

**CLAIM FOR DEFINITIVE MAP MODIFICATION ORDER:
NORTH MEOLS PARISH COUNCIL**

Response of Southport Land & Property Company Ltd

The following are the submissions that Southport Land & Property Company Ltd ("the Landowner") wish to submit to Lancashire County Council as it considers the above Application in respect of land extending to approximately eight hundred and fifty acres ("the Land") in the ownership of the Landowner. These submissions are divided into six sections with various exhibits but reference is made to further documentation which is available for inspection by the Council or the Applicant which in the interest of manageability has not been annexed to these submissions.

The sections are as follows:

1. Brief history of the Land.
2. The Application and recent chronology.
3. Current land use and title evidence.
4. The Highways Act 1980.
5. The Landowner's additional evidence.
6. Summary

1. Brief History of the Land

- a) The Land over which the Applicant Parish Council seeks a Definitive Map Modification Order by the insertion thereon of six public footpaths belongs to the Southport Land & Property Co Ltd ("the Landowner") and has been in the ownership of that Company since 1990. The Land was formerly part of the Scarisbrick Estate which was held in trust with the trust itself being dissolved in 1925 when the assets were distributed amongst the beneficiaries who disposed of various parts of the estate over the next fifty years the last sale being made in 1978 by David Scarisbrick.
- b) By 1910 the marshy foreshore area of land was reclaimed with the consequence that the current embankment extended that part of the estate into the foreshore area known as Banks Enclosed Marsh which area had, prior to 1910, effectively formed part of the Ribble Estuary Marshes.
- c) As a consequence of reclaiming this part of the foreshore, across which five of the claimed public footpaths run (the exception being the claimed footpath from Ralph's Wife's Lane to Station Road) a substantial drainage project had to be undertaken which led to the enactment of a Private Act of Parliament namely the Scarisbrick Estate Drainage Act of 1924. The significance of that Act of Parliament is dealt with later in this submission but the consequence of the reclamation and subsequent drainage of the area in question is that there could not be any ancient or historical rights of way over the land over which the alleged footpaths crossed prior to the completion of that reclamation at the turn of the last century (because it was effectively un-drained marsh land) and perhaps as late as the completion of the drainage work permitted and undertaken pursuant to the 1924 Act.
- d) The Landowner is not aware of any assertion by the Applicant or any witness that any such alleged rights of way were exercised prior to the drainage and reclamation of the land but if such assertions were to be made the Landowner would dispute them for the aforesaid reasons.

2. Application & Recent Chronology

- a) By letter dated 3 September 2012 the Landowner was advised by Lancashire County Council (reference LSG4/JM9/5.46086/JM9) that the County Council as the Surveying Authority had received a Claim for a Definitive Map Modification Order, the claim comprising six public footpaths identified on the plans adjoining the notification. Notice of the application which was made by North Meols Parish Council of 25 Irton Road, Southport was given to the Landowner on 11 July 2012.
- b) By letter dated 1 October 2012 the Landowner advised the County Council of their opposition to the application for a Map Modification Order and by letter dated 18 June 2013 Solicitors instructed by the Landowner wrote to Lancashire County Council confirming their Client's opposition to the applications briefly explaining the reasons for that opposition and the evidence upon which the Landowner relies. These submissions expand upon those reasons for opposing the applications and are submitted in accordance with the agreement of Lancashire County Council.
- c) A recent chronology relating to public rights of way commences with the deposit by directors of the Landowner in January 1998 of a map and statement declaring that no rights of way over the Land have been dedicated as public footpaths save for the footpath/bridleway marked green on the said plan, pursuant to the provisions of Section 31(6) of the Highways Act 1980. A further deposit to the same effect was again lodged with Lancashire County Council on 26 May 2004 and again in February 2012. Lancashire County Council has acknowledged receipt of the notifications and has duly recorded same for public inspection.
- d) Consequently the Landowner maintains that any alleged period of twenty years use by the public as of right and without interruption thereby resulting in dedication within the meaning of Section 31(1) of the Act would require a continuous period of use ending at the latest 1998 as a consequence of the said provisions of Section 31(6) of the Act. Accordingly, and to the extent that any evidence is submitted by the applicant that post dates events in 1998 including, for the avoidance of doubt, witness evidence that cannot be relevant to the application now under consideration.
- e) In December 2001 a public enquiry was held in respect of an application for a modification of the definitive map of the land by adding a bridleway from points shown on the application and by upgrading the existing footpath (as acknowledged by the Landowner) to bridleway status. The inspector published his decision on 12 February 2002 and the application for modification of the definitive map was substantially granted. Although this decision in 2002 is not directly relevant to the current application the Landowner notes the absence in the inspector's decision of any reference at all to any other alleged public footpath on the land save for the footpath that was the subject matter of the modification application. The Landowner contends that in respect of the current application where all six of the alleged rights of way link up with the footpath/bridleway with which the public enquiry was concerned in 2002 this would have been a relevant factor that the inspector would have taken into consideration.

