



Report to **South Downs National Park Authority**
Date **20 October 2022**
By **Director of Countryside Policy and Management**
Title of Report **Management of Byways Open to All Traffic within the Hampshire area of the South Downs National Park**

Decision

Recommendation: The Authority is recommended to:

- 1. Note the current position, as set out in this report, regarding the legal framework for Byways Open to All Traffic (BOATs), their status in the National Park and the existing approach of Hampshire County Council.**
- 2. Consider the options regarding future management of BOATs in the Hampshire area of the National Park, as set out in Section 11, and agree either:**
 - Option 1 - to maintain the current approach to partnership working on BOATs, noting that Officers will continue with the current arrangements and engage via National Parks England in the national debate on legislative change as part of Defra's response to the Landscapes review; or**
 - Option 2 - to change the current approach, noting that further work will be required by Officers as described in recommendation 3 below.**
- 3. If the Authority agrees Option 2, to further agree which of the approaches set out in section 11 (approach a, approach b or approach c), is the Authority's preferred approach. Officers will then liaise with the Local Highway Authority/Authorities as required and will prepare a detailed plan for the preferred approach to include a timetable, resource requirements and opportunity costs to be considered, together with the Local Highway Authority's response, at a future meeting of the NPA prior to a decision being taken.**
- 4. To agree that appropriate communications with interested parties be undertaken jointly with HCC.**

I. Introduction

- I.1.** This report sets out the current status and management of Byways Open to All Traffic (BOATs) within the South Downs National Park, with particular regard to the Hampshire area (due to the number of BOATs within this part of the National Park). It highlights the current legislative framework and how our Local Highway Authority Partners are managing BOATs as a part of the rights of way network.
- I.2.** This report focuses on legal use of BOATs by motorised vehicle users. It does not consider illegal use of rights of way or trespass by motor vehicle users, which are separate matters. There are existing provisions within the legal system which can be used to address illegal use.

- I.3. The basis for the South Downs National Park Authority's (SDNPA) current working arrangements with regard to rights of way are set out in the "Accord for the Management of Rights of Way and Access in the South Downs National Park", agreed and signed between the SDNPA and the four Highway Authorities. The Accord provides that the role of the SDNPA is to bring added value to the rights of way and access network with the aim of achieving improvements to the network for the public's benefit over and above the Local Highway Authorities' statutory duty to maintain rights of way. A copy of the Accord can be found in appendix I. The Accord was first signed in 2012.
- I.4. This report has been written following a Members' workshop on the management of BOATs held on the 27 January 2022. At that workshop Members agreed **"That a paper be brought to the May NPA outlining the current position regarding BOATs in the National Park area of Hampshire, including an assessment of the current status of BOATs in this area. This report will detail the existing positive working relationship between SDNPA and Hampshire County Council (HCC), include how HCC addresses its duties under Section 62 of the Environment Act 1995 and the additionality given to considering BOATs within the National Park. This will be a paper for discussion and noting and may be produced as a joint paper from SDNPA and HCC."** Consideration at a meeting of the Authority was deferred from May to October due to the need to prepare a response to the Government's Response to the Landscape Review and to ensure that all interested parties were able to engage in the discussion.
- I.5. Although BOATs make up only a very small part of the rights of way and access network, it is acknowledged that some communities are disproportionately affected by the legal use of motorised vehicles on these public rights of way, particularly with regard to those BOATs that are located in countryside areas that are otherwise remote from the road network. Some routes are regularly used by 4x4 groups and trail-bike riders and although motorised vehicle users may be local, others travel into the area from longer distances. Most, if not all, BOATs in the National Park are not constructed to the same standard as the "regular" sealed road network, and so some of the more popular and well used routes can become damaged through motorised use. Such damage often makes use by non-vehicular users difficult, and in some cases the route can become impassable to all users. Along with physical damage, noise can be very distressing for local residents.
- I.6. There is a widespread misunderstanding surrounding what can or cannot be done, and by whom, in respect of the management of the use of BOATs by motorised vehicles. This report is intended to set out the facts clearly and to provide sufficient detail to inform Members so that they can better understand the current management procedures and the options open to the SDNPA.

