

SUBJECT: WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53 DEFINITIVE MAP MODIFICATION ORDER ROUTE, A TO G, FOOTPATHS 83 AND 84 CALDICOT – THE SEAWALL
MEETING: LICENSING & REGULATORY COMMITTEE - RIGHTS OF WAY PANEL
DATE: 15th SEPTEMBER 2022
DIVISION/WARDS AFFECTED: CALDICOT

1. PURPOSE:

- 1.1 Under Section 53 of the Wildlife and Countryside Act 1981, the Authority has a duty to keep the Definitive Map and Statement under constant review. To meet this duty the Council is required to consider and determine cases with a view to making an order to change the Definitive Map and Statement (DM&S).
- 1.2 The purpose of the report is to consider all the historical evidence and decide whether or not to add the alleged footpaths to the DM&S for Monmouthshire. The Routes to be added in the community of Caldicot, (location plan Appendix 1) are detailed on the order map (Appendix 2).
- 1.3 The Authority is acting in a quasi-judicial capacity and must reach a decision based on the evidence presented (Appendix 3). We are not required to resolve conflicts in the evidence and there may well be evidence on both sides of the issue. We must weigh up the evidence using the test of the *'balance of probabilities'*, and, if on this balance, it is reasonable to conclude that the evidence shows that change should be made, we must do so. Although officers have considered the evidence, and made a recommendation based on their appraisal, members must themselves consider the evidence and reach their own conclusions. If a modification order is made anyone has a right to object. The matter would then be determined by the Planning and Environment Decisions Wales (PEDW).

2. RECOMMENDATIONS:

- 2.1 Members are invited to consider evidence provided (Appendix 3) and agree that rights of way that are not shown on the Definitive Map and Statement "*subsists, or is reasonably alleged to subsist*", on the crest of the seawall and that the status of the ways are footpaths.
- 2.2 If this is agreed, then to authorise the Head of Local Democracy and Legal Services to make a Definitive Map Modification order, under section 53(2)(b), subsection (3)(c)(i) of the Wildlife and Countryside Act 1981 for the Routes, A to G, to classify them as footpaths, numbers 83 and 84 Caldicot (354), and to confirm the order if no objections are received.

3. KEY ISSUES:

- 3.1 The registered public footpaths formally known as 6 Caldicot and 13 Rogiet (6 Caldicot 354/6) run along the southern boundary of Severnside Rifle Range. They do not form part of the Wales Coast Path. Their alignment is in part unavailable due to historic works altering the sea defences in the area.
- 3.2 The public consequently have been using alternative alignments through the site. User testimony, counter information, historic documents, sentry boxes, flagstaffs, kissing gates and aerial photography all suggest the existence of an alternative path along the crest of the seawall and over the greater earth mound behind the targets.
- 3.3 People counter evidence shows that when the public were restricted to walking five miles from home the numbers using the path rose dramatically. This resulted in the occupier placing barriers across the alternative alignment(s) to exclude the public and advising them that they cannot use it. This action has '*brought into question*' the status of the route(s). The '*bringing into question*' of the route on the crest of the sea wall along with the public's response has required research into the Definitive Map and Statement (DM&S) coupled with an investigation into historical and modern documents to determine whether public rights do already exist through the site.
- 3.4 A pre-order consultation was carried out between the 6th December 2021 to the 31st January 2022 and evidence investigated.
- 3.5 Need, nuisance, suitability or maintenance issues of the route, are not matters which can be considered under WCA 1981 legislation. These are things which will be considered under different legislation if an order is confirmed.

4. EQUALITY AND FUTURE GENERATION EVALUATION (INCLUDES SOCIAL JUSTICE, SAFEGUARDING AND CORPORATE PARENTING)

- 4.1 An EQIA has been included in Appendix 4. The recommendation has positive impacts in that if a path order is confirmed it would provide links to the Wales Coast Path providing health, well-being and economic benefits to the local communities. It would also provide for safer communities in that it would help resolve the anti-social behaviour and trespass issues and ensure a safe route. Monitoring the impact on the Rifle Range business and the need for improved communications and maintaining co-operative working and partnerships is noted as an action.

