

Agenda Item	7.
Report No	CC/05/19

HIGHLAND COUNCIL

Committee: Caithness Committee

Date: 20 February 2019

Report Title: Modified Core Paths Plan (Caithness and Sutherland) Amended

Report By: Director of Development and Infrastructure

1 Purpose/Executive Summary

- 1.1 This report summarises the review of The Highland Council Core Paths Plan in Caithness with respect to the representations received on the amended core paths plan which was out for public consultation from December 2017 to March 2018.
- 1.2 The Council's response, proposed position and action required to these representations are set out in **Appendix 1** of this report.
- 1.3 One objection has been resolved and it is proposed to modify the amended Core Paths Plan and carry out a further limited public consultation for one month and notifying appropriate persons, in response to additional proposed core paths, see Map CA 13c Swiney Hill in **Appendix 2**.
- 1.4 Six further objections to two proposed core paths remain outstanding, and this report proposes to submit the amended Core Paths Plan to Scottish Ministers with these objections still in place.
- 1.5 One further objection was received but not considered to be competent as it did not refer to reasons to object and further comments/objection did not refer to path in the amended plan.

2 Recommendations

- 2.1 Members are asked to agree to:
 - the submission of the amended Core Paths Plan to Scottish Ministers with outstanding objections to proposed core paths CA07.16(C) – John O'Groats – Ness of Duncansby (**Appendix 3**) and CA01.05(C) – Altnabreac – Forsinard (**Appendix 4**);

- the modification of the amended Core Paths Plan to include further core paths CA10.18(C) and CA10.19(C) as shown on Map CA 13c Swiney Hill – **Appendix 2**; and
- undertake a month long public consultation on the modifications to the Core Paths Plan (Caithness and Sutherland) Amended.

3 Introduction

- 3.1 The development of the existing Core Paths Plan was part of The Highland Council's duties provided by the Land Reform (Scotland) Act 2003 (LR(S)A 2003). The existing plan was adopted by the full Council in September 2011 after the plan had been through the statutory consultation process and also a Public Local Inquiry (PLI).
- 3.2 The Core Paths Plan was expected to be reviewed alongside the Local Development Plans (LDP). The Caithness and Sutherland Local Development Plan was started in 2014 and it was decided to review the Core Paths in this LDP area concurrently.
- 3.3 The review aims to consider:
- paths that have been built, or will soon be built, since the first Core Path Plan
 - routes suggested through public consultation;
 - the recommendations of the Public Local Inquiry report on the Highland Council's first Core Path Plan to include more long distance, strategic routes;
 - where there might otherwise be gaps in the sufficiency of the Core Path network; and
 - the removal of routes or sections or routes that have disappeared, become overgrown and where better alternatives are available.
- 3.4 The Highland Council Core Paths Plan (Caithness and Sutherland) Amended was approved by the Caithness Committee on the 16 June 2017 and Sutherland County Committee on 23 June 2017.
- 3.5 The amended Core Paths Plan was published on the 18 December 2017 and was open to public consultation until 30 March 2018.
- 3.6 The Highland Council responses and proposed actions in Caithness have been considered by the Caithness Local Access Forum at meetings on the 23 October 2018 and 14 January 2019

4. Responses and Proposed Position to Representations to the Core Paths Plan (Caithness and Sutherland) Amended

- 4.1 The representations made, with regards to the Caithness area, to the amended plan are set out in **Appendix 1**.
- 4.2 Fifteen representations were made with respect to ten of the Caithness core paths proposals. Eight representations were supportive, or neutral, to the amended plan. Replies have been sent to these representations and no further action is required.
- 4.3 Objections to Caithness proposals in the amended core paths plan:
- CA07.16(C) – John O'Groats – Ness Of Duncansby. 5 Objections,
 - CA10.01(D) – Coastguard Lookout and Brethren Well. 1 Objection (2

comments)

- CA01.05(C) – Altnabreac – Forsinard. 1 Objection.
- CA04.14(C) – Berriedale Pier – Creag na H-Altha 1 objection – not competent

4.4 **CA07.16(C) – John O’Groats – Ness of Duncansby (See Appendix 3)**

4.4.1 The two main issues raised in the objections are: i) the perceived impact of the proposal on the operation on the existing caravan park and ii) that there previously was a constructed path, now washed away, on the shore which should be reinstated and used instead. There are a number of other points relating to the maintenance of the proposed core path, littering, dog fouling and stock worrying.

