

<b>Report to:</b>	Licensing and Regulatory Committee	<b>Date of Meeting:</b>	Monday 10 January 2022
<b>Subject:</b>	St Luke's Church Road, Formby Definitive Map Modification Order – Receipt of Objections		
<b>Report of:</b>	Head of Highways and Public Protection	<b>Wards Affected:</b>	Harington
<b>Portfolio:</b>	Locality Services		
<b>Is this a Key Decision:</b>	No	<b>Included in Forward Plan:</b>	No
<b>Exempt / Confidential Report:</b>	No		

### Summary:

To report the receipt of objections against the Definitive Map Modification Order No.1 – 2021, that relates to several routes in the Ravenmeols area of Formby; to seek authority to make a new Definitive Map Modification Order as a replacement to Order No.1 2021 and to note that there are no standing objections to Definitive Map Modification Order Nos.2 & 3 2021 and that these Orders will be confirmed as unopposed.

### Recommendation(s):

It is requested that the Committee

- (i) note the receipt of objections to Definitive Map Modification Order No.1 – 2021;
- (ii) authorises the making of new Modification Orders by the Chief Legal and Democratic Officer to add the following ways to the definitive rights of way map and statement for the area:
  1. Albert Road, A-B on DC2165 – Byway open to all traffic,
  2. Alexandra Road, A-B on DC2166 – Byway open to all traffic,
  3. St. Luke's Church Road, Bushby's Lane to Alexandra Road, A-B on DC2167 – Byway open to all traffic,
  4. St. Luke's Church Road, Alexandra Road to Range Lane, A-B on DC2168 – Byway open to all traffic,
  5. St. Luke's Church Road, Range Lane to Altcar Footpath 5, A-B on DC2171 – Public Footpath,
  6. Cambridge Road, A-B on DC2169 – Byway open to all traffic,
  7. Range Lane, A-B on DC2170 – Byway open to all traffic,
  8. Two tracks connecting Albert Road to Alexandra Road, A-B on DC2126 and DC2127 – Public Footpaths,
  9. Extension of Albert Road to Shore, A-B on DC2124 – Public Footpath.

- (iii) authorise the Chief Legal and Democratic Officer to give notice of the Authority's decision to the applicant and the landowners;
- (iv) if following the making of the Orders no objections are received, give authority to the Chief Legal and Democratic Officer to confirm the Orders;
- (v) if following the making of the Orders, objections are received, give authority to the Chief Legal and Democratic Officer to refer the Orders to the Secretary of State for the Environment, Food and Rural Affairs for determination;
- (vi) in the event of authorising the making of new Definitive Map Modification Orders, authorise the Chief Legal and Democratic Officer to refer the Definitive Map Modification Order No.1 – 2021 to the Secretary of State for the Environment, Food and Rural Affairs, alongside the new Orders, with the request to not confirm the Order;
- (vii) authorise the Council to adopt a neutral stance during any determination of the Orders by the Secretary of State for the Environment, Food and Rural Affairs.

### **Reasons for the Recommendation(s):**

The Council, as Surveying Authority, is under a statutory duty, imposed by Section 53(2) of the Wildlife and Countryside Act 1981, to keep the Definitive Map and Statement of Public Rights of Way under continuous review. Under the provisions of Schedule 14 of the Act applications can be made to the Surveying Authority for a Modification Order to amend the Definitive Map and Statement of Rights of Way by way of adding, deleting, upgrading or downgrading a route.

The Licensing and Regulatory Committee has delegated powers to approve the making of Orders, under the Highways Act 1980 and the Wildlife and Countryside Act 1981, that affect the Public Right of Way network.

### **Alternative Options Considered and Rejected: (including any Risk Implications)**

Sefton Council has a duty to consider and determine Schedule 14 applications and make Modification Orders when it is considered that there is sufficient evidence to suggest that a public right of way is reasonably alleged to subsist.

### **What will it cost and how will it be financed?**

#### **(A) Revenue Costs**

Financial implications are not a consideration when determining this application as the Authority has a statutory duty to make an Order if it believes that there is sufficient evidence to support it.

Should objections to the Order be received and not withdrawn, the Authority will have to refer the Order to the Secretary of State. The Secretary of State has a choice of how to preside over the matter, they are; by written representations, an informal hearing or by way of a public inquiry. The costs associated with facilitating any of these will be met from the existing Highways and Public Protection revenue budgets and staff revenue budgets.

**(B) Capital Costs**

Nil.

**Implications of the Proposals:**

<b>Resource Implications (Financial, IT, Staffing and Assets):</b>
None
<b>Legal Implications:</b>
See body of the report
<b>Equality Implications:</b>
There are no equality implications.
<b>Climate Emergency Implications:</b>
The recommendations within this report will
Have a positive impact N
Have a neutral impact Y
Have a negative impact N
The Author has undertaken the Climate Emergency training for report authors Y
This report seeks to inform Members of the receipt of objections to an Order and to seek authority to make a new Order. It does not include any Climate Change implications, positive or negative.

**Contribution to the Council's Core Purpose:**

Protect the most vulnerable: Not applicable
Facilitate confident and resilient communities: Not applicable
Commission, broker and provide core services: Not applicable
Place – leadership and influencer: Not applicable
Drivers of change and reform: Not applicable

Facilitate sustainable economic prosperity: An improved Rights of Way network will help provide sustainable transportation and encourage sustainable travel options.
Greater income for social investment: Not applicable.
Cleaner Greener: An improved Rights of Way network will provide better access for all to Sefton's visitor attractions and promote healthier and more sustainable modes of transport.

## What consultations have taken place on the proposals and when?

### (A) Internal Consultations

The Executive Director of Corporate Resources and Customer Services (FD 6639/21) and Chief Legal and Democratic Officer (LD4840/21) have been consulted and any comments have been incorporated into the report.

### (B) External Consultations

N/A

## Implementation Date for the Decision

Immediately following the Committee meeting.

<b>Contact Officer:</b>	Brian Goodwin
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## Appendices:

The following appendices are attached to this report:

### Background Papers:

Licensing and Regulatory Committee – 7 September 2020 - Wildlife and Countryside Act 1981, section 53, application to modify the Definitive Map and Statement to include various public rights of way on and around St Luke's Church Road, Formby.

Planning Inspectorate Direction Decision Ref FPS/M4320/14D/1 – 14<sup>th</sup> October 2019.

Licensing and Regulatory Committee - 18 June 2018 - St. Luke's Church Road, Formby Public Path Creation Agreements.

Certificate of service of notice of application for a Modification Order under Section 53(2) of the Wildlife and Countryside Act 1981 by Formby Parish Council on 13<sup>th</sup> February 2018.

49 public rights of way witness evidence forms submitted with the claim.

Formby Area Committee – 23<sup>rd</sup> September 2004 Wildlife and Countryside Act 1981, Section 53, Application for Modification Order to Definitive Map and Statement in respect of St. Luke's Church Road and Associated Ways.

Transportation (General Purposes) Sub-Committee – 12 February 1996 - Wildlife and Countryside Act 1981 s53 Application for the Alleged Public Footpaths West of St Luke's Church Road, Formby to be recorded on the Definitive Rights of Way Map and Statement.

Highways Committee report - 6th March 1995 - Public rights of way claim made by The Formby Society On 5<sup>th</sup> December 1991 - Result of consultation.

Highways Committee report - 5th September 1994 - Public rights of way claims made by the Formby Society on 5th December 1991.

## **1. INTRODUCTION**

- 1.1 At the meeting of this Committee dated 7 September 2020, a report was considered regarding the receipt of a number of applications to modify the Definitive Map and Statement, pursuant to section 53 of the Wildlife and Countryside Act 1981 and earlier resolutions from the Highways Committee.
- 1.2 The Committee resolved to reaffirm the resolutions from the Highways Committee in 1994 & 1995, which was to make Definitive Map Modification Orders to add a number of routes to the Authority's Definitive Map and Statement in the Ravenmeols area. It was also resolved that should there be any objections to the Orders, that are not subsequently withdrawn, the matter must be reported back to the Committee.
- 1.3 In April 2021 three Definitive Map Modification Orders were made, DMMO Nos. 1,2 & 3 - 2021. DMMO No.1 - 2021 related to a series of routes on and around St Luke's Church Road that were in the application submitted by the Formby Civic Society in 1991. DMMO No.2 - 2021 related to a footpath from Beechwood Drive that was in the application submitted by the Formby Parish Council in 2017 and the third order, DMMO No.3 - 2021 related to a footpath off St Luke's Church Road that was in an application from the Formby Civic Society in 1993.
- 1.4 A period of consultation followed the making of the Orders which resulted in six objections and one statement being received, the majority of them related to DMMO No.1 - 2021.

