

## Regulatory Committee

Meeting to be held on 25 April 2012

Electoral Division affected: Lancaster Central
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### Wildlife and Countryside Act 1981

**Claimed Public Footpath from Lune Estuary Cycleway at Conder Green to  
Lune Estuary Cycleway at Nan Buck Cottage, Thurnham, Lancaster City**

**Claim No. 804/509**

(Annex 'A' refers)

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### Executive Summary

The claim for a public footpath from the Lune Estuary Cycleway at Conder Green to the Lune Estuary Cycleway at Nans Buck Cottage Thurnham, Lancaster City to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/509.

### Recommendation

- i. That the claim for a public footpath from Conder Green to Nans Bucks Cottage Thurnham to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/509, be accepted
- ii. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a Public Footpath from Conder Green Lancaster City (Grid Reference SD 4567 5610) for a distance of approximately 1600 metres to Nan Bucks Cottage Thurnham, Lancaster City (Grid Reference SD 4570 5758) and shown between Points A and J on the Committee plan.
- iii. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary by submitting it to the Secretary of State.

### Background

A claim has been received for a footpath extending from a point on the dismantled railway line (Lune Estuary Cycleway) at the entrance to Conder Green picnic site to a point on the same dismantled railway line (Lune Estuary Cycleway) at Nans Buck Cottage, a distance of approximately 1600 metres, and shown between points A - J on the attached plan, (SD 4567 5610 to 4570 5758), to be added to the Definitive Map and Statement of Public Rights of Way.

The County Council is required by the Wildlife and Countryside Act 1981 to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) set out the tests that need to be met when reaching a decision; also current case law needs to be applied.

An order will only be made if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”  
or
- “The expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path”.

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

The County Council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested on the balance of probabilities. It is possible that the Council’s decision may be different from the status given in the original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists.

## **Consultations**

### **Lancaster City Council:**

Lancaster City Council has been consulted and has confirmed they have no comments to make.

### **Thurnham Parish Council:**

The applicant in the matter is Thurnham Parish Council and their evidence is considered below.

## **Executive Director for the Environment's Observations**

### **Site Inspection**

Points annotated on the attached plan:

	<b>Grid Reference</b>	<b>Description</b>
Point A	4567 5610	Gate at the start of the claimed route where it leaves the Lune Estuary Cycleway at the entrance to Conder Green car park and picnic site.
Point B	4567 5613	Claimed route meets a row of fence posts on the edge of the salt marsh.
Point C	4567 5665	Unmarked point on edge of salt marsh adjacent to Lune Valley Cycleway.
Point D	4560 5679	The end of the line of wooden fence posts.
Point E	4556 5681	The top of the sloping masonry wall.
Point F	4550 5701	The top of the sloping masonry wall adjacent to Pennyhill.
Point G	4550 5704	The bottom of the sloping masonry wall adjacent to Pennyhill.
Point H	4557 5717	Unmarked point on salt marsh to the north of Waterloo.
Point I	4570 5760	Bottom of grass ramp.
Point J	4570 5758	Gate opposite Nans Buck at Lune Estuary Cycleway.

### **Description of Route:**

A site inspection was carried out on 25<sup>th</sup> May 2011.

The claimed route commences at point A on the Committee plan which is a point at the southern end of the Conder Green to Lancaster cycle track (the Lune Estuary Cycleway) which follows the route of a disused railway owned and is maintained by Lancashire County Council.

The claimed route starts on the Lune Estuary Cycleway, at the entrance to the Conder Green public car park and picnic site and opposite a privately run cafe, popular with walkers and cyclists.

A padlocked wooden field gate has been erected across the start of the claimed route at point A. A gap exists on the eastern side of the gate with a single, low level wooden rail across the gap with stone footings giving the appearance of a stile allowing access to the claimed route.

Adjacent to the 'stile' and positioned at the side of the surfaced cycleway is one of the original level crossing posts that formed part of a level crossing providing access across the former London and North Western Railway (Glasson branch) to the marsh (and the start of the claimed route at point A).

Beyond point A the claimed route extends in a northerly direction onto the marsh bounded on either side by bushes and trees. A narrow worn track exists on the ground suggesting regular pedestrian use.

After approximately 30 metres the claimed route passes an old boat (which appears to have been abandoned and fallen into disrepair) and meets a row of wooden fence posts at point B. The views open out over the estuary to the west.

It appears that a barbed wire fence previously crossed the claimed route at point B but the wire has subsequently been cut, removed or wrapped around the posts along the full length of fencing.

From point B the claimed route continues north along the edge of the marsh to the west of the row of wooden posts. A worn track exists on the ground and the route is open to the estuary/marsh to the west. The claimed route follows a visible worn track running parallel to the cycle track but separated by trees and hedges and a boundary fence.

The claimed route continues beyond point C following the edge of the estuary above the mean high water mark with the line of redundant fence posts to the east.

At point D the row of wooden posts ends and the claimed route crosses a rougher area of shingle - although a walked path is still visible. It continues in a more north westerly direction crossing a sloping masonry wall to continue on slightly higher grassy ground to point E.

From point E the claimed route continues on grass (on a visible worn path) along the top of the sloping masonry wall in a more northerly direction towards a property known as Penny Hill and point F.

At point F, west of Penny Hill the claimed route crosses the sloping masonry wall to drop back down onto the marsh at point G.

From point G the claimed route continues on a well trodden path in a northerly direction along the bottom of the sloping masonry and open to the estuary to the west.

It passes to the west of a property known as Waterloo – which is positioned on slightly higher ground - and swings round in a north easterly direction following the edge of the estuary and base of the masonry wall to point H.

It then continues along the estuary in a northerly direction for approximately a further 430 metres running parallel to the cycleway on a worn track to point I where it doubles back on itself up a grassy ramp to a gate at point J.

The wooden field gate is in poor condition but can be opened and appears to be well used.

The claimed route ends at point J where it rejoins the cycleway (disused railway) opposite Nans Buck Cottage.

