

C03/2020



**Command Paper on
a draft Bill to make provision for the establishment of a
National Trails Coordination Board and statutory
public rights of access to land for recreational and other
purposes, to make further provision for the recording,
creation, maintenance and improvement of public paths
and for connected purposes.**

**Presented to Parliament by
the Minister for the Environment, Sustainability, Climate Change,
Heritage, Public Health and Culture**

by Command of Her Majesty

30 June 2020

Comments on this Command Paper should be:

(a) sent by email to commandpapers@gibraltar.gov.gi, or

(b) delivered to:

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Any comments received later than **noon on 14 July 2020** may not be taken into account for the purposes of the consultation.

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1. Draft Bill

BILL

FOR

AN ACT to make provision for the establishment of a National Trails Coordination Board, to establish statutory public rights of access to land for recreational and other purposes, to be known as the Gibraltar National Trails, and to extend some of the provisions for that purpose to rights of way and other rights, to make further provision for the recording, creation, maintenance and improvement of public paths and for securing access to the Gibraltar National Trails; and for connected purposes.

ENACTED by the Legislature of Gibraltar.

PART I PRELIMINARY

Title.

1. This Act may be cited as the Gibraltar National Trails Act 2020.

Commencement.

2. This Act comes into operation on the day of publication.

Interpretation.

3. In this Act, unless the context otherwise requires –

“access rights” means the rights described in section 8 of this Act;

“cultural heritage” includes structures and other remains resulting from human activity of all periods, traditions, ways of life and the historic, artistic and literary associations of people, places and landscapes;

“Minister” means the Minister with responsibility for the Environment;

“National Trails” has the meaning given to that term in section 7 of this Act;

“natural heritage” includes the flora and fauna of land, its geological and physiographical features and its natural beauty and amenity;

“owner”, in relation to land, means—

(a) the owner of the land; and

(b) where the owner is not in possession of the land, the person who is entitled to such possession.

PART II
GIBRALTAR NATIONAL TRAILS COORDINATION BOARD

Establishment of the Gibraltar National Trails Coordination Board.

4. There shall be a Gibraltar National Trails Coordination Board (hereinafter referred to as “the Coordination Board”) which shall be charged with promoting and exhibiting the natural, geographic, historical and cultural assets that contribute towards Gibraltar’s global value, and shall exercise the functions conferred on them by the following provisions of this Act—

- (a) for the preservation and enhancement of natural beauty in Gibraltar, and particularly in the areas designated under this Act as the National Trails;
- (b) for encouraging the provision or improvement, for persons resorting to the National Trails, of facilities for the enjoyment thereof and for the enjoyment of the opportunities for open air recreation and the study of nature afforded thereby;
- (c) to promote and exhibit the natural and heritage assets of Gibraltar, and of exercising such other functions as are conferred on the Coordination Board by this Act.

Constitution of Coordination Board.

5.(1) The Coordination Board shall consist of a chairperson, who may be the Minister, and such number of other members as the Minister may determine, of whom one may be appointed to be deputy chairperson.

(2) The members of the Coordination Board shall be appointed by the Minister and shall hold and vacate office in accordance with such terms as may be prescribed by or under regulations made by the Minister and, on vacating office, shall be eligible for re-appointment.

(3) In appointing members of the Coordination Board, the Minister shall have regard to the desirability that the Coordination Board as a whole shall have knowledge and experience in the following areas-

- (a) environmental matters;
- (b) the cultural heritage of Gibraltar; and
- (c) the natural heritage of Gibraltar.

(4) The Minister may also appoint to the Coordination Board, any representative of a person or body which has responsibility for the management of any premise, building or land contained within any National Trails.

(5) The Coordination Board may, with the approval of the Minister, appoint a secretary to the Coordination Board, and may appoint such number of other officers and of servants as the Minister may determine.

(6) The procedure (including the quorum) of the Coordination Board shall be such as they may determine.

(7) The validity of any proceeding of the Coordination Board shall not be affected by any vacancy among the members thereof or by any defect in the appointment of a member thereof.

Annual Report of Coordination Board.

6.(1) The Coordination Board shall, as soon as possible after the thirtieth day of September in each year, make to the Minister a report on the discharge by them of their functions under this Act during the period of twelve months ending with that day.

(2) Without prejudice to the generality of subsection (1) of this section, but subject to the provisions of the next following subsection, the report of the Coordination Board for any period shall include a record of all questions with which the Coordination Board have been concerned during that period and which appear to the Coordination Board to be of general public interest, indicating the purport of any representations or recommendations made by the Coordination Board with respect thereto, and the conclusions (if any) reached thereon.

PART III GIBRALTAR NATIONAL TRAILS

Creation of National Trails.

