

## Part B Key principles of alignment and management

Part B of the Scheme sets out key principles that Natural England will take into account in deciding what access to recommend and outlines the approach we will take to balancing these considerations.

The 2009 Act requires us, in discharging our Coastal Access Duty, to aim to strike a fair balance between the interests of the public in having rights of access over coastal land and the interests of owners and occupiers of any land over which any coastal access rights would be conferred. The structure of part B of the Scheme reflects this requirement:

- Chapter 4 considers principles relating to the public interest.
- Chapter 5 considers principles relating to the interests of owners and lawful occupiers.
- Chapter 6 explains how we will deploy access alignment and management solutions to ensure that an appropriate balance is struck between these principles on each section of coast.

### Chapter 4. Public interests

#### 4.1 Overview

- 4.1.1 In relation to the trail, Natural England is required by section 297(2) of the 2009 Act to have specific regard to:
- the **safety** and **convenience** of those using the route;
  - the desirability of it adhering to the **periphery** of the coast and providing **views** of the sea; and
  - the desirability of ensuring that, so far as is reasonably practicable, **interruptions** to it are kept to a minimum.
- 4.1.2 Since in many places there will be a choice as to the route, with each option fulfilling each of these considerations to varying degrees, it is for Natural England in its proposals to the Secretary of State to propose the balance to be struck between them on each stretch of coast.
- 4.1.3 The extent to which **spreading room** should be available to the public is relevant in striking this balance, because it is affected by our proposals about the position of the route, and may be affected by our proposals about:
- places where the landward boundary of the coastal margin should coincide with a physical feature (see section 4.8); and
  - any local exclusions or restrictions we think are necessary.
- 4.1.4 The sections that follow explain in more detail the public interest criteria that are summarised above. They also explain our approach in relation to:
- use of **existing walked lines** along the coast;
  - responsiveness to **coastal change**;
  - use of our powers relating to the **wider coastal margin**; and
  - enjoyment and protection of the **coastal environment**.

#### 4.2 Safety on the trail

- 4.2.1 Most people already understand that the coast can be a dangerous environment, and are aware of many of the inherent risks. Our key principle is that visitors should take primary responsibility for their own safety when visiting the coast and for the safety of any children or other people in their care, and should be able to decide for themselves the level of personal risk they wish to take.

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4.2.2 In line with this principle, land subject to coastal access rights benefits from the lowest level of occupiers' liability known under English law – considerably lower than the duty of care owed towards trespassers on private land, and this applies to both natural and man-made features. This makes it extremely unlikely in normal circumstances that an occupier could successfully be sued in relation to injury on land with coastal access rights. However, as elsewhere, liability still applies in relation to reckless or deliberate acts or omissions by the occupier, and in some circumstances to injury caused by the condition of physical infrastructure such as gates or steps installed by the occupier, but in other respects the level of liability is uniquely low<sup>29</sup>.

4.2.3 Our approach to risk management on the trail is therefore light-touch, aiming to minimise any safety measures that would be restrictive on public access or enjoyment, or that would conflict with land management or environmental objectives. We may monitor safety at locations where we have specific concerns, normally working through the access authority.

4.2.4 It will often be possible to minimise potentially significant risks without special mitigation measures, through sensitive positioning of the trail. For example, the trail need not be aligned along a road used regularly by motor vehicles if there is another suitable route. The position of any road crossings that are necessary is chosen in consultation with the highway authority, with safety and convenience in mind. Local authorities have traffic management powers which may sometimes be appropriate in this context.

4.2.5 We assess the likely level of visitors' familiarity with and expectations of the risks on each section of trail when deciding what safety measures are necessary, if any. We will adopt a principle of minimal intervention, assuming that people will avoid dangers that are well known – such as cliff edges – provided that they are readily apparent.

4.2.6 Both Natural England and the access authorities have powers to erect signs along the trail warning of potential dangers, or use fencing or natural vegetation barriers where required. These powers are used very sparingly, to warn or protect people from dangers they could not reasonably anticipate, such as entrances to abandoned mines or unstable cliffs. Section 305 of the 2009 Act provides that no liability will attach to Natural England or access authorities for failing to erect such signs or barriers, or to Natural England or the Secretary of State for the choice of route.

4.2.7 We will take into account risks periodically posed by other activities on parts of the trail itself such as land management activities or other recreational activities such as horse riding or cycling. Any sections of the trail likely to be used by horse riders, cyclists or vehicles will require special consideration. We may make allowance for this in the positioning of the trail, for example if it is necessary to accommodate a mixture of uses safely on a cliff top path.

4.2.8 Local restrictions and exclusions will be available where necessary to prevent danger to the public from things that have been done, or are proposed to be done on the land, but may not be used to prevent danger from natural features or natural events (see section 6.6).

4.2.9 Part C of the Scheme explains our approach to specific safety concerns that are likely to arise: chapter 7 includes considerations in relation to natural hazards such as cliff edges and tides; and chapter 8 considers risks arising from other activities on the land.

### 4.3 Convenience of the trail

4.3.1 For the route to be convenient, it should be reasonably direct and pleasant to walk

<sup>29</sup> The change made in this respect by section 306 of the 2009 Act to the Occupiers' Liability Act 1984 does not affect civil liabilities for people invited on to land. Nor does it apply in relation to land within the margin that is not subject to coastal access rights, for example public rights of way and section 15 land, or excepted land: in such places the liability position is unchanged. Existing duties on employers and the self-employed in relation to public safety under health and safety at work legislation are also unaffected by the change.

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along. There should also be reasonable adjustments for disabled people and others with reduced mobility.

*Reasonably direct*

- 4.3.2 People using the trail should not have to follow an indented coastline slavishly. The trail needs in general to be close to the sea (see section 4.5) and to offer sea views (see section 4.6), but also needs to enable people to make reasonable progress if their key aim is an onward walk around the coast.