The claimed route runs parallel to a well used cycleway – popular with both cyclists and walkers - and can be seen from a number of points along the cycleway between point A and point J. In addition there are a number of locations between point A and point J where it is possible to access or exit the claimed route from the cycleway via gaps in the fence/hedge and there is evidence to suggest that these access points are regularly in use.

In summary, the claimed route is 1600 metres long. It is unenclosed following the boundary of the estuary above the mean high water mark. There is evidence of a worn pedestrian route and walkers were seen using the route on the day of inspection. The claimed route is gated at both ends with the gate at point A padlocked with low level fencing allowing pedestrian access alongside. There are no signs indicating whether the route is public or private. The full length of the route is above the mean high water mark and has been inspected at both high and low tide and found to be passable both times.

### Map and Documentary evidence considered

A variety of maps, plans and other documents were examined to see when the claimed route came into being and to try to determine what its status might be.

Document Title	Date	Brief description of document & nature of evidence
<b>Yates' Map of Lancashire</b>	1786	<p>Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.</p> <p>As well as recording the primary roads in use at that time Yate's Map showed 'Cross Roads'. A cross road is generally accepted as being a secondary road which was neither a principal road nor a turnpike road, often one which ran between two main roads. The term was defined by the influential map-maker Ogilby in the preface to his road itinerary 'Britannia' in 1675. The title of Hennet's map in 1829 included the term 'Cross Roads'.</p>
Observations		The claimed route is not shown on Yates' Map but the scale of the map and purpose for which it was produced would make it unlikely that it would have been shown.
Investigating Officer's comments		No inference can be drawn.
<b>Greenwood's Map of Lancashire</b>	1818	Greenwood's map of 1818 is a small scale commercial map.
Observations		The claimed route is not shown but the scale of the map and the purpose for which it was produced would make it unlikely that the route would have been shown.

Investigating Officer's comments		No inference can be drawn.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map.
Observations		The claimed route is not shown but the scale of the map and the purpose for which it was produced would make it unlikely that the route would have been shown.
Investigating Officer's comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1842	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred. The Tithe Map for Ashton with Stoddy was produced in 1842 and shows the area of land concerned.
Observations		The claimed route is not shown on the Tithe Map and there is no reference to its existence in the accompanying Apportionment.
Investigating Officer's comments		The claimed route probably did not exist in 1842.
<b>Finance Act 1910 Map</b>	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.
Observations		Maps produced under the 1910 Finance Act have been inspected in Lancashire County Records Office. The Ordnance Survey mapping used to produce the finance Act Map (1913 Edition of the 25" map) shows the claimed route existing between points A-B and points I – J but does not show the claimed route between points B-C-D-E-F-G-H-I. No deductions have been made for the existence of a public right of way on the land over which the claimed route runs.
Investigating Officer's comments		The claimed route probably did not exist as a public right of way in 1910.

<b>Railway plans</b>	1877	The claimed route ran parallel to the London and North Western Railway – Glasson Dock Branch. Railway Acts and Plans are held at the House of Lords library in London. A search of the House of Lords records has not been made but Lancashire Records Office hold a number of records relating to this particular railway, including maps and plans and a book of reference dating from 1887 and these documents have been examined together with a more recent local history book detailing photographs and information about the railway line.
<b>Observations</b>		The railway opened in 1883 to transport goods and people from Glasson Dock to Lancaster. A public station existed at Conder Green, close to the start of the claimed route at point A and a private platform existed at Nan Bucks for use by Lord Ashton who owned the Ashton Estate). The railway closed to passengers in 1930 but remained in operation carrying goods until 1964. The line was subsequently sold and was purchased by Lancashire County Council who redeveloped it as a public cycleway in the early 1970s. None of the plans examined showed the claimed route or made reference to it. Photographs did show, however the remains of a level crossing post close to point A indicating that access onto the marsh, across the railway was provided at point A.
<b>Investigating Officer's comments</b>		The claimed route probably did not exist in 1877 and there is no indication as to whether access onto the estuary/claimed route across the railway line to point A was public or private.
<b>Lune Estuary Cycleway - LCC Planning File</b>	1971 - onwards	The file was created when the dismantled railway was acquired from British Railways by Lancashire County Council in 1971.
<b>Observations</b>		The County Council's records indicate that following closure of the railway in 1964 the line had been used as a footpath by the public and that the County Council subsequently purchased the railway line to ensure future use for recreational purposes. Work to surface the route and to provide a car park, picnic site and toilet block was carried out between 1971 and 1975. During that time use of the dismantled railway was restricted to pedestrians with barriers prohibiting use by cyclists and horse riders.
<b>Investigating Officer's comments</b>		Pedestrian access to the claimed route at point A and point J appears to have been possible from 1964 and would have been possible from 1971.

<b>Inclosure Act Award and Maps</b>	1833	Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		The Inclosure Map for Ashton with Stoddy does not show the claimed route. The whole of the claimed route crosses marsh land that was excluded from the Inclosure process.
Investigating Officer's comments		The claimed route probably did not exist in 1833.
<b>Ordnance Survey maps</b>		The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.
<b>6 Inch OS map</b>	1848	The earliest Ordnance Survey 6 inch map for this area.
Observations		The claimed route is not shown. The area is undeveloped and the map predates the construction of the railway or construction of Nan Bucks. A property titled 'Fishermans cottage' is shown to exist adjacent to the claimed route between points G and H – close to the existing property 'Waterloo'. The coastline is shown, together with the High water mark (spring tides).
Investigating Officer's comments		The claimed route did not exist on the ground in 1848.
<b>25 Inch OS map</b>	1891	The First Edition 25" was published in 1891 at a larger scale than the 6" map showing the area in more detail.
Observations		The railway line from Glasson Dock to Lancaster has been built and is clearly shown on the map. A building has been erected close to point A. A benchmark is shown on the map at point A and the existing access onto the salt marsh between point A and point B has been constructed. No worn track is shown on the map



