

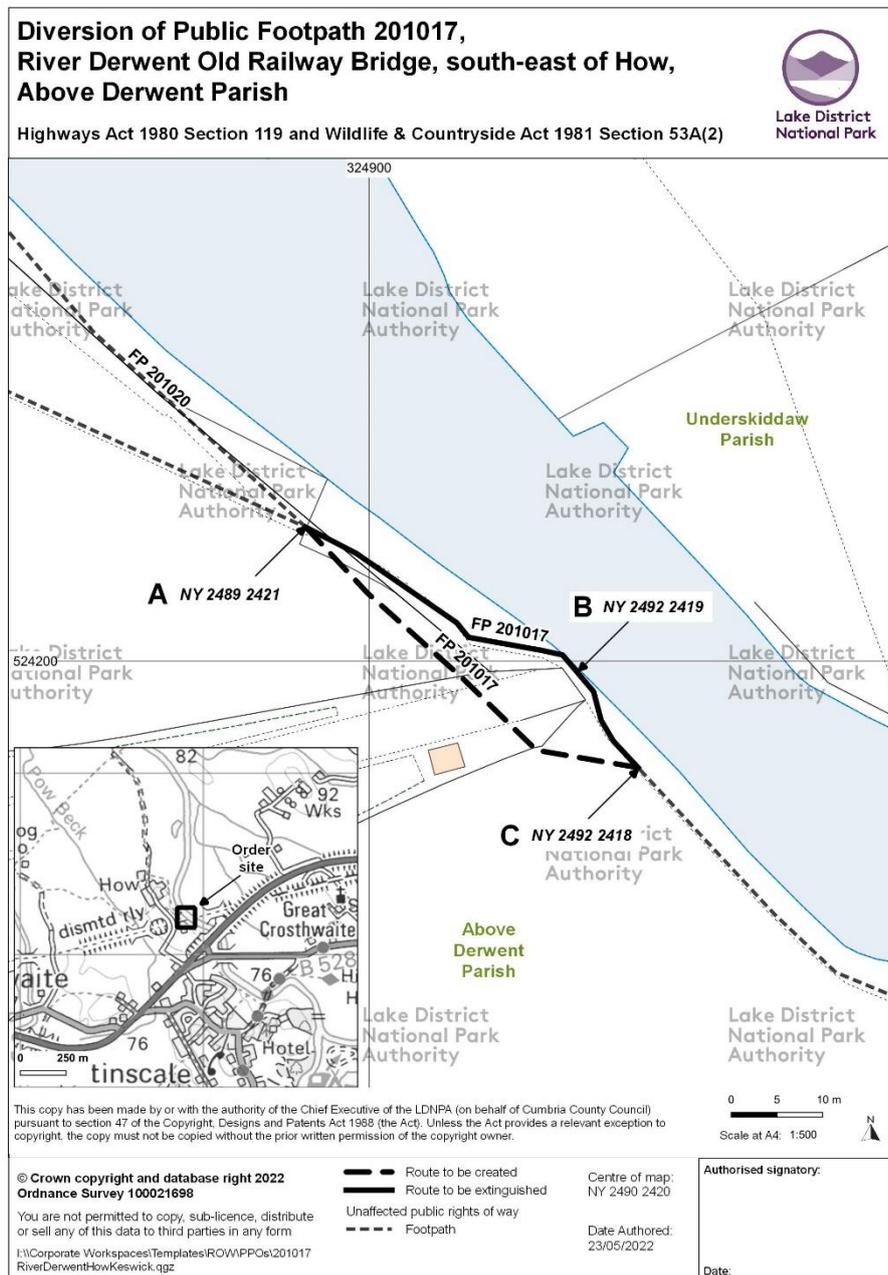
## Potential Diversion of Footpath 201017, River Derwent Old Railway Bridge, How, Above Derwent Parish

### 1 Summary

1.1 A revetment carrying footpath 201017 between an old railway bridge abutment and the river has collapsed. One of the options being considered is to divert the footpath.