7.(1) For the purposes of this Act, and subject to subsection (2), the paths, trails and routes listed and marked by the plans contained in the Schedule, shall be designated as National Trails, in relation to which the specific arrangements listed therein (if any) shall apply.

(2) The plans contained in the Schedule designating the National Trails shall be deposited at the offices of the Minister and shall be displayed on the Government's Geographical Information Systems.

(3) Subject to subsection (4), the Minister may, by order published in the Gazette, amend the Schedule by—

- (a) including any path, trail or route;
- (b) removing any National Trail;
- (c) by amending the entry relating to any National Trail to vary the name or description or any other particulars of it; or
- (d) setting out dates and times during which specified trails may not be accessed.

(4) An order under subsection (3)(a) may only be made where it appears to the Minister that there is need for access rights over land in a particular area and it is satisfied that, having regard to the extent to which the access rights would add to the convenience or enjoyment of a substantial section of the public, or to the enjoyment of persons resident in the area, it is expedient that the right of way should be created.

(5) Before making an order under subsection (3), the Minister shall consult with—

(a) the Coordination Board;

(b) any other person or body as appears to him to have special knowledge of the paths, trails, routes or buildings contained on area in question; and in such cases where there may be ecological or other environmental implications, the Nature Conservancy Council.

(6) An order made under subsection 3 shall contain a plan defining the land over which access rights are created.

(7) Access rights as described in section 8 shall be exercisable in respect of National Trails.

Access Rights.

8.(1) Everyone has the statutory access rights established by this Part of this Act.

(2) Those rights (in this Act called “access rights”) are—

(a) the right to be, for any of the purposes set out in subsection (3) below, on land; and

(b) the right to cross land.

(3) The right set out in subsection (2)(a) above may be exercised only—

(a) for recreational purposes; or

(b) for the purposes of carrying on a relevant educational activity.

(4) The reference—

(a) in subsection (2)(a) above to being on land for any of the purposes set out in subsection (3) above is a reference to—

(i) going into, passing over and remaining on it for any of those purposes and then leaving it; or

(ii) any combination of those;

(b) in subsection (2)(b) above to crossing land is a reference to going into it, passing over it and leaving it all for the purpose of getting from one place outside the land to another such place.

(5) A “relevant educational activity” is, for the purposes of subsection (3) above, an activity which is carried on by a person for the purposes of—

(a) furthering the person’s understanding of natural or cultural heritage; or

(b) enabling or assisting other persons to further their understanding of natural or cultural heritage.

(6) Access rights are exercisable above and below (as well as on) the surface of the land.

(7) The land in respect of which access rights are exercisable is all land designated as a National Trail.

Access rights to be exercised responsibly.

9.(1) A person has access rights only if they are exercised responsibly.

(2) In determining whether access rights are exercised responsibly a person is to be presumed to be exercising access rights responsibly if they are exercised so as not to cause unreasonable interference with any of the rights (whether access rights, rights associated with the ownership of land or any others) of any other person, but—

- (a) a person purporting to exercise access rights who, at the same time engages in any of the following conduct, shall be taken as not exercising those rights responsibly-
 - (i) being on or crossing land in breach of an order of a court;
 - (ii) being on or crossing land for the purpose of doing anything which is an offence or a breach of an order of a court;
 - (iii) wilfully kills, takes, molests or disturbs any animal, or takes or injures any eggs or nests;
 - (iv) wilfully injures, removes or destroys any plant, shrub, tree or root or any part thereof;
 - (v) being on or crossing land while responsible for a dog or other animal which is not under proper control;
 - (vi) being on or crossing land for the purpose of taking away, for commercial purposes or for profit, anything in or on the land;
 - (vii) being on or crossing land in or with a motorised vehicle or vessel (other than a vehicle or vessel which has been constructed or adapted for use by a person who has a disability, and which is being used by such a person);
 - (viii) lights any fire or does any act which is likely to cause a fire;
 - (ix) damages the land or anything thereon or therein;
 - (x) affixes or writes any advertisement, bill, placard or notice;
 - (xi) deposits any rubbish or leaves any litter; or
 - (xii) engages in riotous, disorderly or indecent conduct; and

- (b) regard is to be had to whether the person exercising or purporting to exercise access rights is, at the same time disregarding any guidance on responsible conduct set out by the Coordination Board.

(3) In this section the references to the responsible exercise of access rights are references to the exercise of these rights in a way which is lawful and reasonable and takes proper account of the interests of others and of the features of the land in respect of which the rights are exercised.

Access rights and other rules and rights.

10.(1) The exercise of access rights does not of itself constitute trespass.

(2) The extent of the duty of care owed by an occupier of land to another person present on the land is not affected by this Part of this Act or by its operation.

(3) The existence or exercise of access rights does not diminish or displace any other rights (whether public or private) of entry, way, passage or access.