		<p>corresponding with the claimed route beyond point B but the masonry walls that exist today are shown and there appears to be nothing that would have obstructed access along the claimed route. The 'Fishermans cottage', shown on the 1848 6" map has been renamed 'Waterloo' although the buildings differ from those that exist today and abut directly onto the claimed route. The high water mark is shown below the claimed route. Nan Bucks is shown and the ramped access forming part of the claimed route between point I and point J is shown.</p>
Investigating Officer's comments		<p>Access onto the salt marsh had been constructed at point A and point J meaning access to the claimed route may have been possible at these points. However, the claimed route is not shown on the map between points B - I indicating that it is unlikely that it existed as a linear route in 1891.</p>
<b>25 Inch OS map</b>	1913	<p>Further edition of 25 inch map (surveyed 1890 and revised 1910).</p>
Observations		<p>Access onto the salt marsh can be seen between point A and point B and point I and point J. The building close to point A is labelled as Conder Green Station. Waterloo appears to have been rebuilt on the current footings of the buildings on higher ground slightly further away from the claimed route. The claimed route is not shown between point B and point I.</p>
Investigating Officer's comments		<p>Access onto the claimed route was available at either end (between point A and point B and point I and point J) but the claimed route was not shown on the map between point B and point I and did not exist on the ground in 1913.</p>
<b>25 Inch OS map</b>	1971	<p>Further edition of 25 inch map reconstituted from former county series plans and revised (date of revision not specified).</p>
Observations		<p>The former Conder Green Railway station is shown as 'Railway Cottage'. The railway tracks have been removed and the former railway is now shown as a dismantled railway. Access to the marsh between point A and point B and between point I and point J is shown as are the flood banks/masonry walls that exist today. The claimed route is not shown between point B and point I. A second property – Pennyhill – is shown on the map adjacent to the claimed route at point F.</p>

Investigating Officer's comments		The claimed route existed on the ground between point A and point B and point I and point J but did not exist on the ground between point B and point I.
<b>6 Inch OS map</b>	1955	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1955 (although the date of revision was before 1930) at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1928 25-inch map.
Observations		The Ordnance Survey 1:10560 (6 inches to 1 mile) sheet SD 45NE shows Conder Green Station house close to point A. The railway line is shown and the property known as 'Waterloo' is now shown in its current location. Nan Bucks is shown and it is possible to see the ramped access down onto the marsh between point I and point J. The claimed route is not shown between point B and point I.
Investigating Officer's comments		In the 1930's the claimed route existed on the ground between point A and point B and point I and point J but did not exist on the ground between point B and point I.
<b>Aerial Photographs</b>	1945	Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.  The earliest set available was taken just after the Second World War in about 1945. The clarity is generally very variable and in this particular instance is poor.
Observations		Lighter shading along the length of the claimed route can be observed but appears to reflect a change in vegetation and not a worn track. The quality of the photograph is poor and is incomplete – only showing the land over which the claimed route crossed between point A and point G.
Investigating Officer's comments		No inference can be drawn.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960's and available to view on GIS.
Observations		A worn track corresponding to the claimed route is clearly visible between point A to point D. Beyond this the route becomes more difficult to follow as it closely follows the masonry wall (which can be seen). Beyond Waterloo at point H a thick white line is visible all the way up to the end of the claimed route at point J. On

		close examination this appears to be the masonry wall, which is now obscured by vegetation.
Investigating Officer's comments		The claimed route appeared to exist between point A and point D in the 1960's but between point D and point J the claimed route could not be seen.
<b>Aerial photograph</b>	2006	Coloured aerial photographs taken on 11 <sup>th</sup> May 2006.
Observations		The claimed route can be clearly seen as a worn track along the salt marsh from point A up to point D. From point D the route can be clearly seen crossing a roughly vegetated area to point E and then following along the top of the masonry wall towards point F where it becomes more difficult to see. From point H the claimed route can be clearly seen passing Pennyhill and Waterloo and all the way up to Nan Bucks at point J.
Investigating Officer's comments		Virtually the whole of the claimed route is clearly visible on the ground as a worn track along the salt marsh indicating that it existed in 2006.
<b>Aerial photograph</b>	2010	Coloured photographs taken on 19 <sup>th</sup> March 2010 and available to view on GIS.
Observations		The most recent set of aerial photographs (taken 14 months prior to the Investigating Officers inspection and following the existence of the claimed route being brought into question. These photographs are more difficult to interpret, partly because of tree coverage and shadowing, but also because at that time of year the vegetation has not started to grow and the ground colours are quite brown and neutral. The gate at point A can be seen and the track between point A and point B past the old boat is visible. The majority of the claimed route is not very visible possibly due to the shadows and the time of year that the photograph was taken. From Waterloo at point G to the end of the claimed route at point J a worn track corresponding to the claimed route is visible.
Investigating Officer's comments		Part of the claimed route is visible between point A to C and from point G to J suggesting that a worn track still existed on the ground.
<b>Definitive Map records</b>		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way. Records were to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
<b>Parish survey map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council and the maps and schedules were submitted to the County Council. In the case of

		urban districts and municipal boroughs the map and schedule produced, was used, without alteration, as the Draft Map and Statement.
Observations		At the time of the parish surveys the claimed route was in the parish of Ashton with Stoddy who produced a Survey Map and Survey Cards recording routes they believed to be public. Neither the Map or Survey Cards show the claimed route.
<b>Draft Map</b>		Lancashire County Council took all the parish survey maps and cards for the rural district areas and drew the routes the parishes believed to be public onto a 6-inch Ordnance Survey map. It was given a "relevant date" (1 <sup>st</sup> January 1953) and notice was published that the draft map had been prepared. The Draft Map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The claimed route was not shown on the Draft Map of Public Rights of Way. In this instance, there were no formal objections or other comments about the omission of the claimed route.
<b>Provisional Map</b>		Once all these representations were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The claimed route is not shown on the Provisional Map of Public Rights of Way. In this instance no objections to the omission of the path were made.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The claimed route was not shown on the First Definitive Map and Statement of Public Rights of Way.
Investigating Officer's comments		The claimed route was not considered to be a public right of way in the 1950s.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way

		(First Review) was published. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process
Observations		The claimed route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's comments		From 1953 through to 1966 there is no indication that the claimed route was considered to be public by the Surveying Authority, Parish Council and public at large due to the extensive consultation process that lasted until 1975 when the Definitive Map of Public Rights of Way (First Review) was actually published.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		A Statutory Deposit and declaration was deposited with the County Council on 12 November 2007 by the current landowners (Stoddy Land Ltd, Hayloft Barn, Ashton with Stoddy, Lancaster). The Deposit covers land over which the whole of the claimed route is situated and does not acknowledge the existence of the claimed route as a public footpath.

