

Report to **Policy & Resources Committee**
Date **17 February 2022**
By **Head of Business Services**
Title of Report **Procurement - Contract for Construction of Egrets Way Phase 6**
Decision

Recommendation: The Committee is recommended to:

- 1. Approve the commencement of a procurement process leading to the appointment of a contractor to undertake the construction of Egrets Way Phase 6**
 - 2. Delegate authority to the Chief Executive to award contracts for the above, following a competitive process as described in this report.**
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I. Summary and Background

- I.1 Egrets Way is Delivery Action AN3.1 within the SDNPA Cycling and Walking Strategy and was identified in the SDNPA Corporate Plan Action plan 2020-21. Phase 6 of Egrets Way, is approximately 4.1 kilometres in length between Rise Farm (Iford Estate) and Rodmell, and is an Access Team Priority for 2022/23 and identified within the emerging East Sussex Local Cycling and Walking Infrastructure Plan (LCWIP).
- I.2 Egrets Way is a shared use path intended to provide safe, sustainable access between the towns of Lewes and Newhaven (approx. 6 miles / 10km), linking the villages of the Lower Ouse Valley. The greenfield route will also link to the broader access network including the South Downs Way National Trail and link the Sustrans National Cycle Network NCN2 with RCR90 (Brighton-Lewes-Eastbourne) cycle route and connect the port of Newhaven for long distance touring cyclists.
- I.3 A map showing an overview of the strategic routes and aspirational routes (such as Egrets Way) extracted from the Cycling and Walking Strategy forms **Appendix 1** and an overview map of Egrets Way showing the phases delivered and outstanding, forms **Appendix 2**.
- I.4 The total funding for Phase 6 of Egrets Way is £977,000 comprising of Lewes District Council CIL £100,000, Highways England £600,000, SDNPA CIL £131,250, SDNP Trust £145,502.
- I.5 The contract value for the construction work is estimated at £700,000 and an amount is allocated to design fees, legal costs and pre-construction enabling works. As good practice for large projects, a further sum is set aside for contingency. To date, land surveys and ecological studies have been undertaken to inform path designs (by Sustrans) and

stakeholder consultations with the Environment Agency, ESCC, Parish and private landowner negotiations.

- 1.6 SDNPA has supported and been working with the Egrets Way Project (formerly Ouse Valley Cycle Network) and Sustrans (appointed consultants) for ten years and has delivered four phases to date, with phase 5 partially complete.

2. The Procurement Route

- 2.1 There have been no significant changes to the Public Procurement Rules following the UK's departure from the European Union, save for some minor policy changes to below threshold procurements, allowing Authorities to reserve specific contracts. Although much of the public procurement law in the UK derives from EU directives, it is incorporated into English law through the Public Contract Regulations (2015) Act, which remains in force. The UK has joined the Government Procurement Agreement, within the World Trade Organisation, through which it commits to maintain access to Government contracts to other member states. The Government have published a Green Paper on public procurement, which sets out a direction of travel for the future.
- 2.2 The indicative contract value of £700,000 falls significantly below the threshold set out in the Public Contracts Regulations (PCR) 2015 for works contracts. The threshold applying from January 2022 is £5,336,937 (including VAT) The Regulations, other than Chapter 8, will not therefore apply to this procurement process.
- 2.3 Contract Standing Orders (CSO 10) applies to this contract as it is above £75,000 but less than the relevant PCR threshold and states that tenders should be invited from at least five companies. It is intended in this procurement to use the Open Process and advertise this contract on our own website and nationally using the Contract Finder public procurement portal.

3. Tender Evaluation

- 3.1 Although SDNPA commonly uses the single stage or open process for receiving tenders, as recommended by the Cabinet Office for low value tenders, evaluation of tenders is carried out in two stages.
- 3.2 The Selection Stage is where we evaluate the capability of the contractor to satisfactorily carry out the contract. This involves looking at the financial strength and other resources of the company, including its previous experience in carrying out similar works. There is no weighting or scoring in this stage of an open tender; contractors can either do the work or they can't, so this is judged on a pass or fail basis. As the selection criteria are described in the tender, it is unusual for companies to fail at this stage, generally if they don't meet the criteria then they won't submit a bid.
- 3.3 The Award Stage is carried out using the Most Economically Advantageous Tender (MEAT) criteria for awarding the contract, using a combination of quality factors, such as Approach to the Contract, Project Resourcing as well as price. The evaluation panel will be looking at the sustainability aspects of any approach as well as looking for proposals that will add social value to the contract.
- 3.4 Evaluation is carried out by a number of officers (and in this case involving Sustrans as the design consultants) scoring independently, before meeting on a panel basis. The evaluation programme will also allow for a process of clarification on all aspects of bids and due diligence before the award is made.