5. OPTIONS APPRAISAL

Option	Positive	Negative	Comment
To make the order	Meets legal tests on evidence Provides links in network		Assists towards providing clarity on legal status of route, therefore providing method of dealing with enforcement of route and antisocial behaviour.

Option	Positive	Negative	Comment
Not to make the order		Could lead to a successful legal challenge resulting in Welsh Government requiring us to make an order	This would result in dead end footpaths and no resolution to the ongoing antisocial behaviour and safety issues at the Rifle Range.

6. EVALUATION CRITERIA

- 6.1 If a decision is made that an order should be made than the Head of Law/ Monitoring Officer will be instructed to make a Definitive Map Modification Order in accordance with the procedures contained in the Wildlife and Countryside Act 1981, Schedule 15 and in accordance with Regulations 1993 Statutory Instrument 1993 No12.
- 6.2 Notice of making the Order will be posted on site and published in a newspaper circulating in the locality. A period not being less than 42 days from the date of the first publication of the notice will be given for the receipt of objections to the Order. If there are no objections the Order will be confirmed by the Council as an unopposed order.
- 6.3 If objections are made and not withdrawn, the Order Making Authority will submit the Order for confirmation to the Planning and Environment Decisions Wales (PEDW).
- 6.4 Confirmation of the order would allow this Authority along with other partners to ensure the safe opening of the route along the crest of the seawall and deal with antisocial behaviour and trespass issues, by installing measures such as kissing gates and fencing. The route would be registered on the Definitive Map and Statement.

7. REASONS

- 7.1 The Authority is under a duty to keep the Definitive Map under review and evidence has been produced to show that a path requires adding to the Definitive Map and Statement.

8. RESOURCE IMPLICATIONS

- 8.1 The consideration of the Definitive Map Modification Order falls within existing budgets.

9. CONSULTEES

- 9.1 The public consultation was on the website and a consultation letter was sent to 63 consultees as detailed in appendix 3 chapter 5. These included Cabinet Member, Local Members, The Town Council's, statutory undertakers, user groups, landowners and occupier of Severnside Rifle Range, local residents, Legal Services, Green Infrastructure, Countryside Access, Environmental Health, Natural Resources Wales, Highways and Gwent Police.

10. BACKGROUND PAPERS:

- Location map (Appendix 1)
- Draft Order and Consultation map (Appendix 2)
- Evidential Report and Appendices bundle (Appendix 3)

