-5-S085

164. The trail at this location would run over a narrow uphill access track which provides a link between the lower pastures near the railway line and the upper pastures on Kirkhead. The track is used regularly for the movement of cattle between pastures. The Estate considers that the trail may lead to problems of land management and a risk of injury to users from cattle movements but acknowledges there does not appear to be any other suitable alternative route by which the trail can access Kirkhead.
165. It is not unusual for public access to coincide with routes which are also used by land managers for the movement of cattle or other purposes; where such issues arise, there is generally a degree of 'give

and take' between all parties to avoid conflict between the competing but legitimate uses of a trackway.

166. Due to the physical characteristics of the track, there is insufficient width for a fence to segregate path users from livestock; reliance will therefore have to be placed upon the ability of the parties to exercise common sense and that element of 'give and take' referred to above. In terms of management of the trail, consideration could also be given to the provision of information signs advising trail users of the possible movement of cattle in the area.

### ***Habitats Regulations Assessment (HRA)***

167. The following paragraphs are to assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Competent Authority is required to make an Appropriate Assessment (AA) of the implications of a plan or project for the integrity of any European site in view of the site's conservation objectives. The appropriate nature conservation body must also be consulted, in this case NE. If the AA demonstrates that the integrity of a European site would be affected then consent for the plan or project can only be granted if there are no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (IROPI) and compensatory measures will be provided which maintain the ecological coherence of the UK National Site Network.
168. The HRAs dated 4 December 2019 and 7 October 2020 provide information to inform the Competent Authority's AA. The assessments were undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations and are recorded separately in the suite of reports. The HRAs consider the potential impacts of the coastal access proposals on the Duddon Mosses Special Area of Conservation (SAC); the Roudsea Wood and Mosses SAC; the Morecambe Bay and Duddon Estuary Special Protection Area (SPA); the Morecambe Bay SAC; the Morecambe Bay Ramsar site; and the Duddon Estuary Ramsar site. The HRAs have identified the relevant sites affected by the proposals.
169. 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, further assessment under the HRA provisions was required. The overall screening decision found that as the plan or project was likely to have significant effects (or may have significant effects) on some or all of the Qualifying Features of the European Site(s) 'alone', further appropriate assessment of the project 'alone' was required. On this basis, the HRAs considered the potential for the project to give rise to Adverse Effects on the Integrity (AEoI) of the designated sites.
170. The scope of the appropriate assessment is set out in Section D1 and Table 6a of the HRAs and identifies the sites and qualifying features for which significant effects (whether 'alone' or 'in-combination') are likely or could not be ruled out. The relevant information is discussed in section D2; the Secretary of State should note that in relation to Morecambe Bay and

Duddon Estuary SPA, Morecambe Bay SAC, Morecambe Bay Ramsar site and Duddon Estuary Ramsar site, this relates to the entirety of the SCS and SDC sections of the trail and not just the section of SCS5 to which this report relates.

171. The assessment of AEoI for the project 'alone' takes account of measures to avoid or reduce effects which were incorporated into the design of the access proposals. The assessment considers that these measures are sufficient to ensure no AEoI in light of the sites' conservation objectives. Those relevant to this report where there is some residual risk of insignificant impacts are:
- Path surfacing and other infrastructure leads to loss of extent of the Feature; and
  - Disturbance to foraging, breeding, or resting birds, following changes in recreational activities as a result of the access proposals, leads to reduced fitness and reduction in population and/or contraction in the distribution of Qualifying Features within the site.
172. In section D4 of the HRAs, NE considered whether 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. NE considered that the potential for adverse effects was not wholly avoided by the additional mitigation measures identified in D3 and that there were residual and appreciable effects likely to arise from path surfacing and other infrastructure works and changes in recreational activities as a result of the access proposals which had the potential to act 'in-combination' with those from other proposed plans or projects.
173. However, assessing the risk of 'in-combination' effects (D4 step 2), NE concluded that no further 'in-combination' assessment was required. NE concluded that, in view of the sites' conservation objectives, the access proposal (taking into account any incorporated avoidance and mitigation measures) would not have an AEoI on Duddon Mosses SAC, Morecambe Bay and Duddon Estuary SPA, Morecambe Bay SAC, Morecambe Bay Ramsar site or Duddon Estuary Ramsar site either 'alone' or 'in-combination' with other plans and projects.
174. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Silecroft and Silverdale are fully compatible with the relevant European sites' 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 HRA conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the HRA that the proposals would not adversely affect the integrity of the relevant European sites. It is noted that, if the Secretary of State is minded to modify the proposals, a further assessment may be needed.

### ***Nature Conservation Assessment (NCA)***



175. The NCA, 9 December 2019, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI) Marine Conservation Zones (MCZ), Limestone Pavement Orders (LPO) and undesignated but locally important sites and features, which are not already addressed in the HRA.
176. Relevant to this report is the Roudsea Wood and Mosses SSSI; Skelwith Hill SSSI; Humphrey Head SSSI; Humphrey Head LPO; Wartbarrow and Kirkhead LPO. The impact of the proposals on designated features of Roudsea Wood and Mosses SAC were considered in the relevant HRA. NE were satisfied that the proposals to improve access to the English coast between Silecroft and Silverdale were fully compatible with their duty to further the conservation and enhancement of the notified features of the SSSIs, SAC and LPO consistent with the proper exercise of their functions.
177. In respect of the relevant sites or features the appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes. Works on the ground to implement the proposals would be carried out subject to any further necessary consents being obtained.

### **Whether the proposal strikes a fair balance**

178. It is necessary to consider whether a fair balance is struck between the interests of the public in having rights of access over land and the interests of the owners/occupiers of the land subject to coastal access rights. The proposed route will create a right of access over land which forms part of the Holker Estate. Over some of the routes at issue there are currently no public rights of access, whereas over other parts, there is currently either access on a permissive basis or on a de facto basis.
179. Many of the routes at issue cross land which is used for the rearing and grazing of cattle or sheep. The impact the trail is likely to have on these areas would be mitigated on a site-by-site basis by the measures described above. Should the Estate wish to fence the trail into a corridor at any point where NE do not propose such works, they would be at liberty to do so.
180. With appropriate mitigation including the minor realignments of the trail between Skelwith Hill and Low Frith and the removal of the proposed alternative SCS-5-OA006 to OA010, any adverse effects which are likely to arise would not, in my view, outweigh the interests of the public in having rights of access over coastal land.