## **2. DETAIL OF OBJECTIONS**

- 2.1 When an objection to a Definitive Map Modification Order is received, the Authority has the opportunity to discuss the objections with the relevant parties, which may result in the withdrawal of the objection. In this case the Authority contacted some of the objectors to review the objections, seek to fully understand them and see whether there was the possibility of overcoming the reasons for objecting.
- 2.2 As a result of this correspondence it became clear that all the objections related to the routes that were to be recorded as Byways open to any Traffic and that they therefore did not relate to Orders 2 & 3 - 2021. Consequently, there are no standing objections to Order Nos. 2 & 3 - 2021 and in line with this Committee's previous resolution they will be confirmed and the Definitive Map and Statement updated to include the two footpaths.
- 2.3 Due to the nature of a number of the objections and responses received during dialogue with the objectors, it was clear that it would not be possible to get the objections to Order No.1 - 2021 withdrawn.
- 2.4 The six standing objections all relate to DMMO No.1 - 2021 and the statement, which was received from a resident of St Luke's Church Road, relates to the conduct of the Council officers and their failings to follow Councillors' decisions.
- 2.5 Five of the six objections received are from residents of St Luke's Church Road, Alexandra Road or Albert Road. Three of these objections describe the nature of

the area and the objectors' feelings towards the routes being used by vehicles. There is little or no evidence provided within these objections that counter the view that public vehicular rights have been attained.

- 2.6 One objection received was from Green Sefton, a department of the Council that is responsible for the management of areas of land in close proximity to the routes detailed in Order No.1 - 2021. A copy of this objection is attached to this report in Appendix A.
- 2.7 When deciding to make an Order, the matters to consider relate to whether a route exists, has been used by the public and/or whether there is documentary evidence that suggests a route is public. Matters of safety, environmental impacts and impact of amenity are practical matters but not material in considering whether a route is public or not.
- 2.8 The objection received by Green Sefton was made in the correct manner but its contents relate to practical issues rather than those material to whether the routes are public or not. Nevertheless, given that the objection has come from a department of the Council it is considered important to consider.
- 2.9 One objector submitted two objections via a consultant, the first being more of a holding objection with little detail and the second being the main objection. These objections mainly raise issues relating to the form of the Order and its validity. A copy of the second objection is attached to this report in Appendix B.
- 2.10 The objection suggests some technical issues with the Order and that the Order is flawed. The issues are:
- *The Order cites Section 53(3)(b) of the 1981 Act as the grounds for it being made, however when reading through the history of the case and the various committee reports etc it is evident that a period of actual use is not being relied upon in respect of seeking to prove the existence of public vehicular rights. The Order Making Authority has no evidence of actual use during the Nineteenth Century, but instead directly states that it relies upon historic documentary evidence. As a result, reference to Section 53(3)(c)(i) of the 1981 Act would be the correct approach. The Order is therefore misleading, and this is prejudicial to any party considering an objection.*
  - *As noted in my letter dated 27th May 2021, the widths recorded within the Order are unacceptably vague, using terms such a "minimum" and "approximately". This has been the subject of guidance issued by both the Planning Inspectorate and Defra in the past, and the approach adopted by the Order Making Authority is not acceptable.*
  - *It is further noted that in the Schedules to the Order refer to the Order Route as a "Byway". In terms of routes that may be shown on the Definitive Map there is no such thing as a Byway. The correct term is "Byway Open to All Traffic" and any statutory Order should correctly define the status.*

### **3. REVIEW OF OBJECTIONS AND LEGAL ISSUES**

- 3.1 Whilst most of the objections raise little by way of evidence to counter the claim that the routes are public and that some of them have public vehicular rights, there is an issue of whether the suggested technical errors could result in the Order being fatally flawed. An Order that is fatally flawed cannot be confirmed by the Secretary of State and to try and proceed with such an Order could result in claims for costs against the Council by the effected objector/landowners.
- 3.2 The three points raised that suggest the Order is flawed have been reviewed and it is considered that:
- I. the descriptions of the routes in terms of the widths could be deemed to be contrary to the guidance issued by Defra and the Planning Inspectorate;
  - II. the use of the term in the made order of a 'byway' rather than 'byway open to all traffic' is a fundamental issue as there is no such legal term as byway and this could be deemed to be misleading;
  - III. the section of the Wildlife and Countryside Act under which the Order is made is key and to use the incorrect section will normally result in an Order being considered flawed.
- 3.3 If an Inspector is of the view that the descriptions, in particular the widths, are too vague and contrary to guidance, they have the power to amend the description if they are minded to do so. If an Inspector does this the amended Order will need to be re-advertised and could again result in objections and the need for a second Inquiry/Hearing. Given that the current Order was objected to, it would be reasonable to assume that an amended Order would also be objected to and lead to a second Inquiry.
- 3.4 In regards to the term "byway", the Inspector again could amend the Order and change the description (and therefore status) to byway open to all traffic but this would also need to be re-advertised. However, it is considered more likely that the inspector would reject the Order because the status of the proposed modification is insufficiently clear. This would require Sefton to re-make the order.
- 3.5 The issue of the section under which the Order was made, Section 53(2)(b) of the Wildlife and Countryside Act 1981, as a consequence of events arising under 53(3)(b) is considered not to be the appropriate section. An Inspector would likely not accept an Order that is made under the incorrect section and would reject it.
- 3.6 In view of the three technical issues raised it is considered that it would not be appropriate for Sefton to pursue the current Order and issue it to the Secretary of State requesting a positive determination. If the Order was to be sent in its current form, it will likely result in the Order being rejected and a possible costs claim being made against the Council.
- 3.7 Once such an Order has been made the Council does not have the authority to just abandon it. If a Council is of the view that an Order should not/cannot be confirmed, it must refer the Order to the Secretary of State and request that he/she does not confirm the Order. The reasons for this approach must also be forwarded to the Inspector that is appointed by the Secretary of State.



- 3.8 For Order No.1 - 2021, it is considered appropriate to refer it to the Secretary of State with the request that it is not confirmed because of the technical issues. Should the Inspector agree, the Order would then effectively be abandoned.
- 3.9 New orders will be needed to ensure that the extent, if any, of the public rights are determined, subsequent to the applications received by the Council and the Authorities previous resolutions. The new Orders will need to be made and then referred to the Secretary of State with Order No.1 - 2021, to ensure that the Inspector can be satisfied that it is appropriate to not confirm it.

#### **4. SUMMARY AND RECOMMENDATIONS**

- 4.1 Following the meeting of this Committee in September 2020, three Definitive Map Modification Orders were made, a period of consultation was held during which objections to the orders were received. Following a review of the objections and discussion with some of the objectors only one of the Orders has standing objections.
- 4.2 One objection raised a number of technical issues with Order No.1 - 2021, that on review would likely result in the Order being considered flawed by the Secretary of State's appointed Inspector. Therefore, should the Council submit the Order to the Secretary of State in its current form and request that the appointed Inspector confirms, it will likely be rejected and result in the landowner making a claim against the Council for their costs.
- 4.3 In order to overcome the technical issues with Order No.1, new Orders under the correct sections of the Wildlife and Countryside Act should be made. They should also correctly refer to Byway Open to All Traffic rather than Byway and include improved descriptions of the routes, in particular the widths.
- 4.4 The new Definitive Map Modification Orders should be made to add the following ways (as shown in Appendix C) to the definitive rights of way map and statement for the area:
1. Albert Road, A-B on DC2165 – Byway open to all traffic,
  2. Alexandra Road, A-B on DC2166 – Byway open to all traffic,
  3. St. Luke's Church Road, Bushby's Lane to Alexandra Road, A-B on DC2167 – Byway open to all traffic,
  4. St. Luke's Church Road, Alexandra Road to Range Lane, A-B on DC2168 – Byway open to all traffic,
  5. St. Luke's Church Road, Range Lane to Altcar Footpath 5, A-B on DC2171 – Public Footpath,
  6. Cambridge Road, A-B on DC2169 – Byway open to all traffic,
  7. Range Lane, A-B on DC2170 – Byway open to all traffic,
  8. Two tracks connecting Albert Road to Alexandra Road, A-B on DC2126 and DC2127 – Public Footpaths,
  9. Extension of Albert Road to Shore, A-B on DC2124 – Public Footpath.
- 4.5 Following the making of the new Orders and completion of the associated consultation, they should be confirmed if no objections are received or referred to the Secretary of State for determination if there are objections.

