

DEVELOPMENT CONTROL AND REGULATION COMMITTEE

Meeting date: 15 July 2022

From: Executive Director – Economy and Infrastructure

HIGHWAYS ACT 1980 SECTION 119 APPLICATION TO DIVERT PUBLIC FOOTPATH NO 253009 PARISH OF SILLOTH

1.0 EXECUTIVE SUMMARY

- 1.1 *The County Council is proposing to divert sections of public footpath no 253009 at The Grune in the parish of Silloth.*
- 1.2 *This can be done under Section 119 of the Highways Act 1980 and consultations have taken place so as to assist members to reach a decision as to whether or not a diversion order should be made.*
- 1.3 *The plan at Appendix A shows the proposal and a location plan is included at Appendix B.*

2.0 POLICY POSITION, BUDGETARY AND EQUALITY IMPLICATIONS, AND LINKS TO COUNCIL PLAN

- 2.1 *The relevant corporate theme is “To provide a safe and well managed highway network, secure infrastructure improvements and support local economic growth”.*
- 2.2 *The relevant procedure is an “administrative quasi-judicial” one. The conditions which must be satisfied for an order to be made and confirmed are that it should appear to Members “that it is expedient” for the public footpath to be diverted and that there is a need to make an order on the grounds set out in paragraph 5.1 of this report. Members have discretion as to whether or not to make an order, but such discretion must be exercised reasonably.*

3.0 RECOMMENDATION

- 3.1 *That, pursuant to the power set out at Part 2G paragraph 2.1(g)(iii) of the County Council's Constitution, an order be made under Section 119 of the Highways Act 1980 to divert sections of public footpath no 253009 in the parish of Silloth shown A-B to a new route E-F-G-H-I-B and C-D to a new route C-J-K-I-M-N-O-P-D as shown on the plan at Appendix A and if no objections are received, the order be confirmed. In the event objections are received and not withdrawn, the matter be referred to the Secretary of State for consideration.*

4.0 BACKGROUND

- 4.1 The current recorded route of the footpath passes through low areas of agricultural land prone to flooding. When this occasional flooding happens in spring these areas are used by nesting natterjack toads, a rare and protected species important on this SSSI. Part of the recorded route of the footpath now lies on the shingle/cobble beach where the land has been eroded away by the sea in storm events making it difficult to walk. In between these two sections the current recorded route crosses a WWII training area (now a grazing field) surrounded by a concrete wall, the current crossing point of this wall would not be easy to convert to a more accessible path.
- 4.2 The proposed diversion moves the path to align with the England Coast Path (ECP) and relocates it to higher ground and off the shore and out of fields and so separates the public from agricultural practices.
- 4.3 All works will be undertaken by the County Council to comply with British standard 5701:2018 i.e. gaps (1.1m clear width) at Points F, G, H, & I and kissing gates at Points J, L & M and funded by Natural England as part of the ECP establishment works.

Consultation

- 4.4 The statutory undertakers have been consulted and none are affected.
- 4.5 A consultation has been carried out with

Allerdale Borough Council – No response received

Ramblers – No response received

Cumbria and Lakes Joint Local Access Forum (**CALJLAF**) – In a formal letter of response dated 21 May 2022 states “The footpath diversions meet all legal tests and the Cumbria and Lakes Local Access Forum supports the proposals.”

Byways and Bridleways Association – no response received

British Horse Society – no response received

Open Spaces Society – no response received

Cyclists' Touring Club – no response received

British Driving Society – no response received

Cumbria Bridleways Society – no response received

Auto Cycle Union – no response received

Silloth Town Council – no response received

4.6 The local member for the Solway Coast, Tony Markley has been consulted and no formal response received.

4.7 Natural England has been consulted and responded as follows:-

Natural England fully supports this footpath diversion. The new route will be more convenient to the public than the existing public footpath no 253009, some sections of which are blocked by fencing or are now on the shingle beach due to coastal erosion. Currently it is not possible to walk parts of the public footpath no 253009 when the tide is high.