### **Recommendation**

181. A minor modification of the alignment of SCS-5-S023 – SCS-5-S025 and to SCS-5-S025 – SCS-5-S027 together with the removal of SCS-5-OA006 – SCS-5-OA010 has been proposed by NE; this proposal is illustrated on Map SCS 5c (Modified) at Appendix 2.
182. The minor modification to the route of SCS-5-S025 to SCS-5-S027 would require a modification of the first sentence of paragraph 5.2.16 of



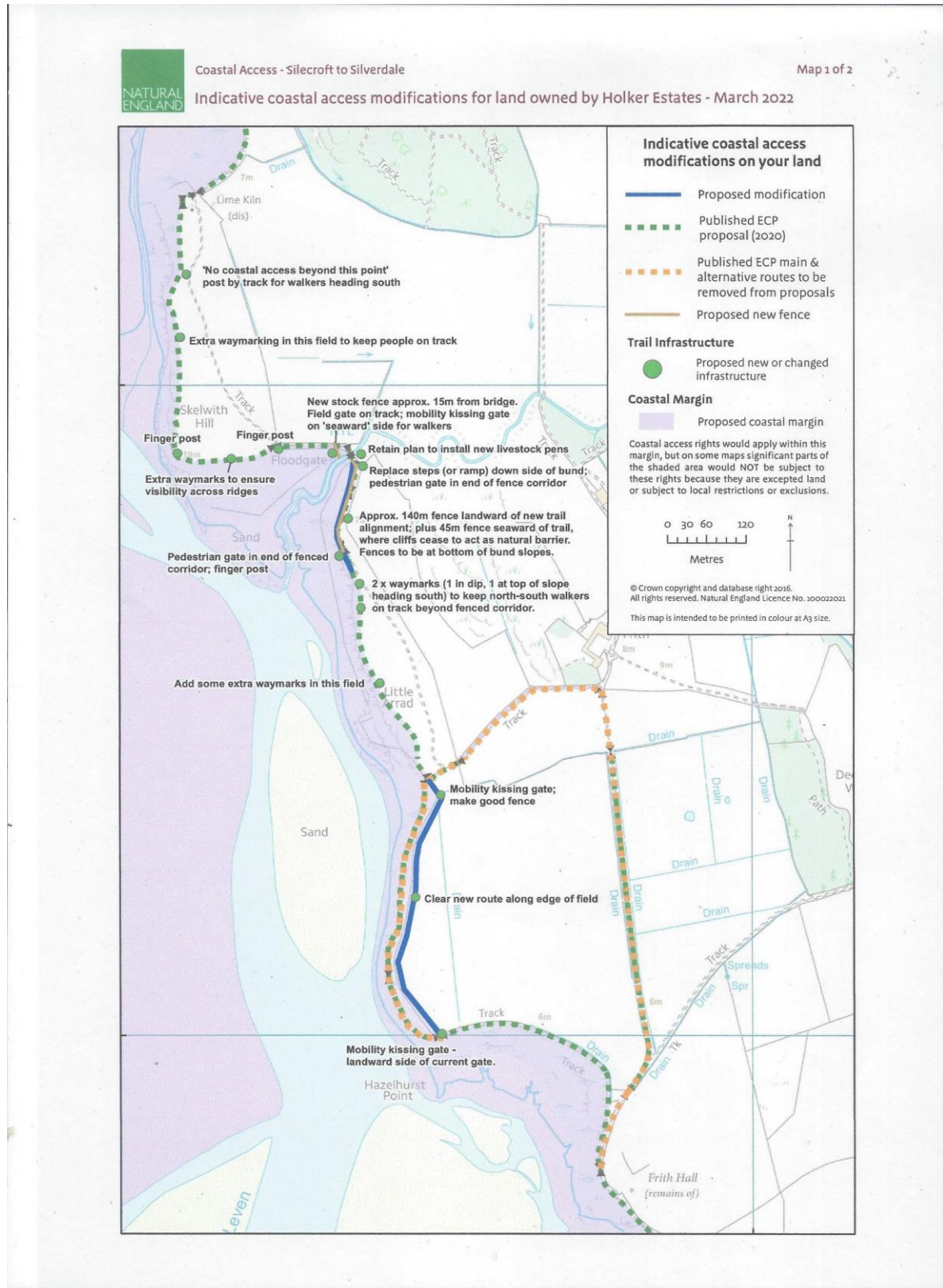
Report SCS 5 to read *"Access to the line of the England Coast Path on route sections SCS-5-S028 and SCS-5-S029 is to be restricted all year round, by direction under section 24 of the Countryside and Rights of Way Act (2000). Under the terms of the direction, people will be required to keep their dogs on a lead for the purpose of land management. The restrictions will have no legal effect on land where coastal access rights do not apply. See Directions Map SCS 5A (Modified)"*. The extent of the modified direction is illustrated on Map SCS 5A (Modified) at Appendix 3.

183. The change in the proposed route would mean that it would no longer be necessary to place the same restriction on sections SCS-5-S026 and SCS-5-S027.
184. The proposed modification would mean that paragraphs 5.2.17, 5.2.18 and 5.2.46 of Report SCS 5 could be deleted, and that paragraph 5.2.36 would require amendment by making reference to *"Directions Map SCS 5M (Modified)"*. This revised map is to be found at Appendix 4.
185. A minor modification to add fencing landward of SCS-5-S023 to SCS-5-S025 would require a modification to table 5.3.1 of the Report, *'Section Details: Map SCS 5a to SCS 5n – Greenodd footbridge to Kents Bank'* relating to sections SCS-5-S023 to SCS-5-S026 as set out in Appendix 5.
186. The deletion of the optional alternative route SCS-5-OA006 – SCS-5-OA010 would require a modification of table 5.3.2 *"Alternative routes and optional alternative route details: Map SCS 5a to SCS 5n Greenodd footbridge to Kents Bank"* by the deletion of the entries in that table which relate to map SCS 5c.
187. The proposed modification would require an amendment to table 5.3.3 *'Other options considered: Map SCS 5a to 5n – Greenodd Footbridge to Kents Bank'* relating to sections SCS-5-S026 to SCS-5-S027 as set out in Appendix 6.
188. NE has proposed these modifications. No new potential objectors have been identified in consequence of these minor modifications.
189. With these minor modifications and the other mitigation discussed above, I conclude that the proposals would not fail to strike a fair balance. I therefore recommend that the Secretary of State makes a determination to this effect in relation to the Report SCS5, making use of the revised mapping and tables attached in the Appendices, to clarify matters in relation to this section.