- f) In July 2004 a celebration was held to mark the launch of the North Meols Parish Plan which plan involved Action to “Link up the public pathway network” and that this would be achieved by “Secure right of way to Ralph’s Wife’s Lane”. The estimated timescale was twelve to twenty four months. The documentation prepared for this event included a large plan illustrating the right of way to be secured but made no reference in any way to the other five proposed rights of way now being sought. Moreover no approach was made by the Parish Council to the Landowner at this time or until receipt of these applications.
- g) Perhaps as a consequence of the decision by the Parish Council to attempt to secure rights of way to Ralph’s Wife’s Lane the Landowner suffered a significant increase in trespass to the estate, vandalism, and accordingly sent a letter dated 1 May 2012 to North Meols Parish Council stating “We are acutely aware of certain local people attempting to create footpaths through the estate where there are none”, drawing the Parish Council’s attention to the vandalism and trespass and that following liaison with the Lancashire Police the measures the Landowner was proposing to take to protect its property including the installation of new gates and fencing and various ground works.
- h) It appears that the response of the Parish Council to the letter of 1 May 2012 are the current applications which seek not simply to secure a right of way to Ralph’s Wife’s Lane, but seeks five additional rights of way across the estate over the farm tracks on the estate which have been utilised by the tenant farmers, their employees and other authorised persons for many years.

3. Current Land Use and Title Evidence

- a) As stated above the Land in question was previously comprised within the Scarisbrick Estate which was subsequently partitioned. The Recitals to the Scarisbrick Estate Drainage Act of 1924 Recites various dispositions on the Estate but the purpose of the Act, as stated in the Preamble, was to establish Commissioners to maintain Sea Embankments and a Land Drainage System for the Scarisbrick Estate and reference is made in the Act to the dredging of Crossens Channel pursuant to the provisions of an agreement dated 1912. In order to further the purpose of the Act it was considered appropriate for such responsibilities to be vested in Commissioners duly appointed for that purpose and the Act is concerned with making the appropriate arrangements to enable that purpose to be achieved.
- b) In order however for the Commissioners to carry out their duties imposed upon them by the Act it was necessary for the Commissioners or their agents to be given rights to enter the Land to carry out their duties "without hindrance from any person whomsoever and without being deemed trespassers for so doing making always reasonable compensation to the owners and occupiers of any such land for any damage thereby sustained..." per section 16 (b) of the Act. Equally it was provided (section 54 of the Act) that the owners or occupiers of any part of the lands in question would have the right at all times to pass and re-pass across the embankments and drainage systems for the purpose of obtaining access from any one part to any other part of the land owned or occupied by them.
- c) Given the necessity to include in the Act rights of entry it seems a reasonable conclusion that in 1924 at least there was no recognised public access to the Land and that such access that was given was limited to persons carrying out the function of the Commissioners.
- d) In August 1968 a Conveyance of part of the Land was entered into between the then vendors of the Land and the River Crossens Drainage Board as the purchaser. A copy of this Conveyance and plan is attached to these Submissions. The Conveyance transferred various plots of land to the purchaser including field 747 which now comprises part of the Land and over which the Conveyance reserved to the vendors "(a) a right of way for themselves, their Tenants and other persons authorised by them over the platts leading to the adjoining lands of the Vendors." It is over these fields that the claimed public footpath from a point PF40 to BW47 North Meols is now claimed. It follows, the Landowner submits, that had such a public right of way existed in 1968 it would not have been necessary for the vendor to retain the right of access retained by the said conveyance of 1968.
- e) In August 1978 the Conveyance was entered into between the then vendors of the Land, the Managing Trustees and The Royal Bank of Scotland who were the appointed Custodian of the Land. By this Conveyance the Managing Trustees agreed with the vendors for the purchase of the Land but reserving to the vendors and their successors in title for the benefit of the owners and occupiers for the time being of Banks Marsh

EXHIBIT

1

Foreshore "(b) full rights of way at all times for agricultural purposes only over the tracks now or formerly known as Banks Pace leading to Suttons Pace and over Charnley Lane Pace between the points marked C and D and E and F on the said plan." A copy of the Conveyance and plan is attached to these submissions. Accordingly these rights are limited to the owners and occupiers of the foreshore, not the public at large and the right is limited to agricultural purposes only.

EXHIBIT
2

f) In 1979 an agreement was entered into between the then owners of the Land and the purchaser namely the Nature Conservancy Council whose successors, Natural England, have produced a copy of their purchase agreement which provides "Full rights of way at all times for agricultural purposes only over the tracks now or formerly known as Bank Pace leading to Sutton's Pace and over Charnley's Lane Pace between the points marked C and D and E and F on the said plan." A copy of the said Agreement is attached to these Submissions. The track between C and D is the now claimed public footpath from Charnley's Lane to New Embankment and between E and F the claimed footpath from a point BW47 to PF40 North Meols.

EXHIBIT
3

g) In 1987 Specific Enquiries were made by a proposed purchaser of the Land in respect of the title thereto and specifically the August 1978 Conveyance. In specific enquiry 1.1.3 it states "This Conveyance reserves rights of way for agricultural purposes only over Bank Pace tracks between points C and D and E and F on the plan for the vendors, their successors, the owners and occupiers for the time being of Banks Marsh Foreshore others authorised by them and in common with all others entitled to like rights". The questions raised were "(i) are those rights still exercised and if so, by whom". The answer is "The vendor believes such rights are exercised by the various tenants of the Estate". The second question was "Is the maintenance and costs thereof the sole responsibility of the owner thereof. If not, please specify." The answer was "The vendor believes the above tenants maintain in accordance with their Tenancy Agreement. The vendor believes the only third party concerned is the North West Water Authority." A copy of the relevant part of the enquiries is attached to these Submissions.

