

### Historic, User, Landowner and Other Documentary Evidence for Fareham Footpath 3a

#### Historic and Documentary Evidence

1.1 This material should be read in conjunction with **Appendix 1**, an evaluation of historic documents. The documentary evidence is considered in chronological order.

1.2 There are a number of early commercial one-inch maps for Hampshire, and some of them do show features that may equate to the claimed route. These will be considered individually.

1.3 Isaac Taylor's map, dated 1759

This early commercial map shows three areas of settlement on that section of the eastern bank of the River Hamble that is the focus of this report. These are 'Saresbury', 'Brook' and 'Warsash'. Warsash is the most prominent of these. The map shows a wide route running along the shore, from the settlement along the shoreline, northwards, and to the west of Brook. It appears to be fenced on the side away from the water. This route is shaded ochre and this notation appears on the map's legend as '*Roads inclos'd with Hedges*'. It appears to peter out to the north west of Brook. This route may equate to the claimed path. This map lends some support for the presence of some kind of route along part of the shoreline of the Hamble in the eighteenth century, considered by the surveyor to be a 'road'. An issue with all early maps showing a route along the shoreline is whether there can be any direct relationship between routes shown in the past and the present Footpath 3a, because of erosion of that shoreline. If a highway falls into, or is washed away by, the sea, then the legal right is extinguished, and not re-created along the resulting new shoreline.

1.4 Thomas Milne's map, dated 1791

This map shows Warsash and Sarisbury Green, but there is no indication of any route along the shore of the Hamble. Milne shows routes between solid lines (fenced) and pecked lines (unfenced) and turnpike roads shaded brown, with mile markers, in the area. It is not possible to say whether no route along the shore is shown because none existed at the time of survey, or whether its absence is because no survey was undertaken of that area. This map offers no support for a historical origin of the footpath.

1.5 Ordnance Survey two-inch Drawing, dated 1779

This black and white drawing (marked as 'Three Inch Drawing' on the copy examined) is preparatory work for the first edition one-inch 1810 edition, discussed in the next paragraph. What may be a route runs along the shore north of Passage Lane and along Bunny Meadows. The shore profile is different from that of today, and this path reaches the northern boundary of Bunny Meadows. Here it stops and there is no route along the shore until a point further north, alongside Downkiln Copse up to where Crableck Lane reaches the shore. This map offers a degree of support for the existence of a

route running along part of the Hamble River bank, following the shore profile at that time.

1.6 Ordnance Survey old first edition one-inch map, dated c.1810

This map is the result of the first systematic survey of the country, its purpose being to identify routes on which men and military materiel could be moved. In view of the map's purpose, it is likely that the routes shown on this map are roads, though the most that can be derived from the map is that these routes were features of sufficient note that they were recorded by the surveyors. Warsash is shown, as is Holly Hill and Swanwick, as well as the bridge across the Hamble, between Bursledon and Swanwick. On this map, a route hugging the shoreline leaves Warsash and runs north until terminating at a property to the south of Holly Hill. There appears to be another section of route along a straight stretch of the shore to the west of Holly Hill, again starting at properties and end at a point where the shore curves north east. There is a difference in the profile of the shore up to where Universal Marina now is, making direct comparison difficult. This map also offers some support for a route along the shore in the early nineteenth century.

1.7 Christopher Greenwood's map, dated 1826

Although Greenwood's work is reputed to be closely modelled on the Ordnance Survey map of 1810, there is an indication that there may have been some re-survey work on this map. The map shows Warsash House, Holly Hill, and Brooklands and the shoreline looks more generalised. Unlike the OS first edition, no route is shown along the shoreline, except for perhaps a small section running north from alongside a property west of Brooklands, for a short distance. This map does not provide support for a route along the bank of the Hamble at this date.

1.8 Titchfield Tithe Map, dated 1839 (HRO 21M65/F7/234/2)

The shore as shown on 1839 Titchfield Tithe Map has a different profile in places from that of today. On this map, Swanwick Shore Road departs from Bridge Road, and runs from a point alongside the first property, just south of a black solid line jutting out into the river, in the same way that it currently does. A line is shown across the path on the map, suggesting a gate. Once the gate is passed, there is what appears to be a hard, shown by parallel pecked lines, jutting out into the river. The route, approximating to the current course of Footpath 3a, continues to run along the shore of the river, at a similar width to Swanwick Shore Road. Before this route reaches 'Brooklands', the outer edge of the route curves inwards and appears to terminate. The path has a solid line on the landward side, and a pecked line on the shore edge. It is coloured ochre. There is no plot number on this or any other part of Swanwick Shore Road. Other routes are shaded ochre on the map, and those that have plot numbers are to be found in the apportionment as having individual ownership, indicating that they are likely to be occupation roads. The claimed route is without such a number, and is likely to be included in the 'Roads and Waste' section of the apportionment accompanying the map (this section does not list individual routes, and gives an aggregate total figure). It is possible that this section of the route on the Tithe Map was a road in 1839, but there is nothing explicit on the map, such as a legend, to indicate this status, or whether

it was public or private in origin. A little further south from this termination point, halfway along a lobe of woodland close to the shore, a path shaded ochre and without a plot number, shown between double pecked lines, comes in from Brooklands, and runs parallel to the shore. It goes to Brooklands Quay, where it ends. What is shown on this map, at the Swanwick Shore Road end of the path, supports the historic existence of a section of the current route.

1.9 Ordnance Survey County Series 1:2,500 1<sup>st</sup> edition, c.1871

This map is the first edition of a survey of the country by the Ordnance Survey published at the large scale of 1:2,500, showing greatly enhanced detail. The configuration of the footpath at this time is very similar to that shown at the northern end of the Titchfield Tithing Map, discussed above. The County Series map shows Swanwick Shore Road (now the U481), where Fareham Footpath 3a begins, and it carries the plot number '440'. It is the convention that these plot numbers are placed in the middle of the feature that they refer to. The placing of this number indicates that the area of the feature is from the junction of Swanwick Shore Road with what is now Bridge Road, including the first section of the current Footpath 3a to a point north west of Brooklands. Only the section that is Swanwick Shore Road is coloured ochre. The route then appears to narrow down and terminate. The book of reference gives plot 440 as 'public road'. Another, narrow, path runs from this termination point, shown by a pecked line on the west and a solid line on the east, southwards along the shore. This is also shaded ochre. The high water mark was not so close to the shore at this time as it is now. This path passes are large property and continues past it between parallel pecked lines, following the shore line. Past an inlet, it appears to be on some kind of embankment. The profile of the shoreline in the 1860s and 1870s is not exactly the same as now. The path continues south on the embankment, for a stretch between solid boundaries. There is a breach in the path, a little way south of where Crableck Lane approaches the shore to just north of Downkiln Copse. The way continues south, in places embanked, down the shore past Downkiln Copse, what is now Bunny Meadows, and terminates near a hard, north of Warsash House. This seems to be the same hard as that used as a termination for the Hamble Ferry now. It is north of the current termination point at Passage Lane, which is plot '1039', described as a 'public road'. This map provides support for the existence of Footpath 3a from at least the 1860s, when the survey work for the map would have been done, and suggests that a short section at the northern end was a public road, for general purpose use.

1.10 Ordnance Survey County Series 1:2,500 2<sup>nd</sup> edition, c.1895

This map shows the outline of the section of road, plot 440 on the first edition, with a single pecked line running along it. There is a line across it where Footpath 3a starts, suggesting there might be a gate. From the termination point, the path continues with a pecked line and a solid line in a similar way to that in the first edition. The mean high water mark is in a similar position to that shown on maps today. Where the path reaches the property now known as Brooklands Quay there is a long strip of land, braced with another plot, which is suggestive of a way, and connects two sections of the path. South west of Brooklands Quay, there appears to be a line across the path, suggesting a gate. In the position where the present Footpath 3b joins 3a, the letters 'F.P.'

appear, indicating the reputation of the path at the time of the survey as footpath. The gap in the path shown on the first edition has been filled at the time of the survey of this map. It continues on to the current termination point, and continues on parallel with Passage Lane. There is a small square structure to the west of the path close to the hard serving the Hamble Ferry. The letters 'F.P.' next to the most southern section of the path indicates that this section had the reputation of being a footpath at the time of the survey. There is nothing on the map to indicate whether this footpath was public or private in origin. This map is also supportive of a historical origin for this path.

1.11 Ordnance Survey County Series 1:2,500 3<sup>rd</sup> edition, c.1909

The profile of the public road section at the northern end of the path is still evident, but there is a line across it, suggestive of a gate at the point where the present footpath starts. The strip of land at Brooklands Quay looks more like part of the path, and where the section indicated by pecked lines continues the letters F.P. are placed against the path, again indicating a reputation as a footpath. There again appears to be a gate to the south west of Brooklands Quay. The same letters are placed against the path close to the junction with Footpath 3b. The path is continuous, on an embankment past Downkilm Copse, and F.P is found close to the path as it passes Bunny Meadows and in a similar position in the southernmost section of path reaches the junction with Passage Lane. There is a small structure on the path, which deviates round it, at the position of the hard which serves the ferry to Hamble, the route of which is shown on the map. This map serves to reinforce the suggestion that the whole route is a footpath.

1.12 Fareham Rural District Highway Handover Map, 1929 (HRO H/SY3/6/7)

This map is one of a series, produced when the responsibility for highway maintenance was transferred from the rural districts to the County Surveyor at the County Council, in 1929. These maps are designed to show what routes were thought to be publicly maintainable, and the accompanying legend covers '*Public Highways (Carriageways)*', subdivided into those repaired by District Councils, and those '*repairable ratione tenurae*' (meaning a public road maintained privately by reason of tenure) bridges on public highways (carriageways), and '*Public Footpaths (other than those at side of Carriageways)*', along with gravel and other pits, and railway bridge approaches. The compilation of these maps was not a public process, and we do not know what research went into compiling them (including whether inclosure awards and tithe maps and apportionments were consulted). On the Fareham map Swanwick Shore Road is shown as a metalled public carriageway, and Fareham Footpath 3a is depicted as a dotted black line. The legend indicates that this route is a '*public footpath other than at the side of carriage – not repaired*', and this map provides support for the being considered as a public footpath at this time.