4.4.2 The caravan park is land on which access rights apply and though each pitch will have a privacy area attached to it when occupied, this privacy area is limited to the pitch (it does not extend to the tracks within the park) and privacy areas cannot be combined to create a larger area as each individual pitch is a separately occupied plot. The operator acknowledges that the proposed route is used by the public. As such the public should be permitted to use the proposed core path and it is reasonable whilst respecting the interests of the caravan park operators.

4.4.3 The shore path option is not suitable for promoting and by designating it a core path would not provide the Council with any capacity (funding) or power to create a route. Such a route would require significant coastal protection works to be sustainable and avoid damage from wind and wave

4.5 **CA10.01(D) – Coastguard Lookout and Brethren Well**

4.5.1 This deletion was considered as being a tidying up exercise given that 140m of the route only led to the middle of a field. In response to the objection to the original deletion, the Council will remove the proposal from the amended core paths path, and instead propose two onward candidate core paths in order for the existing core path to be linked into a better network of paths.

4.5.2 To add these routes to the core paths plan the amended plan should be modified, as shown in **Appendix 2**, and a further limited consultation carried out.

CA10.18(C) – Coastguard Lookout – Achastle-shore

CA10.19(C) – Coastguard Lookout – Swiney Hill

4.6 **CA01.05(C) – Altnabreac – Forsinard (See Appendix 4)**

4.6.1 This proposed core path was considered by the Public Local Inquiry in 2011 and the reporter recommended its inclusion in the Core Paths Plan. Scottish Ministers did not direct the Council to adopt the route in its Core Path Plan on the basis that a review of level crossings by The Law Commission of Scotland was in progress.

4.6.2 The review reported in 2013 and it reiterated that the Council can designate core paths over railways and that the public would be able to exercise their access rights over a railway as long as that route is a core path.

4.6.3 The review did recommend amendments to Section 6 of the Land Reform (Scotland) Act 2003 to confirm that access rights are exercisable at track level by means of a core path. However the review did not recommended new powers so, whilst no enabling legislation has come from the 2013 review, it is considered reasonable for the Council to include this crossing in the amended core paths plan.

4.7 **CA04.14(C) – Berriedale – Creag na H-Altha (See Appendix 5)**

4.7.1 This comment stated the extension at only 100m was irrelevant and that the respondent did not agree with the plotting of the line for the existing core path. A reply was sent but there was very little in the representation to respond to and the comment on the existing core path (as well as further comments to core path CA05.11) was not competent as these routes were not within the amended core paths plan for consultation.

4.7.2 The extension on CA04.14(C) provides a finish for the core path at one of the Duke's Candlesticks, a well known landmark, compared with a previous finish at an ill-defined cliff top point below the ruinous Berriedale Castle.

5 **Implications**

5.1 Resource – Advertisement of a modified amended core paths plan consultation and future adoption, are statutory duties and will incur costs and staff resource to the Council. Further implementation of the core paths plan is discretionary.

5.2 Legal – The Highland Council has a statutory duty to produce a core paths plan sufficient for the purpose of giving the public reasonable access throughout their area. The Plan must be reviewed and amended at such times as appropriate. This is considered to be a period of between 5 and 10 years as appropriate.

5.3 Community (Equality, Poverty and Rural) - Improvement and promotion of core paths increases community connectivity, encourages healthy lifestyles and are available to all users equally.