EXHIBIT
4

h) It is self evident that if public rights of way existed over these tracks there would be no requirement for a specific reservation of the rights referred to in the 1978 and 1979 Conveyances above which are for agricultural purposes only. Further, it appears that no argument was ever advanced by the Nature Conservancy Council that public rights of way existed over the Land and neither that body nor their successors Natural England have ever sought to argue for the existence of such rights. For the record the only application that the Landowner has ever received is the current application now under consideration.

i) It is understood there is no dispute that the Land (including the reclaimed land) has been utilised as agricultural land farmed when part of the Scarisbrick Estate and continuously farmed to this day. The Land comprises grade 1 agricultural land intensively farmed for the production of cauliflower, cabbage, broccoli, salad crops and wheat amongst others. Currently the entire Land is let to various agricultural tenants (further details of which are

dealt with below), subject to Agreements permitting shooting on the Estate and Agreements permitting access across the Land to afford access to the embankment and foreshore beyond to the Wildfowlers Association who have sought permission, and are granted an annual permission for a nominal payment, to utilise the farm tracks. This use of the Land to access the foreshore being subject to an annual permission is confirmed in the witness statement section.

- j) Consistent with the intensive agricultural use of the Land access for the tenant farmers, their employees, machinery and livestock has been afforded by the farm tracks which are well defined on the Land and which are essential to enable best utilisation of it. It is over four of the same farm tracks which are well defined, maintained and secure access to the Land that the Applicant now alleges public rights of way exist. Because these farm tracks are utilised on a constant basis by the tenant farmers, their employees, and the agricultural machinery utilised by the farmers, it would have been impractical and inappropriate to erect gates at the entry and exit points on the tracks. In respect of the alleged right of way through the Cross Bank Covert, which is a wooded area containing a rearing pen for game birds and is the location of the Gamekeeper's Cottage on the Land, there is no farm track through this wood. Similarly there is no farm track in respect of the claimed footpath from Ralph's Wife's Lane to Station Road.
- k) In respect of the claimed public footpath from Ralph's Wife's Lane to Station Road the plan attached to the Application for a Modification Order indicate, according to the Land Registry plan attached to the Landowner's title, a route over land that the Landowner does not own save for the land marked between points A and B which has been marked on the said plan and which has been attached to these Submissions. The Landowner is not aware if any other landowner over which the majority of the claimed right of way appears to cross has been served with this application.
- l) Putting aside the evidential considerations (as to which see below) the Landowner submits that it would be wholly inappropriate for land that is intensively farmed to be subject to public rights of way for several reasons. They include:-
- (1) The operation of farming machinery imposes risks for both the operators of such machinery and persons in the vicinity of it. The land is farmed on an industrial scale utilising heavy machinery for planting, fertilising and harvesting the crops. The danger to members of the public traversing such intensively farmed land is immediately obvious and apparent.
 - (2) The crops harvested from the land are utilised by nationally known food supermarkets that have public health responsibilities in terms of possible contamination of food sources. Contamination by domestic dogs is a particular concern and would be exacerbated by permitting members of the public to bring their pets onto the land.
 - (3) For approximately ninety years at least the Land in question has been subject to Shooting Rights where up to ten guns (shotguns) are permitted to shoot at any one time posing an obvious risk to adults, children and dogs. As a matter of law

EXHIBIT
5

shooting is not permitted within fifty yards of a public highway which reinforces the Landowner's concerns.

- (4) Unrestricted access to commercial farms carries inherent risks of theft and damage to machinery and crops. Damage to property and theft of machinery is a constant concern for farmers when such activities are often undertaken by persons who do not reside in the immediate area and which activities have led in recent years to Farm Watch schemes and other methods advised by the Police to assist the farmers to protect their property.

- m) It is submitted that it would be difficult to argue against the general proposition that given the inherent risks involved in allowing members of the public access to an intensively farmed estate subject to shooting rights, it would be inappropriate for such access to be permitted.

4. The Highways Act 1980

- a) It would appear that from the evidence submitted to date by the Applicant for the Modification Order reliance is placed on section 31 of the Highways Act 1980 which provides in (1) "Where a way over any land, other than a way of such a character that use of it by the public would not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full twenty years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it".
- b) It is further provided in sub section (2) that "The period of twenty years referred to in (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by notice such as is mentioned in sub section (3) below or otherwise".
- c) Section (6) of the Act provides that:-

"An owner of land may at any time deposit with the appropriate Council –

- (a) a map of the land on a scale not less than six inches to one mile; and
 - (b) a statement indicating what ways (if any) over the land he admits to having been dedicated as highways;
- and, in any case in which such a deposit has been made, statutory declarations made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time –
- (i) within ten years of the date of deposit; or
 - (ii) within ten years from the date on which any previous declaration was last lodged under this section

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence a negative the intention of the owner or his successors in title to dedicate any such additional way as a highway."

- d) Given the deposit by the current Landowner in 1998 of such a plan and statement acknowledged by Lancashire County Council the consequence of section 31(6) is that any period of presumed dedication must be a continuous period of twenty years ending at the latest in 1998. Accordingly the Landowner submits any alleged use subsequent to 1998 is not relevant to this application in terms of any presumed intention to dedicate.
- e) Section 32 of the Act provides that the relevant determining authority shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence and gives such weight thereto as that authority considers justified by the circumstances. The Landowner is not aware of any map or plan of public records or similar that indicates public rights of way over the routes currently applied for. It is

noted that no such claimed rights of way appear on any ordnance survey map or other official publication. Attached to these submissions is a letter with the attached plan dated 1993 being a response by Lancashire County Council to Mr G Crook in response to his enquiry as to the existence of any public rights of way over the Land. None of the alleged rights of way appear on the County Council's said plan.