1.13 Ordnance Survey County Series 1:2,500 4<sup>th</sup> edition, c1930s

In contrast to the previous edition of this map, the map does not show a solid line across the path where it leaves Swanwick Shore Road, but area pecks. This edition labels the route as 'F.P.' and, like the previous edition, braces it to the land to the west, up to the mean high water mark. It is shown as being on

an embankment for a short distance, and runs between a solid and pecked line. Where on the previous editions showed a gate to the south west of the property now known as Brooklands Quay, this map shows area pecks only. The path runs across the slipway at the shipyard (now Universal Marina), and then continues on an embankment, also marked F.P. The path continues south along the edge of the shore as shown in the previous edition, marked as F.P. as it passes by Bunny Meadows, and shows the structure by the hard for the ferry. At Passage Lane, there is a similar structure across the path, as shown on the third edition. This map also provides support that this route was considered to be a public footpath in the 1930s.

1.14 Letter from Mercantile Marine Department, Board of Trade to Fareham Urban District Council, date 2<sup>nd</sup> November 1938 (HRO 64M76/DDC/677)

This letter refers to '*a breach in the bank on the east side of the River Hamble opposite Sarisbury Court*' [to the east of Fareham Footpath 3b]. The letter discusses the ownership of the land where the breach has occurred, which was '*conveyed by the board of Trade on the 10<sup>th</sup> September, 1881, to the late Mr. Quintin Hogg for the purpose of a reclamation scheme*'. The rest of the letter concerns itself with a covenant in the conveyance relating to repair of the bank. This letter indicates the presence, and position, of a breach in the bank of the river in 1938.

1.15 Map showing breach in Fareham Footpath 3a, dated 20<sup>th</sup> May 1939 (HRO 64M76/DDC/677)

This map, at a scale of 1:2,500, shows a section of Fareham Footpath 3a. It is the section south of the junction with Fareham Footpath 4 (point B on the map accompanying this report), down to a point south of Wendleholme Nature Reserve. The map shows Footpath 3a running along the shore on an embankment, shaded blue, and marked 'F.P.'. An alternative network of footpaths inland from the shoreline is shown by a pecked purple line. These two paths bear some relationship to the present Footpath 3b, and the path running parallel to Footpath 3a is labelled '*Path formerly used at Low Tide*'. A second path, running further inland is marked '*Path formerly used at High Tide*', and both paths are connected to Footpath 3a by two short stretches of path running west-east, the northern one utilising a footbridge (marked 'F.B.'). Yellow colouring has been applied to a strip of embankment immediately to the east of Footpath 3a, and this is marked '*Sea Defence Works constructed 1881, by Sir Quinton Hogg, shown coloured yellow*'. The '*existing footpath [is] shown coloured blue*' and the '*Approximate position of Breach*' is shown marked between two black pecked lines, at approximately the middle of the stretch of sea defence works, at the point marked 'FB' on the map supplied with this report (opposite Fareham Footpath 3b). This map firstly gives support to the proposition that this route was reputed to be a footpath in 1939, and records the position of a breach in the path mentioned in a letter of 1938.

1.16 Highways Maintenance Map (Droxford Division), c1946 (HRO H/SY3/3/24/4)

This is an internally produced County Council document intended to show which highways are considered to be its responsibility. Bridge Road, Barnes Lane and Brook Lane are shown shaded, pink and green respectively.

Fareham Footpath 3a is not indicated as being a highway considered by the County Surveyor as being publicly maintainable, at this time.

1.17 Aerial Photograph of Hamble River, April 1949 (HRO 134M87/156)

The photograph shows a stretch of the Hamble River from Lower Swanwick to Warsash. Footpath 3a is shown along the river bank, and is obscured at its northern end by overhanging trees. The photograph is indistinct, but there are two possible breaches visible, one by the property known as 'The Walled Garden', and the outlet to the south of Otterholme, both south of point B on Plan 1, by Fareham Footpath 3b.

1.18 Fareham Parish Map (undated)

The Definitive Map was compiled as a result of the provisions of the National Parks and Access to the Countryside Act of 1949 (Part IV). The County Council, as the surveying authority asked parish, borough and district councils for assistance in providing information on routes that were capable of being shown on the Definitive Map. Each council was sent an Ordnance Survey map and invited to indicate on it those routes considered to be public, and to suggest at what status each route should be recorded. This process took place in the early 1950s. The map for Fareham shows Footpath 3, as it was then designated, drawn in with a purple line in a similar way to what is shown on the current Definitive Map. There is no existing correspondence available to the investigation regarding the process for this route, and an examination of the representations made to the draft map indicates that no-one challenged its inclusion on the Definitive Map.

1.19 Definitive Map for Fareham, first edition dated 1952 (HRO H/CL1/2/4)

The first Definitive Map for Fareham Rural District was published on 16<sup>th</sup> June 1952, based on the Ordnance Survey 1:10,560 map. The claimed path is shown by means of a solid purple line running down the river bank, from Swanwick Shore Road to Passage Lane. It is continuous, and includes a branch (now Fareham Footpath 3b) inland from the shore to the west of Sarisbury Court, which is the equivalent of the path used at high tide marked on the 1939 map discussed at paragraph 1.15 above. The designation of this path as a public footpath indicates that the public right is to pass and re-pass on foot only. What is shown on the Definitive Map is legally conclusive, but without prejudice to there being other rights not currently recorded.

1.20 Definitive Statement for Fareham Footpath 3, second edition, dated 1<sup>st</sup> May 1958 (HRO H/CL1/2/30c)

The first Definitive Statement for Fareham Footpath 3 has a sticker dated 1<sup>st</sup> May 1958 on its first page, but the original version is dated 16<sup>th</sup> June 1952. It reads:

No. 3 From Swanwick Shore Road along river bank to Passage Lane, Warsash

Footpath

*Through gate near foreshore, southwards along foreshore at low tide, or along river bank to entrance gate to "The Barn". Footpath is not accessible at high tide beyond this point. Footpath opposite the Solent Shipyards is obstructed*

*(access is through yard). First breach in the river bank occurs approximately 50 yards north of old footbridge opposite Down Kiln Copse, and further breaches have occurred and the footpath is now isolated for nearly a mile. Footpath northwards from Passage Lane along river bank is obstructed by coast erosion south of Brook Avenue.*

1.21 Memorandum from Fareham Parish file, dated 25<sup>th</sup> May 1956

This memorandum is from the Clerk of the County Council to the County Surveyor, and its subject is 'Winns Path', leading down to the sea wall. The opening paragraph states that '*Since 1942 complaints have been frequently received of conditions in Sarisbury and Warsash arising from breaches in the River banks*'. These two settlements are on the east bank, and the memorandum contains evidence that there were multiple breaches in the river bank between 1942 and 1956, supporting the evidence of 1939 that the bank was becoming vulnerable to breaks, even on a stretch where sea defences had been constructed in 1881.

1.22 Letter from Clerk to Fareham Urban District Council to County Surveyor, dated 2<sup>nd</sup> August 1956 from Fareham Parish file

This letter refers to a breach in the river, and to a local resident who the Clerk feels '*is concerned about the tendency of people wishing to get from Sarisbury to the lower reaches of the river, and whose course is broken by the breaches*' walking across his property. This letter provides support for the previous evidence of breaches in the river bank, and indicates that walkers were finding it difficult to use the path on foot because of them.

1.23 Definitive Map for Fareham, second edition dated 1<sup>st</sup> May 1958 (HRO H/CL1/2/30a)

Fareham Footpath 3a is shown in the same way on this map as it was on the first edition discussed at paragraph 1.19 above.

1.24 Report of Mr. Gill on Fareham Footpath 3, dated 24<sup>th</sup> February 1961, from HCC Hamble River file

Mr. Gill describes the path, opposite Brooklands estate, as '*submerged at ordinary spring tides and is impassable*'. Apparently the alternative path for use on these occasions was not useable at the time of his survey in 1961. This is the path described in the Definitive Statement. The report concerns itself with this alternative path, and mentions that a deed was drawn up to ensure Martin de Selincourt's heirs maintained the alternative and original path into which it fed, but this was never signed. The 1961 description of the path by the de Selincourt's house may indicate that the failure of this binding covenant to repair the 1934 work (see paragraph 1.25 below) may have led to fresh problems for path users.

1.25 Letter from Field Roscoe Solicitors to Fareham District Council, dated 13<sup>th</sup> March 1961 from Fareham Parish file

The writer of the letter was a solicitor who had acted for the de Selincourts, previous owners of Brooklands. The letter describes the '*present shore path*' running '*for the most part at the very edge of the foreshore*', but '*on a sort of bank*' where it passed Brooklands House and grounds. This path had been made up by Martin de Selincourt in about 1934 '*in order to overcome the*

*difficulties which had arisen*, namely that *'the old path used frequently in the past to become founderous, particularly during the springtides, and the public then exercised their common law right to divert from the path which was impassable'* by going through the grounds of Brooklands House. The writer stated that Mr. de Selincourt *'spent a very substantial sum in making up the path properly...so that it does not at any time, except on very very rare occasions become impassable'* making it unnecessary for the public to divert from it. This letter provides evidence of the poor condition of the path prior to 1934 and another instance of efforts to protect the footpath by doing defensive works on the water's edge.

1.26 List of comments received from HCC Hamble River file, undated but early 1970s

This is a document recording comments received on proposals to provide shore paths on the banks of the River Hamble. Under 'Comments Received' 'RIGHTS OF WAY', the first entry reads *'wants the breach in the Fareham F.P. No 5 from the old Warsash Ferry Hard at the termination of Brook Avenue restored'*. Other comments received support the restoration of the shore footpath, *'including the breaches in the eastern bank'*. This document confirms that the breaches in the bank continued into the 1970s, and there was public support for a complete restoration of the path from Swanwick to Lee, particularly singling out the breaches. It has already been shown that the public were complaining about these from at least 1942.