5.4 Climate Change/Carbon Clever - Improvement and promotion of core paths can contribute to reduced car usage.

5.5 Risk – Risk to the Highland Council is minimal; Scottish Ministers will decide whether to direct the Council to adopt the plan where there are outstanding objections or they may cause a Public Local Inquiry to be called at their cost. In the interim, the existing Core Paths Plan remains in place and used to promote and protect the public's access rights.

5.6 Gaelic - Where installed, signs to direct users to core paths will be bilingual subject to consultation with Community Councils.

Designation: Director of Development and Infrastructure

Date: 28 January 2019

Author: Matt Dent, Access Officer, Caithness and Sutherland

Appendix 1

Core Paths Plan (Caithness and Sutherland) Amended; Summary of Comments

Appendix 2

Map CA 13c Swiney Hill

Appendix 3

Map CA 6c John O'Groats

Appendix 4

Map CA 17b Altnabreac

Caithness

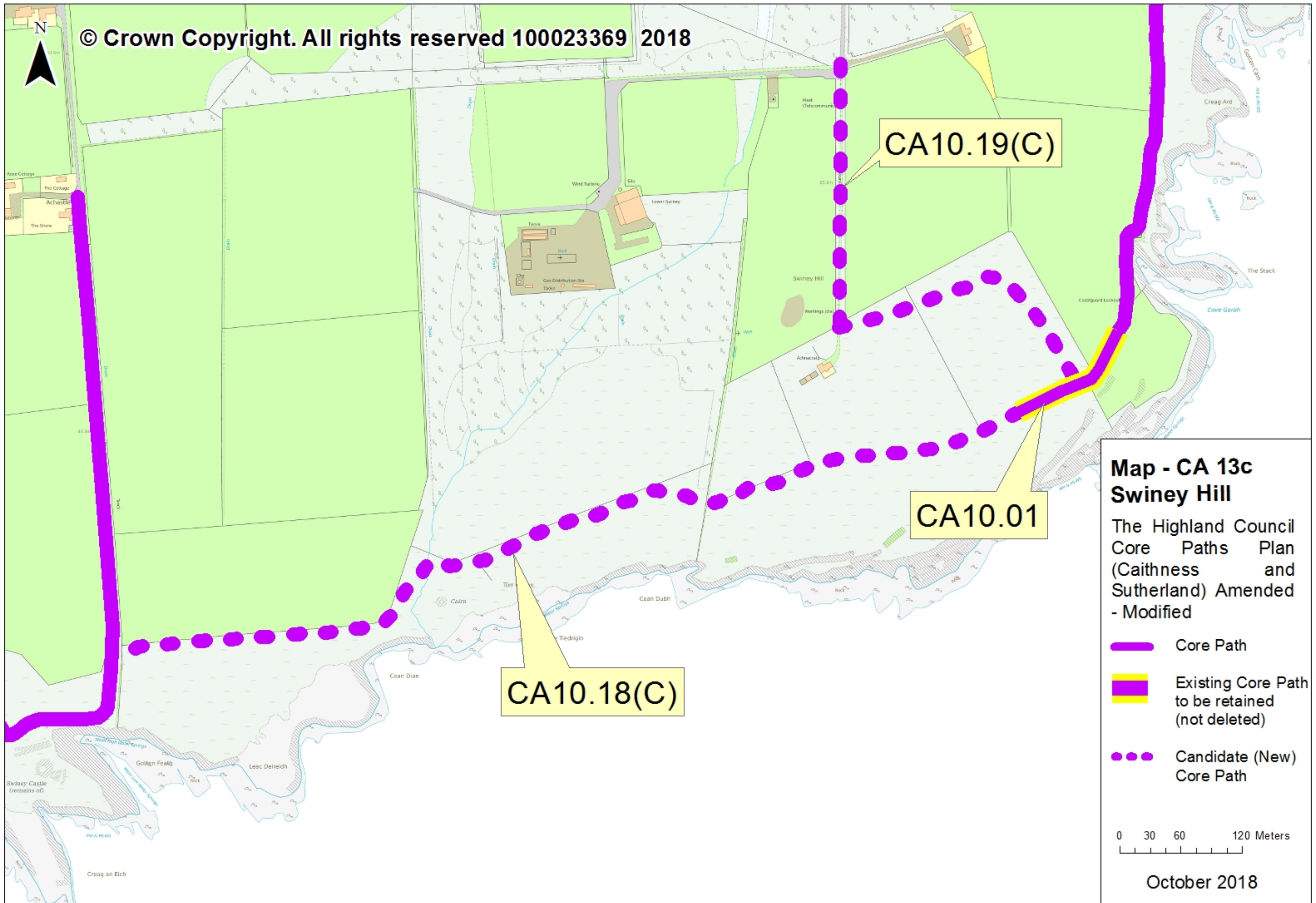
Overview of proposed action type	Outstanding objection but no proposed change to amended core paths plan
	Modify the amended core paths plan in response to representations received/resolve objection.