**Recommendation that:**

- a we make a diversion order for footpath 201017 replacing section A-B-C with A-C as shown on the map below;**
- b we confirm the orders if no objections are received or if those objections received are withdrawn;**
- c we submit the matter to the Secretary of State for determination if objections are received and sustained.**



## 2 Background

- 2.1 Footpath 201017 runs along the riverbank from the A66 in Cumbria, northwards to How Farm. At one point it cuts down to the edge of the river to go below what was the old railway bridge carrying the Keswick to Cockermouth railway over the River Derwent. It goes down some steps, then along what was a concrete revetment, before climbing up to field level again.
- 2.2 We don't know when this revetment was built – the path is shown between the bridge abutment and the edge of the river as far back as 1864, but we can't tell whether this was via a revetment, or whether at that time there was still a bit of solid bank there. The concrete revetment appears not to be built along with the abutment, as in the summer of 2021 it started to come away and appeared not to have been fixed to the bridge abutment.
- 2.3 The slippage shown in the photos below prompted our Ranger team to close the path along the revetment as a matter of urgency and on the grounds of public safety. Soon after that, the revetment collapsed into the river completely, and there is now no way of using the definitive line of the footpath.
- 2.4 There are a number of options to resolve this issue, as discussed in this paper – one of which is to divert the footpath..



**Photos showing the slumping and movement of the revetment, and subsequent collapse.**



### 3 Policy Context

- 3.1 The Vision for the Lake District National Park sets out our aspirations for what we hope to achieve by 2030. To summarise, these are to have a landscape which provides an irreplaceable source of inspiration, whose benefits to people and wildlife are valued and improved; a landscape whose natural and cultural resources are assets to be managed and used wisely for future generations.
- 3.2 The Partnership's Plan contains the policies and actions for achieving the aims of the Vision. The main delivery aim in the Partnership's Plan for access and rights of way is to make the most of the landscape and nature as the backdrop for outdoor leisure experiences for all, particularly the next generation of returning visitors, from relaxing and tranquil, to adventurous and exhilarating.
- 3.3 Our Business Plan states what actions will be taken as the National Park Authority plays its part, in partnership with others, in realising the Vision. It seeks an outcome that provides high-quality and unique experiences for visitors within a stunning and globally significant landscape: experiences that compete with the best in the international market to strengthen the tourism sectors across the National Park.
- 3.4 The Strategy & Rangers Service Plan contains the Business Plan priorities for our service, including Contributing to World Class Visitor Experiences. This aims to achieve a programme of activity that will implement the adopted Cumbria and the Lake District Access and Recreation Strategy.

- 3.5 'Out There' our draft Access and Recreation Strategy contains our goal for access and recreation, which is that by 2040 we have: "A better connected access network fit for purpose in the 21<sup>st</sup> Century with high quality infrastructure, facilities and services meeting the needs of all users, in particular families and young people." The strategy has four main priority themes, including the following – from which I have selected various relevant sentences / themes:

**Improve: Rights of Way and Countryside Access**

**Manage: Rights of Way, Countryside Access and recreational activities**

- Our core statutory duty of maintaining the PROW network will ensure that all users can access the countryside in confidence. We will continue to protect, map, record and continuously review and update the Definitive Map and Statement of Public Rights of Way (PROW).
- We will continue to balance the needs of countryside users with those of local communities, landowners and managers. We will work with key user groups, land managers and local communities to encourage responsible use of the countryside and resolve conflict through appropriate management and guidance.

**Promote and educate: connect more people with the countryside**

**Integrate: with health and wellbeing, sustainable transport and the economy**

- 3.6 Factors to take into account when determining changes to the network were agreed at Park Management Committee in May 1997 ("Changing the Rights of Way Network: Statement of Policy"), and are listed at Annex 1.