- 4.6 As part of any referral to the Secretary of State, the Council must state why the Order has been referred, what the request is for, i.e to confirm an Order and what position the Council is taking. In regards to Order No.1 - 2021, the Council should refer it to the Secretary of State with the request that the Order is not confirmed and effectively abandoned as the new Orders will be in its place.
- 4.7 If objections to the new Orders are received, the Council's request, whether to confirm the Orders or not, will largely depend on the content of the objections and information received.
- 4.8 The position the Council should take, when the matter is considered by the Secretary of State, is influenced by the role the Council has had and whether it fully supports the view that the Orders should be confirmed. Given that the Council has been the landowner for areas over which some of the claimed routes cross and that it played a role in the use of routes, it can be considered that there is a conflict in the determination of the Orders. Also, Green Sefton, the department of the Council that previously managed the land has objected to Order No.1 - 2021 and for these reasons it would be considered appropriate for the Council to take a neutral stance at a Public Inquiry.
- 4.9 Irrespective of whether the new Orders are objected to or not they should be issued to the Secretary of State, alongside the previous Order No.1 - 2021, so that the appointed Inspector can consider the request to not confirm the Order.
- 4.10 It is also recommended that the Committee notes that Orders No.2 and 3 - 2021, have no standing objections and that they will be confirmed in due course.


## **SEFTON M.B.C.**


## Appendix A



### Green Sefton

Ainsdale Discovery Centre  
Promenade  
Ainsdale-on-Sea  
PR8 2QB

0151 934 2961 

Greensefton@sefton.gov.uk 

David McCullough  
Chief Legal & Democratic Officer  
Sefton MBC  
Magdalen House, Trinity Road  
Bootle  
Merseyside L20 3NJ

16<sup>th</sup> June 2021

Dear Mr McCullough

#### **Cambridge Road Recreation Ground, Formby**

#### **WILDLIFE AND COUNTRYSIDE ACT 1981, DEFINITIVE MAP MODIFICATION ORDER**

We would wish to directly comment on proposed Definitive Map Modification Order relating to Cambridge Road Recreation Ground, Formby.

Green Sefton is the division of Sefton Council which manages public open spaces including parks, playing fields and recreation grounds. As such, this means Green Sefton manage and address public use with regards these areas and we have a direct interest in all matters that impact on Public Rights of Way in so far as they relate to public spaces.

We are concerned that the proposals outlined in the Orders will have an impact with regards our ownership and management of the Cambridge Road Recreation Ground, Formby. Green Sefton, as a land owner, OBJECTS to the proposal and therefore believes the Order should not be agreed:

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## GROUNDS OF OBJECTION

We would ask that the following matters be considered in determining the Modification Order.

### 1] EXISTING PROVISION TO OPEN SPACES

We believe the wider area is well served by adopted public highways and there is free and open access at this time to the Cambridge Road Recreation Ground. There is an existing path from Stapleford Road onto to the land and unfenced open access from Stapleford Road for those who choose not to use the pathway onto site. The land is predominantly used for dog walking and exercise and adequately meets this purpose and wider public amenity.

### 2] INCREASED IMPACT ON Sefton Coast SSSI

Some land adjoining to the proposed route is designated as a Site of Special Scientific Interest (SSSI) and Local Nature Reserve. This is a statutory designation which is intended to safeguard the conservation interest of designated land and it is of paramount importance that access onto and approaching a SSSI is controlled, so as to ensure the continued safeguarding of a designated site. In our view, should the Order be approved, it would likely increase the numbers of people accessing the site overall (see Sefton Coast Plan requirements for visitor pressure mitigation) and the risk of damage to the SSSI at Ravenmeols Sandhills and impact of the wildlife interest being protected. The Ravenmeols Sandhills Local Nature Reserve has suffered with vehicular anti-social behaviour / unauthorised 'off road' vehicular access onto the open dunes causing a negative environmental impact through disturbance to important habitats, species and special features of the SSSI citation. The boundaries of the nearby SSSI are shown below:



If granted the Order would direct people to the SSSI from a new route and limit the control that land managers can have for protecting the wildlife interest and quiet recreational nature of the wider coastal area and specifically the site known as Ravenmeols Sandhills LNR.

### 3] DEMAND FOR CHANGES TO ACCESS

We can confirm that Green Sefton has not received public requests for increasing new access routes onto the land at Cambridge Road. We believe that changes to access, and the development of new designated routes of access, should have due regard for demand, and the wider implications of changes.

### 4] UNAUTHORISED ACCESS

We are concerned that the approval of the Order would lead to unauthorised vehicular access across our land. Whilst we actively support the principal of good public access to open spaces and between residential communities, the proposal would establish a "through route" which might lead to unauthorised vehicular access, including for fly tipping or for purposes causing anti-social behaviour. The proposal would likely exacerbate off road motorcycling and other ASB such as poaching which is a challenging nuisance to the area.

### 5] PEDESTRIAN SAFETY

Access to Cambridge Road Recreation Ground, Formby is impacted at times owing to vehicles parking on Stapleford Road. The addition of a new public right of way would need to be accompanied by further assessment on access and egress to the proposed route from the adopted highway. The modification of Cambridge Road to a byway would appear to serve no purpose other than to create a shortcut for motorvehicles which can already access the area via the proposed byway between St Lukes Church Road and Albert Road where it meets Lifeboat Road. Footpath or bridleway status would perhaps be more appropriate for this particular stretch of path.

### 6] PROVISION FOR MAINTENANCE

We feel it important to state that although Green Sefton manages and addresses public use of the greenspaces within its portfolio, it does not carry out PROW maintenance as core work and added costs would need to be incurred and separate maintenance agreements reached with us, including for access to our land for maintenance.

In the context of these matters Green Sefton advocate that the proposed Order not be agreed.

Yours sincerely



Mark Shaw  
Service Manager – Green Sefton

Copies to:

Claire Blundell, Sefton Council

Brian Goodwin, Sefton Council

## Appendix B



# ROBIN CARR ASSOCIATES

Public Rights of Way Management & Consultancy Services



**Your Ref:** DMMO011712CB

**My Ref:** [REDACTED]

**Date:** 17<sup>th</sup> June 2021

Chief Legal and Democratic Officer  
Sefton Metropolitan Borough Council  
Magdalen House  
Trinity Road,  
Bootle  
L20 3NJ

**BY EMAIL ONLY**

Dear Sirs

### **Wildlife & Countryside Act 1981**

### **The Metropolitan Borough of Sefton Modification Order No 1, 2021**

### **My Clients** [REDACTED]

Further to my letter dated 27<sup>th</sup> May 2021, in which objections to the above Order were duly lodged, I have now had the opportunity to meet with my Clients, view the site and undertake a preliminary assessment of the evidence etc that has kindly been provided by your Mr Goodwin.

### **Summary of Objection**

[REDACTED] are the owners of the land crossed by the route identified as Formby No 57 (the Order Route) and shown on Plan No DC2136 in The Metropolitan Borough of Sefton Modification Order No 1, 2021 (The Order). As such, their objections relate primarily to Formby No 57, albeit many of the points raised below may equally apply to other routes included in the Order and may be issues which the respective owners/objectors also wish to reply upon.

In June 2019 my Clients entered into a formal Public Path Dedication Agreement, pursuant to Section 25 of the Highways Act 1980, with Sefton Borough Council. This formal agreement dedicated the Order Route as a Restricted Byway. [REDACTED] have therefore already welcomed public use of the Order Route on foot, cycle, horse back and in non-mechanically propelled vehicles. It is further confirmed that they continue to have no objection to such use and wish the situation to remain unchanged.

My Client's objection is that public rights for mechanically propelled vehicles do not and have never subsisted over any part of the Order Route, however, if such rights did exist, they have been extinguished by the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006.

### **Implications of the Order being Confirmed**

Whilst perhaps not relevant to the actual determination of the Order, my Client's wish to place on record the inevitable consequences of the Order being Confirmed as made. These consequences will essentially be the responsibility of any party who chooses to actively support the Order.

The inclusion of the Order Route (Formby No 57) on the Definitive Map as a Byway Open to All Traffic would result in the current vehicular access controls having to be removed, with no possibility of them

being replaced. This will open up what are currently a small network of quiet routes to anyone wishing the drive along them, with many such users seeking to access the sea front.

There is no public car parking provision, nor any turning facilities, along these roads so it is inevitable that there will be problems with vehicles parking unlawfully and potentially obstructing legitimate access. In addition to car parking and obstruction issues there is likely to be increased instances of fly tipping along the lanes, as well as other unlawful and illegal activities.

The opening up of these routes will also provide unrestricted access to the sand dunes by off road type vehicles. This will cause significant environmental damage and also be dangerous to those seeking the quiet enjoyment of the area. We are sure that the owners of the land (the National Trust) will make substantial submissions to this effect, and my Clients support them wholeheartedly in this respect.