*Pleasant to walk along*

- 4.3.3 So far as practicable, we will align the route to avoid excessively steep, narrow or oppressive sections, whilst accepting the natural limitations and challenges of access over some coastal terrain, and that in some situations achieving a fair balance between public and private interests may rule out the most pleasant alignment.

- 4.3.4 As indicated in chapter 2, the legislation by default secures access rights to the land 2 metres either side of the route shown on the map. This allows for the trail itself to be 4 metres wide under ordinary circumstances, enabling two people to walk comfortably abreast. In practice, we often adopt as part of the trail sections of existing path or track that may be wider or narrower than 4 metres, or not of uniform width. We are unlikely to carry out any physical alterations to the existing path or track to make it conform to a standard 4 metre width, provided that we consider it satisfactory when measured against the public interest criteria set out in this part of the Scheme.

- 4.3.5 Where we use a new alignment for the trail, it will typically have a natural surface rather than an artificial one. This too will often result in a visible path narrower than the 4 metres provided in law.

- 4.3.6 Whether we recommend that an existing route be used or a new one created, we will always aim to 'work with the grain' of existing physical features such as fences, walls, hedges and rocks.

- 4.3.7 The management of the trail and its associated infrastructure and signs will conform to the published standards for other National Trails<sup>30</sup>. These standards consider the overall convenience of the trail within a design framework that uses natural surfaces such as grass wherever possible and otherwise favours the use of natural or carefully chosen artificial materials and local designs that blend well with their setting. We pay particular attention to the location, design and installation of access infrastructure on sites of conservation value (where clearance, digging and drainage works would have the potential to damage features of interest) and in other areas where specific consents are required from other authorities.

*Adjustments for disabled people and others with reduced mobility*

- 4.3.8 We follow the principles set out in our publication "By All Reasonable Means"<sup>31</sup> to make the trail as easy to use as we reasonably can for disabled people and others with reduced mobility, whilst accepting that such opportunities will often be constrained by practical limitations, such as the rugged nature of the terrain or the availability of visitor transport and facilities (see section below). Where there is a choice of routes (after taking into account all the key principles in chapters 4 and 5 of the Scheme), we favour the one that is accessible to the widest range of people or most easily adapted for that purpose.

- 4.3.9 Throughout the trail, we avoid creating any unnecessary new barriers to access by choosing the least restrictive infrastructure that is practical in the circumstances. For example, where we install infrastructure in preparation for the introduction of the rights (or replace existing infrastructure, once it has reached the end of its

<sup>30</sup> Standards for the management of National Trails are set out in the New Deal; Management of National Trails at <http://publications.naturalengland.org.uk/publication/6238141?category=21128>

<sup>31</sup> By All Reasonable Means: [http://www.naturalengland.org.uk/Images/inclusivetcm2-27716\\_tcm6-4032.pdf](http://www.naturalengland.org.uk/Images/inclusivetcm2-27716_tcm6-4032.pdf)

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useful life) we normally use:

- gaps to cross field boundaries where livestock control is not an issue;
- gates rather than stiles where livestock will be present, designed to enable access by people with wheelchairs; and
- graded slopes rather than steps if practicable.

4.3.10 Where appropriate, our proposals include further targeted adjustments to make the trail more accessible for people with reduced mobility. This may include improvements to the information available about those lengths of trail that are already accessible to a wide range of people. We also ask local representatives to help us identify, prioritise and design suitable and affordable physical improvements to the trail according to their local needs and the available budget. They might typically identify:

- particular sections of trail that are well-served by public transport and visitor facilities, but have physical barriers to access for people with reduced mobility which could realistically be removed; or
- sections with potential to provide key strategic links through adjustments that are readily achievable.

4.3.11 In all this, we will have regard to:

- any concerns about making it easier in practice for people to enter land unlawfully with vehicles;
- the importance of conserving cultural heritage features and landscape character in the design of the trail and infrastructure;
- land management needs, for example the need for crossing points to be designed to prevent livestock from escaping;
- the costs involved; and
- the need for crossing points between fields to facilitate access for horse riding or cycling where there are existing rights or permissions for these activities.

*Visitor transport and facilities*

4.3.12 We are not required to consider additional visitor facilities such as car parks, toilets or public transport as part of our proposals to the Secretary of State, though section 51 of the 1949 Act enables us to make proposals for accommodation, meals and refreshments along the route if we see fit. In practice we expect local businesses and communities to decide what additional visitor facilities are appropriate. These do not form part of the proposals in our report.

4.3.13 The presence of additional facilities may affect the management of the trail, for example if it is likely to attract more people to a particular location. Where proposals for additional facilities are in train during the preparation of our initial proposals we will reflect any likely impact in the coastal access report. Otherwise we may reassess coastal access in the light of any facilities that are later provided.

4.3.14 Where there are existing public facilities such as visitor centres near the coast, we consider whether our route proposals can make positive links with these.

#### 4.4 Continuity of the trail

4.4.1 Having arrived at the coast, people should normally be able to walk in either direction for as long as they like around the open coast of England. This is in line with the principle in section 297(2) of the 2009 Act that so far as reasonably practicable, interruptions to the route around the English coast should be kept to a minimum.

4.4.2 People should normally be able to expect this continuity at all states of the tide, so the trail normally avoids any route which is prone to tidal encroachment. Where there are no other viable options, or a route affected by tidal encroachment offers the best 'fit' with the statutory criteria:

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- we consult with HM Coastguard or other relevant agencies about the related safety issues;
- we may propose that an optional alternative route (see section 4.10 and 7.11.4) be available during high tides, where this is practicable and sensible; and
- we will seek to ensure that appropriate notices warning of the tidal issues are erected at either end of the route affected by the tides, and at any other access points to it.