**4 Demonstrating Best Value**

- 4.1 **Work Programme and Relevance to This Case:** the footpath across the revetment is currently closed by legal order. Although an alternative exists immediately alongside, it is of course a priority for us to resolve the issue as speedily as we can – thereby delivering certainty for walkers and landowners alike.

- 4.2 The best value implications are:

- a) The **challenge** is for us to achieve our policies without significant financial or staff implications. The proposed diversion is a pragmatic method of resolving the issue at relatively low cost.
- b) Processing public path orders is not a **competitive** procedure. Cumbria County Council can also process orders, but we are more closely connected with the day-to-day management of the network and so can act more effectively.
- c) We have **consulted** user bodies, the Local Access Forum, and other interested parties as part of the process, their responses are later in the report.
- d) We have **compared** our casework completion rates with other authorities, and it is comparable with other organisations of a similar size and with similar staffing levels.

## 5 Options

- 5.1 a: Rebuild the revetment
- b: Construct a path on the definitive line above the water
- c: Divert the footpath

## 6 Proposals

- 6.1 I recommend option 5.1c, and this is discussed further in sections 7-8. The diversion is supported by all those consulted, other than the landowner. Options 5.1a and 5.1b are described in section 6 below.

### 6.2 Rebuild the revetment

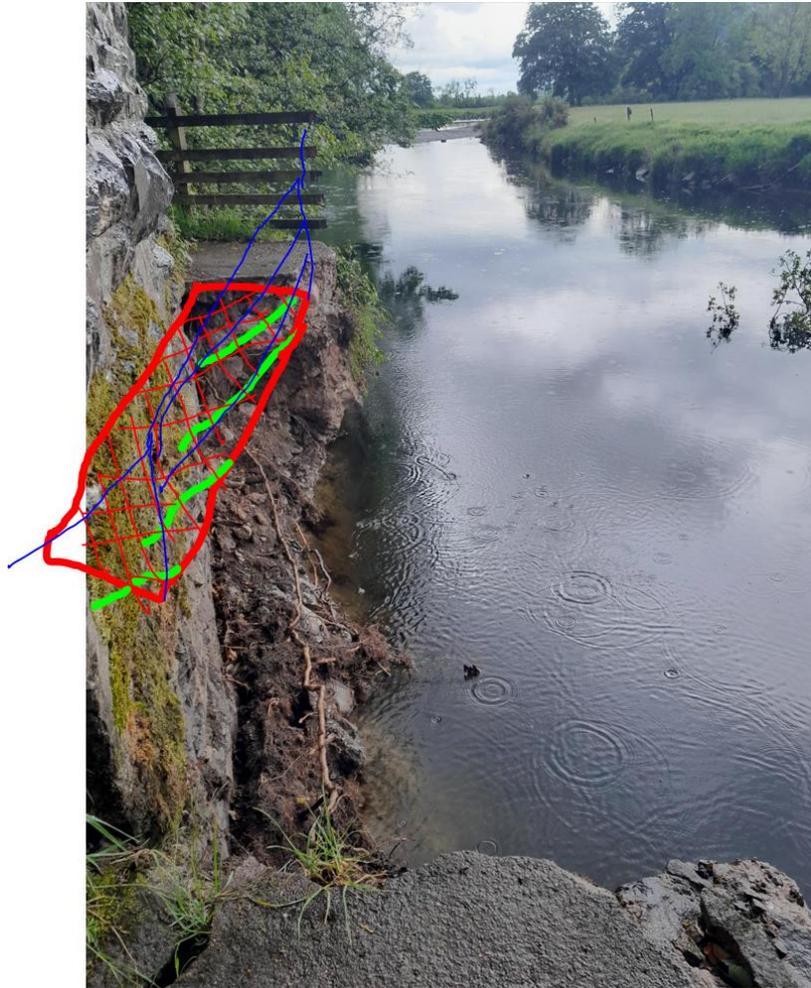
- 6.2.1 This would mean in-river works, probably involving piling for sustainability. The Environment Agency's initial response was as follows:

As an initial feel, where the latter option is replacing an existing structure, we wouldn't outright object to it. However, river bed works would obviously be the most environmentally intrusive/impactful so the preference would certainly be for the new footpath line. In addition to this, from a geomorphology point of view, if the river has already caused erosion here, the effect is likely to continue in the future. The new structure would therefore be susceptible to the same erosion risks and may require on-going maintenance.