EXHIBIT
6

- f) The Landowner acknowledges that the Highways Act 1980 imposes a burden of rebuttal of the statutory presumption by the production of "sufficient evidence" but the Act is not prescriptive as to the nature of that evidence that may be submitted. The Landowner relies not simply upon the documentary evidence referred to and exhibited in this section but upon the further evidence set out in the following section as being sufficient evidence to rebut the presumption of dedication.

5. The Landowner's Additional Evidence

A. TENANCY AGREEMENTS

- i The Land in question forms part of the Scarisbrick Estate and, subsequent to being sold off by that Estate has been dedicated to agricultural use only being divided into various farms let to tenant farmers who have frequently been succeeded as tenant farmers by their children. The earliest Tenancy Agreement in the Landowner's possession is a Tenancy Agreement made on 4 May 1946 between Charles Ewald Scarisbrick (the Landlord) and William Baxter (the Tenant). This Tenancy Agreement relates to the farm described therein and predates the Agricultural Holdings Act 1948. Various obligations to be performed by the Tenant are set out in the Agreement including "To assist his utmost in preventing trespass over the land, and to allow all requisite notices and actions to be given or brought in his name to or against any person trespassing on the said premises".
- ii The Landowner possess copies of some other early Tenancy Agreements including land let to the Ryding family in 1953 and the Bond family and the Gregson family. Each and every previous and current Tenancy Agreement contains similar covenants imposed upon the Tenant by the Landlord in the following terms:

"To prevent to the utmost of his power any new footpaths or other encroachments or easements being made in or required over any part of the Holding" and

"To do his best to prevent trespass over any part of the Holding and to give notice to the Landlords of any continued acts of trespass. To permit the taking by the Landlords of proceedings against trespassers or poachers in the Tenant's name and to lay information and to give evidence against any such trespassers or poachers and to sign if required notices to trespassers and others to keep off the Holding. The Landlords shall indemnify the Tenant against costs, charges or expenses he may incur at their request in connection with these matters".

This is a covenant invariably contained in Tenancy Agreements subject to the Agricultural Holdings Act 1948 or in respect of any Tenancy Agreements whereby the provisions of the Agricultural Holding Acts have been excluded.

It is noteworthy however that the farm tracks which permit access to the Land and over which the rights of way are claimed are excluded from the Landlord's demise to the Tenants. By excluding the farm tracks the Landlord reserves to himself and those authorised by him, including tenants of the Land, access for the machinery and employees in undertaking the agricultural activities. It is however a requirement of all the farming tenancies, both historical and current, that the Tenant contributes to the maintenance and upkeep of the farm tracks in question and for which payment is made of a fair proportion by the Tenant to the Landowner.

B SPORTING RIGHTS

- i A feature of the Scarisbrick Estate and the Land in particular, is the grant by the Landowner of the Sporting Rights along with a tenancy of the "gamekeepers" rearing field and cottage known as Cross Bank Cottage. These tenancies enable the Tenant to exercise the Sporting Rights over the entire Land comprising some eight hundred and thirty five acres.
- ii The earliest reference to a Lease of the Sporting Rights that the Landowner has been able to locate are referred to in a Deed of Partition dated 14 April 1923 in relation to the Scarisbrick Estate. The earliest Lease of Sporting rights that is in the Landowner's possession is one dated 6 April 1979 between the Landlord and Mr David R Battersby the Tenant. A copy of this Lease is attached to these submissions. For the avoidance of doubt the Sporting Rights demised by this agreement includes the farm tracks over which the public rights of way are claimed. The Leases provide that the Tenant "will not at any time permit more than ten guns to be used on the Estate except in the case of organised vermin shooting within the control and in the presence of the Tenant". The Landowner submits that it would have been entirely inconsistent to grant Sporting Rights over the entirety of the Land including the farm tracks in question had public rights of way existed over the Land. The danger to members of the public are all too self evident and moreover it is illegal to discharge a shotgun within fifty yards of a public highway in circumstances where Sporting Rights have been exercised on the Land for generations.
- iii Further, the sporting agreements contain a covenant on the part of the Tenant that the Tenant "will use his best endeavours to prevent trespassing and poaching and if necessary at his own cost prosecute any offenders". The successive shooting agreements with various tenants contain identical provisions namely the permitting of ten guns and a contractual obligation to prevent trespassing to the Land and it would be fanciful (it is submitted) that successive "Gamekeepers" would ignore their obligations to prevent trespassers on entering onto the Land which would be detrimental to the Sporting Rights for which they paid an annual fee.

EXHIBIT
7

C THE SOUTHPORT & DISTRICT WILDFOWLERS ASSOCIATION

- i It is believed that the Southport & District Wildfowlers Association is the oldest association of its kind in the country having been established in 1887. Attached to these Submissions are witness statements from Mr Alan Jones, the current President of the said Association, whose evidence is that his Association have used the farm tracks that continue from George's Lane and Charnley's Lane to access the embankment for the purposes of their Association. This witness recalls the then owners of the Estate approaching the Association in the 1940's seeking a payment to use the tracks for access. He says that he and the members were not happy about paying as they had always used the tracks with permission, but without payment. He refers to a meeting with a Mr Samuel Duncan who was the Estate Manager who explained to him that if the

Wildfowlers Association were not charged for access then others would try to claim rights to use these tracks as public footpaths or rights of way. Mr Jones says it was clear that Mr Duncan and the owners of the Estate did not wish this to happen and accordingly an agreement was entered into whereby members of the Association paid the owners of the Scarisbrick Estate a shilling a year to use these farm tracks. Attached to the statement of Mr Jones is a receipt dated 11 August 1952 from Scarisbrick Estate being a non transferrable permit to shoot wildfowl on the sea marshes and foreshore and to access same on the "PRIVATE ROADS on Bank Marsh.." This is important documentary evidence that the farm tracks on the estate were acknowledged as being private roads by the estate owners and by members of the Association.