4.4.3 In some situations, breaks in continuity may remain for the time being after we have submitted our report - particularly at estuaries where there is no convenient crossing point within reasonable distance of the coast (see chapter 10). If we are aware of plans or projects which may help to bridge such breaks in continuity in the future, we mention these in our report. In the event that such projects do take place, and provide the means to fill any trail gaps, we would expect to submit a later variation report proposing a trail improvement.

4.4.4 Our route proposals avoid altogether any places where long-term or permanent local exclusions would affect the route, including exclusions affecting only people with dogs. However, temporary or seasonal restrictions or exclusions may from time to time be necessary on the trail locally. Wherever possible we anticipate this in our report, proposing alternative routes to enable people to continue their journey along the coast at such times.

4.4.5 Where we know a significant development or change is going to prevent public access along the preferred route for a lengthy period, we may still propose this as the 'ordinary' route, with an alternative route in place during the development period while access along the ordinary route is excluded.

4.4.6 The route should also where practicable be aligned to link up with routes leading to and from the coast, with existing public transport links and car parks on the coast, and with river crossings.

**4.5 Proximity of the trail to the sea**

4.5.1 The route should normally be close to the sea otherwise it would fail in its primary purpose to enable people to enjoy the coast of England. This is in line with the principle in section 297(2) of the 2009 Act that it is desirable that the route should adhere to "the periphery of the coast".

4.5.2 This does not mean the trail must pass along the land closest to the sea. Often the best route will be on the cliff top rather than the beach, for example, because the sea views are better and the surface is more convenient for walking. Equally, the route may be set further back if this strikes the best balance between all the key principles described in chapters 4 and 5 of the Scheme.

4.5.3 Although (subject to exceptions) land seaward of the trail is spreading room by default, the trail may sometimes be a considerable distance from the sea at low tide, and closer access to the water may not be practicable or convenient (or, for example, in keeping with nature conservation objectives).

4.5.4 Significant detours from the periphery of the coast may occasionally be necessary in order to take account of other uses of the land, or of wildlife sensitivities. Part C of the Scheme explains some of these circumstances in more detail.

**4.6 Views of the sea from the trail**

4.6.1 The trail should normally offer views of the sea, because they are a key part of many people's enjoyment of the coast.

4.6.2 Views from the trail may be interrupted by vegetation, landforms, buildings or coastal defence structures. Where this happens, there will sometimes be spreading room beside the trail which people can use to get a better sea view if they wish. We

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are unlikely to clear vegetation in order to open up views, but we may do so if it is necessary to make room for the trail itself (see stage 5 in chapter 3 of the Scheme).

4.6.3 The trail may also lose sight of the sea temporarily in order to follow a safer or more convenient route, or to take account of other uses of the land.

4.6.4 On low-lying coast, it may not be possible to see the sea from the trail at some states of the tide.

#### 4.7 Use of existing walked lines along the coast

4.7.1 Where there is an existing national trail along the coast - or another clear walked line along the coast, whatever its status - we normally propose to adopt it as the line for the England Coast Path so long as:

- it is safe and practicable for the public to use;
- it can be used at all times; and
- the alignment makes sense in terms of the other statutory criteria and principles set out in this Scheme.

4.7.2 Where there is more than one existing walked line, we propose the one we consider offers the best 'fit' for these purposes, if any. Where the definitive line of a public right of way differs from the line already walked on the ground, it is the walked line that we normally propose, in discussion with the land owner, to use as the route.

4.7.3 Where there is an existing walked line along the coast but we conclude that we should instead propose a 'new' route, we set out our reasoning fully in our report to the Secretary of State. This might for example be because:

- there is a poor fit with the statutory criteria or the alignment principles in this Scheme;
- the owner or occupier of affected land would prefer a new alignment that we consider provides as good a 'fit' from these perspectives; or
- the existing walked line follows particularly difficult terrain such as deep sand or shingle (see sections 7.11 and 7.12), or is subject to tidal inundation, and there is another route that would clearly be better.

4.7.4 Where for such reasons the England Coast Path does not follow the line of an existing national trail along the coast, we will subsequently propose that the existing national trail itself be realigned along the new route, using a separate variation report<sup>32</sup>.

4.7.5 Other promoted paths remain the responsibility of the body that developed them. There is no obligation on the promoting body to modify its promoted route to bring it in line with the England Coast Path, if this is different - but we will seek to discuss this option with them where appropriate.

4.7.6 Creation of the England Coast Path does not remove any existing public rights of way that follow different alignments in the same vicinity. It is open to the owner of affected land to argue to the highway authority that any particular right of way has become redundant and should be extinguished. We have no powers to do this through the report we submit to the Secretary of State.

#### 4.8 Use of our powers relating to the coastal margin

*Land considered to be accessible*

4.8.1 The second objective under the Coastal Access Duty in section 296(3) of the 2009 Act is to secure a margin of land along the length of the English coast which is accessible to the public. For land within the coastal margin to be considered accessible for these purposes, the 2009 Act says it must be:

- land where the coastal access rights apply; or

<sup>32</sup> Under section 55 of the 1949 Act.

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- land with access rights of the types listed in section 15 of CROW; or
- excepted land which is accessible to the public by another enactment or rule of law - principally public footpaths, bridleways and other highways.

The component parts of the coastal margin are explained below. They are set by an Order made under section 3A<sup>33</sup> of CROW (“the Order”).

4.8.2 There is no duty on Natural England to make it possible for the public to reach all parts of the coastal margin on foot. Some coastal areas, such as cliff faces and rocky shores, are inherently difficult to reach and this is part of their appeal for some people. However, the route is wherever practicable chosen to make it easy for the public to reach popular areas of spreading room like beaches, either by passing a safe and convenient point of entry, or by linking to a secondary route which leads to them.