The ECP follows an existing walked line on the ground, which is currently used by the public in areas where public footpath no 253009 is blocked. It also follows a new section of path which will be created through fields where the current public footpath is on the beach. Public enjoyment of the path should be increased, as diverting public footpath no 253009 onto the approved route of the ECP will mean that there is a legal accessible route around Grune Point available at all states of the tide.

The ECP and the public footpath no 253009 follow approximately the same route, therefore the public will be able to access the same areas of land that they currently do. Diverting the route onto the ECP rationalises the current access situation in this area.

In terms of the effect of the new right of way on the land over which the new path is created, we have discussed the route of the ECP with landowners and have taken account of any concerns about the impacts of the new sections of path on livestock and farmland.

Fencing will be installed next to some sections of path to separate people and livestock. Most of the ECP at Grune Point runs through Solway Firth SAC, Upper Solway Flats & Marshes SSSI / Ramsar site and Solway Firth SPA. The ECP route has been through a Habitats Regulation Assessment, and we concluded the coastal access proposals will have no adverse effect on site integrity.

4.8 The landowners -There are four landowners affected who have given their approval in writing as the proposed diversion will be of benefit to them as well as the public.

5.0 LEGAL IMPLICATIONS

- 5.1 Under Section 119(1) of the Highways Act 1980 (**the Act**), the County Council must be satisfied that in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted.
- 5.2 The diversion must not alter any point of termination of the path, other than to another point on the same highway or a connected highway (Section 119(2) of the Act) and which is substantially as convenient to the public.
- 5.3 Further, under Section 119(6) of the Act, if no objections are received against the made order, the Council must be satisfied that the public footpath diversion is expedient and will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which:-
- (a) the diversion would have on public enjoyment of the path or way as a whole;
 - (b) the coming into operation of the order would have as respects other land served by the existing right of way; and
 - (c) any new public right of way created by the order would have as respects the land over which right is so created and any land held with it.
- 5.4 Under Section 119(6A)(b) of the Act, our Rights of Way Improvement Plan (now incorporated in the Cumbria Countryside Access Strategy) has been considered and the proposal accords with two of the five priority areas of work identified therein namely: Improving Rights of Way and Countryside Access and Managing Rights of Way and Countryside Access .
- 5.5 Under Part 2G paragraph 2.1(g) (iii) of the Constitution, the Committee has power to divert footpaths and bridleways.

6.0 OPTIONS

- 6.1 The Committee may accept or reject the recommendation. If the recommendation is accepted by Members and an order is made any interested party will have an opportunity before the order is confirmed to submit an objection. If an objection is received and not withdrawn, the matter will then be referred to the Secretary of State for a decision as to whether or not the order should be confirmed.

7.0 ASSESSMENT AND CONCLUSION

- 7.1 No objections have been received as a result of the consultations.
- 7.2 The proposed diversion would relocate the footpath away from the heavily eroded area thereby utilising, higher, drier level ground to provide a safer more accessible route between points E & B.
- 7.3 Elsewhere (between points C & D) the proposed diversion would further improve the accessibility around the popular headland and provide a convenient, accessible and logical route to follow whilst avoiding fields used for agricultural production, thus providing benefit for land management
- 7.4 Aligning the footpath to the same route as the ECP avoids confusion and duplication of effort and cost in maintaining the path.
- 7.5 In considering whether an order should be made under Section 119(1) of the Act, I have also had regard to Section 119(6) of the Act, as it must be noted the criteria for making and confirming an order are not identical (see paragraphs 5.1 and 5.3 above). I consider the criteria for making the order and confirming the order are made out in that the path will not be substantially less convenient to the public in consequence of the diversion and that is considered it would be expedient to confirm the order having regard to the effect which—
- (a) the diversion would have on public enjoyment of the path or way as a whole,
 - (b) the coming into operation of the order would have as respects other land served by the existing public right of way, and
 - (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.
- 7.6 If Members approve the recommendation in this report, the order will be made in the interests of the public and if no objections are received to the order, it is recommended that the order be confirmed.