1.27 Ordnance Survey National Grid Map, 1:2,500, dated 1964-1965 (HRO)

This map shows Fareham Footpath 3a leaving Swanwick Shore Road, with a line across the route suggestive of a gate by the property known as Tidemark. The first part appears to be between solid boundaries, and then is depicted running between parallel pecked lines (suggesting a break in surface) to the west of a fenced boundary. Past the property called Longreach there are marks to the west of the path indicating it is on some kind of embankment. The path, shown by parallel pecked lines past Brooklands Farm, goes through the Universal Marina, round the buildings and the slipways, and follows the shore, crossing a drain by means of a foot bridge. The path then turns south, with a solid boundary on the water side, a pecked line landward and marks suggestive of an embankment. It continues in this way to a breach, alongside the northern part of Downkiln Copse. Across the breach the path continues in a similar way, ending in a breach by a property called Otterholme, which had a landing stage indicating that the breach was used to give boat access to the property. This breach seems to equate with the breach shown in the 1939 map (see paragraph 1.15 above). The path resumes further south and continues along the shore to reach another, more extensive, breach, south of the property called Wendleholme. There appears to be a water channel through the mud, out into the river. At the southern end of the breach, the map shows the path, running south on an embankment, until it reaches a further breach at the southern end of Bunny Meadows, where Footpath 5 now meets Footpath 3. The path then continues on the other side of the breach, parallel to the shore, past the Ferry hut, and down to Passage Lane. This map illustrates the constant threat that Footpath 3 faced (and still faces) from the tides and

erosion, showing four breaches, all of them providing challenges to users of the footpath.

1.28 Definitive Map and Definitive Statement for Fareham, third edition dated 1<sup>st</sup> January 1964

1.28.1 This map is on a scale of 1:25,000 and shows Fareham footpath 3 by means of a solid purple line along the east bank of the Hamble River, with the high level path near Sarisbury Court also shown in the same way.

1.28.2 The text of the Definitive Statement was as the original version published in 1952/1958 (see paragraph 1.20). However, new text has been pasted in and this reads:

*From Swanwick Shore Road along River Bank to Passage Lane, Warsash Footpath*

*Through gap at side of gate below "Tidemark" southwards along shore road at low tide or along upper path on bank passing "Brooklands". Footpath is not accessible at high tide beyond this point. Footpath opposite Solent Shipyards is obstructed (access is through yard). First breach in the river bank occurs approximately 50 yards north of old footbridge opposite Down Kiln Copse, and further breaches have occurred, and the footpath is no isolated for nearly a mile. Footpath northwards from Passage Lane along river bank is obstructed by coast erosion south of Brook Avenue.*

1.29 Extract from Sales Particulars for Otterholme, Holly Hill Lane, dated 1965 (HRO 157M89W/189)

The sales particulars contain a photograph of the property Otterholme, and include a photograph captioned 'view from the residence'. This is taken from the bank, looking out to the River Hamble in the background, with a solid path down to a landing stage. The solid path is augmented, in the water, by a structure which looks to be constructed from scaffolding poles with a walkway constructed by planks of wood. The landing stage is in the middle ground of the photo, and coming in from the north is a spit of land which the National Grid mapping discussed at paragraph 1.27 would suggest is Footpath 3a, reaching one of its breaches. The spit stands proud of the water and seems to be covered with grass. The tops of posts can be seen just above the grassy surface of the spit, and these continue as the land drops away. More of the posts are visible at this end, and the structure seems to be some kind of fencing, with horizontal planks of wood fixed between the posts. There is one separate post, and then two further fence sections are standing, isolated, to the south of the landing stage. There is a further structure made of more scaffolding poles by these two fence panels. It is not possible to gauge the distance between the end of the landing stage and the very end of the spit from this photograph, or whether there is any gap between them. What this photograph does confirm, however, is that there appears to have been no bridge over this breach in 1965, or thereabouts, and no evidence has been produced that there was a bridge across this breach until the construction of what is known as the 'Chinese Bridge'.

1.30 Letter from McCarrahers to the Clerk of the County Council, dated 10<sup>th</sup> May 1967, from HCC Hamble River file

This letter makes reference to the footpath on the eastern bank of the river, from Bursledon to Southampton Water and that, to the north of Moody's Boatyard at Warsash, *'it has already disappeared into the River'*, and *'over a number of years a considerable amount of meadow land and also part of the public footpath has completely disappeared and become tidal through lack of action, presumably by the owners of the land'*. This letter provides further evidence of the difficulties in preserving a complete footpath for the public at this location.

1.31 Memorandum from the Clerk of the County Council to the Engineer of the River Authority, dated 30<sup>th</sup> December 1968, from HCC Hamble River file

This memorandum is headed *'River Hamble – Public Footpath running along the Sea Wall'*, and refers to a letter from Fareham Urban District Council about the public footpath on the sea wall on the eastern bank of the river in its district. The writer was asking if the Urban District Council *'had any proposals for repairing the footpath along the sea wall'*, and *'whether this sea wall is to be repaired or whether in fact it is gradually being abandoned and what consequences might stem from an abandonment'*. This document illustrates that, while attention was being paid to the condition of Footpath 3a and the embankment on which it runs by the highway authority, local authority and river authority, the breaches persisted.

1.32 Ordnance Survey National Grid Map 1:2,500, dated 1972 and 1973

Footpath 3a leaves Swanwick Shore Road at the house called Tidemark, where a line across the path indicates the presence of a gate. It runs between solid boundaries for the first stretch to the next house, Longreach, and then between parallel pecked lines southwards, and partly on an embankment, like the previous edition. The only other map from this edition of the National Grid available to this investigation shows the section of path running between parallel pecked lines and on an embankment to the west of Bunny Meadows, at the southern end of the path. The breach where Footpath 5 forms a junction is still open and unbridged. The path then continues between pecked lines, and then between a solid and pecked line and embankment, past the Ferry Shelter, to meet Passage Lane. Though the available mapping of the path at this time is limited, this evidence shows that there was not a complete path in the early 1970s.

1.33 Ordnance Survey National Grid Map, reproduced at c1:10,000, dated early 1970s, from HCC Hamble River file

This map shows Footpath 3a running along the river bank, including the four major breaches already detailed. These breaches must have affected all users of the footpath.

1.34 Letter from D.J. Folland to the County Council, dated 7<sup>th</sup> July 1976, and reply dated 14<sup>th</sup> July 1976, from Fareham Parish file

This letter was written by Mr. Folland, a local resident, who states *'The footpath from Swanwick Shore to Warsash is impassable as you no doubt know at several points below Crableck Yard due to breaches in the River Wall'* and asks whether repairs would be made. The Assistant Solicitor replied that *'It is most likely that the breaches in the Bunny Meadow wall will be sealed as part of a scheme which will have benefit in a number of fields'*, and that *'At the same*

time, the sealing of these breaches would permit the reinstatement of the footpath'. He explained that there were conflicting interests at Bunny Meadows in terms of its ecology and state, and these had not yet been reconciled. This correspondence illustrates that the mid-1970s had still not a complete footpath for users.

1.35 Letter from Mrs. S. Hall, Hampshire Treasures Survey Field Correspondent, to County Recreation Officer, dated 9<sup>th</sup> May 1977, from HCC Hamble River file

The subject of this letter is the River Hamble Policy Document. She points out that much of the salt marsh of the Hamble has been destroyed by '*the building of the sea wall*'. She addresses local feeling, saying that '*there is I know a very widely held wish of local people for the restoration of the riverside footpath*' and feels this can be achieved, alongside the other objectives. This letter illustrates that local people had been deprived of the full use of Footpath 3a as long as there had been breaches in it.

1.36 Survey of Fareham Footpath 3 by R. Brakewell of the Ramblers' Association, dated 29<sup>th</sup> July 1978

Mr. Brakewell walked the length of Fareham Footpath 3 from Passage Lane to Swanwick Shore Road and recorded what he saw. In his entry for the path location he notes '*(Path only viable at low water)*'. About 270 metres north of the Ferry Hut he notes a breach, which he describes thus '*At low tide the breach is 3 – 4 metres wide with a depth of water up to ¼ metre. At high tide the breach is impassable*'. Fareham Footpath 5 '*joins the path at this point...across an expanse of mud*'. A second breach is encountered about 530 metres further north, of which Mr. Brakewell says '*This breach is impossible to all but the foolhardy (footpath surveyors exempted!) at all states of the tide. Several beached vessels (wrecks) are slowly rotting and present a potential death trap to children who often play around them. The breach is approximately 10 metres wide*'. A further 215 metres north finds another breach '*which can be crossed at low water on mud and seaweed covered stones...10 metres wide*'. Sixty metres on there is a fourth breach which '*can also be crossed at low water on mud and stones, but this is 15-20 metres wide*'. A further breach occurs 140 metres along the path, '*which is merely a gravelly depression at low tide (3-4 metres) wide*'. The last three breaches are described by the surveyor as '*can be crossed at low tide; impossible at high tide*'. When Mr. Brakewell reaches the northern end of the path he notes a '*footpath sign (iron, public footpath) and notice "Footpath only Parking of vehicles strictly prohibited"*'. This very detailed description of the whole path, made in 1978, illustrates the difficulties to be encountered by users of the footpath at this time, suggesting that the second breach might be something that very few might attempt to negotiate, and that even the shallower ones were difficult or impossible at high tide.

1.37 Letter from W. Saunders of the Rotary Club of Locks Heath to the County Surveyor, HCC, dated 3<sup>rd</sup> October 1978, from HCC Hamble River file

The Rotary Club of Locks Heath had asked in 1975 about '*the feasibility of opening fully the Public Right of Way from Swanwick to Warsash, along the course of the River Hamble. The Community Service Committee was of the opinion that it was rather too extensive a task for the Club to undertake*'. A

handwritten comment on this letter indicates that some restoration action was being planned by the Hamble Harbour Authority and the Recreation Committee of the County Council, and indicates that pressure to make Footpath 3a fully usable was coming from several quarters in the late 1970s.