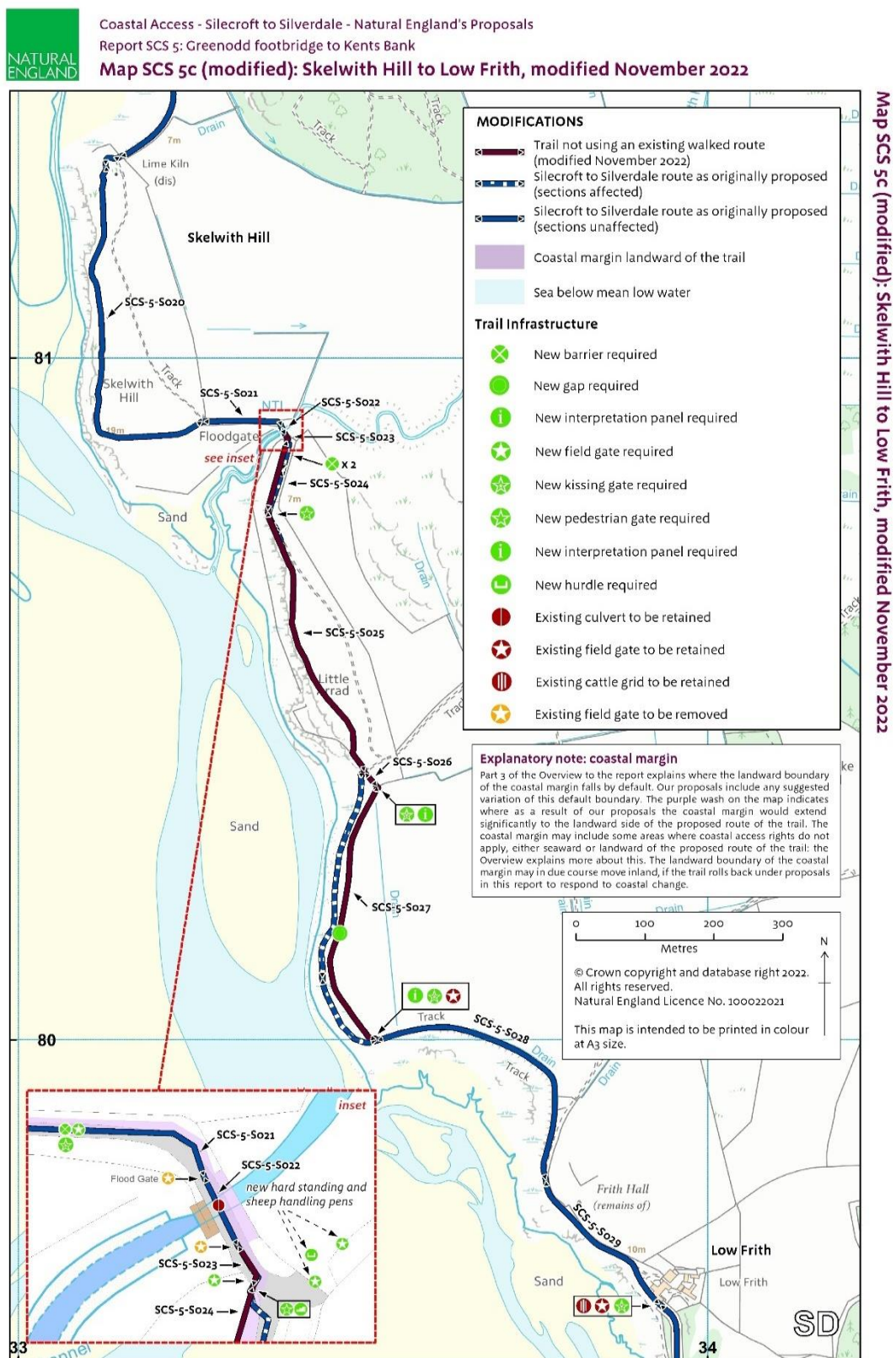
*[redacted]*

APPOINTED PERSON

## Appendix 1: indicative modifications to waymarking and fencing



Appendix 2: Map SCS 5c (modified): Skelwith Hill to Low Frith



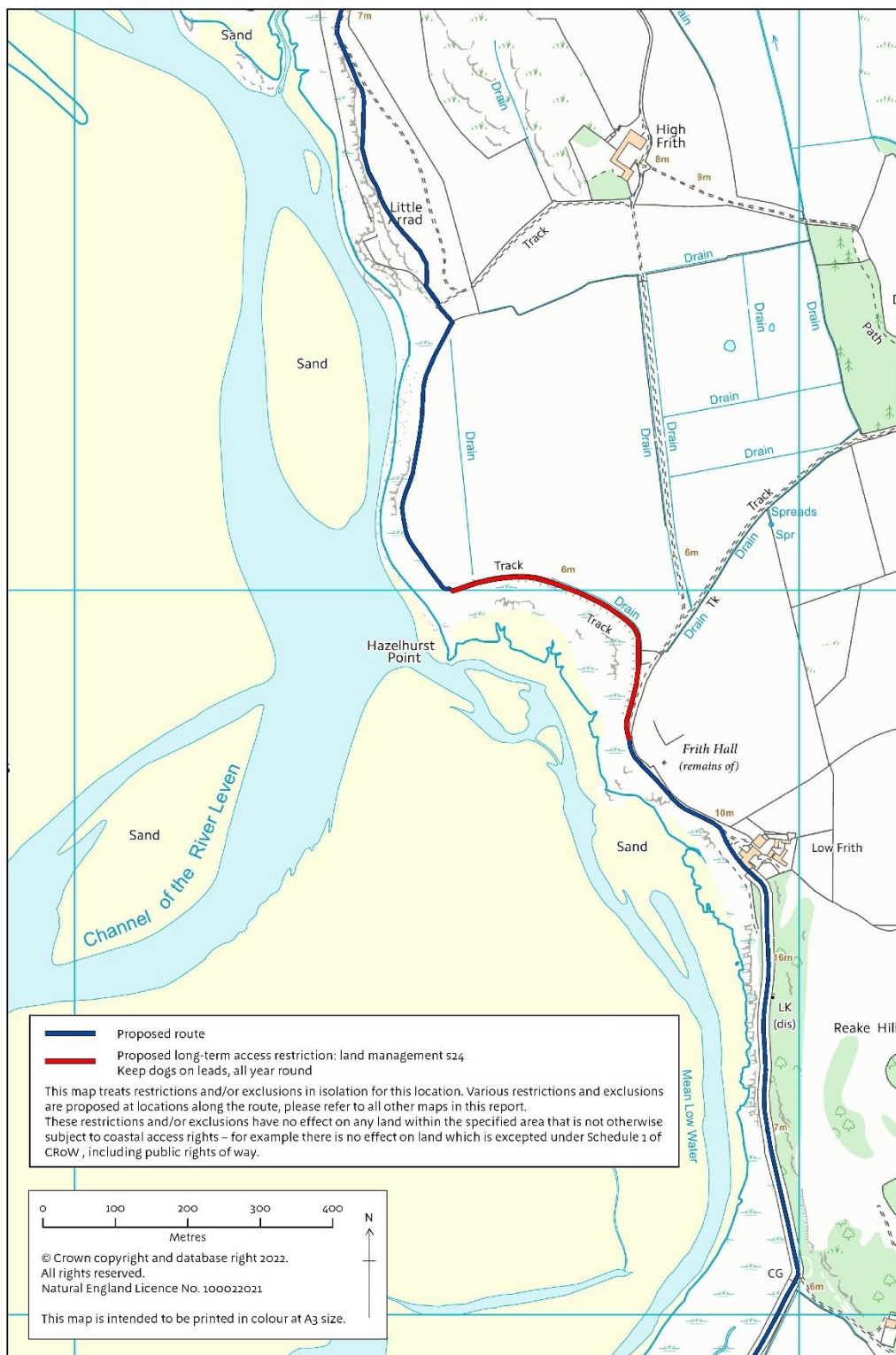
Appendix 3: Directions Map 5A (modified): High Frith and Low Frith (Hazelhurst Point)