It should be stressed that these concerns are not simply speculative, they are all very real issues which occurred on a regular basis prior to the access restrictions being put in place.

#### **Technical Errors within the Order**

An assessment of the Order has highlighted a number of technical errors, namely:

- a) The Order cites Section 53(3)(b) of the 1981 Act as the grounds for it being made, however when reading through the history of the case and the various committee reports etc it is evident that a period of actual use is not being relied upon in respect of seeking to prove the existence of public vehicular rights. The Order Making Authority has no evidence of actual use during the Nineteenth Century, but instead directly states that it relies upon historic documentary evidence. As a result, reference to Section 53(3)(c)(i) of the 1981 Act would be the correct approach. The Order is therefore misleading, and this is prejudicial to any party considering an objection.
- b) As noted in my letter dated 27<sup>th</sup> May 2021, the widths recorded within the Order are unacceptably vague, using terms such as “minimum” and “approximately”. This has been the subject of guidance issued by both the Planning Inspectorate and Defra in the past, and the approach adopted by the Order Making Authority is not acceptable.
- c) It is further noted that in the Schedules to the Order refer to the Order Route as a “Byway”. In terms of routes that may be shown on the Definitive Map there is no such thing as a Byway. The correct term is “Byway Open to All Traffic” and any statutory Order should correctly define the status.

We consider that collectively these errors render the Order fatally flawed and incapable of confirmation. Whilst, in theory the Order Making Authority could ask the Secretary of State to make the necessary corrections, the Planning Inspectorate is clear in its guidance that it is not its role to correct errors in the drafting of Orders.

#### **The DMMO Applications**

The 2017 Application cannot be relied upon for the purposes of recorded a Byway Open to All Traffic because it post-dates the implementation of the Natural Environment and Rural Communities Act 2006 and evidence of use by mechanically propelled vehicles can no longer be taken into account.



Whilst it is accepted that the 1991 DMMO Application pre-dates the implementation of the Natural Environment and Rural Communities Act 2006, it does not meet the requirement of this Act in terms of preserving public vehicular rights for the following reasons:

- a) The application form itself is not as prescribed by the regulations
- b) No map is attached showing the route (Formby No 57) being claimed
- c) The evidence relied upon is not listed as required in the application form
- d) The application seeks to record a Footpath and not a Byway Open to All Traffic

The savings provided by Section 67(3)(b) of the Natural Environment & Rural Communities Act 2006 do not apply to this Order because the DMMO Application sought to record a Footpath and not a Byway Open to All Traffic.

### **Evidential Points**

A brief assessment of the user evidence suggest that it is supportive primarily of public pedestrian rights, which are not disputed. The remaining documentary evidence falls short of meeting the evidential burden of proof which rests firmly with those seeking to assert the alleged public vehicular rights.

It is noted that the routes contained within the Order are cul-de-sacs in nature. There is a presumption in law against cul-de-sac highways, the onus being on those asserting the public rights to provide evidence to demonstrate that the presumption does not apply.

In a similar respect, if the Order Route (Formby No 57) is a Restricted Byway, then none of the routes which rely upon the Order Route for access can, as a matter of law, be of a higher status than Restricted Byway because, by definition, a highway must terminate at each end on a highway of equal or higher status.

We are conducting further research into a number of lines of enquiry relating to a number of evidential uses, but are not in a position to comment on these at this point in time

### **Conclusions**

The Order Route (Formby No 57) is already, as a matter of law, and by virtue of the 2019 Dedication Agreement made under Section 25 of the Highways Act 1980, a Restricted Byway. For the reasons set out above, public rights for mechanically propelled vehicles (if they existed at all) have been extinguished by Section 67 of the Natural Environment & Rural Communities Act 2006. The Order therefore has no reasonable chance of being confirmed

### **The Way Forward**

Given that a number of the routes contained within the Order are already subject to public rights of way confirmed by formal dedication agreements, it is suggested that the Order Making Authority seek to abandon the current Order in its entirety. To do so they will still have to refer the Order to the Secretary of State, but this should be done with a package of new Orders. This approach should help to avoid multiple public inquiries into the Order.

Having decided to abandon the Order the Order Making Authority should make Legal Event Modification Orders (LEMOs) to add the routes already established by the dedication agreements to the Definitive Map. Such LEMOs are not subject to objections. Copies of the LEMOs should be included with the referral documentation seeking to abandon the current Order.

Any routes included in the Orders, but not subject to a LEMO should be the subject of new Definitive Map Modification Orders which, if subject to objections can be referred to the Secretary of State at the same time as the current Order (to be abandoned). This will allow all matters to be dealt with as part of a single process. No party is prejudiced by this approach.

If the Order Making Authority chooses to refer the current Order to the Planning Inspectorate and seek an amendment to the status of the route (from Byway Open to All traffic to Restricted Byway), such modifications must be advertised and potentially leaves the matter open to a second public inquiry. The expense of such a second Inquiry may be avoided if our recommended course of action is followed.

In the alternative, if the Order Making Authority considers it expedient to proceed with the current Order, given the content of this initial and preliminary objection, we should invite the Authority to adopt a neutral stance and allow those who support the Order (i.e. the Parish Council as applicants) put the case in support of Byway Open to All Traffic rights etc.

#### **Other Matters**

Having identified grounds upon which it is evident that the Order has little or no chance of success, I am obliged to put the Council on notice that pursuing the confirmation of the Order, as made, would constitute unreasonable behaviour, and that this may have significant cost implications. We should therefore respectfully suggest that adopting one of the above courses of action would be in the public interest.

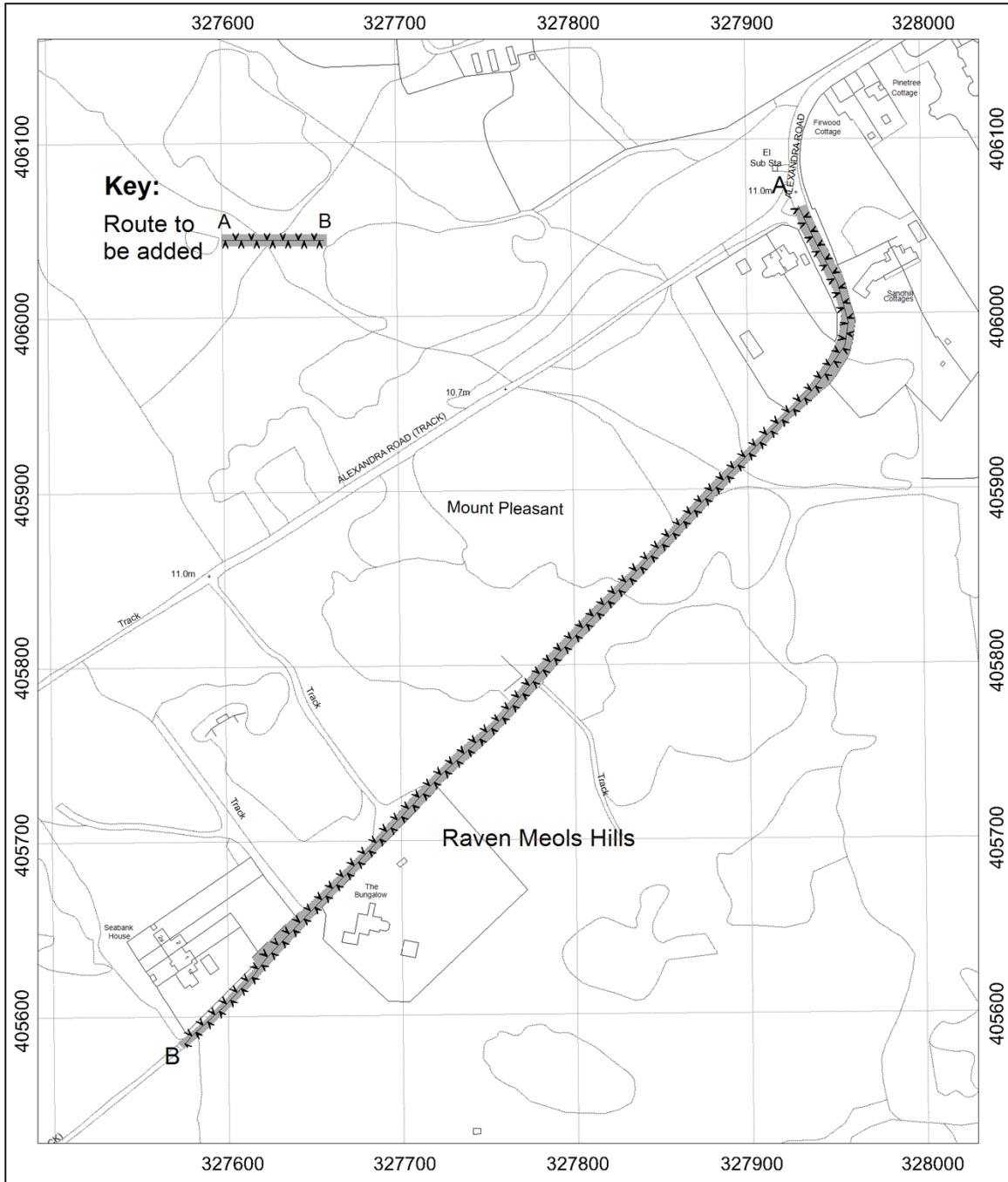
Finally, in the event of this matter proceeding, my Clients are currently minded to invoke their right to be heard. The matter will therefore be heard at a local public inquiry. At that time, we shall expand further upon our objections. My Client's will review their position on this matter subject to the future actions of the Council and Applicants.