(4) The existence or exercise of access rights does not diminish or displace any public rights under the Crown.

(5) The exercise of access rights does not of itself amount to the exercise or possession of any right for the purpose of any enactment or rule of law relating to the circumstances in which a right of way or servitude or right of public navigation may be constituted.

(6) Access rights do not constitute a Pedestrian Area for the purposes of that definition in the Traffic (Designation of Pedestrianised Areas) Order 2001.

(7) A person exercising access rights is to be regarded as being in a public place for the purposes of any enactment.

Duty of Department of the Environment to uphold access rights.

11.(1) It is the duty of the Department of the Environment to assert, protect and keep open and free from obstruction or encroachment any route, waterway or other means by which access rights may reasonably be exercised.

(2) The Department of the Environment is not required to do anything in pursuance of the duty imposed by subsection (1) above which would be inconsistent with the carrying on of any of the authority's other functions.

(3) The Department of the Environment may, for the purposes set out in subsection (1) above, institute and defend legal proceedings and generally take such steps as they think expedient.

(4) The Department of the Environment may take such steps (which may include the putting up and maintenance of notices and fences) as appear to them appropriate—

- (a) to warn the public of and protect the public from danger on any land in respect of which access rights are exercisable; and
- (b) to indicate or enclose, or to give directions to, any such land.

(5) Where the Department of the Environment consider that a fence, wall or other erection is so constructed or adapted (whether by the use of barbed wire or other sharp material or by being electrified or otherwise) as to be likely to injure a person exercising access rights, they may by written notice served on the owner of the land on which it is placed, require the owner to take, within such reasonable time as is specified in the notice, such reasonable action as is so specified, being action calculated to remove the risk of injury.

(6) Where the owner of land adjoining, or adjacent to land in respect of which access rights are exercisable, for the purpose or for the main purpose of preventing or deterring any person entitled to exercise these rights from doing so—

- (a) puts up any sign or notice;
- (b) puts up any fence or wall, or plant, grow or permit to grow any hedge, tree or other vegetation;
- (c) positions or leaves at large any animal;
- (d) carries out any agricultural or other operation on the land; or
- (e) takes, or fails to take, any other action,

the Department of the Environment may, by written notice served on the owner of the land, require that such remedial action as is specified in the notice be taken by the owner of the land within such reasonable time as is so specified.

(7) If the owner fails to comply with a notice given under subsections (5) or (6), the Department of the Environment may—

- (a) remove the sign or notice; or
- (b) take the remedial action specified in the notice served,

and, in either case, may recover from the owner such reasonable costs as they have incurred by acting under this subsection.

PART IV SUPPLEMENTARY PROVISIONS

Crown land.

12.(1) The following provisions of this section shall have effect for applying certain provisions of this Act to Crown land, that is to say land an interest in which belongs to Her Majesty in right of the Crown and land an interest in which belongs to a Government department or is held in trust for Her Majesty for the purposes of a Government department.

(2) A National Trail may include Crown land, and with the consent of the appropriate authority the powers conferred by this Act may be exercised as respects any interest in Crown land.

(3) Any restriction on traffic in a National Trails shall, unless expressly prescribed otherwise, apply to vehicles and persons in the public service of the Crown.

(4) In this section the expression "the appropriate authority", in relation to any land, means—

- (a) in the case of land belonging to Her Majesty in right of the Crown, Land Property Services or other Government department having the management of the land in question;
- (b) in the case of land belonging to a Government department or held in trust for Her Majesty for the purposes of a Government department, that department,

and if any question arises under this section as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

Power to make regulations and other subsidiary legislation.