1.38 Note from 'C.C.B.' [Colin Bonsey, County Recreation Officer] to the Hamble Harbour Master, dated 3<sup>rd</sup> April 1979, from HCC Hamble River file

The County Recreation Officer discusses how the footpath breaches number 2 and number 3 at Bunny Meadows can be dealt with in the context of the '*strategy for protecting sensitive areas*'. There appears to have been an understanding that the objective was to restore the footpath along the river wall, and the '*concept of a bund running across the marshes was an engineering suggestion as an alternative way to bridging breach No. 3*'. This memo indicates that the restoration of the path on the embankment has not been a straightforward matter, because of geography and ecology of the inter-tidal area in which it lies.

1.39 Note from Hamble Harbour Master to J.M. Pell, dated 29<sup>th</sup> March 1979, from HCC Hamble River file

This note is also concerned with the breaches at Bunny Meadows, and outlines the aim of the operation there to be: '*to preserve the river regime*'; '*to restore and improve the footpath*'; and '*to preserve the ecology of the meadows*'. The Harbour Master notes that '*each stage of this operation must lead to the final objective*'. He adds '*I thought that it was the intention to open this area to the public along footpaths, not to keep it as a private enclave for immediately local residents...Not everyone has the time and energy to walk the whole length and back, and access to Brook Avenue and Cawtes Copse as well as to Sarisbury Green via Holly Hill or Crableck Lanes will provide walks of different lengths through varied scenery including a chance to see the wildlife in the meadows now denied to all but a few*'. The concluding remarks of the Harbour Master imply that the use of Footpath 3 in the late 1970s was sufficiently difficult that access was available only to those living in the immediate area of the footpath.

1.40 Extract from the 'Hamble Ferry' Booklet, first published 1979, republished 1983, 1988 and 1992 (HRO TOP144/1/6)

This booklet chronicles the history of the crossing of the Hamble river between the villages of Warsash and Hamble, the ferry being operated at the time of writing by Mr. Ray Sedgwick. '*His passengers consist of local inhabitants, ramblers and cyclists, with a seasonal peak due to summer visitors and yachtsmen. There is also a hard core of regular passengers who commute across the river throughout the year to local industries and colleges. The ferry can carry up to 12 passengers and if the boat is not completely full, a few bicycles can be laid across the bows*'. This account confirms that cyclists have been using the path to reach the ferry in 1979 and in subsequent years. The ferry departs from a point on the path some 212 metres north of point D (the southern termination of the path) on the plan accompanying this report. There is no information as to where the cyclists came from, and from which direction they had approached the ferry.

1.41 Follow-up notes to River Hamble Working Party dated 18<sup>th</sup> June 1979, from HCC Hamble River file

The minutes of this meeting report that the scheme to restore the east bank of the River Hamble was '*now in the approved Recreation Committee Capital Programme*' and '*it was hoped to commence Phase I during October of 1979*'. The point at which a decision was officially made to restore the Footpath 3a is chronicled in these notes.

1.42 Map of Fareham Footpath 3a, prepared for a Recreation Committee site visit on 14<sup>th</sup> December 1979, from HCC Hamble River file

This map was prepared to show the meeting place for a site visit of the Recreation Committee, at Otterholme. The map shows the path and approaches to it, ending at the point that Bunny Meadows start. The map has been annotated with prominent features and shows four of the five breaches in Footpath 3a. The first breach shown is marked '*No 2 Breach*', (the first breach - not shown on the map - is where Fareham Footpath 5 meets the shore path). Breach No 2 occurs where a stream running through Holly Hill Woodland Park meets the main river. No 3 Breach was just to the west and almost opposite Otterholme, and this is the location of the present Chinese Bridge. No 4 Breach is a short distance to the north of No 3 Breach, and No 5 Breach is about 175 metres further north of No 4. This map indicates that, in late 1979, that No 5 was the first breach south of Swanwick Shore Road. The concentration of four breaches in a section of Footpath 3a about 750 metres long, from 1942 onwards (with one shown on a map of 1939) must have had implications on use by the public. Further, the recording of the provision of an alternative higher level path for the section passing Brooklands, north of the breaches, in the Definitive Statement of in 1954, indicated that actually only quite limited sections of the whole footpath were routinely passable by users. The correspondence discussed above shows that there was dissatisfaction amongst the public with this state of affairs, and it took nearly 40 years to reach a position that this could be tackled.

1.43 Letter written by W.B. Griffin, to the County Secretary HCC, dated 11<sup>th</sup> March 1983, from HCC Hamble River file

This letter serves to confirm the decision reached by Mr. G.J. Bryan, an inspector who held a public inquiry into the diversion of what is now known as Footpath 3b, away from the properties called The Cottage, Ashwick House and Duneagle. Mr. Griffin quoted from the decision letter's conclusions (paragraph 39) that '*If the present path is not diverted the public generally will not be able to enjoy the benefit of Footpath No. 3 as a whole unless, and until, the breach in the river bank is repaired*'. The plan accompanying the diversion order, made on 13<sup>th</sup> February 1981, shows a large breach (No 3 on the map discussed at paragraph 1.42) west of Otterholme, with the landing stage, discussed at paragraph 1.29, shown jutting out into it. The inspector had found, as fact, that '*a track along the line of the footpath was shown on the 1932/33 Ordnance Survey "County Series" map of the area. But by the time the footpath was included on the Definitive Map produced by the Hampshire County Council in 1954 developments since 1932/33 had rendered the track or path virtually impassable as it is now*', confirming the difficulties of passage on the path since the early 1930s.

- 1.44 Letter from Councillor T.N. Hall to Deputy County Recreation Officer, dated 20<sup>th</sup> March 1983, from HCC Hamble River file

Councillor Hall had contacted the County Council because he *'was worried about the use of the footpath along the recently restored eastern bank [of the Hamble] by horses and their riders'*. Further, he had *'noticed that this useage is increasing'* and he gave two examples of use that he had seen, one involving two girls, and the second one girl, both riding from north to south along the path, nine days apart in March 1983. He did suggest *'that something must be done pretty soon to stop the use of the footpath by horses and their riders'*. This directly confirms that horse riding has taken place on Footpath 3a.

- 1.45 Note from D.A. Gleave (County Planning Officer) to the County Recreation Officer, dated 23<sup>rd</sup> March 1983, from HCC Hamble River file

The County Planning Officer provides further confirmation of use by horse riders in his note, in which he states that *'we are already having problems with horses coming from the riding routes in Winnards Copse and along the river bank footpath'*.

- 1.46 Letter from W.A. Bide, Senior Rights of Way Officer to Councillor T.N. Hall, dated 23<sup>rd</sup> March 1983, from Hamble River file

On the same day, Mr. Bide replied to Councillor Hall about the horse riding on Footpath 3a, informing the Councillor that he had visited the path, and agreed *'that something needs to be done'*. There was to be discussion as to *'what sort of barriers we need to put up'*, so that he could get on with installing them right away. This correspondence indicates that barriers were considered to be the way to stop increasing horse use.

- 1.47 Ordnance Survey National Grid Map 1:2,500, dated 1985 (HRO)

Two extracts from this map show the most northerly part of Footpath 3a. The structures on the west of the path at Tidemark are no longer shown, and the entrance to the path is clear and ungated. The land between the shore and the path is marked *'shingle'*. The path appears to be fenced as far as the neighbouring property Longreach. It continues between parallel pecked lines from there southwards. The path is marked on the map as *'(um)'*, that is unmetalled. The second extract shows the path going south west, past Brooklands, where its unmetalled state is reiterated. Of note is the fact that the mean high water mark coincides with the edge of the path, illustrating the path's low-lying character on this bend.

- 1.48 Letter from J.D. Nunn to the County Secretary Secretary, dated 29<sup>th</sup> February 1984, from HCC Hamble River file

The letter refers to restoration work on the Crableck to Wendleholme section of footpath 3a, nearing completion at the time of writing. Mr. Nunn asked *'that steps are taken to see that the regulations, bye-laws or whatever they are, governing the right to use the aforesaid footpath are more strictly enforced'*. He describes the path as a *'general free-for-all involving cars, vans, motor cycles, mopeds, cycles and horse riding'*. On Sunday 19<sup>th</sup> February a party of anglers set up their pitches on the bank near Brooklands Farm, and Mr. Nunn could not believe that this *'widespread use'* was legitimate. In his view, *'it is largely responsible for the very poor condition of the footpath between*

*Swanwick Shore Rd and Crableck. If the newly restored stretch it put to similar use it will very quickly become as bad.* This letter provides another snapshot offering specific details about use of Footpath 3a in the early 1980s. It appears that there was nothing on the path to stop use other than by walkers.

1.49 Note from W.A. Bide to E.W. Mason, County Secretary, date 16<sup>th</sup> March 1984, from HCC Hamble River file

Mr. Bide asked Mr. Mason whether the subject of Mr. Nunn's complaint should be dealt with by Fareham Borough Council. In Mr. Bide's view Mr. Nunn was referring to a section of the path forming a vehicular access to properties and used by delivery vehicles as well as residents. He described it as *'extremely difficult to control unauthorised vehicles here. The stretch south of Crableck will be easier to control when restoration work is complete'*. This comment highlights the difficulty, in some situations, of stopping unauthorised use of paths, and points to Footpath 3a being used at this time by all classes of users.

1.50 Letter from W.A. Bide to Mr. A. King, dated 25<sup>th</sup> May 1984, from HCC Hamble River file

Mr. Bide informed Mr. King that he had walked to path from Lower Swanwick to the branch at 'Otterbourne' [Otterholme?] with Mr. Davey from Fareham Borough Council. Mr. Davey was going to put up signs at the boatyard showing the route of the path and was *'considering some barriers to stop horses and motor cycles'*. Otterholme is south of point B on the map with this report, and it is not stated where these barriers would be set up. However, it indicates that the problem of preventing unauthorised use of the footpath was being seriously considered.