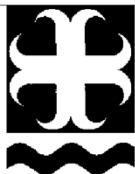


Yours faithfully

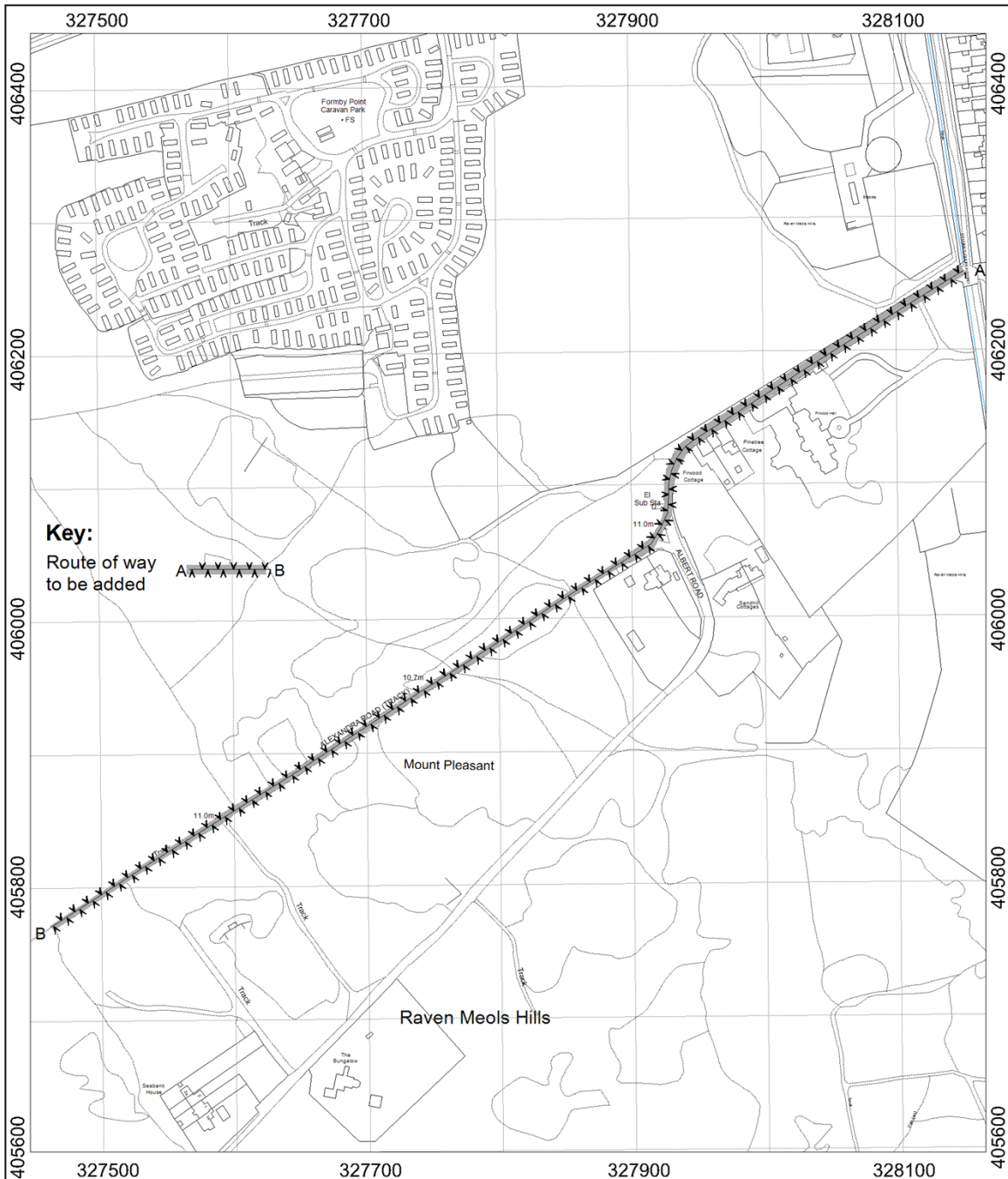
A black rectangular redaction box covers the signature of Robin Carr. A thin line extends from the bottom right corner of the box towards the text below.