- ii The witness statement of Mr Barry Ganaway Jones, the Chairman of the said Association, attached to these Submissions confirms that the Association had permission on an annual basis from the current land owner and the previous owners to use the farm tracks that continue from the end of Chamley's Lane and the end of George's Lane to access the marsh. This permission is recorded in the Association's Committee minutes.
- iii A third witness, Mr Keith Aldersley, whose statement is attached to these Submissions, similarly confirms that as Treasurer of the Association he was responsible for obtaining permits for each member of the association and paying a shilling a year for permission to use the farm tracks to access the outer marsh. Mr Aldersley recalls this being undertaken from the late 1940's up to 1979.
- iv Attached to these Submissions is a [poor] copy of a letter dated 18 December 1979 from the Nature Conservancy Council to Mr T Bolton (secretary of the Southport & District Wildfowlers Association) headed "Banks Marsh : Wildfowling" and states "I have today written to the...and Associated Companies Pension Schemes to ask whether they are prepared to authorise the use of George's Lane by your members in order to have access to Banks Marsh on foot. I will let you know as soon as I have a reply." This, it is submitted, is the clearest indication by the Nature Conservancy Council that in December 1979 there was no public access over the Land to access the embankment in the manner now contended for by the Applicant. EXHIBIT
8
- v By letter dated 17 August 1979 from the River Crossens Drainage Board to Mr T Bolton the Secretary of the Association, a copy of which is attached, the Board indicated their willingness to grant permission to members of the association to pass on foot over the Board's sea embankment at Banks "in order to gain access to the foreshore over which the association holds shooting rights, subject to the drawing up of an appropriate form of licence at a nominal annual rental of one peppercorn". Agreement dated 1 October 1979 was subsequently entered into by the Board and the Association in respect of the requested permission (a copy of which is attached to these submissions) granting permission to pass and re-pass on foot and not otherwise over the embankment owned by the Board on payment of a peppercorn rent. Finally, a letter dated 12 August 1979 addressed by the Association to each member is attached setting out the rule for shooting on the Marsh identifying various access points to the Marsh including "E. George's Lane...NO OTHER ACCESS POINTS TO BE USED". EXHIBIT
9

EXHIBIT
10

EXHIBIT
11

- vi The consequence of the witness statements and documentation submitted in respect of this section is that both the River Crossens Drainage Board and the Nature Conservancy Council, the Estate owners for the time being and the members of the Southport and District Wildfowlers Association have acknowledged that the Land in question is private land, that the farm tracks over the Land are private farm tracks and that permission to use the farm tracks has been requested and granted and recorded. That arrangement continues to the present day.
- vii The further significance of the statements and documents is that access to the embankment (now in the ownership of Natural England the successor to the Nature Conservancy Council) is not a public right (the Landowner is not aware of any suggestion to the contrary) and access thereto has required, and continues to require, permission. If, as the Applicant contends, the alleged public rights of way existed over the five tracks that lead to the embankment to secure access to the marsh users of those rights of way would not be able to access the embankment without committing acts of trespass. Put simply if the Applicant's contentions were correct five of the six tracks would be, in effect, cul-de-sacs.

D SIGNAGE

- i The public footpath (being public footpath number 48) which was subject to a public enquiry in December 2001 contains signposts, which patently have been there for decades, advising of the public right of way pointing in an approximate easterly and westerly directions but there is no signage indicating public rights of way over the areas now contended for by the Applicant. Given the existence of the signage referred to, the absence of any other signage is an indication that those responsible for installing the signage took the view there were no other public rights of way which should be brought to the public's attention. Subsequent to the Landowner purchasing the Land in 1990 additional signage was erected stating "Private Land" but sadly some these have been continually defaced or removed by persons unknown.
- ii Further, at the public enquiry referred to in the previous paragraph in 2001 evidence was submitted concerning access to the public right of way from a southerly direction but no evidence was submitted nor reference made by the inspector to rights of way existing to the north of the public right of way or the claimed footpath from a point PF40 to BW47 North Meols. It is difficult to avoid the inference that if the public rights of way now contended for that existed in 2001, the inspector would not have made reference to them in her decision given that all the alleged rights of way access the public footpath that was the subject of the public enquiry.

E MISCELLANEOUS DOCUMENTATION

- i The Landowner has obtained a copy of the Northern Parishes Local Plan: Proposals Map which appears to be dated in 1989 and is stated to be based upon a reduction of the 1976

ordnance survey map. The map is prepared by West Lancashire District Council and attached to these submissions is a copy of that part of the plan that shows the Land in question. The plan shows the existing footpath (now bridleway) and contains a proposal (only) for one further path identified as RC7B being the claimed footpath from Charnley's Lane to New Embankment. None of the remaining five claimed footpaths appear on this proposals map and the one that does appear is a Proposal only.