1.51 Annotated extract from Ordnance Survey National Grid map, c. April 1986, from HCC Hamble River file

This annotated map shows the section of Footpath 3a that runs past Brooklands and Brooklands Farm, and is connected with a scheme to provide a path down to the river from the A27, Bridge Road. The section of Footpath 3a from Brooklands to Brooklands Farm is bracketed and a handwritten note says *'Make good riverside footpath'*. A handwritten note by Roger Prescott notes *'The path through the wood may be difficult getting down to the riverside path. The latter is in a poor state of repair'*. This section is north of Crableck, and there had been recent restoration works between Crableck and Wendleholme. The path down to Brooklands Farm (now Brooklands Quay), subject to heavy use in 1984, was already in a very poor state of repair then.

1.52 Press Release from the HCC's News and Information Unit, dated 15<sup>th</sup> September 1986, from Fareham Parish file

The press release announced that men of the Royal Corps of Transport were to assemble a bridge on Footpath 3a, on the 17<sup>th</sup> September 1986. This was to *'form the final link in a two-mile riverside walk from Warsash to Swanwick on the River Hamble'*. Further *'Erosion of the river bank footpath over many years has made it almost unusable. Long sections have sunk to nearly water level. At one point, the river has breached its bank and formed a small lagoon, cutting the footpath completely. It is at this point that the wooden bridge will be placed, to carry the path over the lagoon'*. The release also refers to restoration work on the footpath which took place over several years by Hampshire's County

Surveyor. The installation of this bridge represents the first time, since 1939, when Footpath 3a was complete and unbreached. Arguments about the condition of the northern section of the path notwithstanding, this was the first time in 47 years when users could, theoretically, walk from Swanwick Shore to Warsash, along the eastern bank of the Hamble River, without having to negotiate any breaches.

1.53 Memorandum from the County Secretary to the County Estates Office, dated 19<sup>th</sup> August 1987 and reply from W.A. Bide dated 26<sup>th</sup> August 1987, from HCC Hamble River file

This correspondence relates to Bunny Meadows, in the County Council's ownership. A complaint had been received that *'not only are contractors' vehicles being driven along the public footpath but also motor cycles and other vehicles'*. The County Council was being asked what it was going to do to *'prevent such improper use of the public footpath'*. Mr. Bide replied on 26<sup>th</sup> August that the *'Recreation Department erected a single bar gate south of the ferry on the river bank to prevent access by horses and vehicles some 18 months ago'*. The barrier had been accidentally left open, and that the *'hasp and staple have been removed by persons unknown'*. Mr. Bide had arranged for this to be replaced and the gate to be locked. This correspondence pinpoints the placing of the horse and vehicle barrier at the southern end of Footpath 3a, remains of which can still be seen, to about February 1986.

1.54 Fareham Borough Council publication 'Conservation Area Character Assessment Swanwick Shore', published 1998 (provided by Mr. and Mrs. Betts)

Swanwick Shore is one of 13 designated conservation areas in Fareham, and the assessment seeks to identify the characteristics justifying the status. The public hard and river frontage were a part of the conservation area. The section on signage, street furniture and lighting draws attention to *'the clutter and size of signs either end of the car park [at Swanwick Shore Road which] is visually damaging'*. An accompanying plan indicates one of these as being at the entrance to the footpath, to the west of Tidemark. A photograph of that sign is shown on the following page, and captioned *'Inappropriate signage and street furniture'*. The photo shows a lamp post in front of a telegraph post, next to a sign on two posts. This sign is of green wood and reads, in white lettering *'THIS FOOTPATH MAY BECOME FLOODED AT CERTAIN STATES OF THE TIDE'*. Above this assemblage is a large white stamped metal sign, mounted on two metal posts, reading *'FOOTPATH ONLY'*, followed by *'Parking of Vehicles Strictly Prohibited'*. The second set of words is in a smaller font, and upper and lower case. Each of these five words has been spray painted out, making the words FOOTPATH ONLY stand out more strongly. Fareham Borough Council has no information this sign, although there seems to be a general view seems that it was that council which was responsible for erecting this sign, in connection with parking in the immediate area, to stop motorists parking and blocking the entrance to the footpath, a vehicular access for residents along the shore. It is the kind of expensive, large metal sign that is probably not one that an individual resident would put in place, and is of a similar type to the notices another page of the publication, relating to the public hard, which has the same aim of preventing motorists from blocking the hard by parking at its entrance. The 'FOOTPATH ONLY' sign was recorded by Mr.

Brakewell of the Ramblers' Association (see paragraph 1.36), in his survey, in which he quotes its exact wording. It is not possible to say when this sign was put up, but it was in place by 1978. It should be noted that Fareham Borough Council is a landowner of a section of Footpath 3a.

1.55 Letter from Mr. W. Tracy to J. Hall of the County Planning Department Strategy Group, dated 28<sup>th</sup> March 2001, from Fareham Parish file

Mr. Tracy wrote to Ms Hall in connection with the works carried out to Footpath 3a, between its junction with Shore Road to the junction with Fareham Footpath 4. At paragraph 10 of his letter, he says *'the surface of the 165 metre section is, also, already being rutted by bicycle movements. This is, of course, a public footpath (only) over private land and is not a cycleway. Are you intending to take any steps to prevent, cycling, motorcycling or car driving, by those unauthorised, along this path?'* Given that works to improve this section of the path had only just been completed, this letter is the first indication that cyclists were making (literally) an impression on the new surface. It is not known if the enhanced surface showed bicycle ruts more clearly than the pre-improvement surface.

1.56 Letter from M. Denton-Thompson, Assistant County Planning Officer to Mr. W. Tracy, dated 11<sup>th</sup> April 2001

Mr. Tracy's letter to Ms Hall was passed to Mr. Denton-Thompson for reply and he addressed Mr. Tracy's question about use of Footpath 3a by cyclists. Mr. Denton-Thompson said that he was right to point out that *'Footpath 3 is a public footpath over which there is no legal right of way for motorcycles, cars, other motorised vehicles or bicycles. The legal position is that bicycles using this section of footpath without the permission of the owner are committing trespass'*.

1.57 Letter from Mr. W. Tracy to M. Denton-Thompson, dated 16<sup>th</sup> May 2001

Mr. Tracy informed Mr. Denton-Thompson in his reply that he *'...was already...aware that unauthorised users of the footpath are committing trespass'*. His concern was what the County Council would be doing to *'prevent cycling, motor cycling or car driving, by those unauthorised, along this path'*, given that the County Council [as highway authority] own the surface of the path, and he and others *'only own the sub-surface'*. Mr. Tracy wished to know, if the answer was *'in the negative, why not?'*

1.58 Letter from Mr. W. Tracy to M. Denton-Thompson, dated 16<sup>th</sup> August 2001

In his reply to Mr. Denton-Thompson's letter of 29<sup>th</sup> June Mr. Tracy stated that he was not *'prepared to accept financial responsibility for damage caused by literally dozens, if not hundreds, of bicycle movements every week over what is a public footpath only.'* Mr. Tracy contends that more damage resulted from narrow cycle tyres than from use by motor vehicles with wider tyres and good suspension. He asked that Mr. Denton-Thompson confirm that the County Council would *'take responsibility for damage caused by members of the public...or...tell me what steps you propose to take to stop such damage occurring.'* He continues *'you say your Authority owns the surface...and, on the other, that any trespass would be against the owner of the subsoil only...This is incredible and inequitable – surely your Authority cannot have it both ways and duck its responsibilities in this manner'*.

1.59 Letter from M. Denton-Thompson to Mr. W. Tracy, dated 17<sup>th</sup> September 2001

Mr. Denton-Thompson, in his reply, reiterated that the use of a bicycle on a public footpath constitutes a trespass against the landowner, and *'action to prevent this is therefore the responsibility of the landowner. The County Council cannot accept responsibility for trespassers as this is not legitimate public use of the footpath. There are instances where the County Council has taken action to prohibit cycles from footpaths in order to protect the surface and the safety of people using the route on foot. This action would be possible if the problem you describe were sufficiently significant'*. He then goes on to confirm the position stated in his previous letter regarding the ownership of the surface (the highway authority) and the subsoil (freeholder).

1.60 Letter from Mr. R. Atherton to Hampshire County Council, dated 17<sup>th</sup> August 2009

This letter concerns signs on the footpath seen by Mr. Atherton. He notes that *'the pathway is frequently used by cyclists, however signs have recently been erected that front Brooklands Farm at the north of the trail. These signs are not endorsed by Hampshire Borough Council [sic] but forbid: cycling, horses and even running. These signs are slightly confusing, the first at the entrance to the trail reading 'Private Drive/Public Footpath' – indeed, even the residents (those who erected the signs?) seem confused'*. Mr. Atherton was seeking to confirm the status of this path in light of the posting of the signs.

## 2. Witness Evidence

- 2.1 This application is based on user evidence, which has been collected to provide support for the assertion that the Definitive Map is incorrect in showing the claimed route at footpath status only. In all, 232 user evidence forms were received with the application. Because of the way that the evidence has been collected, using forms distributed electronically, many have been received over a period since the application was made. Five user forms were excluded from the investigation as the users had not actually indicated on the form that they had cycled along the footpath. Of these 232 witnesses, 18 gave signed statements enlarging on the evidence they had provided in their user forms.
- 2.2 The remaining evidence has been put into the form of a chart, at **Appendix 3**. Such a chart is, of necessity, a generalisation, but may give a feel for the extent of the use claimed. The range of use of the footpath on bicycles varies. There were 75 people who used the path with cycles between 1 and 10 times a year; 41 witnesses cycled the path between 11 and 20 times; 22 between 21 and 30 times; 31 between 31 and 50 times; 20 between 51 and 100 times; in the range 101-200 times there were 4 users; in the range 201-300 times a year 5 users, and 4 people used the footpath on a bicycle 300 times a year and over.
- 2.3 The earliest recorded bicycle use of the claimed path (as shown on the user forms) was in 1931, and two more users began cycling on the way in 1940. Between 1940 and 1970, 33 cyclists said that they had used the footpath. From 1970 to 1990 (after which time the footpath was essentially complete and without permanent breaches) the user evidence shows 115 users cycling it. In 2009, when most user evidence forms were completed, there were 196 people using the path on cycles. Anyone who is familiar with this path will recognise

that there are probably other users who cycle along Footpath 3a, whose use has not been captured on forms.