Investigating Officer's comments		Prior to 2007 there is no indication by a landowner under this provision of non-intention to dedicate a public right of way over the claimed route. In 2007 the current landowner submitted a deposit.
Land ownership Information		<p>Land Registry and other information has been considered.</p> <p>The County Council have owned the Conder Green Picnic Area since 1971. Section A-B is on this land and is shown on the 1971 deed plan as leading from the Condor Green Level Crossing.</p> <p>Section I-J is also on this land again shown on the 1971 Deed Plan as leading from a level crossing near Nan Bucks</p> <p>The Land registry title for land crossed by section B-J shows the owner as Stodday Land Limited, owner since 2006. Information would indicate that the previous owner, W and Jane Turner Pye Ltd owner land as early as 1960</p>

The land crossed by the route claimed for addition to the Definitive Map is not recorded as access land under the provisions of the Countryside and Rights of Way Act 2000. However it is just within the boundary of the Lune Estuary Site of Special Scientific Interest, Morecambe Bay Special Area of Conservation, Special area and Ramsar Site.

### Summary

No map or documentary evidence was found to support the existence of the claimed route, other than the sections between point A to point B and point I and point J which appear to have been constructed by 1891 to provide access onto the marsh from Conder Green and Nans Buck. With the construction of the railway in late 1870's/early 1880's it also appears that a level crossing was constructed across the railway to access the marsh between point A and point B. The existence of an access route between point A and point B and point I and point J is shown on all Ordnance survey maps since 1891 although this does not indicate whether access was open to the public. Nans Buck was originally tied to the Ashton Hall Estate with no public access to the property suggesting that until the railway line was dismantled in the 1960s there would have been no public means of accessing the claimed route at point I.

Aerial photography shows part of the route between point A and point D in the 1960s but beyond point D it is not possible to determine whether the claimed route existed. Virtually the whole of the claimed route could be seen as a worn track in 2006 giving the best indication that at that time it was being regularly walked.

**Description of the new path for inclusion in the Definitive Statement if Order is to be made (and subsequently confirmed)**

The following should be added to the Definitive Statement for Thurnham, Lancaster City:

**Proposed Schedule to Order**

SCHEDULE

PART 1

MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF WAY TO BE ADDED

A public footpath from the Lune Estuary Cycleway railway line at the entrance to Conder Green picnic site in a general northerly direction along the edge of the estuary passing to the west of Pennyhill and Waterloo and continuing in a northerly direction along the edge of the estuary to a point on the same dismantled railway line (Lune Estuary Cycleway) at Nans Buck Cottage.

PART II

MODIFICATION OF DEFINITIVE STATEMENT

Add statement for Public Footpath 58Thurnham as follows:

"From the Lune Estuary Cycleway at SD 4567 5610 in a generally northerly direction along the edge of the estuary (above the mean high water mark) passing west of Pennyhill and Waterloo and continuing along the edge of the estuary to a point on the same dismantled railway line (Lune Estuary Cycleway) at Nans Buck cottage, SD 4570 5758.

Width: 2 metres

Limitations and Conditions: Gate at SD 4567 5610 and SD 4570 5758

Length: 1.6km"

**County Secretary and Solicitor's Observations**

**Information from the Applicant:**

In support of the claim the applicant has provided 37 evidence of use forms. The forms indicate knowledge and use of the route for up to 70 years.

51-60 years (3)

41-50 years (7)

31-40 years (2)  
21-30 years (10)  
11-20 years (5)  
0-10 years (8)

The route has mainly been used for recreational walks, dog walking, bird watching and horse riding. The frequency of use varies with some users stating the route has been used on a daily basis, others stating frequently, weekly, once a week, once a month, twice a month, occasionally, twice a week and some users providing numbers and stating the route has been used 1, 30, 40, 200 times annually.

Eight of the witnesses claim to have used the route on horseback, three users claim to have seen others using the route on horseback, two users claim to have used the route in a vehicle and three users claim to have used the route on a cycle.

One user states there have been some changes to the line of the route because of the Lancashire cycleway, it is assumed that this is an addition to the route, two users claim there has been a slight variation to the route depending on the high tides, one user states there has been a slight variation only and the other states the only change was the railway closing down.

Ten users claim there are stiles/gates/fencing along the route which prevent them from accessing the route. They explain these blockages have only recently occurred. Some users explain the barbed wire fencing was erected during July 2009 and there is also a stile along the route. Some users explain the gates have only recently been locked. Two of the users have either been employees or tenants of the land owners. In October 2007, one of these users explains he was asked for a fee of £1.00/annum in order to allow him access however when the money was given he was told he was no longer permitted to use the route and his £1 was returned. One user claims to have been stopped from using the route when he was shouted at and told not to use the route. Most of the users claim there has been a notice along the route which has appeared during 2006/07/08 which states, 'Private land Keep Off/Out.'. One user claims to have been told by the previous land owners that he had a right of way on foot/cycle.

The applicant has enclosed 14 brief user evidence forms. These forms are brief in comparison to the standard forms. They indicate use of the route for up to 75 years, 51-60 years (1), 41-50 years (0), 31-40 years (1), 20-30 years (4), 10-19 years (4) and 0-10 years (3). The path is used for various purposes including recreational walking, dog walking, nature walks and bird spotting. The witnesses claim to have used the route daily, weekly, monthly and 2/3 times a week. Only one user claims to have been told that the shore was private land by somebody who lived at Ashton Golf Course in 2007 and was thus prevented from using the route. The users agree there was gates along the route and these gates have never been locked. Most of the users agree the gates have only recently been fenced off to prevent access and they had never seen any notices along the route until the recent notices which went up in 2007.