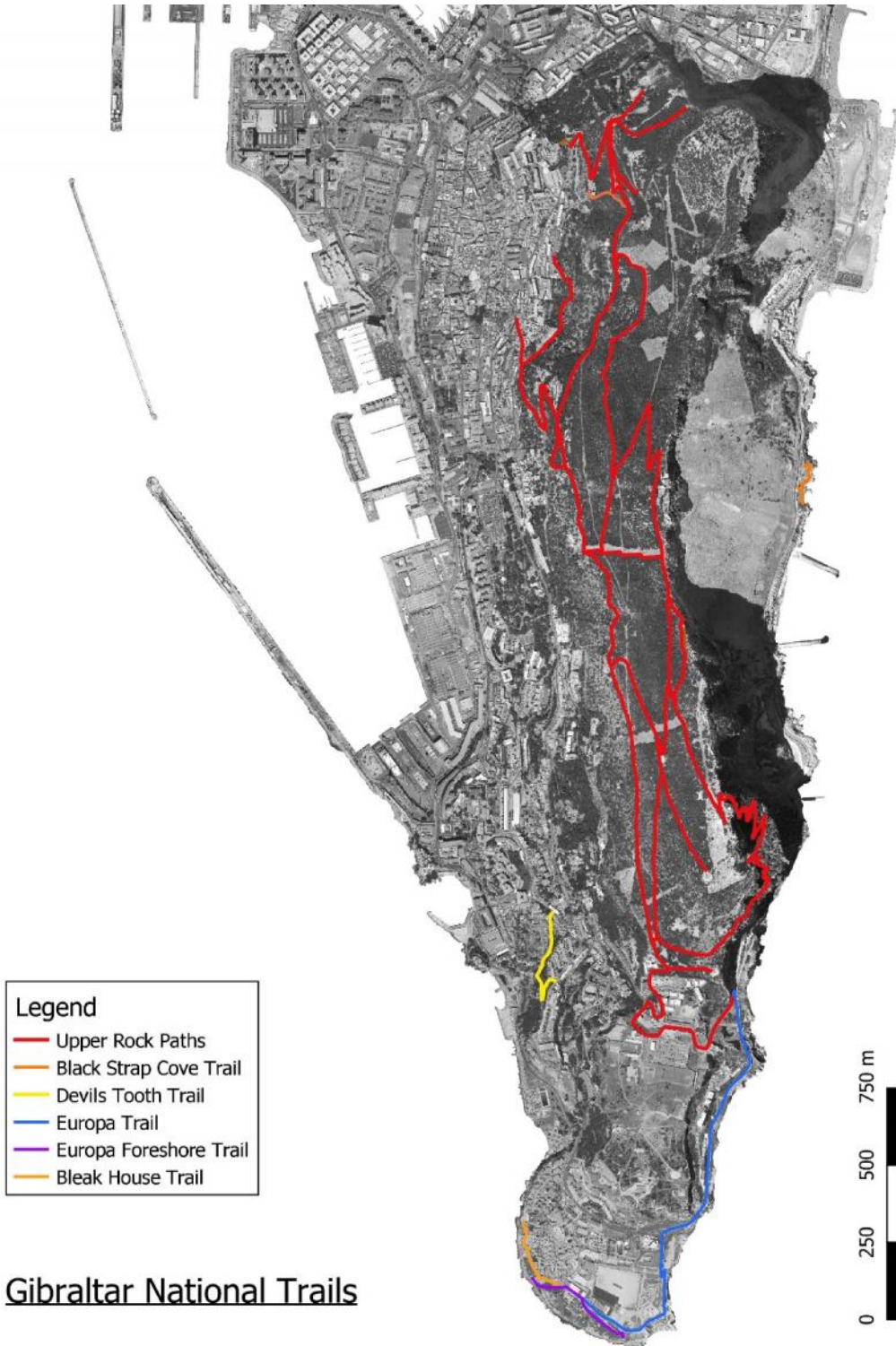
13.(1) The Minister may make such regulations, rules, orders or other subsidiary legislation as may be useful or necessary for the application of this Act.

(2) Any power conferred by this Act to make regulations, rules, orders or other subsidiary legislation includes power, by subsequent regulations, rules, orders or other subsidiary legislation to vary or revoke any regulations, rules, orders or other subsidiary legislation so made.

SCHEDULE

National Trails

The following areas are designated as National Trails under section 7 of this Act.