Coastal Access - Silecroft to Silverdale - Natural England's Proposals  
Report SCS 5: Greenodd footbridge to Kents Bank

**Directions Map 5A (modified): High Frith and Low Frith (Hazelhurst Point)**  
modified November 2022



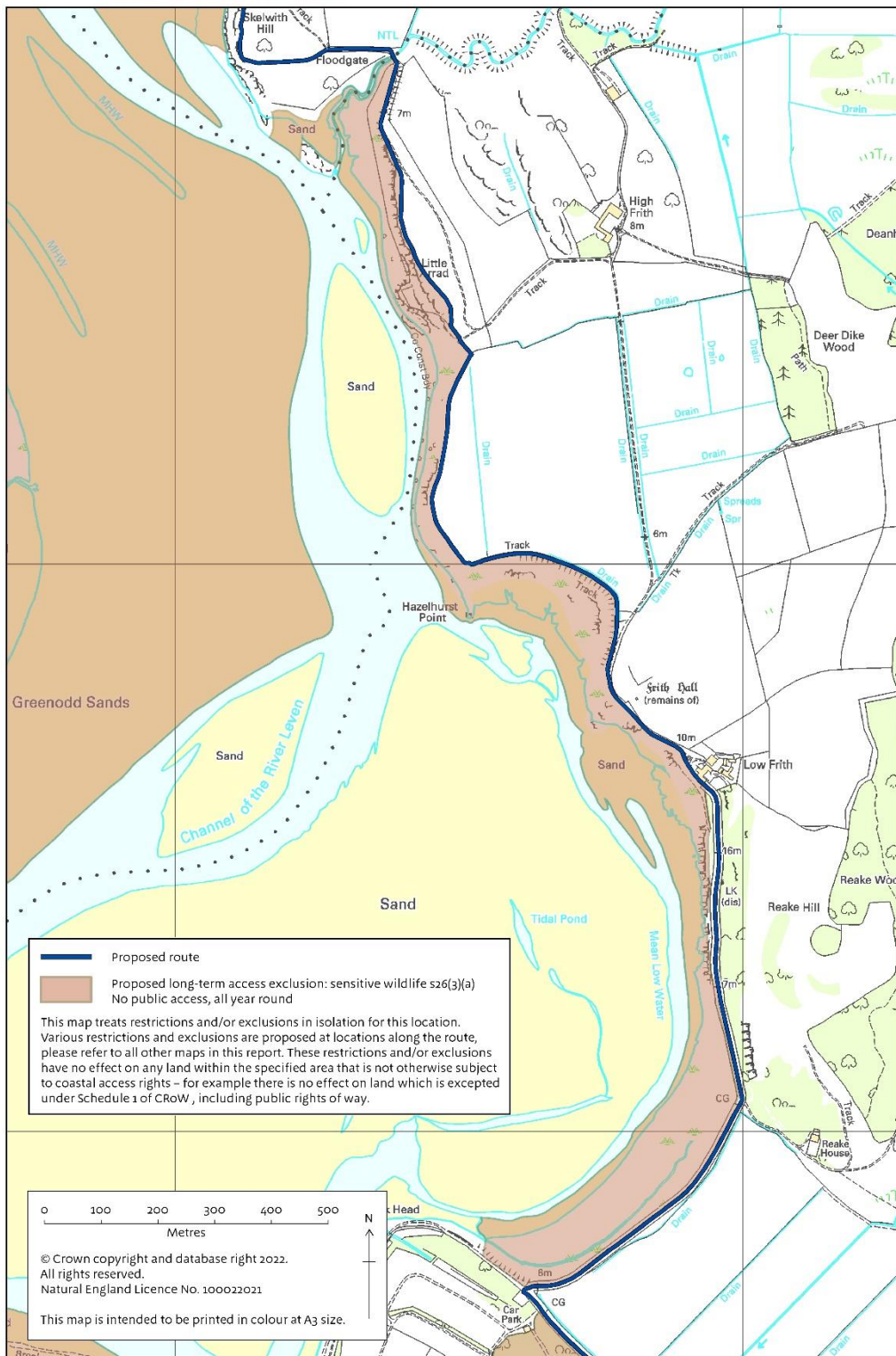
Directions Map 5A (modified): High Frith and Low Frith (Hazelhurst Point) modified November 2022