- 6.2.2 In summary, the Environment Agency wouldn't object to this option, but would recommend against it.
- 6.2.3 We have done no costings or investigations into how this could be done, but it would almost certainly involve piling and concrete –building a brand new stand-alone structure in the river. This is almost certain to be challenging and expensive – even if we were able to gain consent for the works. Further, this option is the least resilient option for the future due to the new structure being susceptible to the same erosion risk and may therefore require on going maintenance.
- 6.2.4 For the above reasons, this option is not considered feasible.

### 6.3 Construct a path on the definitive line above the water

6.3.1 This would be something like a flying walkway fixed to the structure of the railway bridge abutments. A bit like the rough drawing below.



6.3.2 We haven't done any detailed designs or costings for this either. However, when something slightly similar was proposed at Stanley Ghyll, the cost was projected to be something in the region of £30,000.

6.3.3 The owner of the bridge abutments has said that they would have no objections to us fixing this structure to their property (although this would need some sort of agreement / lease with them – presumably with payments).

6.3.4 The Environment Agency's initial response was as follows:

Regarding the flying walkway, this option would have less of an impact on the river when compared to the in-channel option (which is good), however the walkway would have to be fairly robustly designed to ensure that it doesn't get washed away during a flood event, or cause the accumulation of debris which could subsequently cause a blockage. So again, the new footpath line would be preferred.

6.3.5 Again, they say that they wouldn't object to it, but would recommend against it.

6.3.6 And again, this option is not considered feasible from a financial on long term resilience/maintenance point of view – and will create a long-term financial burden for us and the highway authority.

## **7 Grounds and Tests for Diversion**

- 7.1 The grounds and tests for a diversion are slightly different at the making and confirmation stage. However, as the Authority has discretion as to whether to make an order in the first place, it would be unwise to ignore something that could prevent an order from being confirmed. Therefore, the issue should be considered in the whole, and the factors to take into account are set out and discussed below. These factors incorporate our own policies on changes to the rights of way network which are set out in annex 1.
- 7.2 There are only two grounds for a diversion of a right of way (section 119, Highways Act 1980), namely where it appears to the Authority that it is expedient to do so:
- a) in the interests of the owner, lessee or occupier of the land crossed by the path,  
OR b) in the interests of the public.
- 7.3 I consider that it would be expedient in the interests of the public, as it will replace the link severed by the collapse of the revetment, and will also actually make the path easier to follow and easier to use. It will make the path less susceptible to future erosion issues and therefore is likely to be in the long-term interests of the public, as well as the immediate.

## **8 Tests to be Considered**

- 8.1 These are:
- Will the new path be substantially less convenient to the public?
  - The effect which the diversion would have on public enjoyment of the path or way as a whole;
  - The effect the order would have as respects other land served by the existing right of way;
  - The effect of the new right of way on land over which the new path is created;
  - That termination of the alternative footpath is on the same or a connected highway, and is substantially as convenient to the public.
- 8.2 *Will the new path be substantially less convenient to the public?*
- 8.2.1 The proposed path will be more convenient. From point C walkers passed through a gate and descended a flight of steps to the revetment before ascending slightly to point A.
- 8.2.2 Even before the revetment collapsed, walkers appear to have been using an alternative route (C-A) which is flatter and more direct (see photos overleaf taken just as we closed the revetment – the trod is very well worn). This crosses over the old railway line at the western end of the abutment construction. The fences between the fields and the old railway appear to have been redundant for many years, and are no longer really present.