Gibraltar National Trails

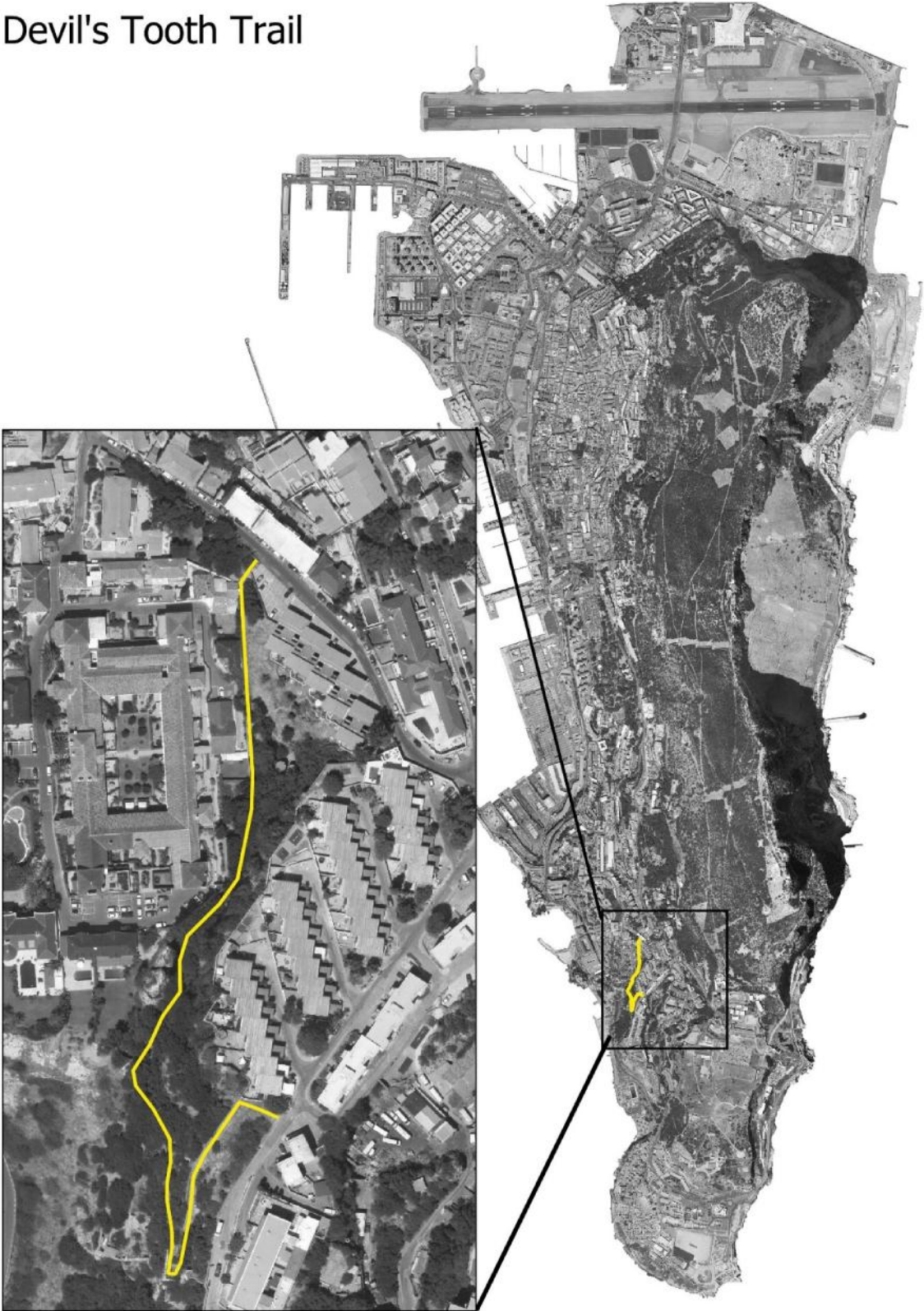
(1) Bleak House Trail; which will be open to the public during the dates and times as may be set out by Notice in the Gazette.

Bleak House Trail



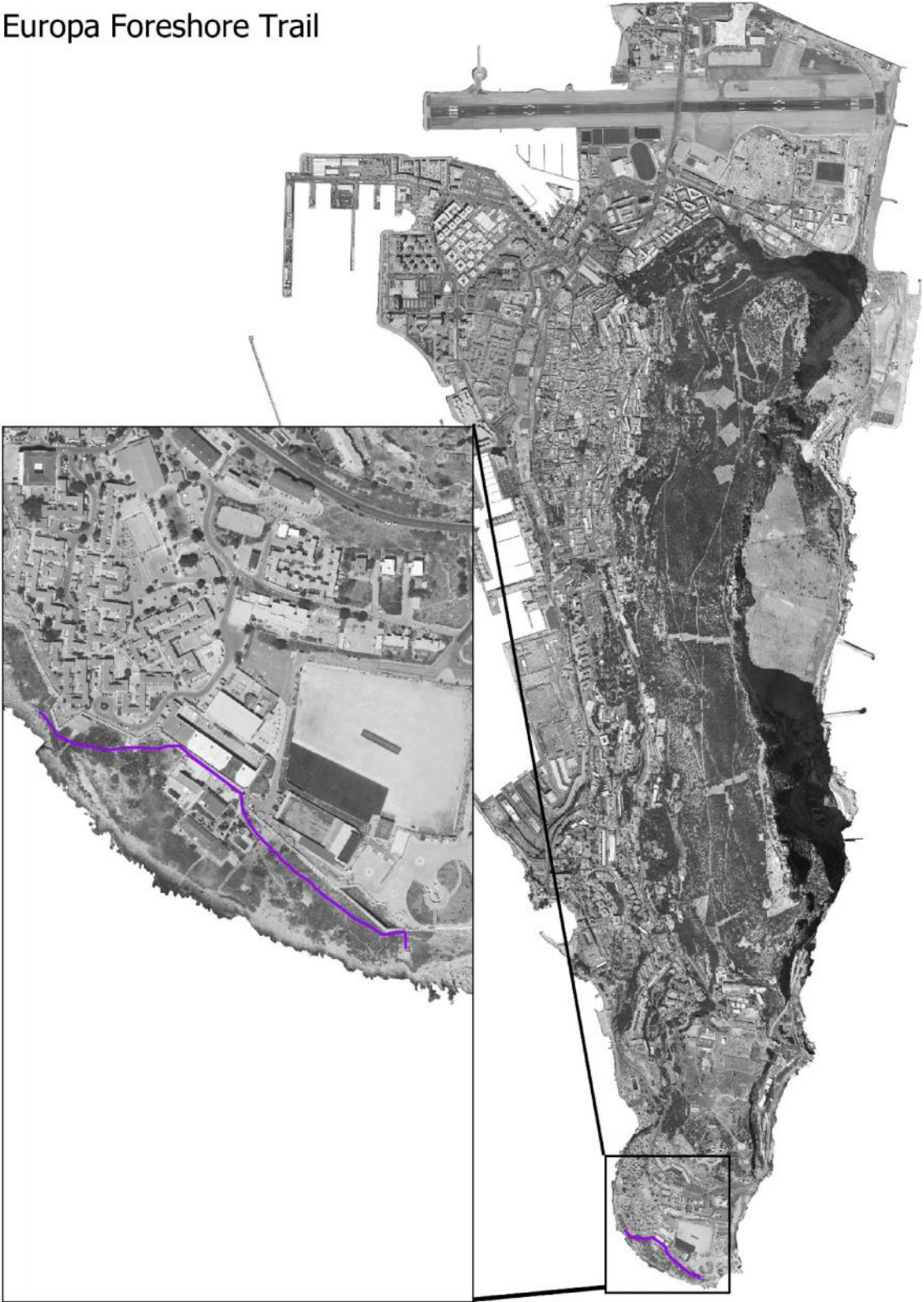
(2) Devil's Tooth Trail.