- 2.4 A summary of the information provided in the statements taken from witnesses can be found at **Appendix 4**. Twenty nine of the users report the presence of stiles on the footpath. **Mr. Castle** notes in his form that there was a stile at the Universal/Crableck boundary; **Mr. Cook, Mr. Lewis, Mr. Moody, Mr. Peeters, Mr. Reed, Mr. Shier, Mrs. Tayler, Mr. Vickers, Mr. Simon Weeks** and **Mr. Yaldron** all refer to the current kissing gate north of Universal Marina on their user maps and **Mrs. Peeters** shows a stile to the south of the boatyard. Others users indicate that the stile they encountered was off Fareham Footpath 3a, or do not indicate the location at all.
- 2.5 Users were asked whether they had encountered any gates, and whether they were locked. Gates had been seen by 93 witnesses. Of these, 6 users report that the gate was locked, and 7 appear to be referring to the kissing gate north of Universal Marina. Sixty-eight users say that the gate was unlocked, **Mr. Moody** showing on his user map that the gate he saw was at the start of the path, by the property known as Tidemark. **Mr. Castle** describes this gate as having a curved top and pointed pales, and **Mr. Mott** recalled that the occupant of Tidemark tried to prevent use of the path by putting up this gate. He describes it as locked, '*with a gap for walkers*' and a '*pillar put in the gap to stop bikes*'. This pillar was pulled up with a rope and thrown in the river in 1958 or 1959. This is confirmed by **Mr. Tee**, who says there was always a gate at Tidemark, with a phase when it was locked, with one unlocked gate for pedestrians and cyclists and a wider locked one for traffic. **Mr. Rice** and his mother recall this gate at the northern end of the path, and note that it was unlocked. **Mr. Clyne** has provided the investigation with a photo of a half gate pulled back open and a gate post, dating from 1979. **Mr. Webb** also saw an unlocked gate at the start of the path, but does not specify which end this was. Six users give no information about the gate, and **Mrs. Gerrard** indicated that the gate was '*beyond Warsash*' and therefore not on Fareham Footpath 3a. Others recall the gate at Brooklands Quay and one at Bunny Meadows, at the southern end. **Mr. and Mrs. Exley, Dr. Gibson, Mr. Clack, Mr. Rice, Mr. Hobbs** and **Mrs. Paddison** pushed their bikes under the bar of the kissing gate. **Mrs. West** and **Mr. Cummins** lift their bikes over the gate, while **Mr. Mott** and **Mr. Lush** wheel their bikes round on one wheel. **Mr. Hobbs** felt that the bar allowing access for bicycles implied some accommodation of these users. The Chinese Bridge is a structure that might be seen as an obstacle for cyclists, but **Mr. Fuller, Mr. Hobbs, Mr. Clack, Mrs. West, Mr. Tee, Mr. Rice** and **Dr. Gibson** all walked or cycled over it.
- 2.6 Witnesses were asked about notices or signs on the path. The majority of the witnesses (192) referred in some way or other to signs or notices on the footpath, and only 33 did not put anything on their forms about this. A wide range of subjects for notices appear in the user evidence forms, and can be summarised as follows:

Notice content	Number of users seeing this content
'No Cycling'	156
'Footpath Only'	20
No content given	16
'No running'	12
'Private' landowner signs	10
Dog related	8
'Danger to Bathers'/'Strong Currents'	7
Police signs	7
'Private Path'/'Private Road'	7
'No Horse Riding'	6
'No Vehicular Access'	4
Ferry information	2
Map with points of interest	2
Nature Reserve	2
Solent Footpath	2
'No Mooring'	1

Some users saw signs with a number of different phrases on them. It is evident that the majority of cycle users on Fareham Footpath 3a saw, at various times, signs indicating that there should be no cycling on the footpath. From the statements made by witnesses, their reactions to see 'No Cycling' signs are varied. **Mr. Castle** expressed some sympathy with those trying to prevent cycling, and remarked that *'there were many years in which this could have been achieved'*, but it had not. The 'Public Footpath Only' signs were *'off putting'* for **Mr. Coombes**, and he reduced the frequency of his cycling on the path. **Mr. Hobbs** thought that he would probably have ignored any early signs, and **Mrs. Hobbs** saw signs at Bunny Meadows which she thought were *'a cheek'*, because she thought bicycles could be used on footpaths. **Mrs. Cory** *'felt cross about'* the 'No Cycling' signs, though they did not stop her from continuing to cycle there. The applicant, **Mr. Cummins**, saw little signage until recently, and he saw *'nothing that ever gave pause for thought'*. **Mr. Fuller, Mr. Rice** and **Mr. Mott** stated that they would not take any notice of such signs, and **Mr. Tee** was concerned that someone wished to affect the pleasure of many users by putting up such signs. Old stamped metal 'No Cycling' signs, dating from 1979, that appeared to be part of the street furniture, were reported by **Dr. Gibson**, who assumed that they had some bearing. However, he saw the path as being *'wide and accommodating'*, and everyone was cycling along it. **Mr. Lush** stated that the 'No Cycling' signs had the opposite effect on him. There appears to be a consensus among witnesses that 'No Cycling' signs became a noticeable feature on Footpath 3a in 2009. A large metal sign reading

'FOOTPATH ONLY' has been discussed at paragraph 1.54 above, and those witnesses who were interviewed were asked about their recollections of this notice. It is no longer in place, and a photograph supplied by **Mr. Clyne** taken (he thinks) in 1978 shows it just behind the lamppost at the entrance to Footpath 3a from Swanwick Shore Road. There is independent corroboration that the sign was there in 1978 from Mr. Brakewell, who surveyed the path for the Ramblers' Association in that year, and mentions its presence (see paragraph 1.36). Of those witnesses questioned, only four could positively recall seeing the sign and one other '*may have seen it*'. It appears that signage indicating that cyclists should not use the footpath has been in place and has come to the attention of witnesses since 2009, but this had not affected their continuing use.

- 2.7 There are 44 reports from witnesses regarding obstructions on Footpath 3a. Twenty of these refer to bank erosion, breaches in the path, and flooding at high tide. **Mr. Moseley** reported that '*stretches of the path used to flood at high tide*' up to 15 years before he completed his form in 2009 and **Mr. Castle** commented that before the path was completely made up '*it was impassable at certain stages of the tide*', and it still floods in some places at spring tides. **Mrs. Cory** remarked that there was '*originally a gap into Bunny Meadows which could not be crossed except at low tide*'. **Dr. Kelly** recalls the '*numerous breaches*' in the path which were repaired '*30 years ago*', and **Mrs. Hemming** comments that '*not all parts available due to flooding until 1980s*'. Other obstructions reported were due to repairs (7 reports), to either the path or the culverts, by vehicles, barriers and height restrictions, a structure to stop cycles and prams (both in unspecified locations), wire fencing, the building of bridges, the bridge being damaged, by landowners, or were not described. **Mrs. Taylor** said that the path was closed during the second world war by the Admiralty.
- 2.8 Only eight of the users did not report seeing others while cycling on the path. The majority of users saw locals and strangers using the path on foot and with bicycles, with 129 reports. Of the remaining 82 other reports from the user evidence forms, ten people did not give enough information to describe what they saw. There are a large number of permutations of the possible combinations of users and usage on the evidence form. Thirty-six people reported seeing people unknown to them on foot and with bicycles, and 14 saw locals using the path in the same way. Eight people saw persons they recognised as landowners using the path, and 11 people reported seeing the use of vehicles along it. Witnesses who gave statements referred to cyclists who were commuters, including the Police (**Mr. Cummins** and **Mrs. Hobbs**) and **Mr. Fuller** commented that he had seen '*more people going to work*' when he started cycling the route, and described this use as being '*more purposeful*'. **Mr. Clyne** and **Mr. Castle** remarked that there were not many cyclists in the 1960s, and the latter felt that bike riders preferred the river path to cycling along Barnes Lane, and said that some were going to the ferry to get to their work. **Mr. Lush** said he always saw people going to the ferry, and they would leave their cycles in the hut, or take them on the ferry. This had originally been a rowing boat, with bicycles carried across the front. **Mr. Clyne** states that there was regular daily usage in 1954 and 1955 of the path by delivery vans, motorcycles, bicycles and horse riders, though at a low volume. The father of **Mr. Lush** was a postman, who drove down the route as part of his round,

finishing the delivery on foot. Most of these users had not seen horses on the path.

- 2.9 Users completing forms were asked if they were ever stopped while cycling on the footpath. Twenty one witnesses indicated that they had been stopped, by landowners, other members of the public, or by council employees or unnamed parties. Only one user, **Mrs. M. Steele**, reports a different circumstance, that of being stopped by a flood. **Mr. Castle** reported that he was stopped twice by one particular landowner, and for a third time by a different owner. He was in his teens when this happened, and he reported that he was '*courteous*', but stood his ground and carried on cycling, saying that he had always used it. **Mr. Hoy** described being '*bawled at*', and **Mrs. Gerrard** said that walkers were '*very abusive*'. In contrast, **Dr. Gibson** had only experienced '*amiable exchanges*', and '*no confrontation*'. The same was true of **Mr. Cummins**' experience, though he knew of others who had been turned back, as did **Mrs. Hobbs**, **Mr. Mott** and **Mrs. Rice**. **Mrs. Paddison** said she had been told by the owner of the property known as Tidemark that the path was not a cycling route for the public, and that the police could stop her and take her name.
- 2.10 None of the witnesses reports having asked for permission from anyone to use Footpath 3a with a bicycle. Fifteen users were apparently using the route on their cycles in the exercise of a private right. Four said they were delivering to properties on the path, and **Mr. Steve Potts** used the path to deliver mail with his bike, and with a van, at the Swanwick end. Four people used the path to reach their boats, and **Dr. Kelly** considered that he was using a private right to reach his own land, some of which includes the path. Two users were visiting people living close the path and eight others worked at the Universal or other boat yards, used the path for commuting to work via the Hamble Ferry, or to visit boats moored on the river. It could be argued that those using the path with a bicycle to reach their place of work were doing so with permission or in the exercise of a private right, in which case any such use would need to be separated out from recreational use, and discounted for the purposes of acquiring a public right.
- 2.11 The presence of breaches in the path, alluded to by many of the witnesses, and the conditions at high water on much of the path which forced users to deviate to higher ground (recorded in the Definitive Statement) were occasions when the route would have been unavailable to users. The fact that walkers could not use the path when impassable would not affect the right to pass and re-pass on foot symbolised by its recording on the Definitive Map as a public footpath. However, many of those who have completed forms recording their use on cycles state that they had to deviate inland at times. Some of the breaches were deep, dangerous and persisted for many years. Many of the users acknowledge that there was not a complete path until 1986. At times they were only able to use sections of the footpath. Therefore, the effect of these periods of interruption must be taken into account when considering whether or not a higher status should be recorded for Footpath 3a. This calls into question how much cycling could take place along the whole of the footpath.