4. Outline Timetable

- 4.1 With Committee approval, it is intended to publish the Contract Notice and release the Invitation to Tender on 1 March.
- 4.2 The tender process will remain open for seven weeks, closing in late April. Three weeks has been allowed for evaluation, including clarifications and due diligence, leading to award in mid-May and a start on site in the middle of June.

5. Other implications

Implication	Yes*/No
Will further decisions be required by another committee/full authority?	No
Does the proposal raise any Resource implications?	SDNPA has sufficient resources in place, in term of staff qualified to undertake the procurement exercise.
How does the proposal represent Value for Money?	The competitive tender process is aimed at delivering value for money for SDNPA
Which PMP Outcomes/ Corporate plan objectives does this deliver against	<p>SDNPA Partnership Management Plan 2020-25</p> <p>Outcome 5: Outstanding visitor experiences are underpinned by a high-quality access and sustainable transport network, supporting improved health and wellbeing.</p> <p>Priority Programme 5.2: Improve accessibility through a network of high quality routes connecting communities with the landscape, heritage, attractions and transport hubs and gateways.</p> <p>Note: Egrets Way is identified as a priority scheme within the SDNP Cycling and Walking Strategy 2017-24 and is an Access Team Priority for 2022/23.</p>
Links to other projects or partner organisations	<p>Egrets Way is identified in the emerging East Sussex Local Cycling and Walking Infrastructure Plan (LCWIP) and Sustrans National Cycle Network 20 Year Strategy.</p> <p>When complete, Egrets Way will provide a strategic link in the Sustrans National Cycle Network between NCN2 and RCR90.</p>
How does this decision contribute to the Authority's climate change objectives	Egrets Way Phase VI is identified in the Authority's <i>Climate Change Action Plan, Programme: Transport and Sustainable Access</i> . The creation of off-road active travel infrastructure such as the Egrets Way supports the shift to low carbon travel.
Are there any Social Value implications arising from the proposal?	Tenders will be evaluated partly on the basis of the social value the bidding organisations are prepared to deliver
Have you taken regard of the South Downs National Park Authority's equality duty as contained within the Equality	The procurement exercise and the terms of the subsequent contract will meet the terms of the Authority's equalities duties. The works delivered to the Egrets way will provide a surface usable by groups with protected characteristics, helping

Implication	Yes*/No
Act 2010?	support access to this route for all.
Are there any Human Rights implications arising from the proposal?	The selection process will examine the bidding companies' compliance with the laws on Modern Slavery.
Are there any Crime & Disorder implications arising from the proposal?	The probity of the companies bidding for the contract will be examined as part of the selection process.
Are there any Health & Safety implications arising from the proposal?	The works contractors' Health and Safety policies and record will be examined during the selection processes.
Are there any Data Protection implications?	No
<p>Are there any Sustainability implications based on the 5 principles set out in the SDNPA Sustainability Strategy?</p> <ol style="list-style-type: none"> 1. Living within environmental limits 2. Ensuring a strong healthy and just society 3. Achieving a sustainable economy 4. Promoting good governance 5. Using sound science responsibly 	<p>The environmental policies of the bidding companies will be examined during the selection process, as will their track record on sustainable construction.</p> <p>Those companies shortlisted will also need to demonstrate how their policies and experience in sustainable construction will influence their approach to the contract. This will be examined at the Award stage of the procurement process.</p>

6. Risks Associated with the Proposed Decision

- 6.1 There are four well documented risks with any procurement and those are listed as follows;
- 6.2 *Commercial Risk* – That either the price objectives aren't achieved up front or there are other costs that arise during the contract that diminish the overall benefits. Construction contracts are particularly susceptible to price overruns. The schedule of rates will be drawn up by Sustrans and Sustrans will also assist in the management of the construction project. The detailed design will be agreed by the Client and further alterations, which can add significantly to the tendered price, will be kept to a minimum. The construction work is likely to be carried out during a period of severe economic downturn and insolvency on the part of the contractor is a significant risk. There are provisions within SDNPA Standard Terms and Conditions of Contract to allow insolvency situations to be managed and financial standing will form part of the due diligence process. Neither of those is sufficient to eliminate this risk.
- 6.3 *Technical Risk* – This concerns the difficulty in being able to specify the desired outcome and on the market being able to deliver to the specification. SDNPA is using a traditional contract to manage this delivery with a single consultant designing and overseeing the build.