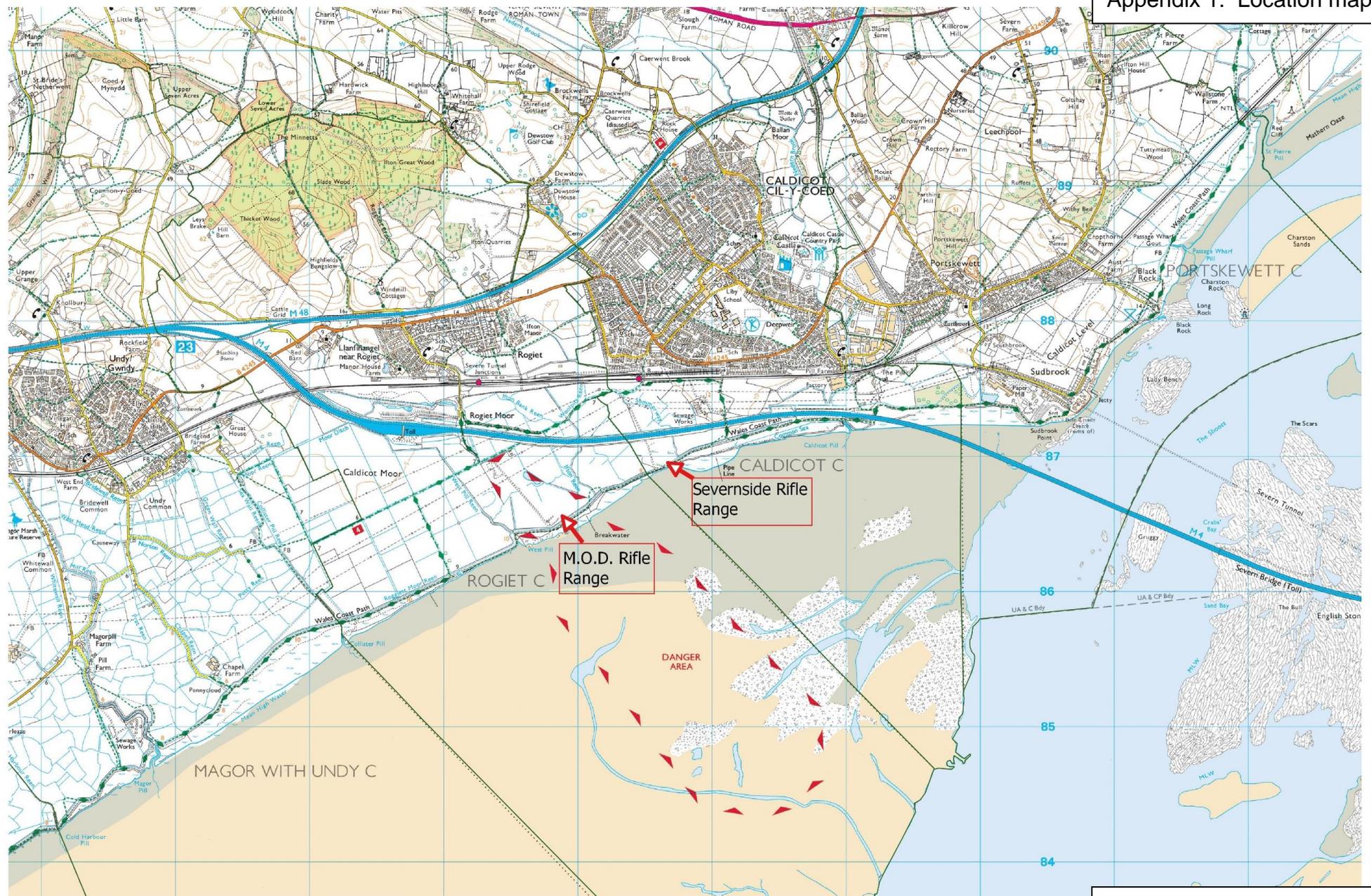
- Equality and Future Generations Evaluation (includes Social Justice, Safe Guarding and Corporate Parenting) (Appendix 4)