Comment ID	Core Path Ref.	Respondee	Approve of the plan.			Summary of Comments	Response	Proposed Action
			Support	Neutral	Object			
62	CA05.21(C)	Julian Smith		X		Queries around occupier insurance, all-abilities nature of route and maintenance.	Replies sent, no further action required.	n/a
19	CA13.30(C)	Adrian Brunner		X		Queries around dogs, fencing and cliff/blowholes on and near the proposed core path	Reply sent, no further action required	n/a
24	CA07.16(C)	Andrew Sinclair			X	Water running down the path has caused erosion to the respondees land. Suggests path is placed on the beach where it originally was. Does not want the path on his land and wants to know who is responsible for it and who has public liability for it.	The Highland Council is aware of erosion on the route and has offered advice and assistance to the Community Council. The Highland Council does have discretionary power to maintain core paths but powers (and resources) do not extend to other routes/paths. Responsibility for the route lies with occupier(s). Shore options for this core path are not considered practical as such a route would be affected by high tides and storm events.	Retain proposed core path as promoted in the amended plan. See map John O'Groats CA 6c.
25		William and Clara Steven			X	Object on the grounds that 1) the land crossed by the proposed core path is not subject to access rights as provided by the Land Reform (Scotland) Act 2003. and 2) that the Council has not given due regard to Section 17(3) of the LR(S)A 2003 when considering this core path proposal. 3) Concerns about privacy and security of the site should it be a core path	The Council does not agree that the land over which the proposed core path passes is land not covered by access rights. The individual stances, when occupied, will have an area around them which is outwith access rights but such areas, for a mobile home or tent, will be relatively modest and a collection of stances cannot be combined to create a larger privacy area. The respondee has already acknowledged that the route is used by the public so consideration of Section 17(3)(a) is met. Whilst the existing use of the route is against the wishes of the respondee, no formal steps have been taken by the operators of the site to stop this happening so regard of the proposal as per Section 17(3)(c) is also met.	
10		Mr Jay Wilson (Friends of the John O'Groats Trail)	X				This is a positive development as it extends the coastal core path east of John O'Groats to the Ness of Duncansby and then Duncansby Head	