2. Policy Context

- 2.1. The management of BOATs can contribute to the statutory purposes of the National Park, being;
- to conserve and enhance the natural beauty, wildlife and cultural heritage of the area and,
 - to promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public.
- 2.2. The management of BOATs within the National Park also contributes towards Outcome 5 of the South Downs Partnership Management Plan (2020-2025), which states "Outstanding experiences for communities and visitors are supported by high quality access and sustainable transport networks".
- 2.3. Any actions to prevent damage to the special qualities of the National Park would also contribute to Outcome 1 of the Partnership Management Plan, which states "The landscape character of the South Downs, its special qualities, natural beauty and local distinctiveness have been conserved and enhanced by avoiding or mitigating the negative impacts of development and cumulative change."

- 2.4. The National Park Authority is a Statutory Access Authority (i.e. it has duties relating only to Open Access Land under the Countryside and Rights of Way Act 2000), but it is not a Highway Authority.
- 2.5. In the National Park, the Local Highway Authorities (Brighton & Hove City Council, East Sussex County Council, Hampshire County Council and West Sussex County Council) have a statutory duty (Highways Act 1980 section 130(1)) to assert and protect the rights of the public to the use and enjoyment of the highway network, including rights of way. These Local Highway Authorities have specialist staff who undertake the management of both the roads network (commonly via a Highways Section) and the rights of way network (commonly via a Rights of Way Team). Links to those Local Highway Authorities that have policies about motor vehicles on unsealed roads can be found at the end of this report (in the background documents section). A different situation exists in five of the other English National Parks (see 8.1) where the management of the rights of way network is delegated to the National Park Authorities from the Local Highway Authorities, along with appropriate resources.
- 2.6. Section 62 of the 1995 Environment Act gives Local Highway Authorities a duty to have regard to the statutory purposes of a National Park when performing functions that relate to or affect land in a National Park. This duty to have regard would extend to the management of BOATs and other rights of way that lie across land in the National Park.

3. The current situation with BOATs

- 3.1. Some BOATs are in a poor state of repair. Many are affected by poor drainage and have uneven surfaces which have worsened over time (often as a result of use by motorised vehicles). The maintenance and repair of BOATs tends to be expensive, and the Local Highway Authority rights of way revenue budgets often cannot meet the costs of effective and long-lasting repairs. Capital funding is often necessary in order to undertake repairs, and one-off bids for funding from annual capital budgets can be made to address individual routes. However, this does not address the issue in the shorter term. The poor state of repair can make BOATs difficult to use for all users, both motorised and non-motorised. This in turn can lead to further damage to verges and adjacent land as users detour around difficult or impassable sections.
- 3.2. Most BOATs have an unsealed surface. This, along with the underlying geology, such as chalk or clay, means that the heavy load of motor vehicles can cause surface damage. Often this initial surface damage is subsequently exacerbated by water erosion.
- 3.3. The above scenario is not unique to BOATs. Many bridleways, and even some footpaths, in the National Park are also in a poor state of repair due to legitimate use by horse riders, cyclists and walkers. Some lower status rights of way also carry private vehicular rights, and such use by vehicles can also contribute to the deterioration of the surface of the highway.
- 3.4. Due to topography and geology, the repair of BOATs (and many other rights of way) is neither straight forward nor cheap. With the limited resources available to the responsible bodies, only a few projects are completed each year.
- 3.5. Another issue that is sometimes raised is that some users find the use of BOATs by motor vehicles to be intimidating. It can be difficult to pass oncoming users, particularly when a BOAT is narrow. The same issue is raised by some horse riders who dislike sharing bridleways with cyclists. In addition, motorised vehicles can be noisy and not what some people expect, or want to come across, in the countryside.
- 3.6. Complaints are sometimes received by Local Highway Authorities and SDNPA about aggressive driving or speeding of motor vehicles on BOATs. All users of motor vehicles on byways, are bound by the same highway laws as the rest of the ordinary highway network. Vehicles must be road worthy, taxed, insured and drivers must proceed with due care and attention. It is rare for a BOAT to have a speed limit so in theory the national speed limit would apply, however drivers are required to drive a speed that is safe for the conditions. Incidences of speeding, aggressive driving and other infringements of the law are matters for the police to deal with, rather than being an access issue. Any restriction on the use of a

BOAT should only be imposed if there are sufficient resources available to undertake routine enforcement - for example, imposing a 20mph speed limit on a BOAT would be impractical if an infringement of the speed limit would not be a high enough priority for enforcement by the police.