11. AUTHOR & CONTACT DETAILS:

Ruth Rourke Countryside Access Manager

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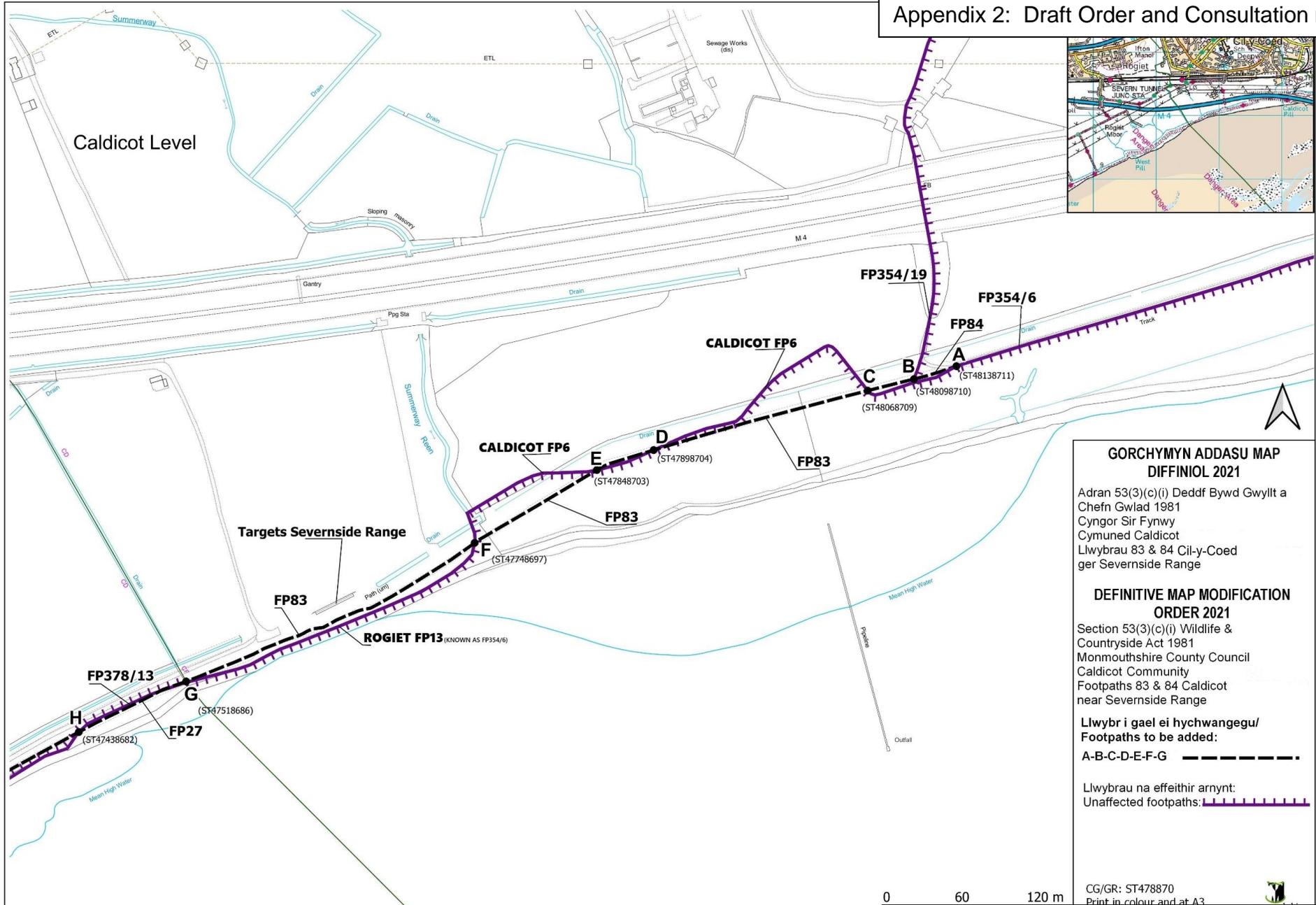
Appendix 1: Location map



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Appendix 1: Location map

Appendix 2: Draft Order and Consultation map



**GORCHYMYN ADDASU MAP
DIFFINIOL 2021**

Adran 53(3)(c)(i) Deddf Bywd Gwylt a
Chefn Gwlad 1981
Cyngor Sir Fynwy
Cymuned Caldicot
Llwybrau 83 & 84 Cil-y-Coed
ger Severnside Range

**DEFINITIVE MAP MODIFICATION
ORDER 2021**

Section 53(3)(c)(i) Wildlife &
Countryside Act 1981
Monmouthshire County Council
Caldicot Community
Footpaths 83 & 84 Caldicot
near Severnside Range

**Llwybr i gael ei hychwangu/
Footpaths to be added:**
A-B-C-D-E-F-G - - - - -

**Llwybrau na effeithir arnynt:
Unaffected footpaths:** [Purple hatched line]

0 60 120 m

CG/GR: ST478870
Print in colour and at A3

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Appendix 2: Draft Order and Consultation

Appendix 3

Evidential Report

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Glossary

Appendices bundle



<p>Name of the Officer Ruth Rourke Phone no: 01633 644860 E-mail: ruthrourke@monmouthshire.gov.uk Mandy Mussell Phone no: 01633 644183 E-mail: mandymussell@monmouthshire.gov.uk</p>	<p>Please give a brief description of the aims of the proposal</p> <p>WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53 DEFINITIVE MAP MODIFICATION ORDER ROUTE, A TO G, FOOTPATHS 83 AND 84 CALDICOT – THE SEAWALL</p> <p>To determine whether or not the routes are reasonably alleged to exist as footpaths and if so to make a Definitive Map Modification Order and confirm the order if no objections are made.</p>
<p>Name of Service area: MonLife</p>	<p>Date 18th August 2022</p>

1. **Are your proposals going to affect any people or groups of people with protected characteristics?** Please explain the impact, the evidence you have used and any action you are taking below.