2.12 What can be understood from this evidence is that local people have used Fareham Footpath 3a, on bicycles, in small numbers from the mid 1950s and early 1960s, consistently and increasingly through the 1980s and 1990s, and continue to do so. The erection of 'No Cycling' notices in 2009 brought the public's right to use the route into question, and therefore the first relevant period for the purposes of section 31 of the Highways Act 1980 is 1989 to 2009. The placing of a locked single bar metal gate at the southern end of the footpath in 1986 by the County Council to exclude all traffic except pedestrians constitutes another bringing into question, giving a second relevant period of 1966 to 1986. This application can also be considered under common law, which has no fixed periods of use.

### 3. The Landowners

3.1 The land over which the route being claimed runs is unusual in that it is owned by 14 separate freeholders, and there are 8 abutting titles. The freeholders are a mixture of private individuals, commercial companies and local authorities.

3.2 All owners of land including the path, or abutting it, were invited to complete 'landowner forms', and thirteen have completed and returned their forms. In addition five landowners have been interviewed, and provided signed statements and other material, some of which was not in response to the interviews. A summary of the evidence put forward by those landowners who have responded can be found at **Appendix 5**.

3.3 **Mr. Smith** lives at the northern end of the footpath, and has resided there since 2001. He already knew of the path, having been in the area for a sailing course 18 years before, and had been informed by his solicitor that the path was a public footpath, which did not include public cycling, though there was a private right for vehicles. At the start of his occupation there was still a gate (with a padlock) attached to the post, which is currently visible. This gate was removed in 2003 when building work was done. The 'Footpath Only' sign was in place at this time, along with Hampshire County Council 'No Cycling' signs. The former sign was on two grey metal poles, and Mr. Smith thought it had been put up by Fareham Borough Council, judging by its similarity to those in the nearby car park. In his opinion, the sign disappeared in 2005 or 2006. On his first visit in 1982 he recalled that it was not possible to walk the full length of the path, and had to cut up through a hedge. The path's condition was also bad towards the south, with no bridge at Brooklands Quay. He cannot recall whether the Chinese Bridge was in place, but he does remember giving up and coming back. Mr. Smith states that cycling on the path was '*virtually non-existent*' on the path in 2001 and, while cyclists could come from the south, the northern section was very difficult, except in dry conditions. Since work was done on that section of the path in 2001 the cycling situation has become worse, in his view. Mr. Smith describes a slow progression of increasing use with cycles, including more use for commuting as the Universal boatyard has developed. This increased use has been complained about from the start, and there have been problems with signs. While one cyclist, asked to slow down, has responded positively, Mr. Smith reports that his dog has been hit by a cyclist who did not apologise. In 2008 or 2009 his son, then a toddler, had a narrow escape when a cyclist almost hit him. Mr. Smith was abused by the cyclist when he remonstrated with him. There have been other, similar,

incidents. He has challenged cyclists, and has not given anyone permission to cycle on the path.

3.4 **Mr. and Mrs. Betts** also live at the northern end of the path, though they have also lived in a nearby street, not on the footpath, since 1981. Footpath 3a was their favourite walk from Moody's boatyard, and the route was only passable in the early 1980s in the summer, because of the breaches. It would not have been possible to cycle the whole route at that time. Mrs. Betts recalls seeing the gate at Tidemark, and thought it was the original farm gate for Brooklands Farm, with another by Brooklands Quay. She does not remember either being closed. The first gate was removed because it caused difficulties for lorries when Tidemark was being rebuilt. In her recollection, there was always a 'Footpath Only' sign at the northern end of the path, and a 'Walkers Only' sign at the south. The 'Footpath Only' sign was in place in 1992, when she first moved to Swanwick Shore Road, but she does not know who put it up, and cannot remember when it was taken down. Mr. Betts also recalls a 'No Cycling' sign by the 'Footpath Only' sign, positioned low down. Mrs. Betts recollects that one or two people cycled to the boatyard at that time, and it is her view that cycling is a recent popular pastime. In the past there would be one cyclist a month and 10 walkers, because the path was not usable in its entirety. Mr. Betts recalls that there was no-one commuting to work by bike at that time, and has spoken to someone who have been told off by Commander Owen for cycling past his gate. There was no huge surge of cyclists after the work was done to complete the path in 2001, because people were used to not being able to cycle on the path, and it did not build up until 2005 or 2006. It is Mr. Betts' view that there was no problem with cycling until a neighbouring landowner put up signs in 2009, and red signs appeared, apparently made by the police. There had also been a plan to install electric gates along the route, but he did not want to participate because gates outside his property would cause problems. Mr. Betts finds that younger riders are more respectful and do take notice when told they should not be cycling on the path. He finds most difficult with older cyclists '*with all the gear*', who can be difficult or unpleasant. Some have made threats. Mrs. Betts feels that challenging cyclists is ineffective, and she sometimes receives a '*very unpleasant response*', though some cyclists respect the signs, dismount and walk past her house, for which courtesy she thanks them. Mr. Betts says that the whole volume of use by walkers and cyclists has gone up, from few users of any kind in the 1980s.

3.5 **Mrs. Willment** is the Managing Director of Universal Marina. The former Crableck Boatyard and Universal Marina are now under one ownership, and the Willment family has controlled the land south of Universal since the 1960s, and north to the culvert by Brooklands Quay since 1997. Universal considers the path to be a public footpath, as shown on the Definitive Map. The boatyard is now a quite different setting from the path, and the path was diverted in it. There were always slipways from the buildings in the past, and Brooklands Farm was farming right down to the waterline, where marshland is now to be found. She has been involved with the Marina since 1987, and feels that traffic on the footpath has increased over that time, with few people walking then. Groups of ramblers come through the Marina all year round, but this has emphasised the issue of security there, as there have been so many changes to the boatyard. It was pontooned and gated when it was Crableck Boatyard.

Some people wander off the footpath, and the company had a policy of challenging them. The Marina was not manned continuously, but there was a staff member living on site, and a previous employee would challenge those off the footpath, mostly walkers. The company has to be vigilant to prevent theft, and also wants people to take care in the Marina, however they access it, because of the large machinery used to move boats. The public footpath is not appropriate for cyclists because it is narrow, and there are many families in the Marina with buggies, so passing can be difficult. Staff have challenged cyclists and horseriders, and there have been instances of these users being turned away out of the yard. Mrs. Willment cannot recall the last instance of a horse being in the boatyard, and horses stopped riding there in 2009 or 2010. The footpath had been the principal access route as riders were not previously allowed on the lane leading to the Marina. The current kissing gate, which allows a buggy through, was put up in 2008 to replace old estate fencing of wrought iron. This is primarily aimed at horse riders who do not dismount, but also at cyclists. The Marina would like cyclists to dismount, but any signage put up is difficult to maintain, as it is removed. There was a sign reading '*Private property – walkers only*' sign in place from 1987, and Mrs. Willment also recalls the 'Footpath Only' sign at the northern end of the footpath. She has a private right to drive a vehicle along the footpath, as has the Marina.

- 3.6 **Dr. Kelly** lives at the southern end of Footpath 3a. He bought his property in 1979 and was aware of the public footpath running over part of his land. There was a 30 metre wide breach at the end of Brook Avenue when he moved to his property, and Hampshire County Council asked his permission to fill this breach. He recalls that the County Council wanted people to be able to walk to Moody's boatyard. Dr. Kelly agreed to this plan, and the work was carried out. There were other breaches in the path at this time, and one owner refused to have the breach on or by their land filled. Foot traffic in the late 1970s came up from Warsash village to the breach by Dr. Kelly's property and then had to turn back because it was impossible to cross, and not negotiable with a bicycle. Mountain bikes were not available then. People coming from Swanwick Shore Road would have to go inland around the breaches. Dr. Kelly is aware that cyclists come and go, and that there are more since the path was completed. He finds '*ordinary cyclists*' reasonable to deal with, but some riders are aggressive, and these are mainly in their 20s and 30s. These cyclists ride very fast and will not stop for anything. He has only encountered riders like this two or three times, and they are not a problem for him. People take children on the footpath to cycle because they feel it is safer. Dr. Kelly estimates that there has been more cycling on the path in the last ten years. He does not recall the 'Footpath Only' sign at the northern end of the footpath, though he has seen a number of 'No Cycling' signs on the southern stretch. He is not aware on whose authority these signs were put in place. Having seen people, including workmen, putting their bikes on the ferry for a long time, he is not sure why these notices are there. Dr. Kelly is not aware of the gate that used to be in place at the northern end of the path, but has seen the gate at Brooklands Quay, and also the kissing gate by Universal Marina, which he says has only been there for five years. He can see cyclists every day from the upstairs windows of his house, and has seen others on foot and with bicycles when using the footpath himself. He has cycled himself occasionally between 1975 and 2009. He has seen the occasional horse, and three motorcycles over 30

years. He did not challenge the motorcyclists directly but called the police, who apprehended them and reported back to him. Dr. Kelly has not made any changes on the section that he owns, done any maintenance work on it, and has not given permission for any cyclists to ride on the footpath.