Comment ID	Core Path Ref.	Respondee	Approve of the plan.			Summary of Comments	Response	Proposed Action
			Support	Neutral	Object			
47		Mr Jay Wilson (Friends of the John O'Groats Trail)	X			We would like to amend our support of this new core path to state that the important thing is a coastal path connecting John O'Groats harbour to the Ness of Duncansby. The campsite owner has been flexible in dealing with our trail and we would support a path being developed to the sea side of the campsite boundary. The campsite is an important part of the JOG economy and note the desire of people to go to and from this iconic location including by foot along the shore. We care more about the overall connectivity than about the exact route.	The route on the sea side of the boundary fence of the caravan site was considered during the development of the amended plan. It was seen that this route was being purposefully obstructed with a timber pallet fence and barbed wire. The space available for this route is very narrow and unstable meaning this route would be prone to erosion by both users and more so to extreme weather events and not considered practical as a long term option.	Retain proposed core path as promoted in the amended plan. See map John O'Groats CA 6c.
28		Mrs Laura Munro			X	Proposed development would take away the security away from the site and therefore have a huge impact on the number of campers staying on the site. I don't understand why the Highland Council can't reinstate the pathway along the beach which existed for a number of years and was popular with walkers.	The Highland Council does not have any legal interest (ownership or lease) in the path that was previously washed away during multiple storm events. As such The Highland Council cannot expend capital funds on the construction of a path and there are not enough discretionary revenue monies and/or any desire within the Council to repeatedly repair a path in such an exposed location. The Council does not agree that the land over which the proposed core path passes is land not covered by access rights. Individual stances will have a privacy area associated with them when they are occupied but shared open areas are not afforded such a privacy area. The caravan site at John O'Groats is of a compact design with uniform, regular stances and constructed internal tracks, which can in my opinion cope with promoted pedestrian access by the public without detriment to the use of the site as a caravan park.	
29	CA07.16(C)	Mr William G S Steven			X	Believe it is an animal welfare issue with people littering on the proposed path and then litter blowing into grazing fields. Issues with dogs not on leads scarring animals and fouling. Water erosion from a neighbours land causing erosion to a footbridge on my land causing it to be unsafe, I would like to know who is taking public liability for the unsafe bridge. Have already needed to replace fences damaged by the public and want to know who is responsible for this financially and also who will maintain the core path.	Littering and dog fouling/worrying are offences and the Council would seek to discourage such activity and use bins provided at the John O'Groats car park. There is advice to the public in the Scottish Outdoor Access Code and the Council can assist in providing signs to encourage responsible behaviour. The Council would not actively discourage the promotion of an access route to manage irresponsible actions of the few against the benefits to the wider public. The condition of the path is the responsibility of the occupier of the land and neighbours issues should be taken up with them. The Council is unaware why the public would need to cross fences to use the proposed core path as the route has numerous gates at locations needed to pass fencelines.	

Comment ID	Core Path Ref.	Respondee	Approve of the plan.			Summary of Comments	Response	Proposed Action
			Support	Neutral	Object			
42	CA07.16(C)	Mrs Anne Mackenzie			X	This proposal will have a detrimental effect on tourism at the site, which at present has security camera and dogs must be on a short lead ensuring the safety of patrons to the site. Staying in a tent and the thought of the public being able to pass within very close proximity both day and night is very scary and disturbing and the reason for staying at this site would be removed. There is a path below the site which we have used for many years that is adequate for walking and only requires maintenance, which I believe Highland Council maintained, so am surprised the Council now propose a path through a local business that for many years has provided a relaxing and safe environment for visitors.	The ground of the route for the proposed core path is land on which the public has a right of recreational access as provided by the Land Reform (Scotland) Act 2003. As such The Council does not consider that the public using the route, to access the Ness of Duncansby from John O'Groats, affects how the site functions as a caravan park. A number of camping and caravan site in Highland have core paths and public access through them. Individual stances will have a privacy area associated with them when they are occupied but shared open areas are not afforded such a privacy area. The other users of the site are not acquainted with all other users and the situation you described whilst camping would currently take place and the future use of the core path by the public does not alter this. The operators of the site have acknowledged that the route of the proposed core paths is already used by the public.	Retain proposed core path as promoted in the amended plan. See map John O'Groats CA 6c.
9 & 15 (repeated comment)	CA07.15(C)	Mr Jay Wilson (Friends of the John O'Groats Trail)	X			This is a positive development as it extends the coastal core path west of John O'Groats and connects to the historic mill and beyond.	Reply sent, no further action required	n/a
11					X	This section of core path links to a loop back to A9 and south towards Achastle. It also passes over a stile whose continued existence may depend on the core path status. Deleting sections of core path goes against the trend of improving public access to coastal routes including the John O'Groat Trail and this section is an integral part of the existing core paths plan		Remove deleted section of core path in amended plan. See Map CA13c Swiney Hill
46	CA10.01(D)	Mr Jay Wilson (Friends of the John O'Groats Trail)			X	We would like to add that this deletion was proposed without consulting the Friends of the John O'Groats Trail which has been in frequent contact with the access team.	Offered to remove proposed deletion. In order for current core path to make sense I have investigated extending the core path to Achastle and also a side link to Swiney Hill which was previously promoted locally.	Include new core path link to Swiney Hill (CA10.19(C))and Achcastle (CA10.18(C)). See Map CA13c Swiney Hill
12	CA10.17(C)	Mr Jay Wilson (Friends of the John O'Groats Trail)	X			This new core path follows a much used route across a historic bridge into an area with many natural features such as cliffs used for climbing, a natural arch and a blowhole. It is important to protect the route of the JOGT using the core path designation.	Reply sent, no further action required	n/a