4.8.3 In some situations we may also promote or improve existing secondary routes or points of access to spreading room from the trail, either to make it easy for people to reach it or to encourage people to avoid other areas that are less suitable for general use. For example, see figures 26, 29 and 30 in chapter 9.

4.8.4 We are unlikely to recommend new secondary routes through spreading room in our coastal access reports, unless we conclude that it is necessary to encourage people to take a particular route for safety, land management or conservation reasons. The detailed assessment criteria in chapters 7 and 8 indicate circumstances where this might be necessary.

*Land seaward of the trail*

4.8.5 The Order provides for any land seaward of the route to qualify automatically as coastal margin as a consequence of the route being put in that position. On estuaries, as on the open coast, this relates to any land between the trail and the seaward extremity of the foreshore – see chapter 10.

4.8.6 Some parts of the coastal margin seaward of the trail will not be spreading room because:

- they are excepted land; or
- coastal access rights there are subject to long-term local exclusions (see section 6.6).

4.8.7 In some instances, there may be no lawful means for the public to reach spreading room from the trail because the intervening land is excepted land (or excluded by direction). For example, the only way to reach a particular beach may be through a building or private garden that lies between the trail and the beach.

*Default landward margin*

4.8.8 Subject to these same provisos, the Order also provides for certain specific coastal land types to be included automatically in the coastal margin where they fall landward of the trail. The land types in question are:

- foreshore (which is taken here to mean the area between the mean high water mark and the mean low water mark); and
- any cliff, bank, barrier, dune, beach, flat or area of section 15 land which either touches the foreshore itself at some point, or connects indirectly with it by touching another part of the coastal margin that itself touches the foreshore at some point<sup>34</sup>.

4.8.9 In some cases, this provision may result in the coastal margin extending for some considerable distance inland of the trail.

*Identifying the landward boundary of the coastal margin*

4.8.10 Where the landward boundary of the coastal margin is to be inland of the trail itself, we

<sup>33</sup> The Access to the Countryside (Coastal Margin) (England) Order 2010 – SI 2010 No.558

<sup>34</sup> For example dunes are often separated from the foreshore by a narrow strip of beach, but will still be considered to be adjacent to it for these purposes. But in the event that an area of dune was completely separated from the coast by developed land, it would not be included in this way unless the landward boundary of the coastal margin is extended to coincide with the landward boundary of the dune under section 55D(2)(a).

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seek to define the boundary in our report. Where possible, we show it on our report maps as well as describing it in our report. However, in some situations we may not be able to depict the boundary on our maps. These situations include the following:

- when we exercise our discretion, as described below, to recommend that the boundary of the coastal margin coincides with a physical feature – but that feature is so close to the trail as to be obscured by the line of the trail itself, on our maps; or
- where there is default landward margin, as described at 4.8.8, but we cannot identify continuous and recognisable physical features with which the boundary can be aligned under the discretion described below.

In such situations, we will rely in our report on a description of the extent or boundary of the coastal margin, in relation to each section of the trail.

*Discretion to align landward boundary of coastal margin with a specified physical feature*

4.8.11 Natural England has a discretionary power under section 55D(2) of the 1949 Act to propose that the landward boundary of the coastal margin should coincide with a recognisable physical feature. We consider using this discretion where it would:

- make the extent of people's access rights clearer or more cohesive on the ground; or
- secure or enhance public enjoyment of the coast,

and, in either case, where there is a recognisable physical feature which would provide a suitable boundary. We would not use our discretion to incorporate additional land within the coastal margin if the land owner disagreed with us doing so - other than in exceptional circumstances (see paragraph 4.8.17 below).

*Make the extent of people's access rights clearer or more cohesive on the ground*

4.8.12 It often makes practical sense to use this discretion to achieve this objective by aligning the landward boundary of the coastal margin with a nearby physical feature that will be easily visible to the public and is likely to be intuitively recognised by them as the inland boundary of their coastal access rights. The effect of this proposal may be either to extend or to contract the size of the coastal margin in the interests of achieving this clarity and cohesiveness.

4.8.13 Often the physical feature to which we align the boundary is close to the trail itself, or even forms part of it - for example:

- a field boundary, e.g. a wall, hedge, fence or ditch;
- the edge of a road, pavement or surfaced track; or
- the edge of an embankment, such as those used for flood risk management.

4.8.14 Another way in which we use this discretion for this reason is to achieve greater clarity about the extent of any areas of default landward margin such as cliff or dune that connect with the trail. We normally look to align the landward boundary with suitable physical features that will enable all or most of such an area to be confirmed by our proposals as part of the coastal margin, rather than it forming part of the coastal margin by default but without such clarity. If this approach of confirming the inclusion of the default land is not practicable, we consider whether proposing to remove all or part of such an area from the coastal margin would increase clarity by enabling the landward boundary of the coastal margin to be aligned with a specified physical feature further seaward.

4.8.15 Either way, we share informally with the land owner our views about where this line should be drawn, so that any issues around this can be discussed.

*Secure or enhance public enjoyment of the coast*

4.8.16 In some situations we may consider that including specific additional areas that lie landward of the trail would achieve this second objective of securing or enhancing public enjoyment of the coast – for example by:

- providing additional areas to explore, or a place to rest, picnic or shelter from



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the elements;

- offering an enhanced sea view, or a contrasting environment from the more typical experience on that section of coast; or
- incorporating existing areas of CROW access land within the margin.

4.8.17 Only in exceptional circumstances would we propose the inclusion of additional areas that lie landward of the trail for this reason if the land owner disagreed with us doing so. We might do so, for example because the public benefit appears great and any impact on private interests minimal. If such a situation were to arise, our report would set out clear and compelling reasons for our proposal and indicate why we consider the fair balance test is met.

*Other considerations*

4.8.18 In considering these various options we will strike an appropriate balance with other objectives such as heritage and nature conservation, using the procedures and principles set out elsewhere in the Scheme.