Appendix 4: Directions Map 5M (Modified): High Frith and Low Frith (Hazelhurst Point)



Coastal Access - Silecroft to Silverdale - Natural England's Proposals  
Report SCS 5: Greenodd footbridge to Kents Bank

**Directions Map 5M (Modified): High Frith and Low Frith (Hazelhurst Point)**  
modified November 2022



Directions Map 5M (Modified): High Frith and Low Frith (Hazelhurst Point) modified November 2022

Appendix 5: proposed amendments to table 5.3.1



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
SCS 5c	SCS-5-S023	Not an existing walked route	Yes – see table 5.3.4	No			
SCS 5c	SCS-5-S024	Not an existing walked route	Yes – see table 5.3.4	No	Fence	Clarity and cohesion	
SCS 5c	SCS-5-S025 to SCS-5-S026*	Not an existing walked route	Yes – see table 5.3.4	No			
SCS 5c	SCS-5-S027*	Not an existing walked route	Yes – see table 5.3.4	No			

#### Appendix 6 – amendment of table 5.3.3

Map(s)	Route section number(s)	Other option(s) considered	Reasons for not proposing this option
SCS 5c	SCS-5-S026 and SCS-5-S027	We considered aligning the trail inland from the southern end of Little Arrad, before joining the existing main access track immediately south of High Frith which then leads south to Low Frith.	<p>We opted for the proposed route because:</p> <ul style="list-style-type: none"> <li>it is closer to the sea and maintains views of the sea</li> </ul> <p>We therefore concluded that overall the proposed route struck the best balance in terms of the criteria described in chapter 4 of the Coastal Access Scheme.</p>

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

**by [redacted] BA MSc MIPROW**

**An person appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Date 18 November 2022**

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Marine and Coastal Access Act 2009

Objection by Bourne Leisure

Regarding Coastal Access Proposals by Natural England

Regarding Silecroft to Silverdale

Report SCS 5 Greenodd Footbridge to Kents Bank

SCS-5-S057 to SCS-5-S062 and SCS-5-A003 FFW to SCS-5-A005RD

## **Objection Ref: MCA/SCS5/03**

### **Land at Cark**

- On 8 January 2020 Natural England ('NE') submitted reports to the Secretary of State setting out proposals for improved access to the coast between Silecroft and Silverdale. The period for making formal representations and objections to the reports closed on 4 March 2020.
- There are 3 admissible objections to report SCS5. Two of the objections relate to parts of the trail which are not the subject of this objection and are considered in a separate report.
- The objection considered in this report was made on 4 March 2020 and is made under paragraphs 3 (3) (a) of Schedule 1A to the National Parks and Access to the Countryside Act 1949 on the grounds that the proposals fail to strike a fair balance in such respects as are specified in the objection.
- In addition to the objection, five representations were made in relation to the SCS5 report. Of these representations, those made on behalf of the Ramblers' (R4), the Open Spaces Society (R5) refer specifically to those sections subject to the objection.
- I carried out an inspection of those parts of the proposed trail at issue accompanied by the objectors together and representatives of NE and a representative of Cumbria County Council.

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

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### **Procedural and Preliminary Matters**

190. I have been appointed to report to the Secretary of State on an objection made to report SCS5. This report includes the gist of submissions made by the objector and those making representations, the gist of the responses made by NE and my conclusions and recommendations.

### **Main Issues**

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

192. The first objective is that there is a route ('the trail') 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.

193. The second objective is that, in association with the trail, a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with the trail or otherwise. This is referred to as the coastal margin.
194. 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.
195. 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.
196. NE's Approved Scheme 2013 ('the Scheme') is the methodology for implementation of the trail and associated coastal margin and sets out the approach NE must take when discharging the coastal access duty. It forms the basis of the proposals of NE within the Report.
197. My role is to determine whether the proposals set out in NE's Report fail to strike a fair balance as a result of the matters specified in the objection. I shall set out that determination and make a recommendation to the Secretary of State accordingly.

### **The Coastal Route**

198. The trail, subject to the SCS5 report, runs from Greenodd Footbridge (SD 3163 8257) to Kents Bank (SD 3969 7526) as shown on maps SCS 5a to SCS 5l (points SCS-5-S001 to SCS-5-S092). The trail generally follows the coastline quite closely and maintains good views of the sea and estuary.
199. Four new sections of path are proposed: between Roudsea Woods and Mosses National Nature Reserve ('NNR') to Low Frith; south of Old Park to Crook Wheel, Cark; from Cark airfield to Holy Well Lane; and from Allithwaite water treatment works to Kirkhead Road, Kents Bank. One of these proposed new sections are the subject of the objections considered in this report.
200. The proposed trail follows the line of the former Cumbria Coastal Way between Sand Gate Farm and West Plain Farm, and for short sections from Holy Well Lane around Wyke Farm to Allithwaite water treatment works. The trail departs from the Cumbria Coastal Way in other places to afford better views of the coast.

### **The case for the objector**

201. There are three main strands to the objection; (i) the flood embankment was not constructed to serve as a public right of way and there are safety