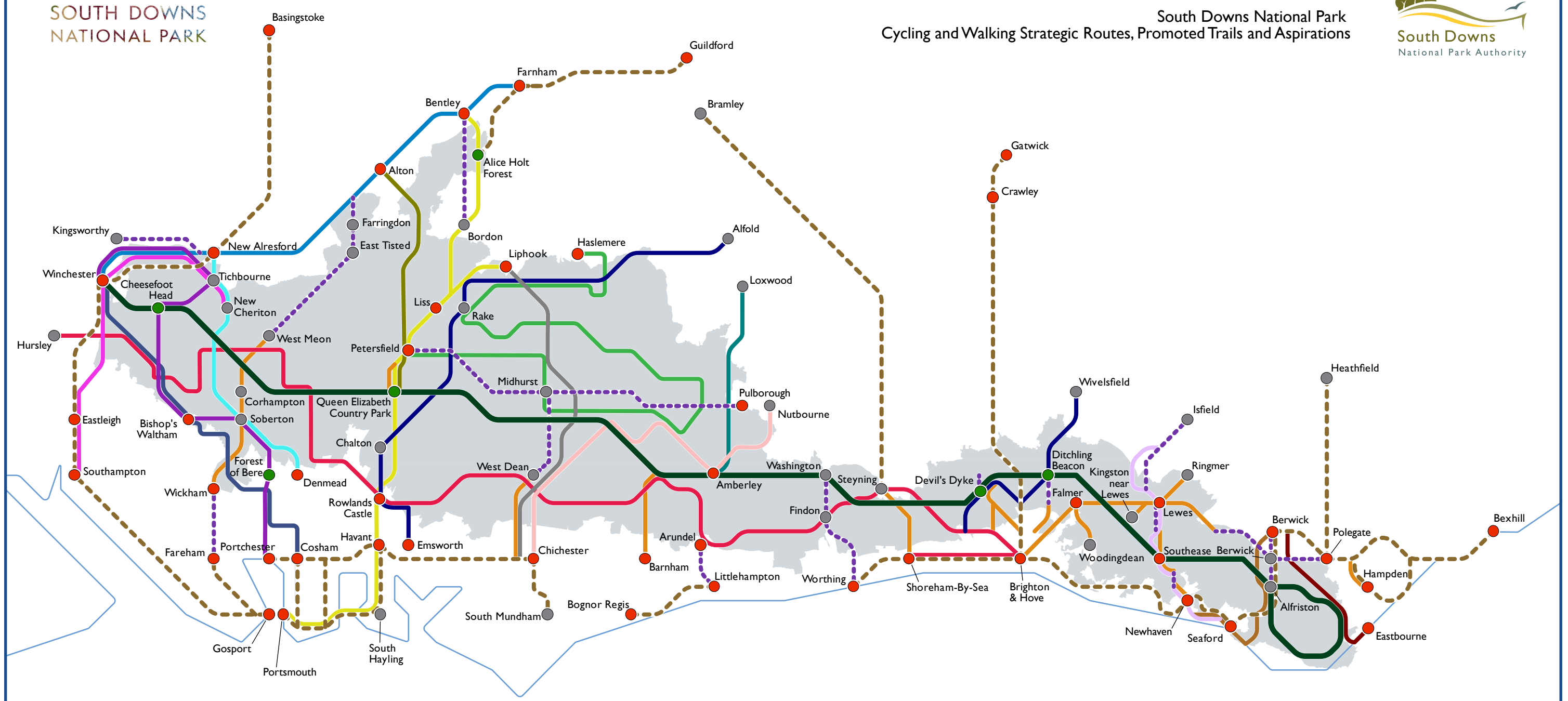
- 6.4 *Performance Risk* – This concerns the ability of suppliers to perform consistently over the life of the contract to deliver the planned benefits. Stage payments and regular supervision will provide the necessary incentives for the timely completion of the work to the required standard. However, see insolvency risk above.
- 6.5 *Contractual Risk* – This covers things like being able to remedy the shortcomings in the contractors' performance without severely damaging the contract and about avoiding reliance on the contracted supplier as the contract develops. There is obviously a reliance on the main contractor in any construction process and it is important to ensure intelligent and active contract management
- 6.6 In Public Procurement, there is also the *Legal Risk*, where a procurement is found unsound in law, either through the remedies directive or the public procurement rules. The application of the Public Contract Regulations to a works contract of this value is limited and the use of professional procurement staff will help ensure that the contract process complies with the procurement rules and with best practice.