Devil's Tooth Trail



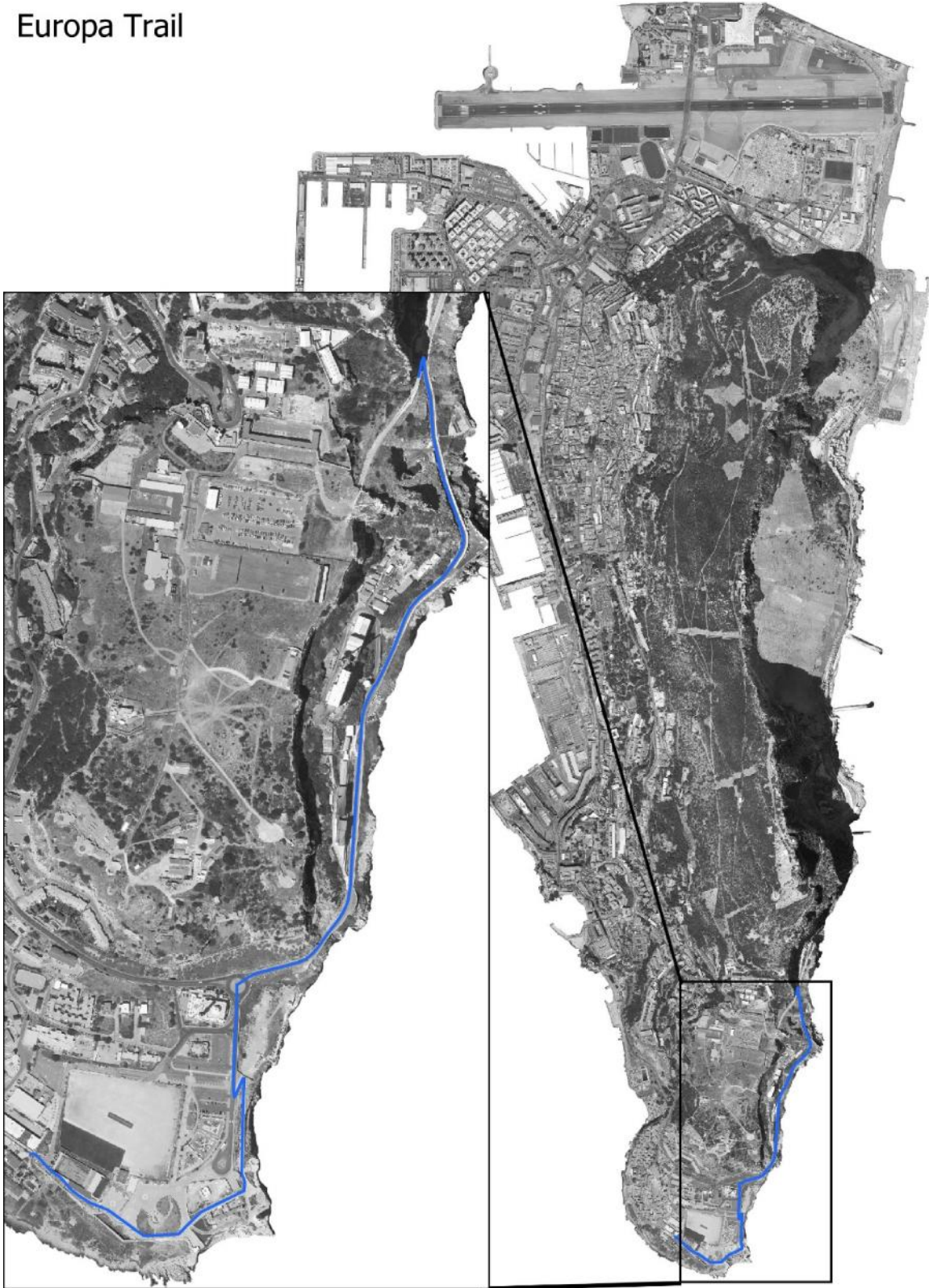
(3) Europa Foreshore Trail.