4.8.19 The coastal environment is inherently dangerous and we recognise that for some people – climbers for example – that is part of its intrinsic appeal. We are therefore very unlikely to rule out the inclusion of landward spreading room under this discretion on safety grounds alone, unless there are significant risks arising from other activities on the land.

*Figures 25, 27 and 29 in chapter 9 illustrate some circumstances where we might exercise our discretion to recommend landward spreading room.*

*Voluntary dedication of land as coastal margin*

4.8.20 A land owner may make a dedication under section 16 of CROW to 'opt in' to the coastal margin land that would not otherwise be part of the coastal margin, but is adjacent to it. This can only be done once there is an approved coastal access report for the stretch, so that the initial extent of the coastal margin is known.

4.8.21 Land that is already coastal margin may also be permanently dedicated as such. Dedication may be used in this way, for example, to allow the route to pass over areas that would otherwise be excepted land.

4.8.22 A land owner may also use a dedication to remove or relax specific national restrictions that would otherwise apply to the CROW access rights.

4.8.23 Land that was previously dedicated under section 16 becomes automatically subject to the coastal access regime if it forms part of the coastal margin.

#### 4.9 Protection of sensitive features

4.9.1 Coastal access rights create more opportunities for the public to enjoy the natural and cultural environment of the coast and to understand it better. Our proposals for the trail and the extent of landward spreading room are influenced by local opportunities for people to encounter particular features or to get a more varied experience, where this is consistent with statutory obligations and with the other key principles in chapters 4 and 5 of the Scheme. This includes features designated for their landscape, geological or geomorphological, biodiversity or historic interest.

4.9.2 The key principle in our approach will be to find the best outcome that secures these opportunities for engagement so far as practicable while ensuring appropriate protection of key sensitive features. This principle is in keeping with our statutory purpose to conserve, enhance and manage the natural environment for the benefit of present and future generations<sup>35</sup>.

4.9.3 There are two key considerations here:

- on the one hand, the various statutory obligations in respect of sites and

<sup>35</sup> The Natural Environment and Rural Communities Act 2006, section 2(1).

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features on the coast; and

- on the other hand, our duty to deliver coastal access rights.

Each is set in the context of the more general statutory responsibilities under our founding legislation to pursue such imperatives in an integrated way.

4.9.4 We carefully consider the potential effects of improved coastal access on any key sensitive features along each stretch of coast, including wildlife, heritage, landscape and geodiversity features. This includes considering potential effects arising from any works which are necessary for the establishment or maintenance of improved coastal access, as well as from people's use of the coastal access rights.

4.9.5 In respect of heritage features, we take advice from local authority archaeological officers about the potential effects on these features, and consult English Heritage in relation to Scheduled Monuments.

4.9.6 In respect of sensitive natural features, we use an iterative process for developing our proposals for coastal access, assessing the potential effects of various options and further refining them and assessing them as necessary to help us decide on the best outcome. The way in which we do this in consultation with relevant local bodies is outlined in chapter 3. Appropriate separation of duties within Natural England is in place to ensure that impartial judgements can then be made in the light of the available evidence about any potential impacts of particular options on key sensitive features before reaching our final decision.

4.9.7 More specifically, we:

- fulfil our obligations under the Habitats Directive and Habitats Regulations in relation to European sites to which our proposals may relate;
- comply with our duty to take reasonable steps, consistent with the proper exercise of all our functions, to further the conservation and enhancement of the notified features of any sites of special scientific interest to which our proposals may relate;
- comply with our duty, in exercising our functions as a public authority, to have regard (so far as is consistent with the proper exercise of those functions) to the purpose of conserving biodiversity in England; and
- take into account any potentially significant effects on particular habitats or species protected under other legislation, insofar as they occur on the coast.

4.9.8 In developing our proposals for coastal access, we make a judgement on whether any of the features of conservation interest that may be affected are sensitive to public access, and if so:

- what changes in public use are likely to occur as a result of improved coastal access (see section 6.2 and figure 16 for the methodology); and
- whether any such changes will have a substantial effect on the features in question.

4.9.9 Often coastal access rights can be put in place without any special measures to protect the coastal environment. However, where we identify that there may be potential for coastal access rights to cause negative effects on protected sites or species, we consider whether any action is required to avoid or mitigate such effects, and include these measures within our proposals. There is a range of options available, including:

- a trail route that avoids sensitive areas, or an alternative route used during sensitive periods;
- informal management techniques such as public information, or promotion of particular routes;
- local restrictions or exclusions<sup>36</sup> on public use of spreading room; and
- monitoring the outcome on the ground.

<sup>36</sup> Natural England may exclude or restrict coastal access for this purpose using powers under section 26 of the Countryside and Rights of Way Act 2000.

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4.9.10 In all cases where we decide that special intervention is necessary because of environmental considerations, our policy is to adopt the option which is least restrictive on public access that will meet at reasonable cost our environmental objectives and any specific statutory obligations that apply. Chapter 7 of the Scheme indicates the solutions we are likely to consider in relation to key concerns.

4.9.11 The development of our proposals to introduce coastal access rights draws on a range of expertise in both Natural England and relevant organisations such as local wildlife trusts and other conservation bodies as outlined in chapter 3. We share our emerging analysis with these bodies before it is published as part of the coastal access report, in order to help ensure we reach the right decisions. The aim is to develop proposals that have the necessary measures built into their design to avoid any substantive impacts on key conservation interests. These are then assessed as to their potential impact on key conservation interests, including European or other designated features, and habitats and species of principle importance in England.