**Photo of the steps down to the revetment**



**Photos showing the route that has developed across the old railway line.**



8.3 *What is the effect of the diversion on public enjoyment of the path or way as a whole?*

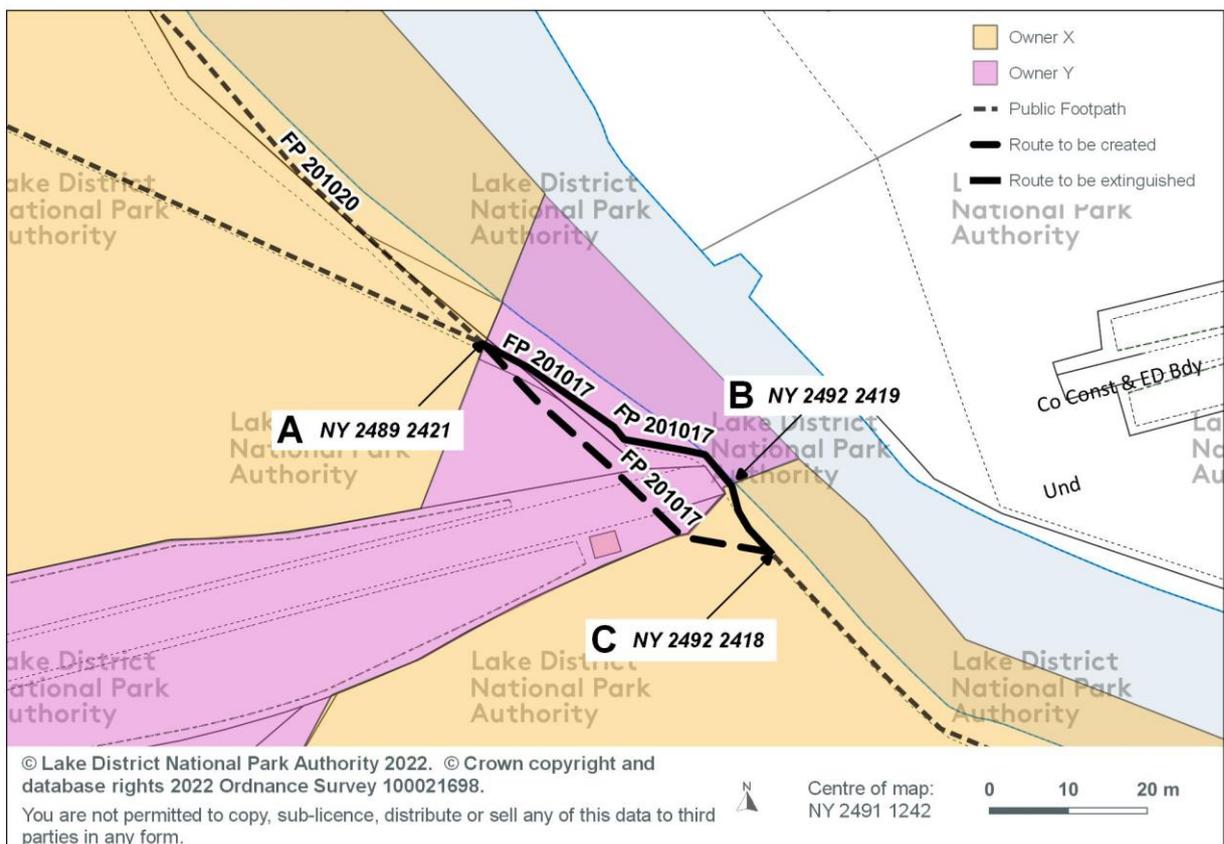
8.3.1 I consider that there will be a slight diminishment in enjoyment. The diversion would remove a little bit of the enjoyment of being right next to the water (or indeed over if option 5.1b were chosen), and is just a 'path' rather than a 'feature' in its own right.

8.4 *Would the order affect other land served by the existing right of way?*

8.4.1 I am not aware of any private rights.

8.5 *Is there any effect of the new right of way on land over which it is created?*

8.5.1 The land is owned by two landowners, X & Y. Landowner X supports the diversion. Landowner Y considers that we should look to one of the other two options rather than divert the path, although they accept that this would be very expensive. Their reasoning is in the box overleaf.