Europa Foreshore Trail

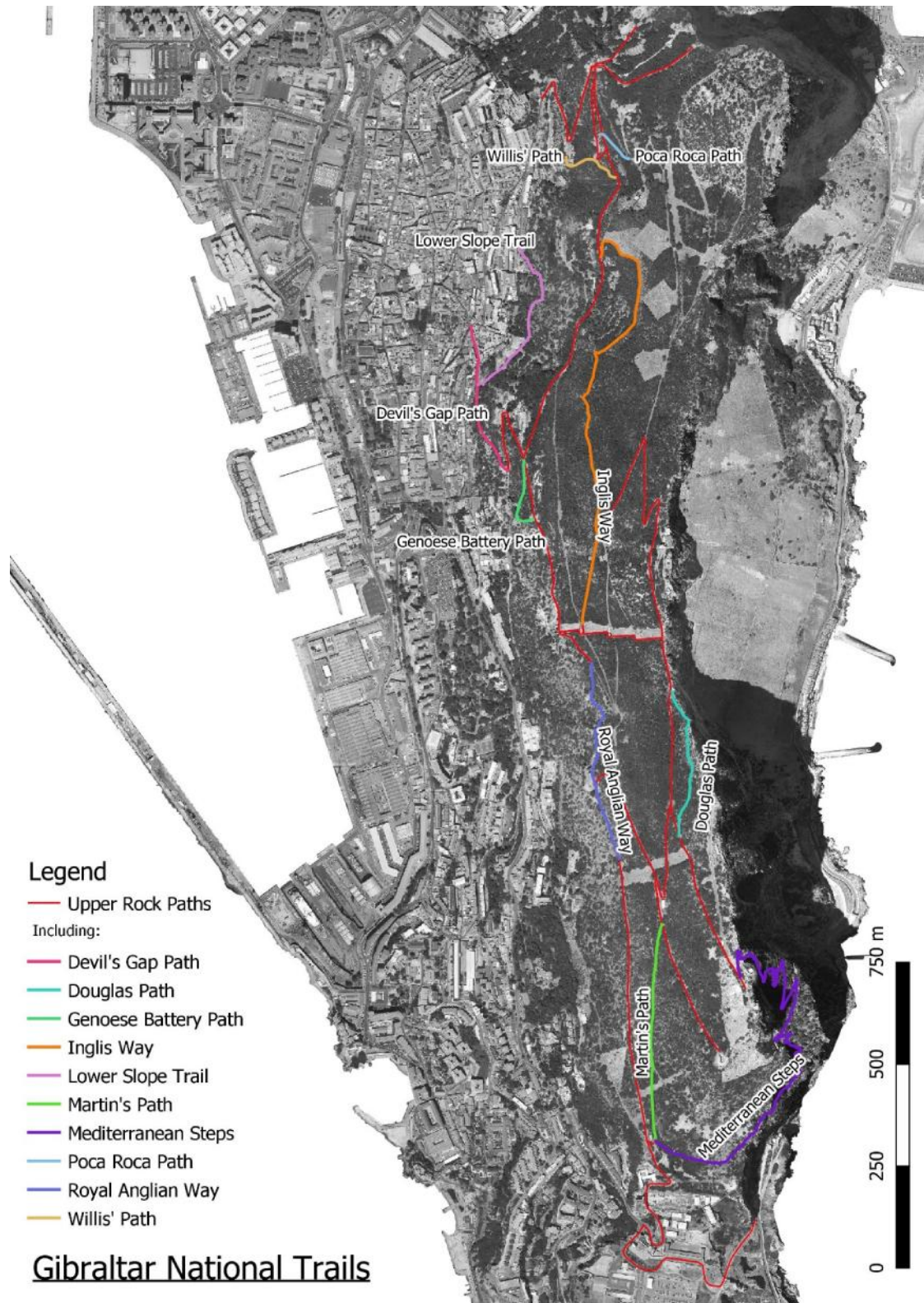


(4) Europa Trail.