Angela Jones

Executive Director – Economy and Infrastructure

June 2022

APPENDICES

- A** *Plan showing proposed diversion*
- B** *Location plan*

IMPLICATIONS

Staffing: Nil
Financial: Nil
Electoral Division: Solway Coast, Tony Markley

PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS *[Including Local Committees]*

No relevant decisions

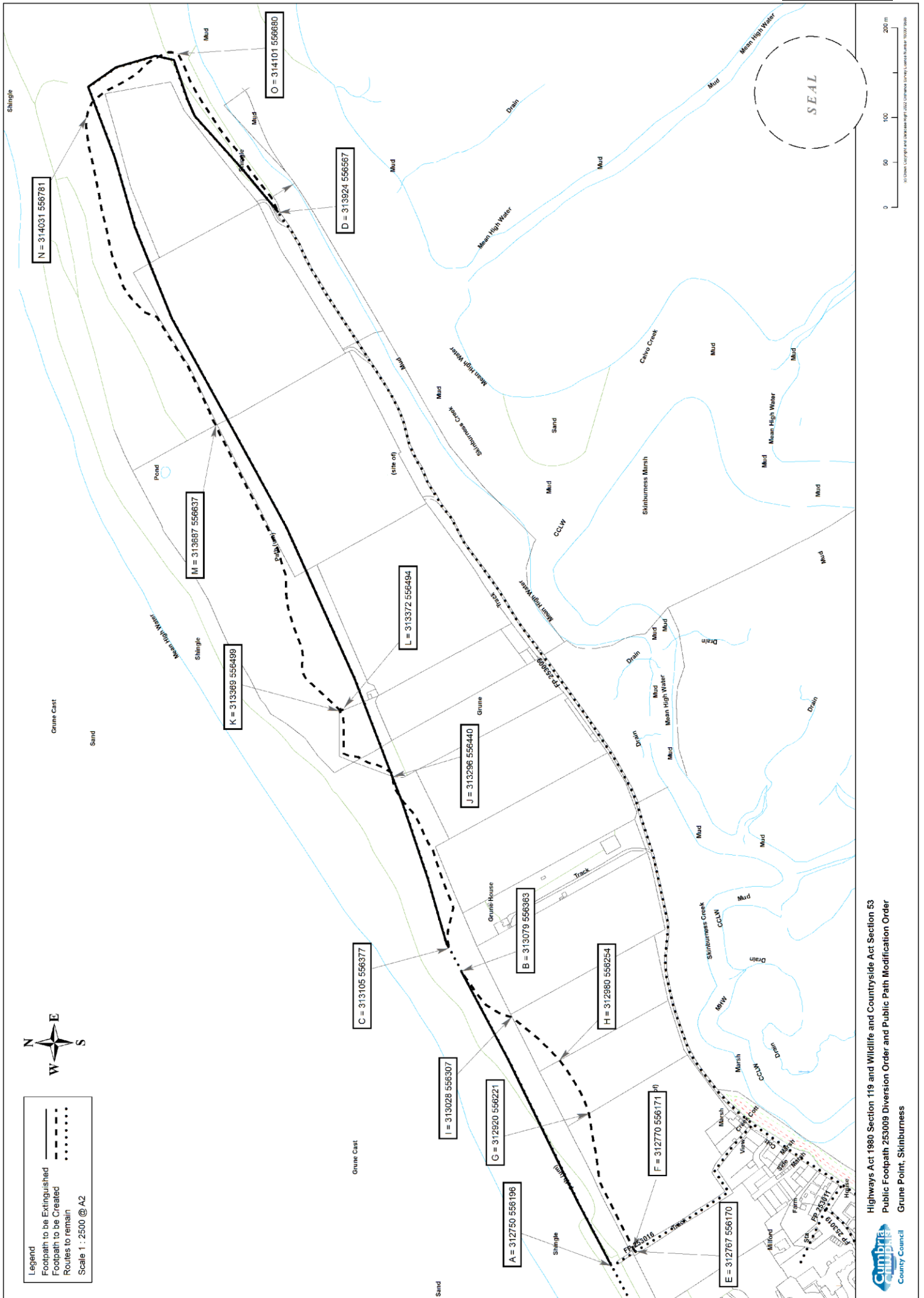