Having considered your proposal I'm afraid we are not prepared to consent to the right of way.

Please let me know once you have made alternative arrangements so we can erect a fence around our land to secure it.

We arrived at that decision based upon the liability of members of the public going over our land *[this relates to maintenance of gates, and occupiers liability for things like trees and so on]*.

This is not of our making your council didn't maintain the revetment (nothing personal because I know everyone has funding problems), the result being we will have increased liability of people passing over the land.

The proposed re opening of this line is still in the background!

We are familiar with matters going to the Secretary of State for determination.

We are quite happy to consent to the revetment being rebuilt or a metal bridge being built as you suggest but I suspect this avenue would be very expensive.

Don't want you to feel we are being difficult in any way, we are quite happy to help [have done elsewhere in county].

- 8.5.2 In essence, the old railway line is a discrete plot of land (despite it being open to people and stock currently), and they would like it to remain that way. We have offered to erect a fence along the western side of the proposed path to maintain it as a separate plot – but undoubtedly, it would be a smaller plot.
- 8.5.3 The land is held more as an investment than farmed or for woodland – and the loss of a section of it would reduce its value. Under s28 of the Highways Act 1980, a landowner may claim compensation if their interest in land is diminished by legal changes to rights of way of this nature.
- 8.4 *Is the termination of the alternative footpath on the same or a connected highway, and is it as substantially as convenient to the public?*
- 8.4.1 The proposed diversion is 'mid-path' and therefore the termination points are unaffected.

## 9 Brief Analysis of the Three Options

9.1 The matter was considered by our Ranger Team Leaders, with the information below, and their comments in the box below that.

| Proposal                 | Benefit to public  | Disbenefits  | Likelihood of objection                                | Costs                                 |
|--------------------------|--|--|--|---------------------------------------|
| Rebuild revetment (5.1a) | <ul style="list-style-type: none"> <li>• Maintain historic line of footpath</li> <li>• Maintain a different experience</li> </ul>                                  | <ul style="list-style-type: none"> <li>• Could be difficult to do</li> <li>• Needs consents</li> <li>• Less easy to use, involving a flight of steps</li> <li>• May need some sort of lease / agreement (payment?) for pinning to abutment</li> </ul>  | None – EA & landowners say they wouldn't object        | Uncosted                              |
| Flying Walkway (5.1b)    | <ul style="list-style-type: none"> <li>• Maintain historic line of footpath</li> <li>• Create a different experience – quite a 'thing' in its own right</li> </ul> | <ul style="list-style-type: none"> <li>• Could be difficult to achieve (needs project)</li> <li>• Less easy to use, involving a flight of steps (although it could be higher than revetment – so, fewer steps)</li> <li>• Would need some sort of lease / agreement (payment?) for fixing to abutment</li> </ul> | None – EA & landowners say they wouldn't object        | Indicative costs of £30k              |
| Diversion (5.1c)         | <ul style="list-style-type: none"> <li>• Easier route to use</li> <li>• Cheaper to maintain in long-run</li> </ul>   | <ul style="list-style-type: none"> <li>• Could take a few years</li> <li>• May involve compensation / costs</li> <li>• Would be directly opposite to landowner's wishes – potential reputational risk</li> </ul>   | Probable – landowner Y say they do not consent to this | £4-30k<br><br>Unknown re compensation |

### **RANGER TEAM LEADER COMMENTS**

We have considered the options and the reasons behind each of them along with the comments from the landowner who would be affected by the proposed path diversion.

We have rejected the options of reinstating the walkway as was or a new metal 'flying' walkway for the following reasons;

As highlighted by the Environment Agency, any work to the river bed would be intrusive and susceptible to erosion, particularly in increasingly frequent storm events. Even a 'flying' walkway would be vulnerable to such storm events and may become a hazard in its own right if it were to act as a 'strainer' in the water flow providing a lodgement site for water borne debris.