4.9.12 In the case of European sites, we have a specific duty to assess the implications of proposals to introduce coastal access rights on the sites' conservation objectives, under Regulations 9 and 61 of the Habitats Regulations 2010. The proposals are designed locally, and may include any measures considered necessary to reduce impact on the European designated features. We then assess each stretch proposal to determine whether it is likely to have a significant effect on the features to which their designation relates, either alone or in combination with other plans or projects. Where we consider that the coastal access proposal:

- is not likely to have a significant effect, either alone or in combination with other plans or projects, this concludes the necessary Habitat Regulations tests; or
- is likely to have a significant effect either alone or in combination with other plans or projects, we must then carry out an appropriate assessment to establish whether the proposal will have an adverse effect on the site's integrity.

4.9.13 On stretches of coast where we conclude that an appropriate assessment is required in relation to a European site, we also subject our proposals to strategic environmental assessment (SEA), in accordance with government policy. It is at the local rather than the national level that any SEA relating to coastal access is applied.

4.9.14 Should we conclude from an appropriate assessment that coastal access rights may have an adverse effect on the integrity of a European site, we will modify our proposals to the extent necessary to ensure on reassessment that there will be no adverse effect on the integrity of the site.

4.9.15 Where other protected sites or species may be affected, we use our flexible powers under the legislation to find solutions that best integrate our nature conservation and coastal objectives, complying with any specific legal duties where relevant. There may be circumstances where after careful assessment we conclude that some impact on nature conservation interests is unavoidable but acceptable, in order to strike the right balance between our aspirations in this respect and our responsibilities under the Coastal Access Duty.

4.9.16 Where appropriate, we consider carrying out monitoring to ensure that any actual impacts on nature conservation interests stay within acceptable limits and that we can take further steps to mitigate those impacts if we conclude from monitoring that this is necessary. We use or adapt existing monitoring activity wherever possible to achieve this. We also work closely with local and national partners to build on existing best practice in encouraging the participation of local people and users of the trail in helping to identify and solve issues.

4.9.17 We also ensure that any operations (such as those necessary to install access infrastructure) which are felt necessary to implement the proposals meet any relevant statutory requirements, including any applying to SSSIs or Scheduled Monuments. Our

approach is in any event always to ensure that any establishment works are undertaken in the way that has least impact on other uses and features of the land in question.

## 4.10 Responsiveness to coastal change

4.10.1 Most parts of the English coast will experience change at some point, and this can and does affect the continuing ability of people to walk around the coast. There is most likely to be an issue in terms of our route alignment where:

- the coastline is subject to significant erosion or other geomorphological processes;
- the trail is subject to periodic flooding (for example in storm conditions) or more regular tidal action; or
- there is a strategy of managed realignment<sup>37</sup> or non-intervention with coastal processes which will lead to change occurring.

4.10.2 The 2009 Act includes powers that enable our proposals to facilitate adaptation to these circumstances: these are described below.

4.10.3 Management of coastal erosion and flood risk is central to these considerations. Accordingly, section 55D of the 1949 Act requires us to consult the Environment Agency in relation to any interests of flood defence, or in the management of coastal erosion or encroachment by the sea, which may be affected by our proposals.

4.10.4 Delivery of the England Coast Path will not be a factor in determining shoreline management policies or the strategies that implement them, though individual schemes may make special provisions for coastal access where these can be accommodated within the overall objectives for flood or coastal risk management. This fits with our policy that sustainable management of flood and coastal risk is best achieved by solutions that work with the physical and hydrological processes that shape coastal and river environments.

*'Roll back'*

4.10.5 A continuous and sustainable trail cannot follow the same fixed route year after year on parts of coast that are changing significantly. Section 55B of the 1949 Act provides powers for the future line of the trail to be determined in accordance with provision made in our proposals to the Secretary of State, enabling the trail to be moved inland as the coast changes. In the Scheme, and in our reports, we call this provision 'roll back'.

4.10.6 The distinction between roll back and any other later change to the trail is that roll back takes place without further approval by the Secretary of State. Approval of the way in which roll back is to happen is given as part of the approval of our original report. In this way, everyone knows from the outset what the process will be for moving the trail in response to change.

4.10.7 The power enables us to recommend that the trail rolls back in an area which is (or may be) subject to:

- significant coastal erosion or physical change due to geomorphological processes, such as landslip; or
- significant encroachment by the sea, such as occurs in the case of a natural or deliberate breach of existing sea defences.

4.10.8 Where appropriate, our report may propose to the Secretary of State that roll back may be used to adjust the trail either:

- in direct response to such changes; or
- in order to link with other parts of the route that need to roll back in direct response to such changes.

4.10.9 In particular, if we consider it necessary in order to maintain the viability of the route as a whole, we may use roll back to reposition any part of the route landward of any

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<sup>37</sup> See entry for 'managed realignment' in the glossary.

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physical boundary feature, area of excepted land or area from which we consider it necessary to exclude access in accordance with the principles in this Scheme.

4.10.10 Roll back is an option both on the 'ordinary' line of the trail and on alternative routes where the issue arises, but not on temporary routes (see figure 17 in chapter 6).

4.10.11 Where we recommend roll back, our report to the Secretary of State includes:

- a map to show the starting position of the route at the time the report is prepared; and
- a written description of how the route will in future be determined, including:
  - provision for prior consultation with all owners and occupiers of affected land, and
  - the usual requirement to aim to strike a fair balance, when deciding how the route is to be realigned, between their interests and those of the public.

4.10.12 Where the route rolls back using this power, the landward boundary of the coastal margin is also likely to change, for example because:

- the new route further inland becomes the new boundary of the coastal margin; or
- an area of section 15 land or foreshore, cliff, dune, or beach, or a bank, barrier or flat, newly touches the trail when it rolls back, with the result that it also becomes part of the coastal margin by default under the terms of the legislation.

Such changes happen automatically as a consequence of roll back, and update the landward boundary that had initially been approved by the Secretary of State.

Where appropriate we use our discretion to align this boundary with a clear physical feature on the ground in the interests of clarity and cohesiveness.