- issues with its proposed use as such; (ii) the liability issues likely to arise if trail users strayed into the holiday park, particularly given the proximity of the lake to the proposed route; and (iii) the proximity of the proposed trail to static caravans and lodges on site would reduce the privacy and amenity of those units.
202. The embankment. It is considered that there would be an increase in the numbers of people clambering over the rock armour seaward of the embankment. There is a risk of slips on the landward side of the embankment which is steep and has a deep perimeter ditch at its landward foot; there is a need to prevent public access to the pump chambers, outfall flaps and overflow pipes located within the embankment.
203. The embankment (owned by Holker Estates) is designed to protect against flooding and to offer protection to the holiday park. The public already scrambles over the rock armour which protects the embankment to reach the salt marsh; such activity would increase were the trail to run on the embankment.
204. The perimeter ditches are deep, and the landward slope of the embankment is steep. To prevent slips down the embankment a fence would have to be installed which would require regular maintenance; similar preventative measures would be required to prevent access to the pump chambers and other infrastructure located within the embankment. None of these works have been set out or costed in NE's proposals.
205. Annual maintenance is required to the embankment and the rock armour seaward of it. During such periods of maintenance, it would be necessary for the public to be excluded from the embankment. Although NE has proposed an alternative route to be used when maintenance is being undertaken, this would only be for 5 days each year; repairs to the rock armour can take up to two months.
206. In addition to regular maintenance, emergency works to maintain the pump stations may be required which involve heavy machinery; these are unscheduled works and the need to undertake such works without prior notice demonstrates the unsuitability of the embankment as part of the trail. It is submitted that no part of the embankment should be used for the trail.
207. Liability. It is accepted that there would be reduced liability towards users on the trail, however, a standard level of liability would remain should users deviate from the trail and enter the holiday park. In order to prevent unauthorised entry to the holiday park and its facilities, NE would have to install fences or hedging as a deterrent which would be costly to install and maintain. Such infrastructure would be contrary to the open approach taken to the park through the landscape plan agreed as part of the planning process. Routing the trail along the perimeter path of the holiday park would not strike the fair balance required.
208. Privacy and amenity. The trail would run in proximity to static caravans and lodges in the holiday park and would result in an unacceptable reduction in privacy and amenity in those units. The route landward of the embankment at section SCS-5-S061 borders existing units and plots for

which planning permission is extant and which are being developed; there would be an adverse impact in relation to rental and sales uptake and the value of those plots. Approval has also been granted for the extension of the holiday park into the triangle of land east of the East Plain part of the site; the trail will also impact upon the plots to be developed.

209. Trail section SCS-5-S062 may prejudice the opportunity to extend the park further east beyond the East Plain site. The alignment of the trail would have a detrimental impact upon the holiday park both now and in the future and fails to strike the fair balance required.
210. Alternative route. Two alternatives are suggested. Firstly, it is proposed that the trail should permanently follow the route shown as SCS-5-A003FW to SCS-5-A005RD, and not run to the west and south of the holiday park. This is the proposed alternative to be used during periods of maintenance of the flood embankment; using it as the main route of the trail would prevent the detrimental impacts upon the holiday park from arising.
211. By proposing the alternative route, NE acknowledge that it is practicable and safe for public use, would not result in the trail being interrupted and although views of the sea would be reduced, the alternative route would satisfy all the other statutory criteria.
212. The route described above would be the objector's first preference. A second alternative would be to route the trail from West Plain Farm at SCS-5-S056FP and then proceed generally eastwards along the edge of the former Cark airfield on what is shown on map SCS 5i as a 'kart track' to join the proposed trail around midway along SCS-5-S062. This route would avoid the safety risks associated with the flood embankment, although it is recognised that the route may lead to negative impacts on the ability to develop the holiday park further east around the former airfield. This route would nonetheless satisfy the statutory criteria.

## **Representations R4 and R5**

213. The proposal to route the trail landward of the embankment between SCS-5-S059 and SCS-5-S068 is strongly opposed. The trail should run along the embankment top throughout this length. The confinement by fencing is unacceptable especially when walkers would have to view the caravan park between SCS-5-S061 and SCS-5-S062. Secondly the route chosen by NE ignores the significant current use by the public of a route around Rougholme Point. The proposed alternative route along the road has the potential to bring walkers into conflict with cyclists and vehicles and should be avoided.

## **The response by Natural England**

### ***The objection***

214. NE considers that the proposed route is entirely consistent with the guidance given at 8.19.7 of the Scheme. The proposed route follows the top of the flood embankment for the majority of the sections close to the holiday park, only deviating landward of the embankment for nature conservation reasons.



215. That the embankment was not created to carry a public right of way is not a material concern when assessing the route of the trail; the 2009 Act provides for the trail to be created according to various constraints and criteria, irrespective of current or previous access or intentions regarding access. NE has assessed the proposed route and is satisfied that it will be safe for use and fit for purpose following the proposed establishment works.
216. Occupiers' liability is considerably reduced under the Scheme; clear waymarking will guide users along the trail and it is considered unlikely that trail users will seek to deviate inland. SCS-5-S057 and SCS-5-S058 are segregated from the holiday park by a fence and ditch. Sections SCS-5-S060 to SCS-5-S061 bring the trail to the periphery of the holiday park to avoid disturbance to a range of protected birds which roost, feed and nest in the adjacent salt marsh. The route on the periphery of the site will follow a reasonably wide existing track used (among other things) for periodic maintenance of the ditch just landward of the embankment; the proposed route would minimise any visual intrusion on residential units on the site.
217. Large caravan and holiday lodge sites are by their nature, semi-public places, likely to see guests moving around the site on a regular basis. Whilst such places are considered excepted land, provision is made in paragraph 8.19.2 of the Scheme for an access strip in the vicinity of such sites. A route on the periphery of the site is likely to be preferable to one which ran over the access roads through the site and is likely to have little impact upon site management.
218. It is not considered that the use of the flood embankment will result in the safety risks suggested by the objector. Flood embankments are a common feature of low-lying coastal areas; the Scheme recognises that the trail may be aligned on such features (paragraph 8.21.4). Similarly, many flood embankments are reinforced with rock armour; given the existing public access around the embankment and its vicinity, NE do not expect any significant increase in risk to the infrastructure over and above that which is already present.
219. Members of the public following the trail are primarily responsible for their own safety (paragraph 4.2.1). It is not considered that fences need be installed around features which would be immediately obvious to visitors who should be reasonably expected to act accordingly. Any consents required for the establishment works will be obtained before those works are carried out.
220. The suggested period of closure for up to five days per year is based on information provided by the Environment Agency, the body responsible for the maintenance of the flood embankment. Equally, it may be possible to manage some short-term closures on an informal basis. It is likely that the holiday park operator already has effective means in place for segregating guests from plant and machinery which may prove to be the most effective means of managing risk to guests and trail users alike. Discussions regarding management of the site both pre and post-establishment of the trail would be welcomed.
221. Alternative routes. The proposed modification is resisted for a number of reasons. Firstly, it is not accepted that the proposed main route is unsafe;

secondly, the proposed optional alternative route is suitable for that purpose, particularly given the limited number of days for which it might be required. The objector's alternative is not in close proximity to the coast, nor does it provide views of the coast. Paragraph 4.2.4 of the Scheme recommends that the trail should follow public roads only when it is the best or only option available; this is not the case at this location.