For the above reason we recommend, despite the landowners' objections, that the path be diverted over the railway line. Whilst acknowledging the landowners' concerns regarding public access and liability we have considered that there has been use of this route for some time already and there have been no recorded incidents on this route and neither has the landowner taken steps to exclude the public from using it.

Furthermore the route is across the railway line for a short distance as opposed to along the line for any considerable distance and is close to the end of the useable length of the railway line so represents minimal impact on the landowners use or enjoyment of the railway line section in their ownership. Mitigation works in the form of fencing and signage should be offered by the Authority in the event of the diversion being confirmed to help manage the land owners liabilities.

We acknowledge that if compensation has to be paid as a result of this diversion, the costs of this option may well be as much as the engineered solution of a flying walkway, therefore overall costs are not a deciding factor in the recommendation.

Considered and recommended by Ranger Team Leaders on 28.07.2022.

## 10 Other Considerations Required by Legislation

### 10.1 Rights of Way Improvement Plan

10.1.1 Before confirming a public path creation or diversion order we are required to have regard to any material provision of a Rights of Way Improvement Plan (ROWIP). Unfortunately, it is not certain whether we have a current, valid RoWIP at present. We developed the Cumbria ROWIP in 2007 with Cumbria County Council (CCC) – and this was fully adopted (CCC are the highway authority, we act as their agents). This 2007 ROWIP has since been withdrawn by Cumbria County Council and replaced with a CCC Strategy. However, the latter has never been formally ratified by us, or formally consulted upon - although it includes actions from a draft LDNPA access strategy that has not yet been completed. Nonetheless, we are assured by CCC that it is indeed the current Cumbria ROWIP. We are still working towards developing our own Access & Recreation Strategy to run alongside this, and are discussing the status of the various documents with CCC.

10.1.2 The Cumbria Access Strategy does not contain specific route proposals, but is a more generic document. *Action 1a states “Review and make legal orders to ensure a safe network, limit obstructions and support priority access development initiatives where required on the rights of way network.”* This creation helps fulfil this aim.

## 11 Stakeholder Consultation

11.1 We have consulted our usual consultees with the three options and responses received are below.

| Name of Stakeholder          | Consultation Response (quotes)   |
|------------------------------|--|
| Above Derwent Parish Council | Support the diversion [in preference to the other options].  |
| Local Access Forum           | <p>Site has been visited – it seems likely that the definitive line is only there to pass under the original bridge and avoid crossing the active railway line. To re-instate the path on the definitive line is now not completely necessary, and considering the environmental issues on ‘in-river’ works and the costs of building a new fixture to the bridge the potential path diversion would be preferable.</p> <p>The potential path diversion follows a line that has been used for some time and does not affect any other land use. It is noted that fences between the railway line and the farmland have been missing for an even longer time. This diversion option appears to meet all the legal tests for a path diversion. Consequently, the LAF supports the potential path diversion as a solution to the issue.</p> |
| Open Spaces Society          | Any work you do should not damage the structure of the bridge as we would like to see further use of the old railway line being made available for walkers. That said – the bridge structure [option 5.1b] would be the most appealing line to take. However,  |

|                        |   |
|------------------------|---|
|                        | <p>we are also conscious of the propensity for the river to flood in this area.</p> <p>On balance, it would appear that a diversion route, as much as possible without any need for steps, over the former line of the railway would appear to be acceptable.</p> |
| Cumbria County Council | The County Council would support a proposed diversion as it seems to be the most appropriate solution.  |
| Owner X                | We have no objection to the proposed diversion – it's the only feasible option.   |
| Owner Y                | See section 8.5.1   |

## 12 Finance Considerations

- 12.1 Our charging policy says that where diversions are wholly in the public interest, then it is appropriate that we meet the full costs. For an unopposed order, this would be in the region of £4,000 in staff time and advertising. For opposed orders – refer to sections 9 & 12 for the options and costs and team leader discussion.