- 3.7 **Mr. Tracy** completed a landowner form, with attached material amplifying the answers and he also gave a statement in an interview. In order that this material can be read in its entirety, it can be found attached to this report at **Appendix 6**. To summarise, Mr. Tracy has known the area since 1952, and has lived in a property by the footpath since 2000. Mr. Tracy sets out his recollections of the volume of use and type of user, his own experience of using the footpath, his interactions with Fareham Borough Council, Hampshire County Council and with users of the footpath. He also sets out his own recollection of features of the path already discussed in this report, such as signs, gates and breaches. Mr. Tracy and others have challenged members of the public using Footpath 3a illegally, and he sets out arguments relating to barriers and the impassable conditions on the path. He has also provided this investigation with a number of photographs showing aspects of the footpath.

#### 4. Other statements

- 4.1 The officer whose job it has been to maintain and protect public rights of way in the Fareham area has given a statement to this investigation, and the Harbour Master and the Environment and Development Manager of the Hamble Harbour Authority have also given statements of their involvement with maintenance issues on Fareham Footpath 3a.
- 4.2 **Mrs. Giles** served as the Area Rights of Way Officer for the southern area of Hampshire, and the claimed footpath was a route that she was responsible for maintaining and protecting from 1995. She states that, when she took up her post, the Hamble Harbour Master was involved in maintaining the southern section of the footpath. She points out that there were breaches in the path, recorded in the Definitive Statement, that *'there were regular repairs to the path and bank'*, and Mrs. Giles was aware that there had been major repairs to the path in the 1980s, carried out by the Roads and Bridges section of the then County Surveyors Department. Mrs. Giles believes that it was possible to walk the whole length of the path in 1995, and her role was to ensure that it was correctly signposted at both ends and at junctions with other recorded rights of way. The Countryside Service had an interest in managing the Bunny Meadows Local Nature Reserve, and other work concerning the protection of the path was managed by other colleagues in the Countryside Service and the Harbour Master. The northern section of the path received major repairs in 2001, and these were managed by a countryside colleague, who ensure that the works carried out were with the full agreement with adjoining landowners and other interested parties. The aim of the repairs was to provide a path of a particular width for pedestrian use, elevated *'to a level that would not be subject to regular flooding'*. The private vehicular rights of Mr. Tracy to his property were also taken into account. Mrs. Giles' office received reports of cycling on the footpath from 2007 onwards, and requests from landowners to maintain the round 'No Cycling' signs. She herself did not necessarily see any cyclists when visiting the path, perhaps because cycling use was probably more likely to take place at weekends. Mrs. Giles is familiar with the white metal 'Footpath Only'

sign at the northern end of the footpath, and thinks it was not put up by the County Council, but possibly by Fareham Borough Council. She was asked to add the green information sign that 'Path becomes flooded at certain times of the tide' and a 'Walkers Only' additional sign. On the instruction of the Head of Access, Countryside 'No Cycling' signs were also put in place by the pink ferry hut in early September 2009, in place of temporary green signs that the County Council may have erected. The 2009 signs were later replaced by more substantial signs. A sign was also in place at the junction with Footpath 4. The old stile at the Universal Marina boundary was replaced by a kissing gate by the manager there, and Mrs. Giles was told that the Marina was experiencing problems with unauthorised motorcycles and horse riders entering the site and being on the footpath on occasion. The kissing gate allowed for easy access for legitimate public users. The path at the northern end by Tidemark was always open, and Mrs. Giles does not recall a gate there, or at Brooklands Quay, or a barrier at Bunny Meadows. The signs put up at the request of the Head of Access and of landowners may have been, in her view, what prompted the present claim to record a higher status over the footpath. The signs advising 'Footpath Walkers Only' were positioned in order to advise the public and protect legitimate users. Mrs. Giles records that the Countryside Service has received a large number of comments and queries since the receipt of the claim, but these have now returned to a level (2 or 3 queries a year) comparable to that before the claim was made.

- 4.3 The Harbour Master of the River Hamble Harbour Authority, **Mr. Evans**, has been employed by the County Council for more than eight years, first as Marine Director and, from 2010, as Marine Director and Harbour Master. The Authority leases most of the river bed up to the mean high water mark, but he points out that the Authority does not own any of the footpath itself, though a plan showing the limits of the Authority's control indicates that there is some jurisdiction on the landward side of the path in places because of the position of the mean high water mark and the profile of the shore. When Mr. Evans took up his post in 2004, the path was of a similar character to that of today, with some deterioration in places, notably the deepening of pot holes and crumbling of edges. Authority staff have, over the years, walked the path annually and compiled reports of its condition, with photographs. This record has been forwarded to a colleague in the Rights of Way Office, who have paid the Authority to do this work. The focus of the inspection is safety, and if there is anything in the path's condition rendering it unsafe, or a breach opens up, the Rights of Way Office is informed. Members of the public also come in to the Harbour office to report problems. The Authority has only done works to the Chinese Bridge in recent years, such as replacing individual planks, netting or the handrails. This work is not the responsibility of the Authority, though others believe it to be the case, and a part of the Authority's budget was used for this, but is no longer. This was before Mr. Evans took up his post. The work, such as replacing bricks, was done over the winter. Mr. Evans says that he thought that cycling was not allowed on the footpath. He talked about the cyclists that he saw to the previous Harbour Master, who said that it was all right for them to do this. However, the Chinese Bridge, with its steps suggested to Mr. Evans that it was not a cycling route. The northern section of the path was difficult in the winter months. Mr. Evans explains that this part of the Hamble does not flood after heavy rainfall, raised levels being caused by the tides. The highest

tides predicted in tide tables is 5.1 metres, the absolute maximum. In such conditions, the path will overtop. The lower the atmospheric pressure, the higher the tide, often when there is a strong southerly or south-westerly wind. Run-off from the land results in slight peaking of a high tide. On one day in 2008 the tide was predicted to be 4.5 metres, and was actually 5.4 metres, when people had to be rescued from the footpath when they became stranded, possibly involving a walker. When gales combine with low pressure, the path can be rendered effectively impassable, and the tides go through regular cycles, with a peak and a falling away over a number of years. These differences are observable, and the current situation is that tides are liable to get higher in the future. There are no 5 metre tides, which are disruptive, forecast for 2013, with the highest at 4.9 metres in November, which is a concern. Most years there is one 5 metre tide rendering the footpath impassable to all traffic. When the path is over-topped, users may not be able to see where the path is, and Mr. Evans has seen a tide high enough for the top of the Chinese Bridge to be touching the water. In such circumstances, there is always a risk that the under-pinning of the path will be damaged, particularly at mid-tide, when there is more wave action taking out the material under the banks. The effect of persistent wind damage is greater than that of the wash from boats, which dissipates after only 2 or 3 waves. Mr. Evans is not familiar with the gate post near Tidemark, at the northern end of the footpath, or the 'Footpath Only' sign. He does recalled that wellingtons were required for the northern section of the path before 2001, and he thinks it was *'not easy to cycle this section before it was built up and improved'*.

4.4 The Environment and Development Manager for the Harbour Authority, **Ms Fowler**, briefly described her role at the Authority in her statement, and also provided copies of the reports on the condition of the footpath mentioned by Mr. Evans above. Ms Fowler has been employed in this position since 2007, including environment protection of the River Hamble, including planning and development, waste management, oil spill responses and nature conservation. She has an interest in Bunny Meadows, which runs alongside the footpath, as a site designated for nature conservation and the impact of any action on this site must be taken into account. Ms Fowler carried out inspections of the path every 6 or 9 months, for the County Council. The results of at least one, and sometimes two, surveys per annum is a good photographic record of the condition of the path, from the year 2000. Ms Fowler was kind enough to make this material, and documents relating to coastal surveys of Bunny Meadows, available to this investigation. Documents of note are:

- photographs of the construction to a higher level of the southern section of the path and culvert installation in December 1983 and February 1984
- photographs showing damage to the path after exceptionally high tide (4.9 metres) in September 1984
- reports to the River Hamble Harbour Management Sub-Committee in 1996 discussing remedial work to the path alongside Bunny Meadows, to *'ensure that the structure remains in a safe condition for pedestrian traffic'*
- documents relating to the effects of extreme tides, tidal scouring, potential risks from breach and inundation on both sides, the effects of climate change on Hampshire County Council's coastal landholdings, erosion by

wave attack, and overwashing of the footpath. all of which problems could potentially render *'the public footpath unusable as a recreational amenity'*

- draft Bunny Meadows Coastal Survey compiled by the Leisure Research Team, at Southampton Solent University, dated 30<sup>th</sup> May 2007, designed to provide *'baseline data'* on use of the Bunny Meadows section of Footpath 3a, particularly usage by walkers and cyclists, and to determine the pattern of daily use during the week and at weekends in the summer and winter seasons. The survey shows that, in 2006, respondents answering a questionnaire about how they arrived at the footpath revealed that a small percentage (3.2%) had arrived by cycle. Small numbers from the sample were cycling on the footpath (7%), compared to 66.9% walking, and 21.2% walking a dog. An extract of the activity patterns, by days, is presented at **Appendix 7**. The pattern for counting in Table 9 is that samples were taken on a Tuesday, Thursday and Sunday in the summer, and a Saturday and Monday in the winter of 2006. In summer there were 31 cyclists on the Tuesday and Thursday, and 18 on the Sunday. In winter, there were 15 cyclists on the Saturday, and 2 on the Monday. The total for these counts was 66, representing 6.9% of the total use, with the percentages for walking and dog walking as set out above. There was no evidence of horse riding on these days. The daily activity patterns are shown in Table 10a. A question directed at recording the value of the footpath to users, and suggested improvements, indicated that there was some interest in the possibility of recording the footpath as an *'official cycle track'*, though this came towards the end of the list of issues of interest to users, with the suggestion occurring 4 times. The most popular items were regarding litter and path surface issues. The report does not, unfortunately, specify the locations at which users were approached by the researchers. The results contained in this document are the only material available to the investigation presenting specific information in terms of numbers and dates where cycle use is recorded.
- inspections of the path in 2007, 2008, 2009 and 2010, the last showing survey including a photograph where only the top section of the Chinese Bridge is above the water, during an over-topping event itself.