*EXHIBIT
12*

- ii The Landowner submits that it is self evident that if the public rights of way now contended for were in existence in 1989, any or all of them would have appeared on the plan and none would have been described as a Proposal.

Report prepared on behalf of Clarges Street Investments Ltd

- iii Prior to purchasing the Land in 1990 the Landowner obtained a copy of a report prepared by Smith Hodgkinson McGinty the purpose of which was to provide recommendations for the management of the Scarisbrick Estate. The reference to the Scarisbrick Estate is a reference to the Land in question. A copy of this report is attached to these Submissions. Given the purpose of the report is concerned with management of the Land, the prospects for development, details of the current tenancies and financial returns it would be a surprising omission if no reference was made to the public rights of way that are now alleged to traverse the Land. It is hopefully clear from these submissions that the existence of public rights of way would be a material consideration for any prospective purchaser of the Land and might be seen as a material omission if a professionally prepared report by expert agricultural surveyors omitted such references. There are no references in this document to any of the public rights of way that are now alleged to exist. The Landowner was aware, at the time of purchase, of the footpath (now bridleway) running east to west across the land which is of course the same footpath referred to in the statutory declaration and map lodged with the Council in 1998.

*EXHIBIT
13*

F WITNESS EVIDENCE

It is not proposed to repeat in the Submissions the contents of the eleven witness statements attached to which no doubt the Council will give appropriate weight and consideration. By way of brief summary:-

i Godfrey Bernard Crook

Mr Crook is the effective owner of the Land and from the 1960's was engaged by the River Crossens Drainage Authority as a contractor to maintain the drainage ditches etc and confirms that company was authorised by the estate owners to use the farm tracks and that is the current position with the Environment Agency as at today's date. He confirms that people using the tracks were the tenant farmers and their employees and doesn't recall seeing people walking the tracks with dogs. He says his pre contract enquiries prior to acquiring the Land in 1990 revealed there were no public rights of way over the Land save for public

footpaths 47, 48 and 49 now the bridleway. He says he became concerned following the application in 1995 for a bridleway that others might seek to claim rights of way over the estate and accordingly register the statutory declarations in 1998 to which reference has been made. He says it was a rarity to see anyone walking the farm tracks and if strangers did walk on the tracks they were asked to leave. He confirms that to the best of his knowledge, information and belief the submissions are accurate.

ii David Summerland

David Summerland confirms the provision in his company's Tenancy Agreement and consistent with that contractual obligation confirms that if people are walking the farm tracks it is pointed out the Land is private and that they are trespassing. He refers to the unfortunate vandalism and confirms that his company would not be able to rent land in circumstances where it was crossed by a footpath. He refers to the contamination risks in his statement.

iii David Alan Trow

This witness deals with the claimed public footpath from Ralph's Wife's Lane to Station Road and he details his recollection of persons using the Land for the past forty three years and states, quite simply, that during this entire period there has not been a footpath through the field adjacent to their property at 100 Banks Road. On occasion when people have requested permission to walk through the field he has said "no it is private land". He refers to various gates and fences that have been erected and removed depending upon the use to which the Land was being put at the relevant time.

The Landowner has confirmed that it would appear a right of way is claimed over land that it substantially not in the ownership of the Landowner. The Land Registry Plan in respect of the Landowner's title is attached to these Submissions.

iv David Lloyd

Mr Lloyd (whose father had the shoot on the Estate for over ten years from the late 1970's to the late 1980's) deals with the Sporting Rights and the annual renewal of the Sporting Lease. In particular the deals with the pens situate in the wood known as Cross Bank Covert used for the rearing of young game. He refers to setting snares to catch foxes (to protect the game birds) in the wood and confirms that there were no footpaths on the estate except that part which is now the bridleway.

v Philip Pearson

Mr Pearson was a member of the shooting syndicate on the Estate in the early 1980's and he confirms that the field behind the Gamekeeper's Cottage was used for rearing birds up to six weeks old which were then transferred to the rearing

pens in the woods adjacent. He says the activity would never be located in an area to which the public had access particularly with dogs. He says to the best of his knowledge he has no recollection of there ever being a public footpath through the wood or anywhere on the Estate when he was a part of the syndicate.

vi David Houghton

Mr Houghton's recollection relates back to the early 1970's and he too confirms the rearing pens in the wood and he recalls Mr Aldridge and the Gamekeeper dealing with both trespassers and poachers. He says that through his long association with the Estate he understood the tracks are private tracks for the Estate, their tenants, the shoot and the wildfowlers only.

vii Michael Murphy

Mr Murphy, a former gamekeeper on the Estate, confirms the situation regarding the rearing pens and the absence of public footpaths and that if he saw anyone in the wood or in any of the other woods he would ask them to leave.

viii Mr Amatino

Mr Amatino confirms that he has been associated with the shoot for some twenty five years and that if he saw someone walking on the tracks or across the fields he would explain to them they were trespassing and ask them to leave. He does however relate to recent incidents over the past two or three years that clearly caused him distress. He confirms that members of the shoot are not allowed to shoot within fifty yards of a public footpath and that he is not aware of any public footpaths other than the bridleway.

ix Alan Jones

This witness, who is the current President of the Wildfowlers Association and has been a member since 1937 says that when he discovered the Scarisbrick Estate were seeking payment for use of the farm tracks to access the marsh he didn't agree. He refers to correspondence with the Estate owners and recalls the response that the Estate owners wanted to ensure their private land and private roads remained so. As a consequence he too began paying for access to the Estate roads becoming a member in the mid 1940's. He produces the receipt referring to the payment and to private roads.