222. The second alternative proposed by the objector may be a better option for walkers, but its designation as the main route would not be justified on the basis of the suggested risk to users arising from the proposed main route. The proposed route would also not be comparable to the proposed main route in terms of proximity to the sea, views of the sea or convenience and attractiveness to users.

### ***Representations R4 and R5***

223. NE is grateful for the support of the Ramblers and OSS for parts of the proposals. The alignment east of cark airfield was guided by the conclusions of the Habitats Regulations Assessment (HRA) and the Nature Conservation Assessment (NCA), taking into account the risk of disturbance to key bird species on Out Marsh and around the seaward flanks of the flood embankments.

### **Further information sought by the Inspector following the site visit**

224. Report SCS 5 states that NE considered aligning the trail on top of the embankment but did not pursue this option due to conflicts with nature conservation objectives from increased disturbance to roosting, feeding and breeding birds at high tide. The proposed route would therefore run on a path or track on the periphery of the holiday park site from which guests can access other parts of the holiday park without having to leave the site. Concerns have been raised by the objector regarding trail users accessing parts of the holiday park without authority.
225. From the site visit, there appeared to be sufficient space between the seaward side of the drainage ditch and the flood embankment within which a route could be engineered to serve as the coastal path. If this were possible, the trail would mitigate possible disturbance to protected species and reduce the potential for disturbance to residents and guests of the holiday park. Had NE explored the feasibility of the trail being constructed at this location? If such an alignment was not possible, could NE provide further information as to what infrastructure would be provided to mitigate unauthorised access to the holiday park.

### **NE's response to the Inspector**

226. A survey was conducted of the land seaward of the ditch and landward of the flood embankment. It appears likely that a route could be constructed in this location parallel to (and for the majority of) SCS-5-S062. Unfortunately, the same opportunity does not exist alongside SCS-5-S061 or the most southerly section of SCS-5-S062.
227. The Environment Agency was consulted regarding replacement of the boundary fence on the landward side of the base of the embankment.

Replacing like for like would not pose a problem but would restrict mowing machinery if the fence was moved up the embankment slope itself. For the maintenance of the ditch, EA requires a minimum of 5.5 metres landward of the ditch from which to operate its machinery. It would not be possible to engineer a path landward of the ditch segregated from the holiday park's path without interfering with EAs working area.

228. On the basis that it is not considered viable to create a separate new route on either side of the drainage ditch parallel to section SCS-5-S061, further discussions will be held with the objector over the most appropriate methods to deter trail users from leaving the coast path and entering the holiday park. Clearly worded and polite signage at key points is likely to be the most effective means of achieving this along with clear directional signage for the trail. However, more engineered solutions (such as key controlled barriers at entrance points) cannot be ruled out and would be part of ongoing discussions should that prove necessary.

### **Discussion and conclusions**

229. The route proposed by NE would be available at all states of the tide, would be in close proximity to the sea, and would provide views of the sea from SCS-5-S057 and SCS-5-S058. Although those views would be temporarily lost behind the flood embankment between SCS-5-S059 to SCS-5-S062, these sections of the trail connect with other sections from which such views would be available. The proposed trail would broadly satisfy the criteria set out in sections 4.4, 4.5 and 4.6 of the Scheme.
230. I saw from my site visit that there is already de facto public access along the flood embankment from the corner of Moor Lane at the northern end of SCS-5-S057; such access appears to have been available for some time and no objection has been raised to the trail running over this section of the embankment by the landowner, Holker Estates, or by the Environment Agency.
231. Whilst concerns regarding the safety of users who might seek to follow the trail on top of the embankment have been raised by the objector, those concerns do not appear to be shared by the owner of the land or the body responsible for the maintenance of the flood embankment. The same can be said with regard to concerns over the infrastructure present in the embankment; whilst the number of people using the embankment might rise as a result of the establishment of the trail, the risks to any infrastructure present in the embankment will already be present given the extent of current public use. Those techniques currently employed to manage the existing risk are likely to be sufficient to address any increase in that risk.
232. From SCS-5-S059, the proposed trail would run over an existing surfaced track which serves to provide access between different parts of the holiday park for residents and their visitors. This track runs landward of a substantial drainage ditch which is located at the landward foot of the embankment. The trail has been aligned along the access track to prevent disturbance to protected bird species which roost, feed and nest on Out Marsh which would occur if the trail ran along the top of the embankment as suggested in representations R4 and R5.

233. Along the access track are a number of locations by which access to the residential part of the holiday park would be possible. The objector has concerns that these access points may prove attractive to trail users and a means by which unauthorised access to the holiday park and its facilities might be obtained.
234. The majority of the plots closest to the access track and the proposed SCS-5-S061 would be screened from trail users by existing shrubs and trees which separate the track from the residential units. Toward the eastern end of this section, the shrub growth gives way to grassland with the result that any reduction in privacy is likely to be greater at these plots than elsewhere along SCS-5-S061. Nonetheless, as the track already provides access to the wider holiday park site including the listed structures on the former airfield, those plots are likely to experience a degree of intrusion and reduced privacy in any event. Appropriate waymarking and signposting of the trail along the existing access track would enable trail users to pass along the site quickly and should encourage users to remain on the trail. NE recognises that more formal measures may be required to prevent access to the holiday park if informal measures prove inadequate. This aspect of management of the trail should be the subject of continuing discussions between NE, the access authority, and the objector.
235. The concerns of the objector regarding unauthorised access and intrusion are likely to be addressed if it were possible to route the trail on the seaward side of the drainage ditch at the landward foot of the embankment. NE have explored the possibility of such a route being created, but the requirements of the EA for access for the maintenance of the embankment and ditch are such that it is not feasible to engineer such a route.
236. The holiday park is in the process of expanding eastward as the approved plans demonstrate; those plans show the existing access track to be separated from the new residential units by an access road; whilst there may be a reduction in privacy arising from the establishment of the trail, the privacy of the new units will be compromised to some extent by the use of the access road and existing access track. Appropriate management of the trail through signage, waymarking and notices is likely to mitigate any further impact the trail might have.
237. The first alternative suggested by the objector would align the trail along the public road network between Moor Lane and Holy Well Road. Whilst this route would be suitable as an alternative to the proposed trail for short periods of time, it would not provide the best fit with the statutory criteria as it would not be in close proximity to the sea and would not provide views of the sea. The alternative route via the road network is also not the only or best option for the trail in this location and aligning the route inland would also draw all non-exempted land into the coastal margin. For these reasons, it can be reasonably concluded that the proposed alternative is not suitable for the main trail.
238. Although the second alternative route proposed would be available at all states of the tide, it would be less proximate to the sea than the route proposed by NE and would not offer the views of the sea available from the

proposed route. As such the second alternative route would not provide the best fit with the criteria of the Scheme.