## 13 Risk

- 13.1 If we made a diversion order, Owner (Y) is likely to object.
- The matter would be referred to the Secretary of State.
  - A hearing or inquiry could be held, or written representations procedure used.
  - A diversion normally takes around 60-70 hours staff time. Preparing for, and attending an inquiry would add 20+ days (days not hours) to this.
  - If successful, then compensation for the impact on their interest in the land could be payable – and this would probably be determined by the Land Tribunals. We do not have any knowledge of what sort of amount this could be, as there is little empirical knowledge on such compensation payments, and we have never made any to my knowledge other than paying for ancillary works such as fencing. However, it is worth noting that the proposed path is already used by the public. It is also worth noting that the current line of the footpath runs over the same ownerships, so the liabilities referred to by owner Y at 8.5.1 already exist for them.
  - If the order is not confirmed, we may be liable for meeting the landowners' costs – as it could be argued that this is akin to a compulsory purchase order (creation orders are definitely like this – and where we are moving a path onto a new owner's land – it's similar). Again, we have little experience of this.
- 13.2 If we chose one of the other two options, we may be faced with a long-term maintenance issue.

## 14 Legal Considerations

- 14.1 The order will be made under section 119 of the Highways Act 1980 and we are able to make orders under this section by virtue of schedule 9, paragraph 11 of the Environment Act 1995. The modification element will be made under section 53A(2) of the Wildlife & Countryside Act 1981, and we have powers to do such orders through our Agency Agreement with Cumbria County Council. The action strikes a reasonable balance between private and public rights.

## 15 Human Resources

- 15.1 The work involved in this proposal (if unopposed) is approximately 60 hours from members of the Ranger teams, and one hour from a member of Legal Services. The work involved is all part of our day-to-day duties, and over half of it has already been undertaken. Refer to section 12.1 for likely resources required if the diversion is opposed.

## 16 Diversity Implications

- 16.1 I have identified no significant diversity issues, other than that the proposed diversion will be more usable to those with limited mobility.

## 17 Sustainability

- 17.1 I have not identified any significant environmental, economic or social effects.

## 18 Summary

- 18.1 The proposals will benefit the public. All of those who responded to the consultation are in agreement with the proposals. The landowner is not supportive.
- 18.2 On balance, I consider that the public benefit is such that a diversion order here would be expedient. The public have already been using the proposed route for many years in preference to the definitive line, even before the revetment collapsed. Compensatory remedies are available to the landowner.

|                              |  |
|------------------------------|--|
| <b>Background Papers:</b>    | Case file reference 1412.201.12                        |
| <b>Author/Post:</b>          | Nick Thorne, Senior Rights of Way Officer              |
| <b>Responsible Director:</b> | Stephen Ratcliffe, Director of Sustainable Development |
| <b>Date Written:</b>         | 5 December 2022  |

## **Our Policies on Changes to the Public Path Network**

Policies on changing the public path network have been developed and approved by the Authority. These are listed below, and reference is made to them, where appropriate, in the later annexes.

- There will be a presumption in favour of preserving the historical integrity of the network.
- The concerns of those managing land, especially for agriculture and forestry, will be recognised where legitimate operations may affect the public's enjoyment of or safety in using a public right of way. Under schedule 6 of the Countryside & Rights of Way Act 2000, we also have to look at the impact of all changes on agriculture and forestry.
- There will be a presumption against re-alignment of cross-field paths onto routes following field edge boundaries.
- There will be a presumption against any reduction in the amount of public access in the National Park.
- Where the route in use at present differs from the definitive line, there will be a presumption in favour of restoring the original route before considering a legal diversion.
- The future maintenance and management implications of any proposed change to the network will be considered.
- Changes should, if possible enhance public benefit through enabling the better enjoyment of the cultural landscape and nature conservation interest and should not reduce the ability of the public to discover any of the special qualities / features of the National Park.