Europa Trail

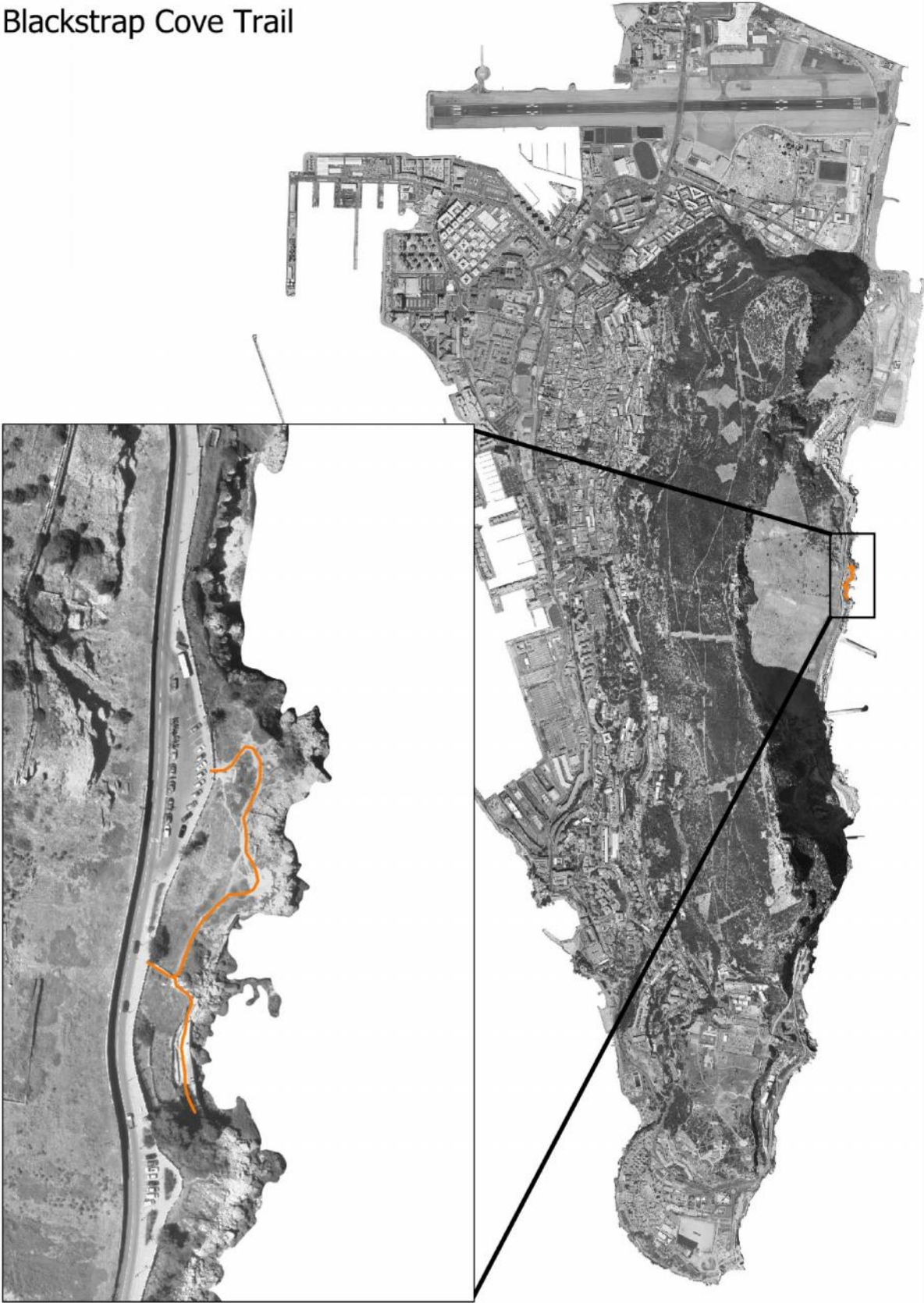


- (5) Upper Rock paths including, but not limited to Mediterranean Steps, Martin's Path, Douglas Path, Genoese Battery Path, Inglis Way, Devil's Gap Path, Poca Roca Path, Royal Anglian Way, Lower Slope Trail and Willis' Path.



(6) Blackstrap Cove Trail.

Blackstrap Cove Trail



2. Draft Explanatory Memorandum

EXPLANATORY MEMORANDUM

This Act provides for the establishment of the Gibraltar National Trails Coordination Board, and for the establishment of Gibraltar National Trails and the regulation and management thereof.