4.10.13 Figures 11 to 13 illustrate one scenario of how roll back might be used on the ground.

**Figure 11**

The trail is aligned on an eroding cliff.



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**Figure 12**

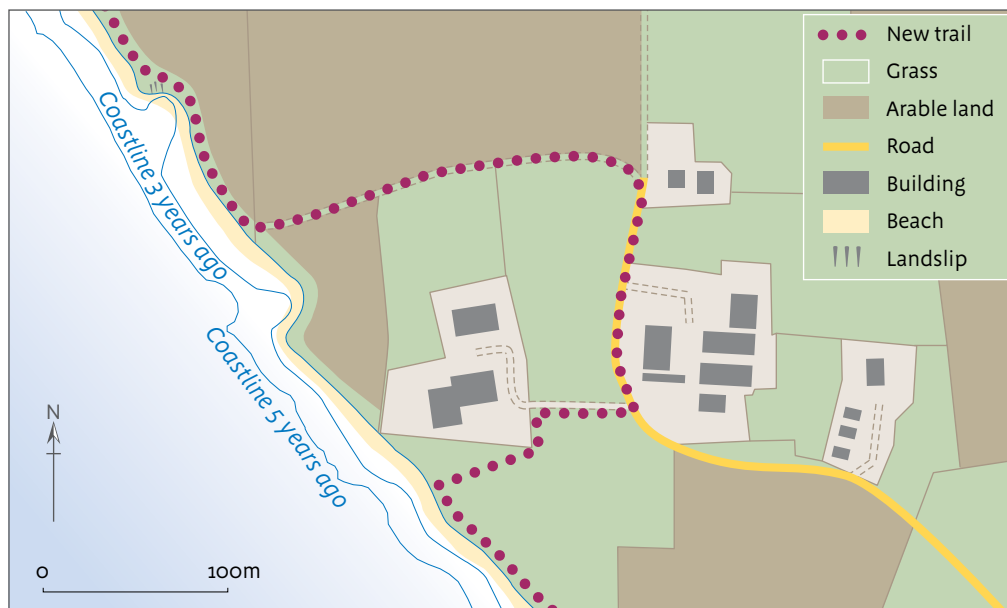
2 years after approval of our report: the initial line of the trail is no longer safe and convenient to walk along because of the landslip. Roll back is used to move the affected section inland to a safe position.



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**Figure 13**

5 years after approval of our report: there is no longer space for a safe and convenient route between the cliff and the garden of the house. The trail is repositioned further inland using the roll back power.



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4.10.14 Existing public rights of way have traditionally been lost to coastal change, or rendered unusable by it, when the ground over which they run disappears or slumps, or when a section of formerly defended coast along which they run is breached. This will continue to happen but where the England Coast Path follows such a route, the roll back power provides a means by which onward access on foot along that section of coast can nevertheless be maintained. Where the trail 'adopts' an existing right of way along such a section, that part of the trail is initially excepted land, with the public's ability to use it being based on the existing right

rather than the coastal access rights. In this situation, our report will typically describe the trail as rolling back. As the line of the trail is repositioned in response to coastal change, it ceases to be excepted land, and coastal access rights along it will come into force, and will then continue to roll back as necessary.

- 4.10.15 Any rights of access for horse riders and cyclists along rights of way such as bridleways will be lost when the ground over which they run disappears or becomes unusable, unless the owner voluntarily grants rights for these groups.

*Optional alternative routes*

- 4.10.16 Section 55C(4) of the 1949 Act<sup>38</sup> provides powers for Natural England to propose an optional alternative to the 'ordinary' route, which would be available for the public to use at times when the ordinary route could reasonably be regarded as unsuitable for use because of flooding, tidal action, coastal erosion or other geomorphological processes.

- 4.10.17 Where possible, we avoid aligning the trail on any land that is likely to be subject to periodic flooding or tidal action, though spreading room on the seaward side of the trail will often by its nature be affected. However, there are likely to be places where the route we recommend will be flooded periodically, for example:

- on a beach, if there are no other viable route options, or if this offers the best 'fit' with the statutory criteria; or
- on an embankment that is subject to occasional flooding during storm conditions.

- 4.10.18 In these circumstances we will consider whether an optional alternative route could be provided at reasonable cost that would strike an appropriate balance between the other key principles described in chapters 4 and 5 of the Scheme. For example, see figure 28 in chapter 9.

*Managed realignment and non-intervention*

- 4.10.19 Where the shoreline is defended by banks or barriers, it may appear quite stable in the short term, but it could be subject to significant changes in the future if there is a policy of managed realignment or non-intervention with coastal processes (under which existing defences are no longer actively maintained). We therefore take careful account of Shoreline Management Plans and the strategies which implement them at key stages throughout the implementation process described in chapter 3 of the Scheme, working closely with the Environment Agency and other relevant bodies. However such documents only represent a snapshot in time and a change to the route may be required later in order to ensure continuity of access if it initially follows any such bank or barrier and subsequently becomes unavailable.

- 4.10.20 Where there is a policy of managed realignment or where defences are not actively maintained, we consider carefully at the outset the best line for the trail. We may align the trail from the beginning along the future predicted line of the coast, provided this is known with sufficient certainty and is then likely to be stable; or we may rely on the power to roll back the trail in the future if necessary in all the circumstances (see 4.10.5).

- 4.10.21 Where we decide that a trail along the current coastline is for the time being appropriate, it will be necessary to reposition it in the future:
- on a section of coast subject to managed realignment, in accordance with a plan agreed with the Environment Agency and the operating authority, if different;
  - on a section that is no longer actively maintained, when in our judgement it is necessary, taking into account all the criteria in the Scheme, including the safety and convenience of the route.

- 4.10.22 Figures 14 and 15 illustrate how the line of the trail might be changed to adapt to managed realignment.