The applicant has also enclosed photographs of the route which show part of the route and the original notice stating Danger beware fast rising tides, quicksand,



hidden channels and another notice stating, Private land, Keep off. The applicant has also enclosed photographs from August 2009 which show the erection of the barbed wire fence.

There is also a statement enclosed from the former managing director of W and J Pye Ltd, Mr John Pye (deceased) which is dated 11/11/07 which states as previous owners of the foreshore at Ashton and Conder Green, they wish to verify that for their period of ownership, of more than seventy years, public access was never restricted. During this period there was open access to the path from Nans Buck to the Conder Green car park which to my knowledge was regularly used by members of the public as part of the route from Lancaster to Glasson Dock.' Another letter from one of the land owners states the path has been used since 1971.

The applicant has also enclosed a letter from a user who confirms in writing he has never encountered access problems between 1958 and 1970. Another letter confirms that a couple had used the route for 50 years without let or hindrance. There is also a letter from a relative of the previous owner of the land from 1935 until 2006, this letter confirms the owners never wanted to or tried to stop anyone who wished to use the land for recreational purposes. There is a letter from somebody who used the land from 1975 and they confirm they have enjoyed free and uninterrupted access to the beach and at no time had access been restricted or denied.

#### **Information from Others:**

A consultation response has been received from a landowner Mrs Morley-Pye who states she has lived in the area all her life and has enjoyed the foreshore for the last 40 years and her parents have used the route for the last 75 years. She explains, the present owner has tried to stop access to the route by using signage, fencing and barbed wire.

A letter from Mr James and Betty Pye explains that through family association they have known the area for over 75 years and during this period the track along the foreshore has been used freely by the public, permission has never been granted nor sought. There is another letter from a landowner who confirms having used this footpath since moving to the area in 1986 and also accessing the path to maintain the drains from their land and never having been prevented from doing so by the landowner.

Another land owner explains that the claimed route originally followed the railway line from Lancaster to Glasson Dock and at that time this was the only footpath usable. We are also told by one of the land owners that the current land owners have three holiday lets and wish to restrict access to the shore path to themselves and their paying guests. The land owners, Mr and Mrs Duckworth have no objections to the claimed footpath either.

The landowner who owns most of the land along the claimed route, Stodday Land Limited is the only land owner opposed to the claim. He has provided a S.31 (6) Highways Act 1980 Statutory Declaration signed by the directors of Stodday Land Limited and dated 12 November 2007. The declaration states that there are no

recognized public rights of way over any of the land or roadways in the ownership of Stodday Land Ltd, nor is it their intention to grant any public rights of way in the future.

Stodday Land Limited has also provided correspondence from Natural England which explains that the site is of special scientific interest (SSSI) and listed as a nature conservation area. The letter from Natural England also states the fencing which has been erected along the boundary of the site will have a beneficial effect as regards the management of Stodday Marsh. It explains the fencing erected across Stodday Marsh will help prevent cattle from the neighbours land entering the southern-most part of Stodday Marsh which will help to prevent unauthorised persons with their dogs off lead from entering the marsh and causing disturbance to roosting/feeding birds in this all important area of SSSI.

There are also photographs included of the damage done to the stock fencing and a picture of the keep off sign, we are told several other signs have been illegally removed.

The County Council as owner of the land crossed by A-B and I-J confirm that the sections A-B and I-J are indeed on County Council land. The land, the former Lancaster to Glasson Dock railway line, was acquired as part of a derelict land reclamation scheme.

It is held for the purposes of informal recreation and the land was developed to provide a recreational route for walkers, cyclists and horseriders.

There are no restrictions on the public use of the land for walking and indeed public use is entirely compatible with the management aims for the site.

## **Assessment of the Evidence**

### **The Law - See Annex 'A'**

#### **In Support of the Claim**

- User Evidence
- 2006 Aerial Photograph
- No actions taken by owners until 2006/7
- Statements of previous owners

#### **Against Accepting the Claim**

- No documentary or map evidence to support the existence of the entirety of the claimed route.
- Actions by landowners (although not earlier than 2006);
  - Use not “as of right” (one user sought permission)
  - Obstructions across route (gates, barbed wire fencing at point B)
  - Signage (erected 2006/07/08 according to users)
  - Interruptions to use (gates/fencing)

## Conclusion

In this matter it is claimed that the route A - J is already a public footpath in law such that it should be recorded on the Definitive Map and Statement.

Since there is no express dedication, it is advised that the evidence is considered to determine whether a dedication can, on balance, be deemed under S31 Highways Act 1980 or inferred at Common Law from all the circumstances.

The evidence in this matter is overwhelmingly user evidence, countered by evidence of actions taken by present owners of some of the land in question.

Pursuant to S31 Highways Act 1980, for a dedication to be deemed it must be determined that the route has been actually enjoyed by the public, as of right and without interruption, for a full period of 20 years without there being sufficient evidence of a lack of intention to dedicate by the owners. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by notice or otherwise.

The Committee will note that the landowner of most of the land along the claimed route, Stodday Land Limited, has provided a S.31(6) Highways Act 1980 Statutory Declaration signed by the directors of Stodday Land Limited and dated 12 November 2007, evidencing non-intention to dedicate a public right of way over the claimed route as of that date. Stodday Land Limited purchased the land in November 2006, and the majority of users claim that a notice appeared along the route during 2006/07/08 which states, 'Private land Keep Off/Out.' There is also evidence from one user who, in October 2007, was asked for a fee of £1.00/annum in order to allow him access to the path. The fee was subsequently returned and the user was informed that he was no longer permitted to use the route. Furthermore, barbed wire fencing was, according to some users, erected across the route at point B in July 2009, and the gate at point A was "recently" locked – although no specific date is provided.

It is therefore advised that the route was called into question in 2006, following the current owners' acquisition of the land and subsequent erection of "Private Land" Notices. It therefore follows that the period of use from which dedication can be deemed is 1986 to 2006.