CONSIDERATION BY OVERVIEW AND SCRUTINY

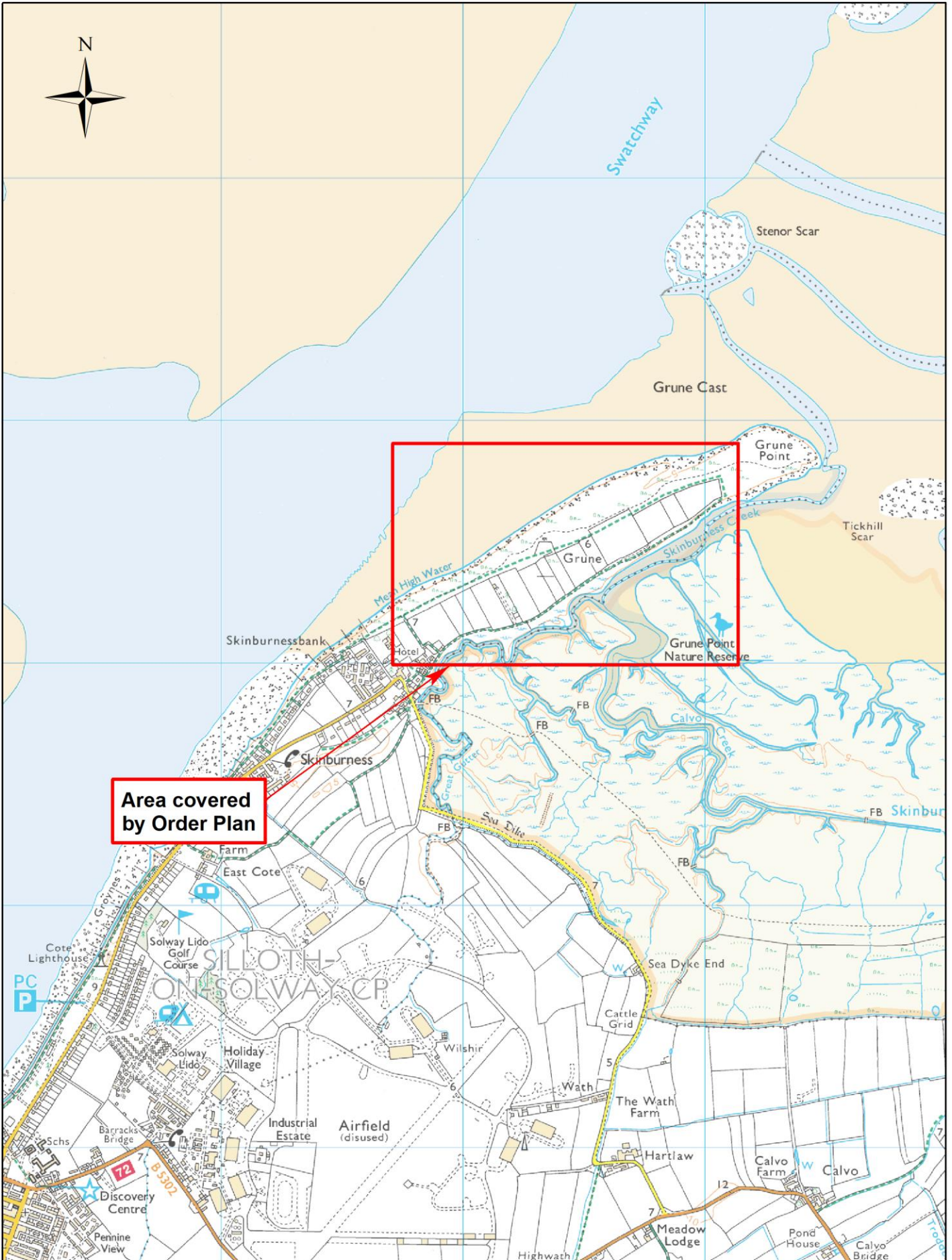
Not considered by Overview and Scrutiny

BACKGROUND PAPERS

Cumbria Countryside Access Strategy.

Contact: Hazel Wainwright, Countryside Access Officer
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**Location Plan for Grune Point
Skinburness**

Scale 1:20,000 @ A4