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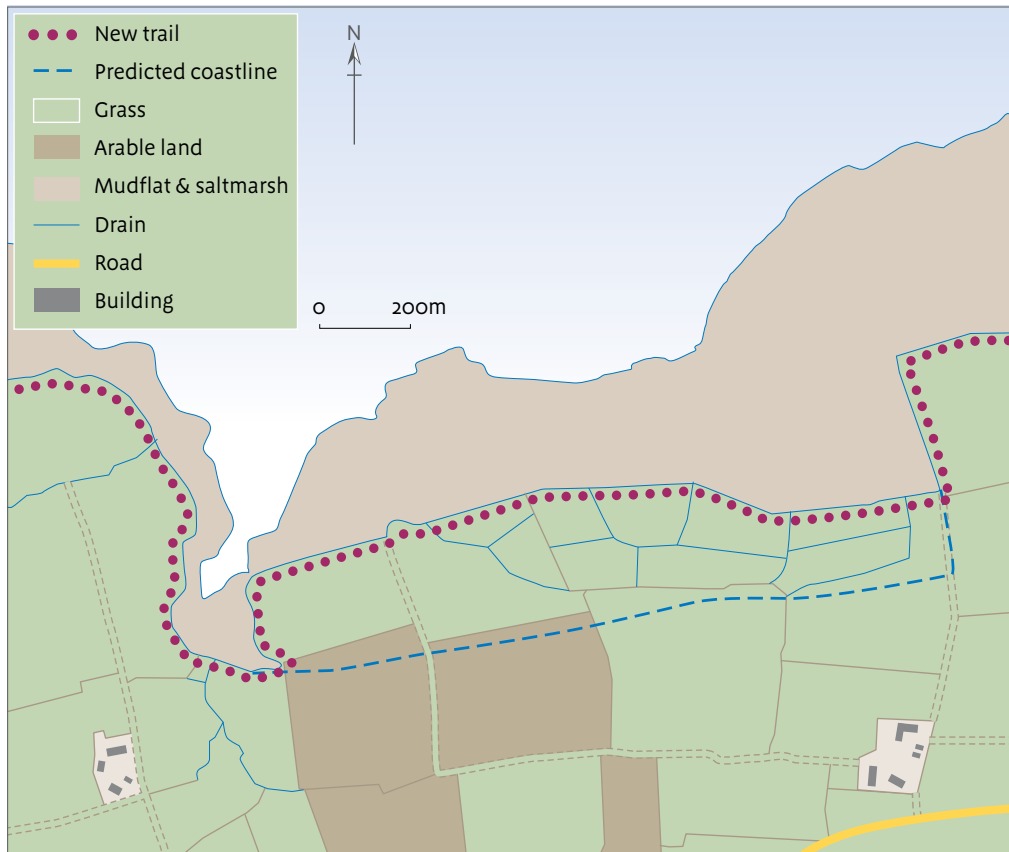
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<sup>38</sup> As inserted by section 302 of the 2009 Act

**Figure 14**

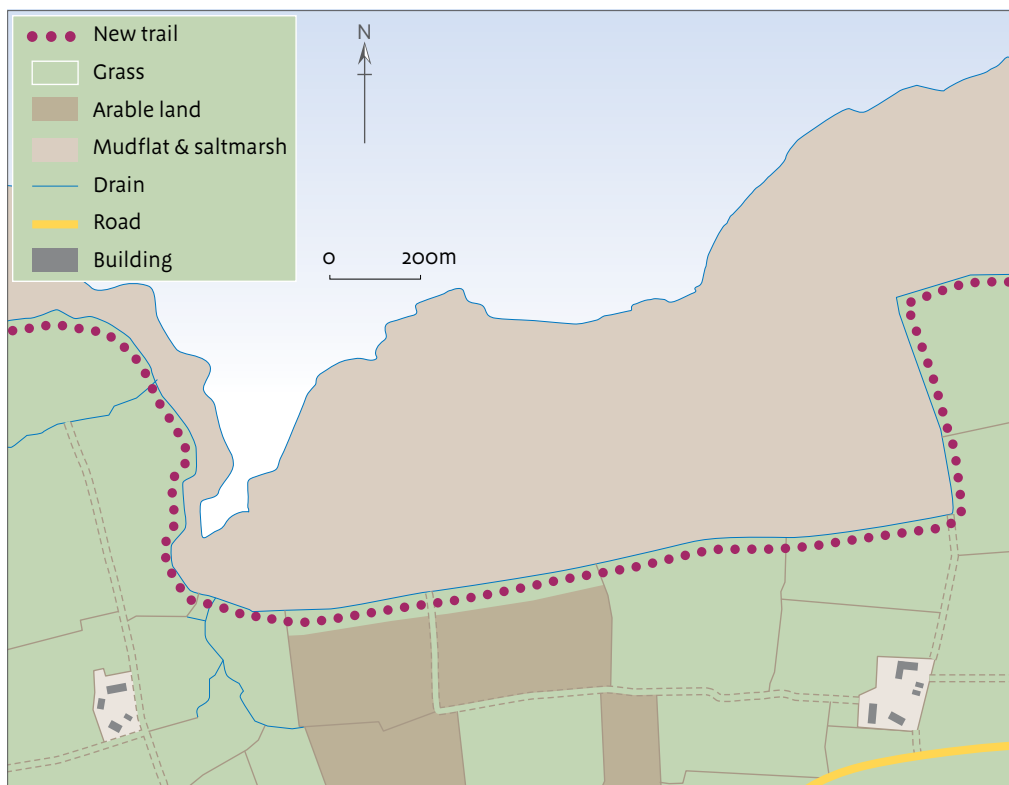
The trail aligned along a section of coast subject to managed realignment. The map shows the future position of the coastline that is predicted after managed realignment.



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**Figure 15**

The trail is repositioned in accordance with the plan for managed realignment, using the roll back power.



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