Robin Carr FIPROW  
Principal Consultant

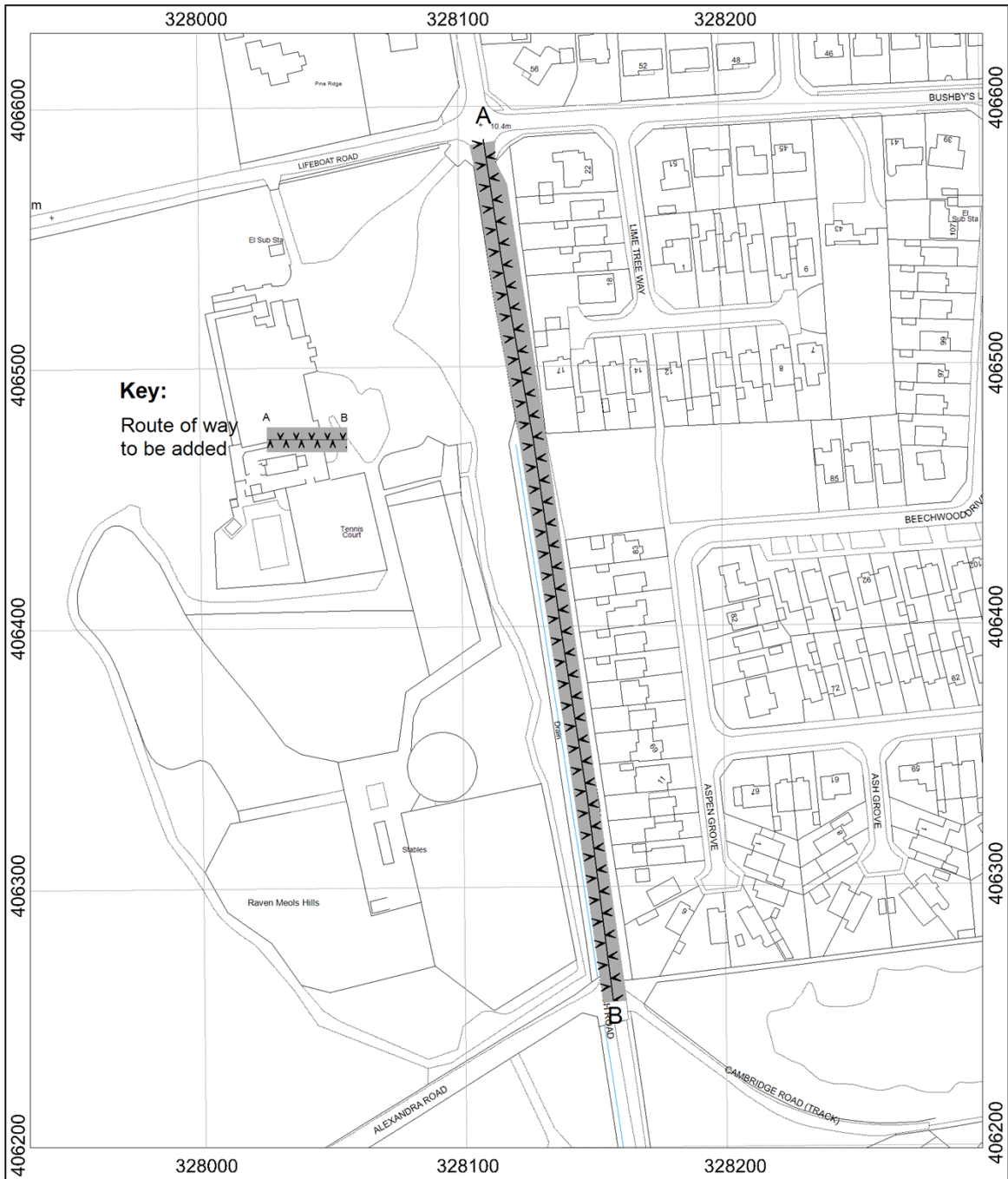
# APPENDIX C






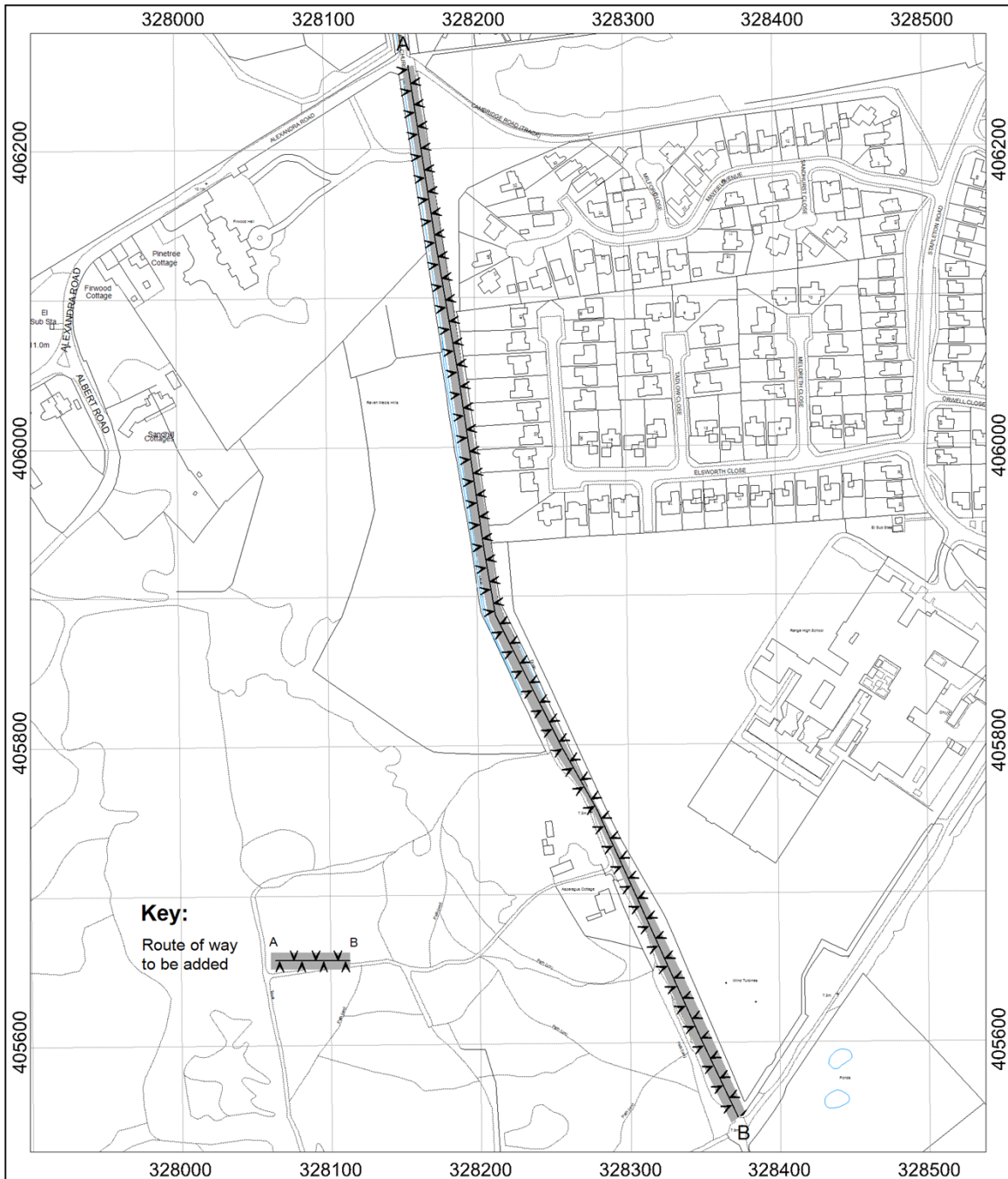
<b>SEFTON M.B.C.</b>  HIGHWAYS DEVELOPMENT CONTROL	<b>Public Path Modification Order</b> <b>Section 53 Wildlife and Countryside Act 1981</b> Formby No.62									
	Route to be Added 									
Peter Moore Head of Highways & Public Protection Magdalen House Trinity Road Bootle L20 3NJ	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Drawn By: BG</td> <td style="width: 25%;">Scale: 1:3000 on A4</td> <td style="width: 25%;">Date: 01/11/21</td> <td style="width: 25%;">Checked:</td> </tr> <tr> <td>Ward: Harington</td> <td colspan="2">Os Sheet Name: SD2705ne</td> <td>Plan:</td> </tr> </table>	Drawn By: BG	Scale: 1:3000 on A4	Date: 01/11/21	Checked:	Ward: Harington	Os Sheet Name: SD2705ne		Plan:	<b>DC2165</b>
Drawn By: BG	Scale: 1:3000 on A4	Date: 01/11/21	Checked:							
Ward: Harington	Os Sheet Name: SD2705ne		Plan:							
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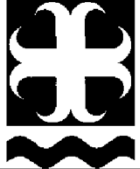




 SEFTON M.B.C. HIGHWAYS DEVELOPMENT CONTROL	<b>Public Path Modification Order</b> <b>Section 53 Wildlife and Countryside Act 1981</b> Formby No.60			
	Route to be Added 			
Peter Moore Head of Highways & Public Protection Magdalen House Trinity Road Bootle L20 3NJ	Drawn By: BG	Scale: 1:4000 on A4	Date: 01/11/21	Checked:
	Ward: Harington	Os Sheet Name: SD2706se		Plan:
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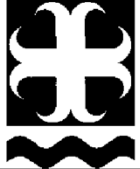




 SEFTON M.B.C. HIGHWAYS DEVELOPMENT CONTROL	<b>Public Path Modification Order</b> <b>Section 53 Wildlife and Countryside Act 1981</b>			
	Formby No.57 Route to be Added 			
Peter Moore Head of Highways & Public Protection Magdalen House Trinity Road Bootle L20 3NJ	Drawn By: BG	Scale: 1:2000 on A4	Date: 01/11/21	Checked:
	Ward: Harington	Os Sheet Name: SD2806sw		Plan: <b>DC2167</b>
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 SEFTON M.B.C. HIGHWAYS DEVELOPMENT CONTROL	<b>Public Path Modification Order</b> <b>Section 53 Wildlife and Countryside Act 1981</b>			
	Formby No.58 Route to be Added 			
Peter Moore Head of Highways & Public Protection Magdalen House Trinity Road Bootle L20 3NJ	Drawn By: BG	Scale: 1:3500 on A4	Date: 01/11/21	Checked:
	Ward: Harington	Os Sheet Name: SD2805sw		Plan:
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 SEFTON M.B.C. HIGHWAYS DEVELOPMENT CONTROL	<b>Public Path Modification Order</b> <b>Section 53 Wildlife and Countryside Act 1981</b>			
	Formby No.59 Route to be Added 			
Peter Moore Head of Highways & Public Protection Magdalen House Trinity Road Bootle L20 3NJ	Drawn By: BG	Scale: 1:2500 on A4	Date: 01/11/21	Checked:
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SEFTON M.B.C.