### ***Habitats Regulations Assessment (HRA)***

239. The following sections are to assist the Secretary of State, as the Competent Authority, in performing the duties under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Competent Authority is required to make an Appropriate Assessment (AA) of the implications of a plan or project for the integrity of any European site in view of the site's conservation objectives. The appropriate nature conservation body must also be consulted, in this case Natural England (NE). If the AA demonstrates that the integrity of a European site would be affected then consent for the plan or project can only be granted if there are no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (IROPI) and compensatory measures will be provided which maintain the ecological coherence of the UK National Site Network.
240. The HRA provides information to inform the Competent Authority's AA. The assessment was undertaken by NE in accordance with the assessment and review provisions of the Habitats Regulations and are recorded separately in the suite of reports. The HRA considered the potential impacts of the coastal access proposals on the Morecambe Bay and Duddon Estuary Special Protection Area (SPA); the Morecambe Bay Special Area of Conservation (SAC); the Morecambe Bay Ramsar site; and the Duddon Estuary Ramsar site. The HRA has identified the relevant sites affected by the proposals.
241. 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, further assessment under the HRA provisions was required. The overall Screening Decisions found that as the plan or project was likely to have significant effects (or may have significant effects) on some or all of the Qualifying Features of the European Site(s) 'alone', further appropriate assessment of the project 'alone' was required. On this basis, the HRA considered the potential for the project to give rise to Adverse Effects on the Integrity ('AEoI') of the designated sites.
242. The scope of the appropriate assessment is set out in Part D1 and Table 4 and Part D1 and Table 6a of the HRA and identifies the sites and qualifying features for which significant effects (whether 'alone' or 'in-combination') are likely or could not be ruled out. The relevant information is discussed in D2; the Secretary of State should note that in relation to the Morecambe Bay SPA & SAC NRA, this relates to the entirety of the SCS and SDC sections of the trail.
243. The assessment of AEoI for the project alone takes account of measures to avoid or reduce effects which were incorporated into the design of the access proposals. The assessment considers that these measures are sufficient to ensure no AEoI in light of the sites' conservation objectives. Those relevant to this report where there is some residual risk of insignificant impacts are where

- Disturbance to foraging, breeding or resting birds, following changes in recreational activities as a result of the access proposals, leads to reduced fitness and reduction in populations and/or contraction in the distribution of Qualifying Features within the site.
244. In section D4 of the HRA, NE considered whether the appreciable effects that are not themselves considered to be adverse 'alone' to determine whether they could give rise to an AEOI 'in-combination' with other plans or projects. NE considered that the potential for adverse effects was not wholly avoided by the additional mitigation measures identified in D3 and that there were residual and appreciable effects likely to arise from changes in recreational activities as a result of the access proposals and the construction of sections of new path through these habitats which had the potential to act 'in-combination' with those from other proposed plans or projects.
245. However, assessing the risk of 'in-combination' effects (D4 step 2), NE concluded that no further 'in-combination' assessment was required. NE concluded that, in view of the sites' conservation objectives, the access proposal (taking into account any incorporated avoidance and mitigation measures) would not have an AEOI on Morecambe Bay and Duddon Estuary SPA, Morecambe Bay SAC, Morecambe Bay Ramsar site and Duddon Estuary Ramsar site either 'alone' or 'in-combination' with other plans and projects.
246. Part E of the HRA sets out that NE are satisfied that the proposals to improve access to the English coast between Silecroft and Silverdale 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 HRA conclusions are certified by both the person developing the access proposal and the person responsible for considering any environmental impacts. Taking these matters into account, reliance can be placed on the conclusions reached in the HRA that the proposals would not adversely affect the integrity of the relevant European sites. It is noted that, if the Secretary of State is minded to modify the proposals, a further assessment may be needed.

### ***Nature Conservation Assessment (NCA)***

247. The NCA, 9 December 2019, should be read alongside the HRA. The NCA covers matters relating to Sites of Special Scientific Interest (SSSI) Marine Conservation Zones (MCZ), Limestone Pavement Orders (LPO) and undesignated but locally important sites and features, which are not already addressed in the HRAs.
248. Relevant to this report are the World War II aircraft pens, other airfield remains and defences of the former RAF Cark Scheduled Ancient Monument. NE were satisfied that the proposals to improve access to the English coast between Silecroft and Silverdale were fully compatible with their duty to further the conservation and enhancement of notified features, consistent with the proper exercise of their functions.



249. In respect of the relevant sites or features the appropriate balance has been struck between NE's conservation and access objectives, duties, and purposes. Works on the ground to implement the proposals would be carried out subject to any further necessary consents being obtained.

### **Whether the proposal strikes a fair balance**

250. It is necessary to consider whether a fair balance is struck between the interests of the public in having rights of access over land and the interests of the owners/occupiers of the land subject to coastal access rights. The proposed route will create a right of access over land on the periphery of the holiday park site. There are currently no rights of access over the holiday park site, although there is existing public access along the flood embankment to the east and south of it.
251. The proposal will create a right of access over the objector's land which may adversely impact upon how that land is currently used. Mitigation in the form of notices, signposts and waymarking is proposed to limit the impact upon privacy of those resident at the holiday park. There is currently public access to part of the route the trail would follow and the access track outside the residential areas of the holiday park is also subject to extensive use by residents and guests. It is unlikely that the establishment of the trail will lead to an increase in disturbance to those resident on the site over and above that which is already present. Any adverse effects do not in my view outweigh the interests of the public in having rights of access over coastal land. As such I do not consider that the proposals fail to strike a fair balance.

### **Recommendation**

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

*[redacted]*

Appointed Person