Comment ID	Core Path Ref.	Respondee	Approve of the plan.			Summary of Comments	Response	Proposed Action
			Support	Neutral	Object			
13	CA08.02(C)	Mr Jay Wilson (Friends of the John O'Groats Trail)	X			This important core path extension provides access from Keiss to an historic castle and beyond it to the coastal route with scenic cliffs and sea views. The development of the JOGT has led to increased use of the coastal cliff corridor justifying the expansion of the core paths in cases such as this.	Reply sent, no further action required	n/a
14	CA15.01(C)	Mr Jay Wilson (Friends of the John O'Groats Trail)	X			The extension of this core path is important because it designates a new section of the coastal JOGT. This will preserve this corridor for generations of walkers.	Reply sent, no further action required	n/a
53	CA01.05(C)	Network Rail (Mrs Lisa Cameron)			X	Network Rail previously objected to this route being included in the core paths plan and the reporter noted that it was premature to direct core paths over railway line until the legal review of level crossings by the Scottish Law Commission was completed. NR object to this proposal on the grounds of Prematurity and Lack of Force of Law. Recommendations of the law commission report expressly state legislation is required to make changes.	The Scottish Law Commission report clearly states that Local Authorities can designate a core path over land which falls within Section 6 of the Land Reform (Scotland) Act 2003, which includes railways. The draft bill, to which the Scottish Law Commission report leads, does not propose to give Local Authorities this power. This is clarified in para. 5.60 of the report; stating the proposed bill confirms this position (as opposed to creating such a power or new form of access rights). As directed by Scottish Ministers in July 2011 the Council has only reconsidered the above routes inclusion into the core path plan after the Scottish Law Commission report has been published. The Highland Council has reconsidered these routes and has concluded there is still a requirement for their inclusion in the core paths plan in order that the core path plan provides a sufficient network for the public in that area.	Retain proposed core path as promoted in the amended plan. See Map Altnabreac CA 17b.
64	CA04.14(C)	Mr Anson MacAuslan			X	Comments that extension is irrelevant at only 100m, does not agree with the plotting of the line for the existing core path.	Reply sent but no competent reasons in objection to respond to. Further comments by respondee relate to core path not amended in the consulted plan.	n/a






CA10.19(C)

CA10.01

CA10.18(C)

Map - CA 13c Swiney Hill

The Highland Council
Core Paths Plan
(Caithness and
Sutherland) Amended
- Modified

-  Core Path
-  Existing Core Path to be retained (not deleted)
-  Candidate (New) Core Path

0 30 60 120 Meters

October 2018



CA07.10

CA07.15(C)

CA07.16(C)

**Map - CA 6c
John O'Groats**

The Highland Council Core Paths Plan (Caithness and Sutherland) Amended

- Core Path
- Delete Core Path
- Core Path Change
- Candidate (New) Core Path

0 45 90 180 Meters


November 2017

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JOHN O'GROATS

Map - CA 17b Altnabreac

The Highland Council Core Paths Plan (Caithness and Sutherland) Amended

-  Core Path
-  Delete Core Path
-  Core Path Change
-  Candidate (New) Core Path

0 195 390 780 Meters

November 2017