x Barry Ganaway-Jones

Mr Ganaway-Jones is currently the chairman of the Southport & District Wildfowlers Association and states that his association have had permission from the current owners and the predecessors in title for the past one hundred years to use the farm tracks that continue from the end of Charnley's Lane and the end of

George's Lane to access the marsh. He confirms that permission is requested every year from the Landowner, that the permission is minuted and referred to in committee minutes. He says that they have questioned people using the tracks being mindful of people poaching or trespassing and that all dogs are kept on a leash.

xi Keith Aldersley

Mr Aldersley's recollection goes back as far as the 1950's having lived in the area since he was four years of age. He says that to his knowledge there has never been a public footpath from Ralph's Wife's Lane to Station Road and says that he has been a member of the Wildfowlers Association since 1950. He was treasurer of that Association and remembers permits being issued up to 1979. He recalls various arrangements with the tenant farmers in the 1970's and remembers Mr David Scarisbrick turning people away from the farm tracks and that David Scarisbrick put up a number of signs to deter trespassers.

6. Summary and Conclusions

- a) The Council records will confirm the deposit by the directors of the Landowner in January 1998 of a map and statement declaring that no rights of way over the Land have been dedicated as public footpaths save for those coloured green on the plan (footpaths number 47, 48 and 49). This deposit was made in accordance with section 31(6) of the Highways Act 1980 and further deposits were made in May 2004 and February 2012. Lancashire County Council had acknowledged receipt of these notifications and has recorded same for public inspection.
- b) The consequence of such a deposit pursuant to section 31 (6) is that the deposits are “in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway”. Accordingly the Landowner submits that the Applicant’s evidence in respect of alleged user as of right that post dates January 1998 is not relevant at law to discharge the statutory presumption that there was no intention to dedicate by the Landowner.
- c) The Landowner is not aware of any evidence that has been submitted that would demonstrate a contrary intention by the Landowner within the meaning of the section and accordingly evidence and events post 1998 submitted by the Applicant should be ignored.
- d) The letter dated 22 November 2001 from Lancashire County Council’s Archivist to Mrs B Crook appears to confirm the Landowner’s belief that the “new” embankment had been constructed by 1910 and that embankment is now in the ownership of Natural England which has signage adjoining the embankment erected by Natural England confirming that the land (embankment) is private land. It is of course to that embankment that five of the alleged public footpaths seek access.
- e) Following the reclamation of the land between the “old embankment” referred to in the said letter of 22 November 2001 and the new embankment significant drainage work for reclamation purposes had to be undertaken. This in turn led to the enacting of a private Act of Parliament the Scarisbrick Estate Drainage Act of 1924 which gave to the Commissioners (who were responsible for maintaining of the drainage of the Land) statutory rights access to the Land for statutory purposes only.
- f) Following the successful reclamation and drainage of the Land it appears the Scarisbrick Estate let the Land to various tenant farmers and from the records it is clear that some families have farmed the land for generations. Reference has been made to the earliest Tenancy Agreement in the Landowner’s possession made in May 1946 and the obligation imposed upon the tenant farmers in their Agreements to prevent “to the utmost of his power” any new footpaths or encroachments or easements being made over the Holding and to do his best to prevent trespass over any part of the holding. Similar covenants have been and currently are imposed on all the farming tenants and, it is submitted, that it would be fanciful to imagine the tenants have ignored their contractual obligations relating to the creation of footpaths or trespassers. Indeed, the Landowner submits, the most obvious demonstration that could be made that there was no intention to dedicate

EXHIBIT
14

any part of the Land as public footpath would be to impose contractual obligations on the current occupiers of the Land to prevent such dedication or trespass. There is no evidence whatsoever that the tenant farmers have failed to comply with these contractual obligations.

- g) It is self evident that the tenant farmers, amongst others, used the farm tracks to access their land for agricultural purposes. Similarly the tenant farmer's employees and indeed members of their greater families would continue to use the farm tracks for access purposes no doubt on a frequent and regular basis. Such permission to use the farm tracks is entirely consistent with an intention not to dedicate any of those tracks for public use.
- h) In addition to the tenant farmers the Land has been subject to a Lease of Sporting Rights to which reference is made in a Deed of Partition dated 14 April 1923. The Lease of the Sporting Rights has always carried with it the right to occupy Cross Bank Cottage for use by a Gamekeeper in the employment of the tenant who held the Sporting Rights. Those Sporting Rights relate to the entirety of the Estate including the farm tracks over which the public rights of way are now claimed. Again the Lease of the Sporting Rights contains a covenant on the part of the Tenant that "he will use his best endeavours to prevent trespassing and poaching and if necessary at his own cost prosecute any offenders". The employment of Gamekeepers to nurture and protect the game on the Estate undertaking the Tenant's contractual obligation to prevent trespass to the Estate including the farm tracks is, it is submitted, the clearest evidence that the Landowner demonstrated publicly his intention not to allow any part of the Land to be dedicated to public use and that persons were specifically employed who were resident on the estate to undertake those obligations. Gamekeepers have been employed on the Estate since at least 1923 and continued up to 1990.
- i) Substantial evidence has been adduced by the Landowner demonstrating that both private associations and public bodies have for decades (certainly since 1924) required either statutory authority or permission to access the Land and farm tracks for specific purposes. Whilst it is acknowledged that permission and/or payment for user to certain bodies does not exclude the possibility of rights of way being established it is, nevertheless, strong evidence of the lack of intention to dedicate by the Landowner that was within the knowledge of private organisations and public bodies.
- j) Reference and evidence has been made to the statutory right of access pursuant to the Scarisbrick Estate Drainage Act, detailed evidence has been given by members of the Southport and District Wildfowlers Association who have adduced documentary evidence confirming the estate roads were acknowledged to be private roads and that permission to use two of those roads required payment to the Landowner. The document attached to the statement of Mr Alan Jones is dated 1952 and contains a reference to Private Roads.
- k) Reference has been made to a Conveyance of part of the Land in August 1968 between the then estate owners and the then River Crossens Drainage Board which provides