Protected Characteristics	Describe any positive impacts your proposal has on the protected characteristic	Describe any negative impacts your proposal has on the protected characteristic	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?
Age	Path would be open to all ages	None	
Disability	If the path order is confirmed there may be opportunity to improve the surface of the footpath and there will be opportunity to ensure that any furniture required meets our policy on “Least Restrictive access” to ensure the path is made as accessible as possible.	None	The Countryside Access service has a policy of improving paths to allow for greater access by all wherever possible. If an order is confirmed this will be taken into account as part of discussions and plans to open the path and to maintain it in the future.

Protected Characteristics	Describe any positive impacts your proposal has on the protected characteristic	Describe any negative impacts your proposal has on the protected characteristic	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?
Gender reassignment	None	None	
Marriage or civil partnership	None	None	None
Pregnancy or maternity	None	None	None
Race	None	None	None
Religion or Belief	None	None	None
Sex	None	None	None
Sexual Orientation	none	None	none

2. The Socio-economic Duty and Social Justice

The Socio-economic Duty requires public bodies to have due regard to the need to reduce inequalities of outcome which result from socio-economic disadvantage when taking key decisions This duty aligns with our commitment as an authority to Social Justice.

	Describe any positive impacts your proposal has in respect of people suffering socio economic disadvantage	Describe any negative impacts your proposal has in respect of people suffering socio economic disadvantage.	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?
Socio-economic Duty and Social Justice	The route is important for all people, for both its recreational value and for the important part that it plays in their physical and emotional health and well-being. Paths are free for all too use regardless of their social or cultural background.	The Sevenside Rifle Range has been affected by the amount of people using the path since lockdown. It is expected that this will reduce to more normal numbers as the public are not now confined to walking a distance from their house. There have been rifle ranges along the sea wall since 1902 which have until now been successfully managed by Flagstaffs and sentries. Nevertheless the impact on the business remains a concern.	Public rights of way provide opportunities for active travel, economic and social benefits which contribute to communities. Paths such as these which are closed after a long period of use are often emotive and result in local dischord and antisocial behaviour. Providing certainty on status will help resolve such issues in the long term including putting measures in place to address issues of trespass and vandalism within the Sevenside Rifle Range.

3. Policy making and the Welsh language.

How does your proposal impact on the following aspects of the Council's Welsh Language Standards:	Describe the positive impacts of this proposal	Describe the negative impacts of this proposal	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts
Policy Making Effects on the use of the Welsh language, Promoting Welsh language Treating the Welsh language no less favourably	We have given this consideration and none have been identified at this stage.	We have given this consideration and none have been identified at this stage.	If an order is made it will be translated according to policy and we will look to see if we can improve any further aspects of the order making process.
Operational Recruitment & Training of workforce	We will continue to seek to recruit Welsh speaking staff in order to provide an effective Welsh language service.	We have given this consideration and none have been identified at this stage.	Will seek when recruiting to increase the level of Welsh speaking staff
Service delivery Use of Welsh language in service delivery Promoting use of the language	The Order will be made both in Welsh and English and will be available on our website in both languages. If an order is made comments can be made in English or Welsh. If the order goes to PEDW the Inspector will ask participants if they wish to hold an inquiry in Welsh or English.	We have given this consideration and none have been identified at this stage.	Pre- consultation has occurred on our website in both English and Welsh. We have asked consultees if they wish to have a Welsh translation at the committee meeting. If an order is made it will be translated according to policy and we will look to see if we can improve any further aspects of the order making process.

4. Does your proposal deliver any of the well-being goals below? Please explain the impact (positive and negative) you expect, together with suggestions of how to mitigate negative impacts or better contribute to the goal. There's no need to put something in every box if it is not relevant!