HIGHWAYS DEVELOPMENT CONTROL

**Public Path Modification Order**  
**Section 53 Wildlife and Countryside Act 1981**



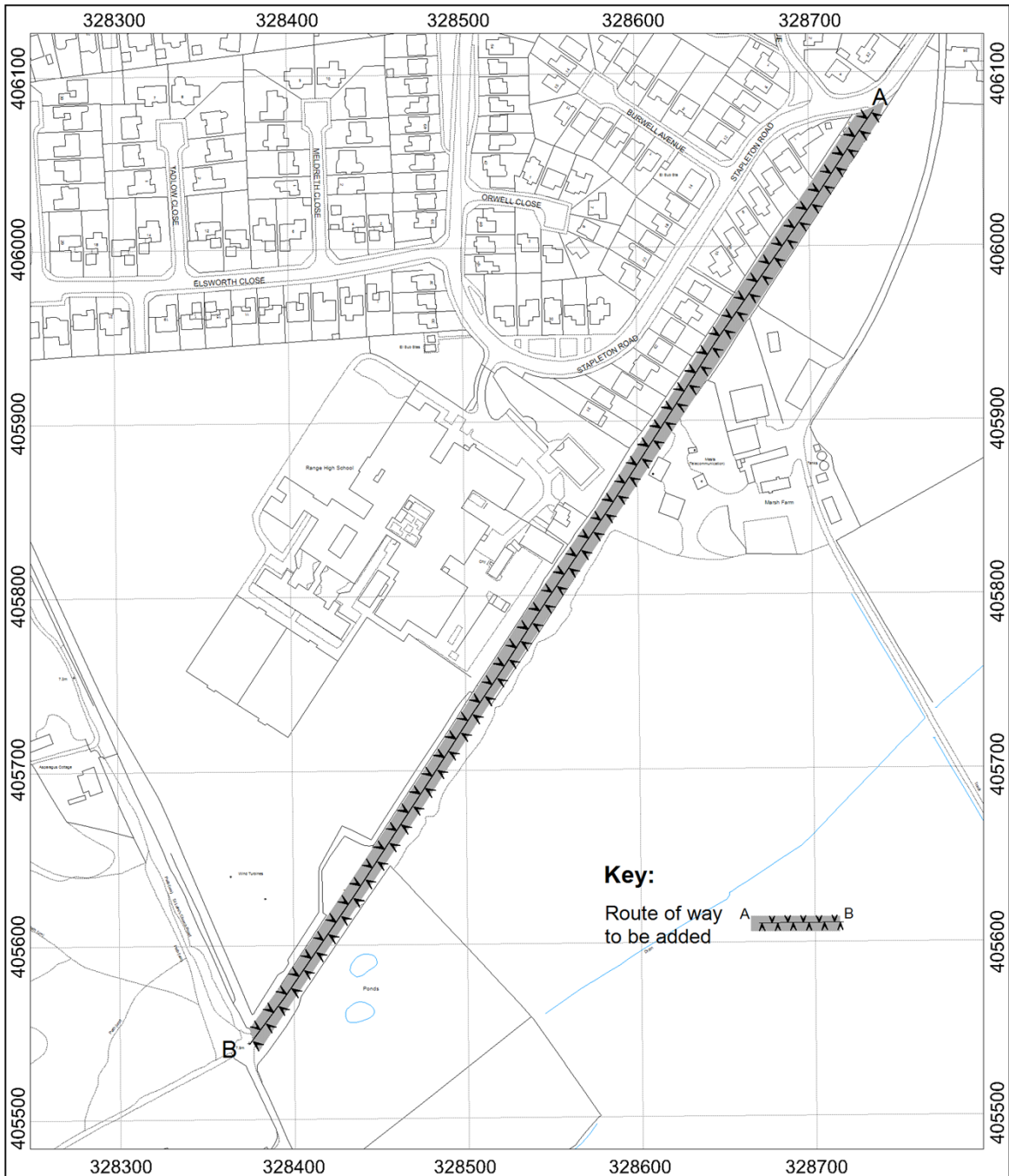
Formby No.67




Route to be Added 

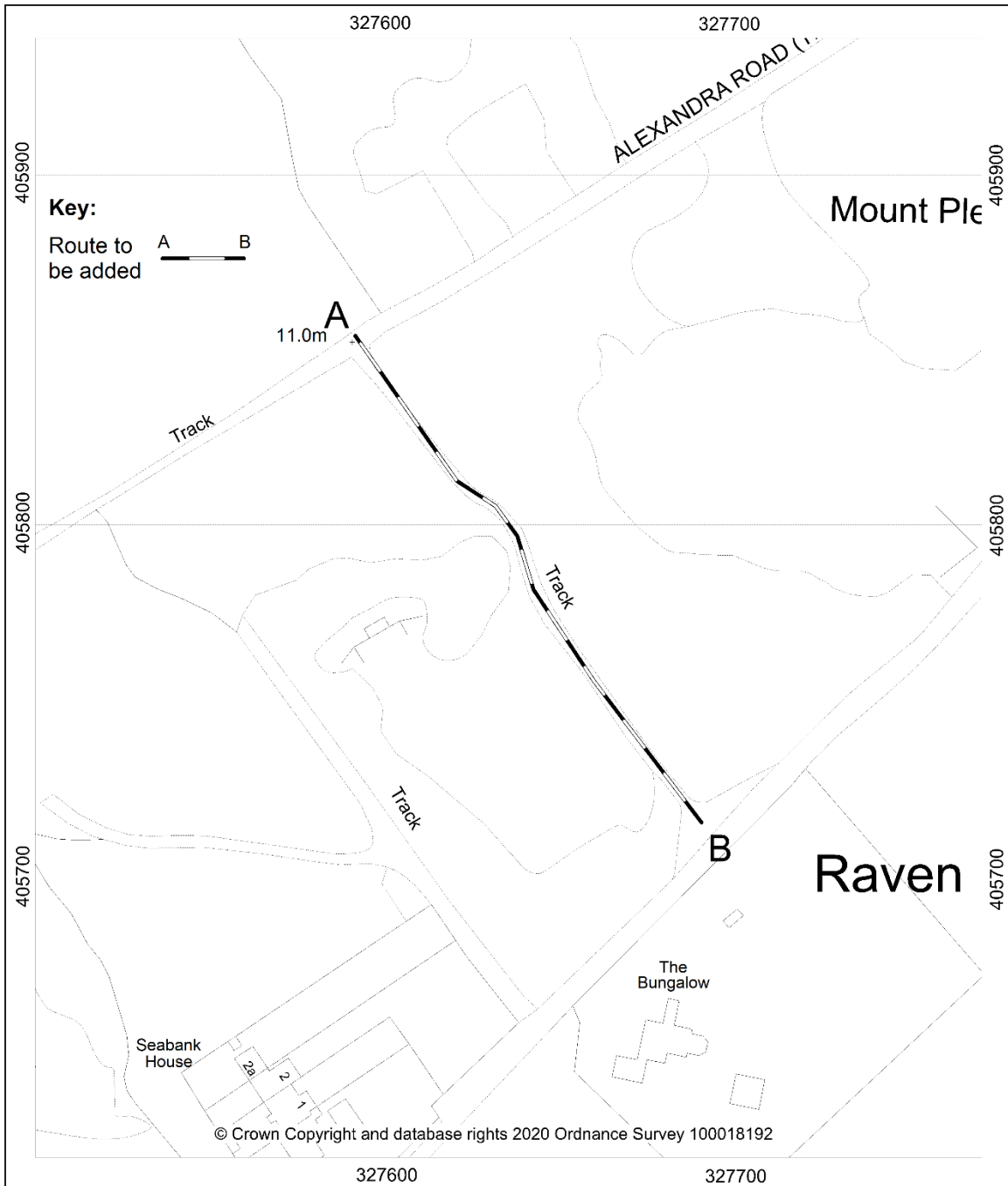
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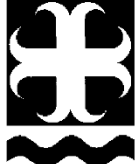