37 complete user evidence forms have been submitted, from 28 separate households. The users claim to have known and used the route for varying periods of time, with 22 users claiming to have known and used it for more than 20 years.

14 'brief' user evidence forms have also been received, although seven of these users also submitted full user evidence forms.

This suggests good user evidence for the required 20 year period 1986-2006.

The same line of the claimed route appears to have been open and available for the 20 year period.

The ownership of the former freehold owners of the majority of land at issue, W & J Pye Limited, covers the full 20 year period 1986-2006. During that period, there is no evidence of any actions taken by the freehold owners to show lack of intention to dedicate to the public. To the contrary, the Committee will note the statement of Managing Director of the owner Company until 2006, Mr John Pye (deceased), who confirms that as previous owner of the foreshore he had no intention of restricting access to the land over which the claimed path runs. The Committee will also note the further supporting statements from members of the Pye family and other adjoining owners, who confirm that access to the path was open, available and used for the 20 year period.

It is considered that the current owners of the land crossed by section B-J, Stodday Land Ltd, first called the route into question in 2006, upon their acquisition of the land and subsequent erection of "Private Land" Notices.

The Committee will note that any comments from Stodday Land Ltd concerning actions taken to demonstrate a lack of intention to dedicate to the public after November 2006, when it is considered that the route was first brought into question, are irrelevant in considering the possible deemed dedication in 1986. They have no information relating to sufficient actions to indicate any lack of intention of the owners 1986-2006.

As well as considering possible deemed dedication under S31 it is advised that consideration should also be given to whether dedication could be inferred at common law. This is more difficult but in this matter whilst the route crossed land in the ownership of W and M Pye Ltd and the County Council there would seem to be evidence of acquiescence in user such that an intention to actually dedicate a route for use by the public can be inferred.

Taking all the evidence into account, the Committee may consider that on balance the provisions of s31 Highways Act can be satisfied or dedication inferred at Common Law such that an Order be made and promoted to confirmation.

### **Risk Management**

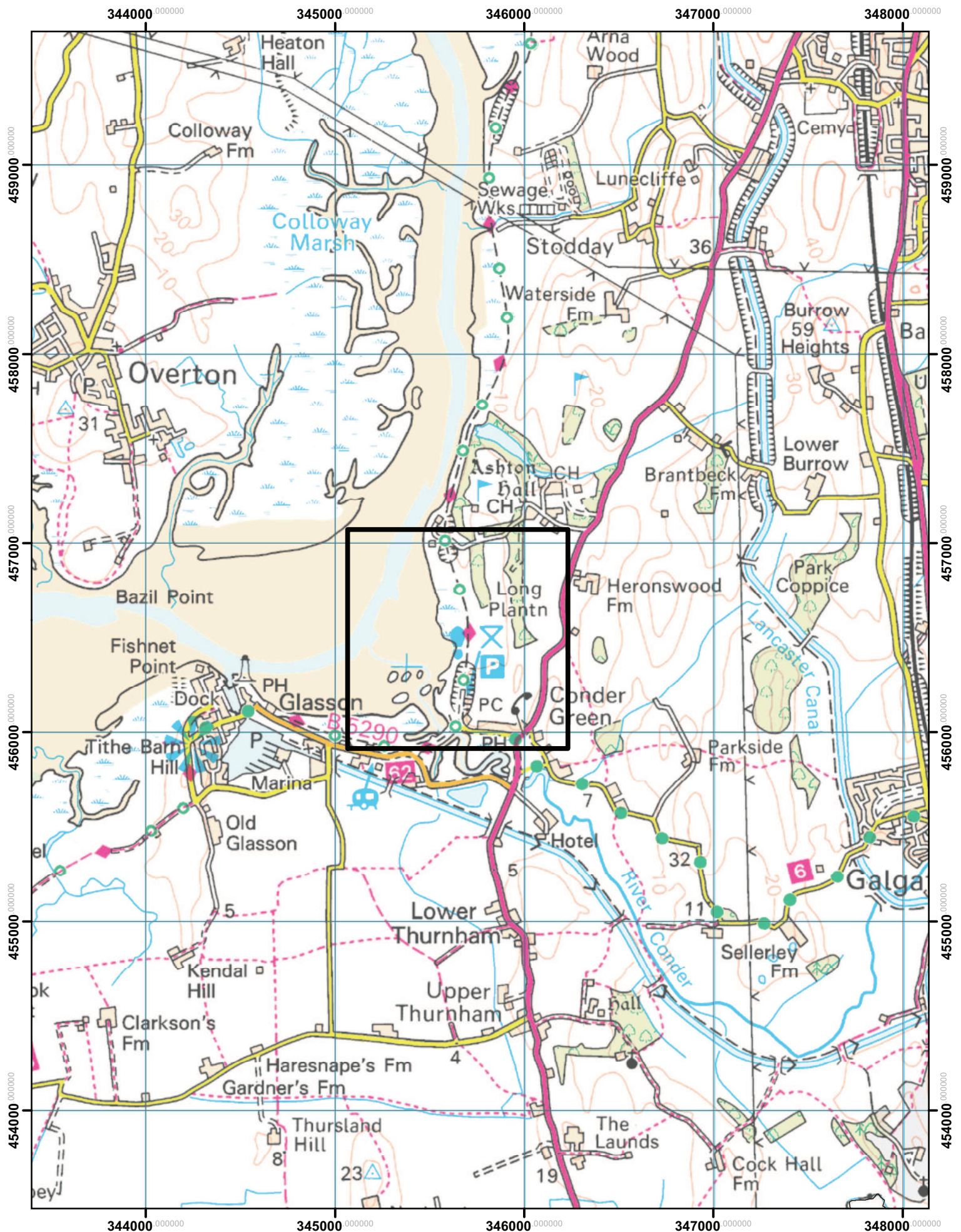
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda Papers (item 4). Provided any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