Well Being Goal	Does the proposal contribute to this goal? Describe the positive and negative impacts.	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
<p>A prosperous Wales Efficient use of resources, skilled, educated people, generates wealth, provides jobs</p>	<p>Positive – The path is an important link to the Wales Coast Path. It provides opportunities for both linear and circular route. The paths provide economic opportunities and benefits in the area and across Wales.</p>	<p>Data shows that there was a significant rise in the numbers of people using the seawall path during covid. This had an impact on the private rifle range who feel they could not use the site whilst so many walkers were present. This resulted in them closing the route. People counters will be monitored to see if the numbers reduce back to the levels pre covid. Environmental Health have been working on ensuring the site practices are robust and safe. We will, if the order is confirmed, work closely with the occupier to ensure adequate signage and a route is available that has the least impact on his business that we are able to do, given legislative requirements that we have to work under.</p>
<p>A resilient Wales Maintain and enhance biodiversity and ecosystems that support resilience and can adapt to change (e.g. climate change)</p>	<p>Positive – If the order is made and confirmed the public are afforded views across a special landscape and the biodiversity it contains. There has been no identified impact by the historical use along the seawall on the environment.</p>	<p>The Authority's Biodiversity Officer and Natural Resources Wales have been consulted and would be involved with any plans to open up paths should the order be made and confirmed in order to enhance biodiversity and protect the sea wall. Consideration to essential measures to reduce vandalism and trespass will help protect the environment if the path order is made and confirmed.</p>
<p>A healthier Wales People's physical and mental wellbeing is maximized and health impacts are understood</p>	<p>Positive – Public Footpaths provide a means of free exercise which has proven benefits to public health and well being.</p>	<p>The current situation negatively impacts on local people and the occupier of the Sevenside Range. Clarifying status would open up avenues to seek to resolve matters on the ground and reduce this negative impact in the long term.</p>
<p>A Wales of cohesive communities Communities are attractive, viable, safe and well connected</p>	<p>Positive – If an order is confirmed it would enable a safe route to be re-opened for the public, connecting communities.</p>	<p>Full consideration would be given to re-opening both the definitive routes and new route when the order is confirmed, in a safe way. The Specialist Environmental Health Officer has been involved and will continue to do so with regards safety</p>

Well Being Goal	Does the proposal contribute to this goal? Describe the positive and negative impacts.	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
		aspects at the Rifle Range. Opportunities have and will then continue to be discussed with concerned parties regarding the best approach to protect the environment, secure private land from anti social behaviour and keep the public to one safe route with operation of safety in place such as red flags etc.
A globally responsible Wales Taking account of impact on global well-being when considering local social, economic and environmental wellbeing		
A Wales of vibrant culture and thriving Welsh language Culture, heritage and Welsh language are promoted and protected. People are encouraged to do sport, art and recreation	Positive – walking gives the public opportunity to experience heritage and culture.	Any signage on site will be produced in both English and Welsh. We will consider where improvements can be made to ensure the order making process considers and facilitates the use of Welsh language.
A more equal Wales People can fulfil their potential no matter what their background or circumstances		The public feel that the closure of the path by the occupier of the site was unfair. This DMMO process enables all to share their views and evidence and be involved in the process of establishing the routes status, if any.

5. How has your proposal embedded and prioritised the sustainable governance principles in its development?

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 <p>Long Term</p> <p>Balancing short term need with long term and planning for the future</p>	<p>Short term the only action that could take place is to temporarily close the existing paths in the interests of public safety. Long term these paths will need to either be re-opened or closed by formal order. Issues around the impact on the sea wall and suitable engineering solutions to re-opening the path are on-going. Consideration of what would be involved to re-open the sea wall has also occurred. Longterm, the only way to resolve the ongoing trespass and anti social issues at Sevenside is to clarify the status of the route along the sea wall. Legislation states that it is not until this has been established can any enforcement action or necessary maintenance will then occur. Once this is complete then we can work with NRW and other interested parties to put measures in place to secure the safety of the public and occupiers at the site.</p>	<p>We shall look at how we might improve information to the public regarding this site and how we can keep them up to date with progress as it is made.</p> <p>Todate we have offered the possibility of looking at a package of orders that would enable there to be one useable path to the public, that would also be acceptable to the Firing Range. But the Occupier does not want any path opened. We will keep communication channels open with the Occupier should the order be confirmed and they wish to revisit this opportunity.</p> <p>We shall continue to have open dialogue with the landowners, Occupier and Natural Resources Wales regarding an acceptable solution to providing a safe route for the public. It is important that long term all parties are happy with the end result or the issues that have occurred on this site will continue to occur in years ahead.</p>
 <p>Collaboration</p> <p>Working together with other partners to deliver objectives</p>	<p>A full public consultation has been held. There has been ongoing partnership working for the past two years with different partners such as NRW and the Police. Partnership working is central to the delivery of a safe route on the ground and resolving the conflict, trespass and antisocial behaviour that has occurred.</p>	<p>The order making process includes a list of 63 statutory consultees who will continue to be involved at its various stages. There is also considerable reliance on partnership delivery to communicate the correct messages to the public and to help in future establish and maintain routes. Partners include Police, Town Councils, Natural Resources Wales and other partners and agencies.</p>