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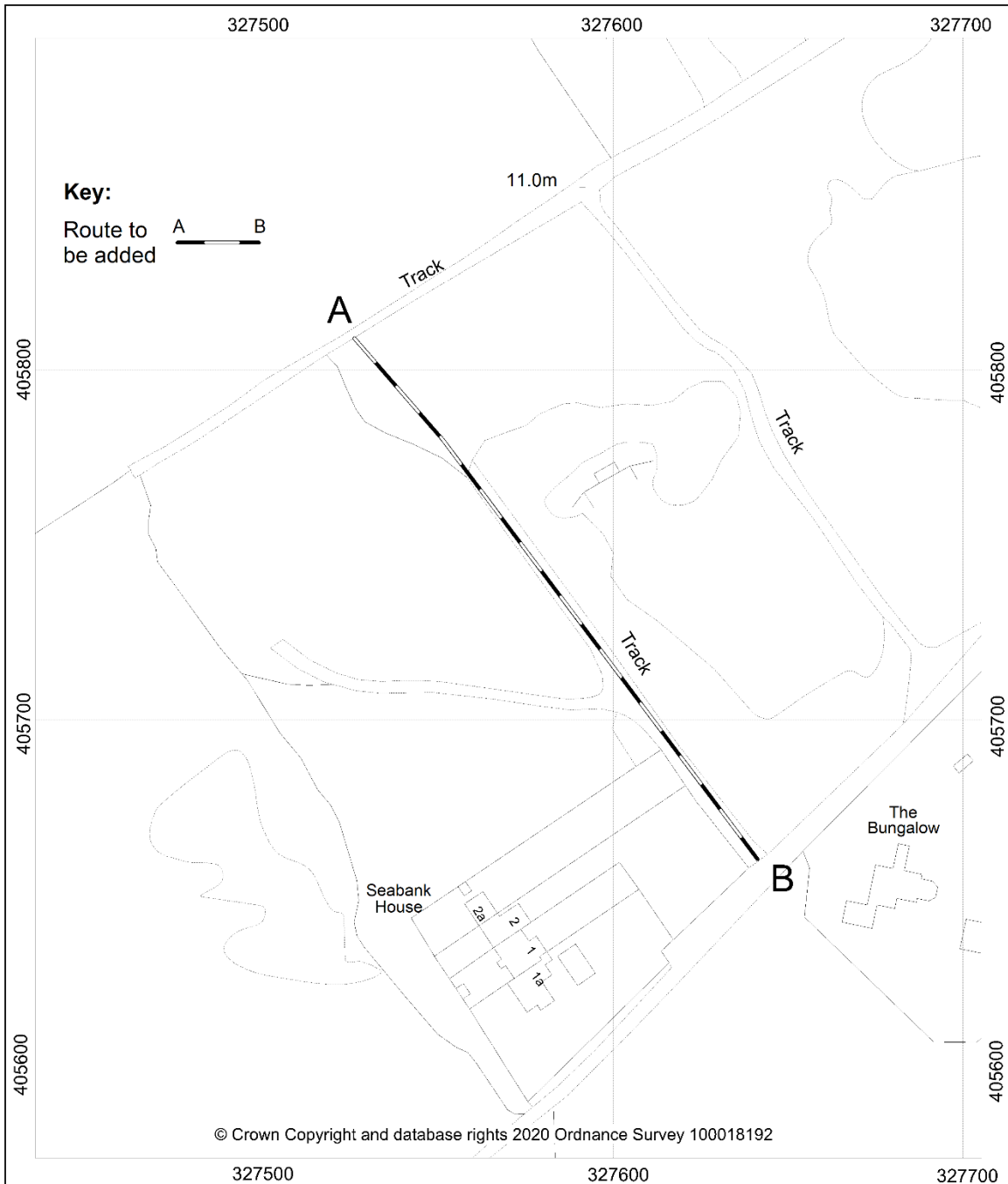







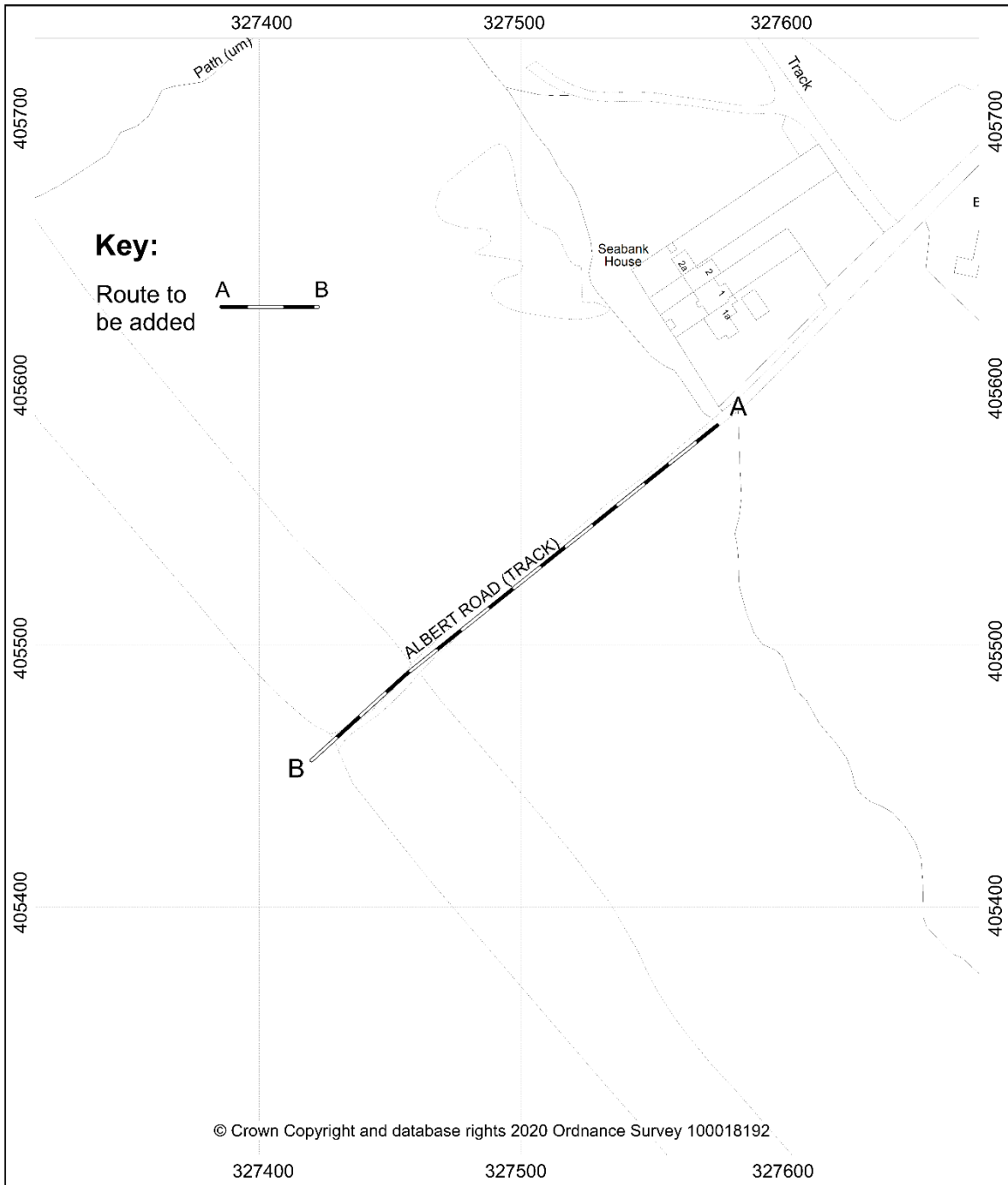
 SEFTON M.B.C. HIGHWAYS DEVELOPMENT CONTROL	<b>Public Path Modification Order</b> <b>Section 53 Wildlife and Countryside Act 1981</b> Formby No.68			
	Route to be Added 			
Peter Moore Head of Highways & Public Protection Magdalen House Trinity Road Bootle L20 3NJ	Drawn By: BG	Scale: 1:3000 on A4	Date: 01/11/21	Checked:
	Ward: Harington	Os Sheet Name: SD2805ne		Plan: <b>DC2170</b>
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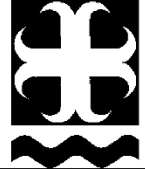


 SEFTON M.B.C. HIGHWAYS DEVELOPMENT CONTROL	<b>Definitive Map Modification Order</b> <b>section 53 Wildlife and Countryside Act 1981</b> Formby No.63 - Alexandra Road link to Albert Road Formby			
	Route to be Added 			
Peter Moore Head of Highways & Public Protection Magdalen House Trinity Road Bootle L20 3NJ	Drawn By: BG	Scale: 1:1500 on A4	Date: 22/12/20	Checked:
	Ward: Harington	Os Sheet Name: SD2705ne		Plan: <b>DC2126</b>
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 SEFTON M.B.C. HIGHWAYS DEVELOPMENT CONTROL	<b>Definitive Map Modification Order</b> <b>section 53 Wildlife and Countryside Act 1981</b> Formby No.64 - Alexandra Road link to Albert Road Formby			
	Route to be Added 			
Peter Moore Head of Highways & Public Protection Magdalen House Trinity Road Bootle L20 3NJ	Drawn By: BG	Scale: 1:1500 on A4	Date: 22/12/20	Checked:
	Ward: Harington	Os Sheet Name: SD2705ne		Plan: <b>DC2127</b>
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<p>SEFTON M.B.C.</p>  <p>HIGHWAYS DEVELOPMENT CONTROL</p>	<p><b>Definitive Map Modification Order</b>  <b>section 53 Wildlife and Countryside Act 1981</b></p> <p>Formby No.61 - Albert Road          Formby</p> <p>Route to be Added </p>			
<p>Peter Moore          Head of Highways &amp;          Public Protection          Magdalen House          Trinity Road          Bootle L20 3NJ</p>	<p>Drawn By: BG</p>	<p>Scale: 1:2000 on A4</p>	<p>Date: 22/12/20</p>	<p>Checked:</p>
<p>Ward: Harington</p> <p><small>This map is reproduced from Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution. Sefton Council Licence number 100018192. (c) 2020.</small></p>	<p>Os Sheet Name: SD2705ne</p> <p>Plan: <b>DC2124</b></p>			