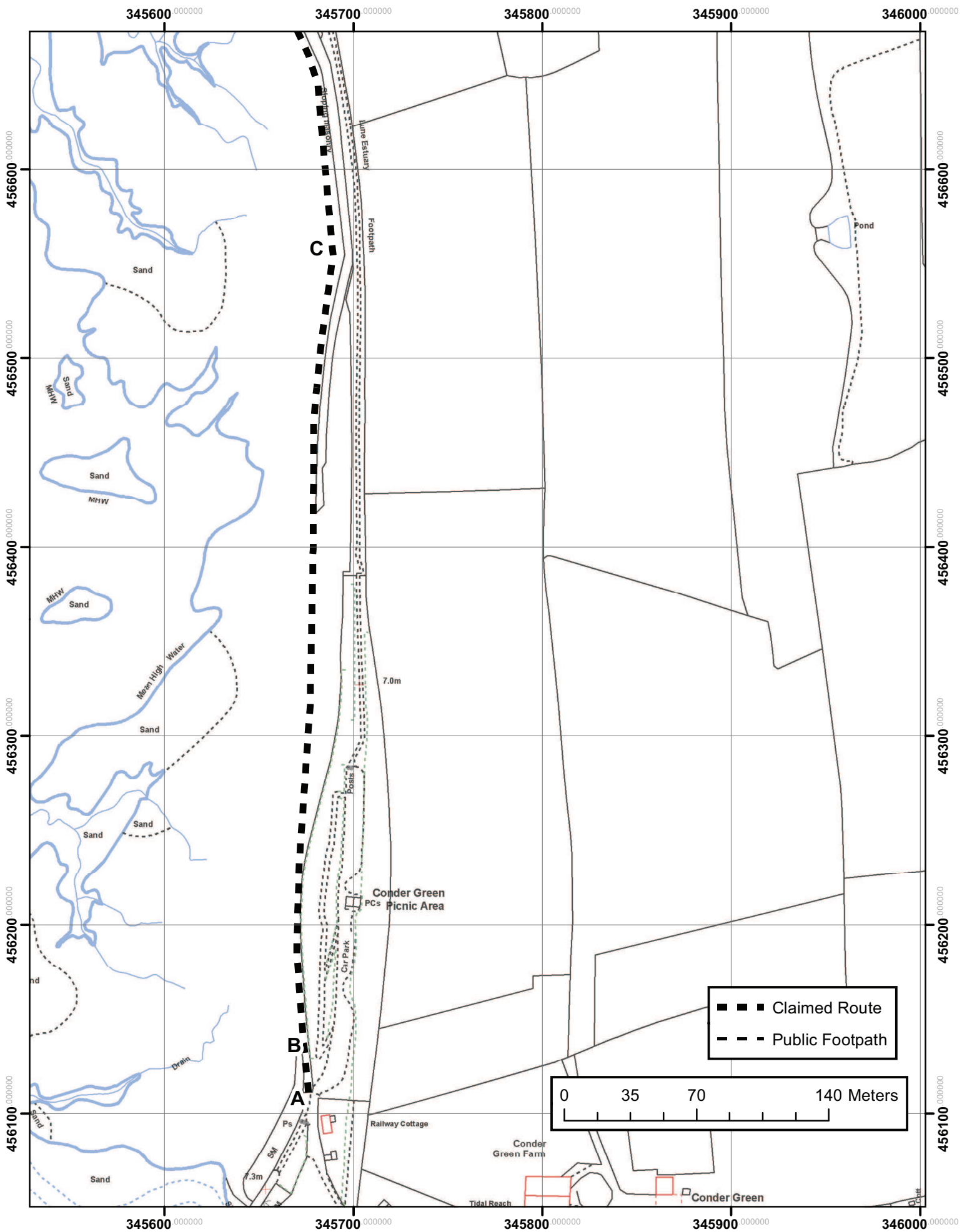
**Alternative options to be considered - N/A**

**Local Government (Access to Information) Act 1985  
List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804/509 5.37467		Charlotte Ripley, County Secretary and Solicitor's Group, 01772 533427
Reason for inclusion in Part II, if appropriate		
N/A		







Jo Turton  
Executive Director  
for the Environment

Wildlife and Countryside Act 1981 Section 53  
Claimed public footpath from Conder Green to Nan Bucks Cottage, Thurnham, Lancaster District  
PLAN 1