ALAN BROUGH
Head of Business Services
South Downs National Park Authority

Contact Officer:	Alan Brough
Tel:	01730 819202
Email:	Alan.brough@southdowns.gov.uk
Appendices	1. Cycling and Walking Strategy Map 2. Egrets Way Overview Map
SDNPA Consultees	Chief Executive; Director of Countryside Policy and Management; Director of Planning; Chief Finance Officer; Monitoring Officer; Legal Services,
External Consultees	None

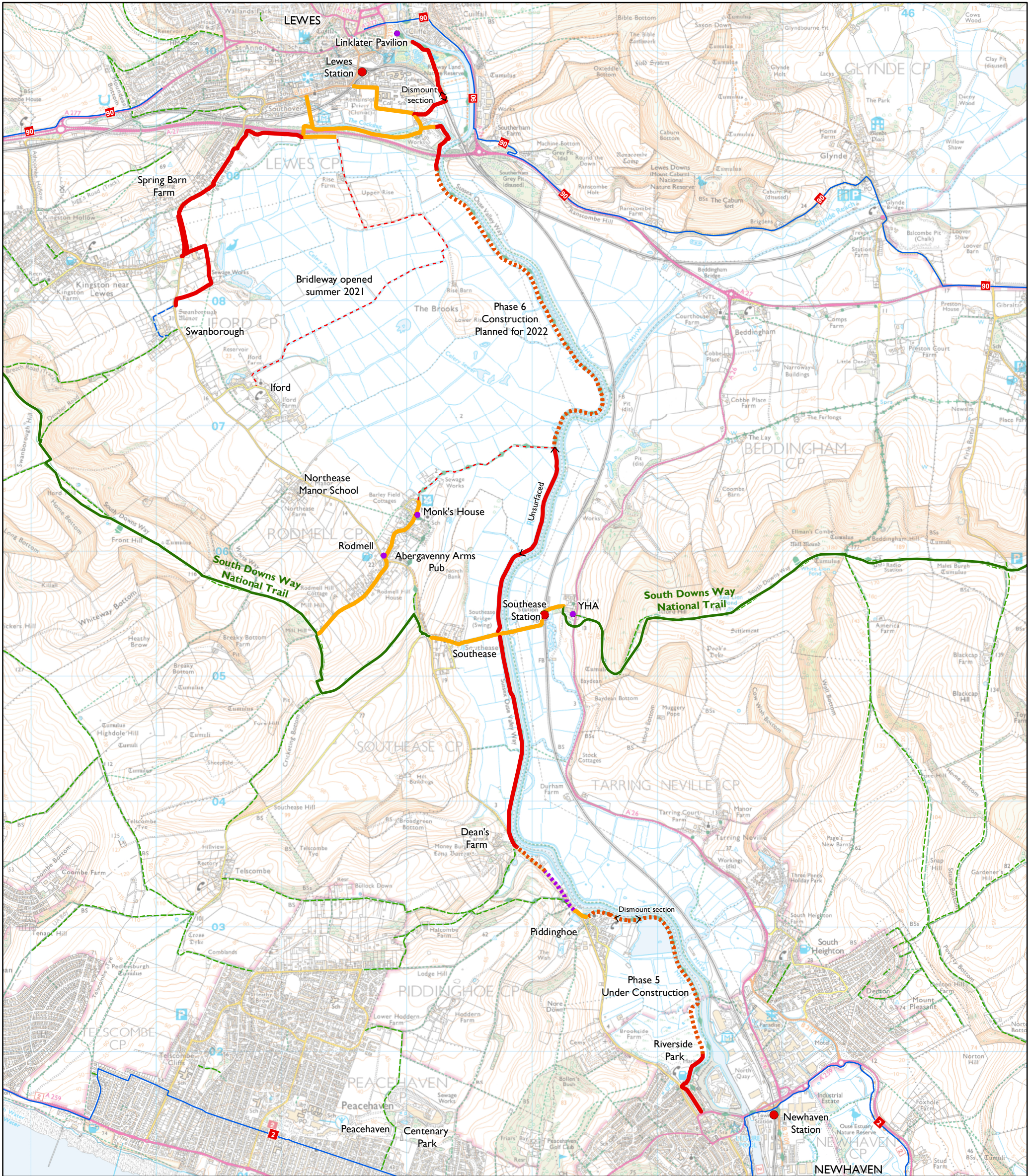
SOUTH DOWNS NATIONAL PARK

South Downs National Park Cycling and Walking Strategic Routes, Promoted Trails and Aspirations



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|-----------------------|---------------|------------------|------------------------|----------------------------|--------------|---------------------------|
| South Downs Way | Hangers Way | New Lipchis Way | St Swithun's Way | Wayfarer's Walk | Rail station | South Downs National Park |
| Aspirational route | Itchen Way | Pilgrim's Trail | Sussex Border Path | Wealdway | Landmark | Coastline |
| Strategic cycle route | King's Way | Serpents Trail | Sussex Ouse Valley Way | Wey South Path | Settlement | |
| National cycle route | Monarch's Way | Shipwright's Way | Vanguard Way | West Sussex Literary Trail | | |

Egrets Way Project



- Egrets Way Network**
 - Open route
 - Quiet lane
 - Planned future route
 - Future on highway option
- Public Right of Way**
 - Bridleway
 - Open bridleway
 - Permissive bridleway
- South Downs Way**
 - National Cycle Route

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