contractual rights of way over part of the Land and alleged rights of way in question which would have been self evidently unnecessary had such public rights of way existed at that time. Reference is made in a Conveyance dated 1978 whereby specific rights of way are reserved over two of the farm tracks in question "for agricultural purposes only" and such rights being limited to the owners and occupiers of the foreshore and not to the public at large. A similar agreement was entered into in 1979 between the estate owners and the Nature Conservancy Council again referring to access over two of the tracks for agricultural purposes only.

- l) Further, a letter from the Nature Conservancy Council dated 18 December 1979 has been exhibited addressed to the Secretary of the Southport & District Wildfowlers Association seeking permission to authorise the use of George's Lane "to have access to Banks Marsh on foot". Additional letters and correspondence is exhibited between the Wildfowlers Association, the Drainage Board and the Nature Conservancy Council all of which demonstrate beyond any doubt that all parties regarded the Land and the farm tracks as private land and that specific permission was required for access thereto.
- m) A reference has been made in the Submissions to the absence of any official documentation, map or plan identifying as rights of way the six rights now contended for. Reference has been made to the Northern Parish's local plan proposals map which plan shows the existing footpath (now bridleway) and a "*proposal*" for one further path being the claimed footpath from Charnley's Lane to new embankment. It is significant that none of the remaining five claimed footpaths appear on that proposal map at all.
- n) Reference has been made to the estate report prepared by well known local farming surveyors, Smith Hodgkinson McGinty, prepared in 1990 which contains no reference to the six paths now claimed which would have been a significant omission had such rights existed. Similarly, the omission of any reference in the inspector's decision following the public enquiry into the bridleway held in December 2001 is, it is submitted, significant. Had the inspector been of the view that the bridleway abutted five public rights of way that would, it is suggested, have been a material consideration for the inspector and relevant to her decision making process.
- o) It is perhaps inevitable that in terms of the witness evidence there will be conflict between the evidence submitted by the Applicant and the witness evidence submitted by the Landowner attached to these Submissions. It is however difficult to avoid the conclusion that the recollections of the Applicant's witnesses may be coloured by their desire to secure what they may perceive to be a "victory" over Mr Godfrey Crook. That comment is not lightly made; attached to these Submissions is a copy of a leaflet contained within a protective plastic envelope, many of which have been circulated in the area by, it is assumed, a minority of the supporters of the application. The evidence of continuing vandalism referred to by the Landowner's witnesses with consequential Police enquiries and prosecution in one instance, are matters that cannot be entirely overlooked when assessing the value of witness testimony.

- p) A significant number of the Applicant's witnesses deal with matters post 1998 and are not therefore, it is submitted, relevant to the application. Further, a number of the witnesses (on the basis of family names) would undoubtedly have enjoyed access over the farm tracks to visit relatives no doubt on a regular basis, or as employees or perhaps as members of a permitted group. Equally, the Landowner does not doubt some members of the public, perhaps more in their youth, would have used or played upon the Land and farm tracks but it is submitted such user was not "as of right". Such user must be without secrecy in order to establish a public right of way and the Landowner would suggest that given the Land has for generations been farmed on an intensive scale, was continually occupied by tenant farmers and a gamekeeper it is extremely unlikely that trespassers would have been ignored or tolerated and that the recollections of the Landowner's witnesses in advising any strangers that they were trespassing and the Land was private is more consistent with the reality on the ground.
- q) If the Applicant is correct that over some (undefined) period of twenty years prior to 1998 members of the public enjoyed rights of way over the routes now contended for and that such enjoyment was without force, permission or secrecy (the legal requirements) then it is necessary to make the following assumptions:-
- i the tenant farmers have for generations ignored their contractual obligations relating to rights of way and trespass;
 - ii the Sporting Rights Tenant and Gamekeeper ignored their contractual obligations to prevent rights of way and trespass;
 - iii at some stage the River Crossens Drainage Board and/or the Nature Conservancy Council and/or Natural England and/or the Southport & District Wildfowlers Association were all mistaken in believing the farm tracks were private roads that required permission from the Landowner for their use;
 - iv the Landowner tolerated the breaches of contractual obligations referred to above and took no action on its own behalf to prevent trespass;
 - v the absence of any documentary record or reference to the contrary to the Landowner's submissions cannot be explained;
 - vi the statutory declarations commencing in 1998 made by the Landowner were false.

It is submitted that it would not be reasonable for the Council to make the assumptions referred to in this paragraph in terms of the Landowner's evidence and that the Applicant has therefore failed to disclose a reasonable case for seeking a Map Modification Order.

In respect of the claimed footpath from Ralph's Wife's Lane to Station Road evidence has been submitted that the greater portion of the land over which the right of way is alleged to exist does not belong to the Landowner.