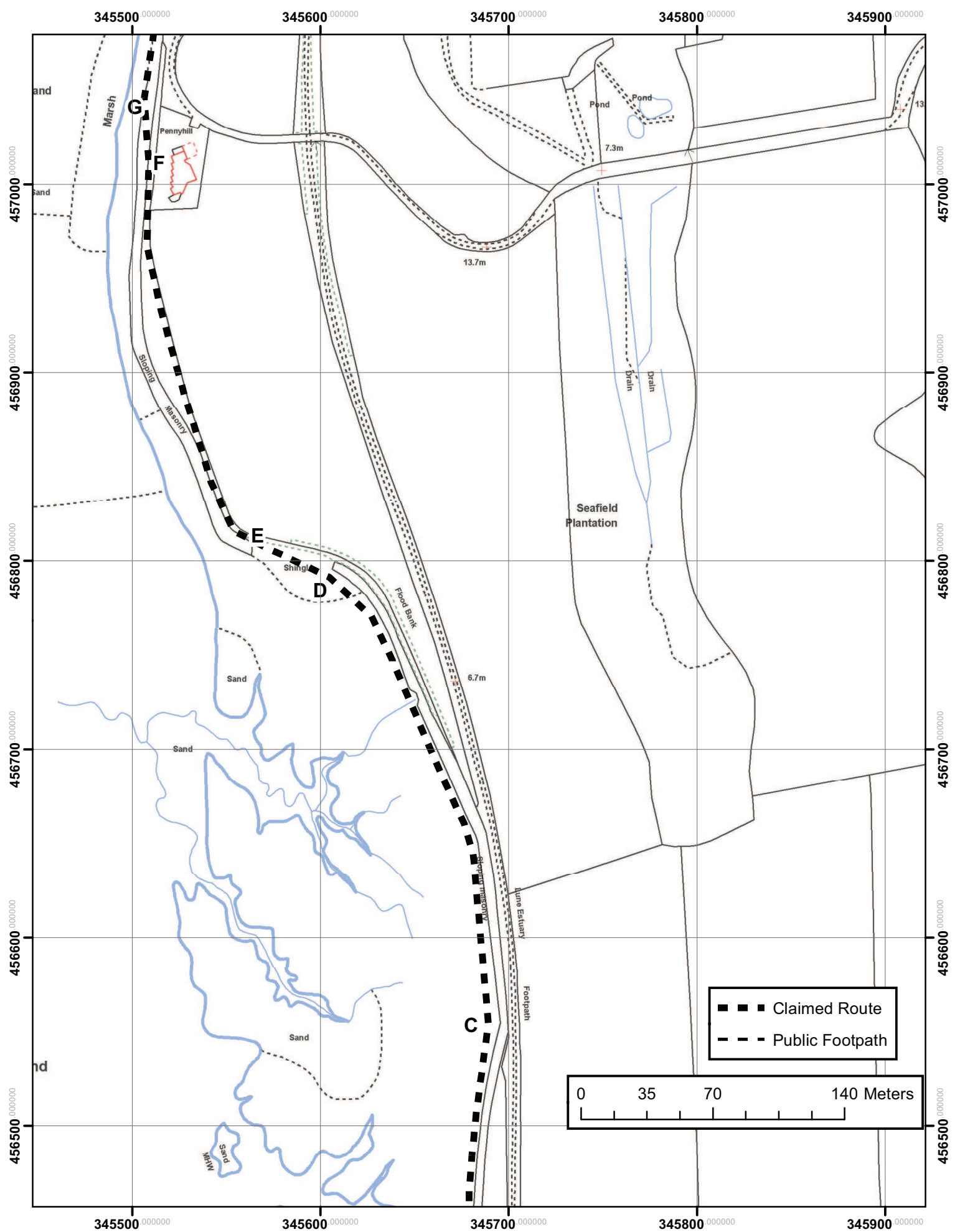
1:2,500

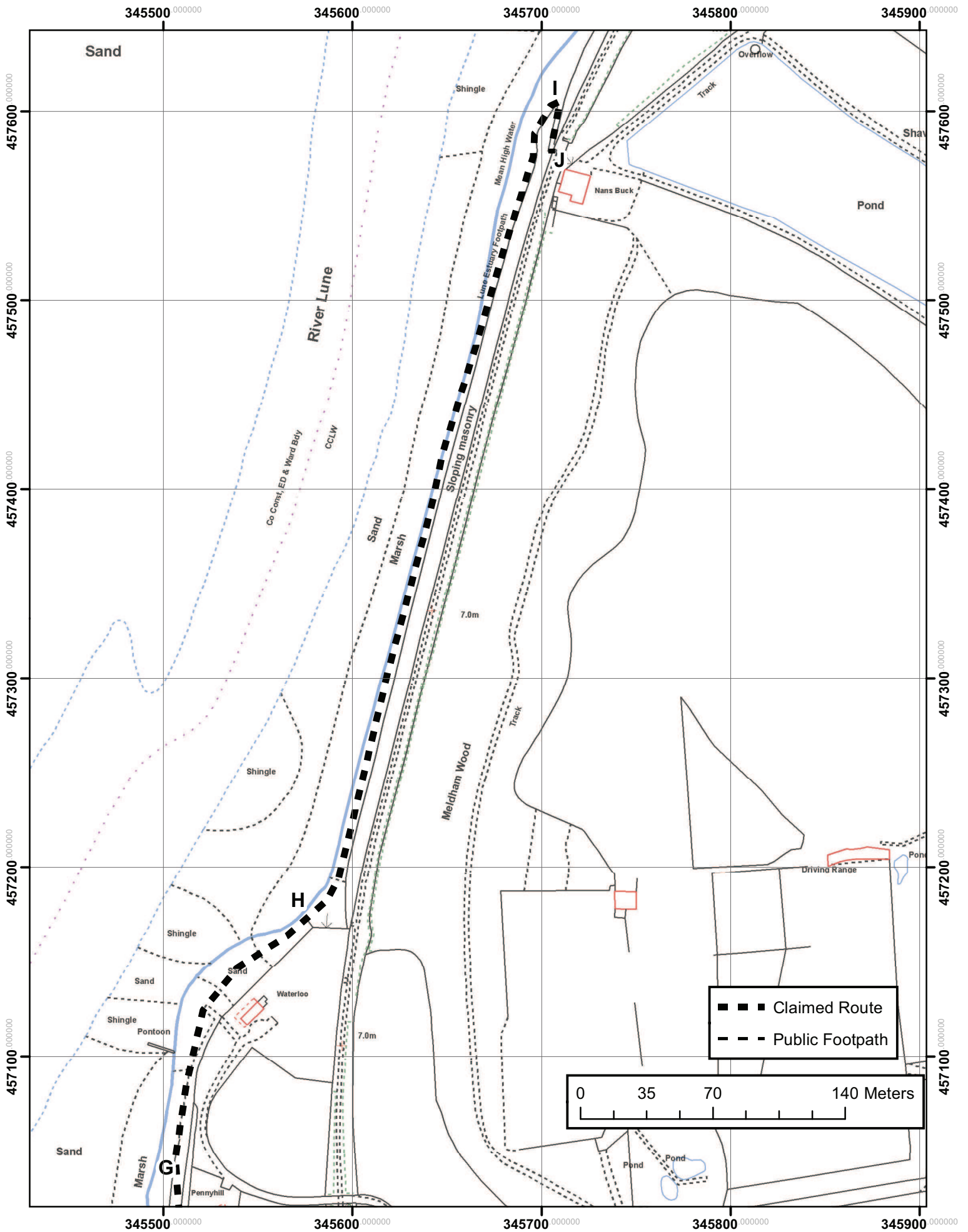


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Jo Turton  
Executive Director  
for the Environment

Wildlife and Countryside Act 1981 Section 53  
Claimed public footpath from Conder Green to Nan Bucks Cottage, Thurnham, Lancaster District  
PLAN 3

1:2,500



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