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 <p data-bbox="219 692 376 719">Involvement</p> <p data-bbox="427 472 584 754">Involving those with an interest and seeking their views</p>	<p data-bbox="607 237 1357 994">The Countryside Access Team have published articles in the press and on social media periodically. We have maintained closure notices and information around the issues on the Authority's website. A pre-order public consultation has been carried out as detailed in the evidential report. Statutory Consultees, including those individuals who have shown an interest, have been made aware of the final evidential report and conclusion. If an order is made it will be sent to the landowners and statutory consultees, notice will be placed on site and in a local paper and the order will be made available on our website. Legislation gives 42 days for any objections. If objections are received and not withdrawn the matter then goes to the Planning Environment Department Wales who will decide whether or not to confirm the order by way of written representations, Public Inquiry or Hearing.</p>	
 <p data-bbox="232 1294 369 1321">Prevention</p> <p data-bbox="421 1032 577 1361">Putting resources into preventing problems occurring or getting worse</p>	<p data-bbox="607 1032 1346 1145">We will maintain temporary traffic regulation orders keeping the site closed , the interest of public safety until the status can be resolved.</p> <p data-bbox="607 1185 1330 1259">Resolving the status is the only way in wich we are able to progress with any further actions.</p>	

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 <p data-bbox="237 459 376 488">Integration</p> <p data-bbox="203 533 566 647">Considering impact on all wellbeing goals together and on other bodies</p>	<p data-bbox="607 237 1344 523">Securing safe and available access to the countryside is important to the economic health and well being of the local communities involved. The current position is draining resources of several organisations and is not sustainable. Working in partnership and following the legislation will enable all to move forward in a proactive maner.</p>	<p data-bbox="1386 237 2119 344">Ensure communication is on-going between parties and there are regular updates and communication strategy is in place.</p>

Council has agreed the need to consider the impact its decisions has on the following important responsibilities: Corporate Parenting and Safeguarding. Are your proposals going to affect any of these responsibilities?

	Describe any positive impacts your proposal has	Describe any negative impacts your proposal has	What will you do/ have you done to mitigate any negative impacts or better contribute to positive impacts?
Safeguarding	N/A	N/A	N/A
Corporate Parenting	N/A	N/A	

6. What evidence and data has informed the development of your proposal?

- Consultations with landowner and Occupier of Sevenside Range
- Pre Order public consultation
- Historical Records including Ordnance Survey Maps, Finance Map and Definitive Maps (as detailed in evidential report)
- Aerial Photographs 1947 to 2020
- People Counter and Strava data
- Wildlife and Countryside Act 1981 and other relevant Acts.

7. SUMMARY: As a result of completing this form, what are the main positive and negative impacts of your proposal, how have they informed/changed the development of the proposal so far and what will you be doing in future?

The positive impact that securing safe access can have on local communities and any opportunities to perhaps improve the route for all. The positive impact in working in partnership to improve communication and work towards reducing antisocial behaviour. The challenges of better understanding future demand for the path and its impact on the Rifle Range business. Developing improved on-going communications with public and engaging occupier so as to end up with safe available route that works in everyones interests and is properly recorded.

8. ACTIONS: As a result of completing this form are there any further actions you will be undertaking? Please detail them below, if applicable.

What are you going to do	When are you going to do it?	Who is responsible
Put the evidence to Licensing and Regulatory Rights of Way Committee	L&R 15 th September 2022	R. Rourke
Make Order (depending on result of above) and consider objections to it if any are made.	October 2022	Legal Services

9. VERSION CONTROL: The Equality and Future Generations Evaluation should be used at the earliest stage, such as informally within your service, and then further developed throughout the decision making process. It is important to keep a record of this process to demonstrate how you have considered and built in equality and future generations considerations wherever possible.

Version No.	Decision making stage	Date considered	Brief description of any amendments made following consideration
1	Licensing and Regulatory Rights of Way Report		
2			