- 3.7. Associated with all the above, there are often calls for the use of motor vehicles to be restricted or prohibited on BOATs, largely because BOATs are a part of the rights of way network which is often perceived by the public as being a network for the use of walkers, cyclists and horse riders. However, as it stands, drivers of road-legal motorised vehicles are legitimate users of BOATs, and Defra recommends that before public rights to use BOATs are removed or restricted all other options should be first explored (See [Defra Guidance Making the best of byways \(2005\)](#) in background documents). This aligns with the “least restrictive access” principle that operates on most publicly accessible land.

4. The current BOAT network

- 4.1. There are currently 85.4km of BOATs within the National Park, just under half of which already have some form of restriction in place. Table I below provides details of BOATs within the National Park with regard to each Local Highway Authority.
- 4.2. A map showing the location of all BOATs within the National Park can be found in appendix 2.

Authority Area	No. of BOATs/ total length (km)	% of National Park Rights of Way network (by length)	No. of BOATs with Traffic Regulation Orders for twelve months of the year	No. of BOATs with Traffic Regulation Orders that are seasonal (2021)
Brighton & Hove	4 / 1.9km	0.03%	2	0
East Sussex	32 / 15.3km	0.46%	0	24
Hampshire	88 / 64.4km	1.95%	23	11
West Sussex	6 (4) / 3.8km (2.3km)*	0.12%	0	0
South Downs Total	130 / 85.4km	2.56%	25	35

* 2 BOATs in West Sussex (UPB/2761 & SHS/2761) run over (i.e. co-exist with) metalled publicly maintained ordinary highways.

Table I: Details of BOATs within the National Park with regard to each Local Highway Authority.

5. Traffic Regulation Orders

- 5.1. Traffic Regulation Orders (TROs) can be used to prohibit, restrict or regulate certain users, types of vehicle or activities on the public highway network. Within the rights of way network they are most commonly used to manage certain types of use on a route. For example, four wheeled motor vehicles could be restricted in their use of a particular BOAT. However, TROs can also be used to restrict or regulate any type of user on any class of right of way; they are not intended to be solely used on BOATs or to only restrict use by motor vehicles.
- 5.2. Because TROs effectively remove a public right, they are tightly legislated and often highly scrutinised by user groups.
- 5.3. TROs can be Permanent, Temporary or Experimental. They may also be time limited, for example they may operate seasonally.

- 5.4. The grounds and procedure for making a TRO are laid out in the [Road Traffic Regulation Act 1984 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1984/27). Section 1 of the Act sets out the 7 grounds for making an order (in England and Wales, outside Greater London); these are:-
- for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or
 - for preventing damage to the road or to any building on or near the road, or
 - for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or
 - for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or
 - for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or
 - for preserving or improving the amenities of the area through which the road runs, or
 - for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).
- 5.5. In National Parks and other special areas of the countryside, section 22 of the Road Traffic Regulation Act 1984 provides additional grounds for making a TRO; these are for the purpose of:
- conserving or enhancing the natural beauty of the area (where conserving the natural beauty of an area shall be construed as including a reference to conserving its flora, fauna and geological and physiographical features); or
 - affording better opportunities for the public to enjoy the amenities of the area, or recreation or the study of nature in the area.
- 5.6. Within a National Park both the Local Highway Authority and the National Park Authority can make TROs on rights of way and unsealed roads (see 7.1) and can use any, or any combination, of the above grounds. In practice, it is usually those National Park Authorities that have delegated responsibility for managing the rights of way network that make TROs, as TROs would normally form one part of the management of the network. However, a National Park Authority has the power (i.e. can make) a TRO where they do not have this responsibility.
- 5.7. A TRO cannot be made jointly. It must be made by either the Local Highway Authority or the National Park Authority. The Local Highway Authority and the National Park Authority may both make TROs within the same geographic area. If the SDNPA wished to make a TRO it would need to consult the Local Highway Authority as part of the procedure.
- 5.8. The use of TROs and the assessment of their impacts should be applied equitably in all respects, including across the network, on all types of (eligible) highway and across all user types. Therefore an assessment of whether to use a TRO to restrict motor vehicle use due to surface damage should not be considered any differently to the use of a TRO to restrict horses on a bridleway or walkers on a footpath for the same reason.
- 6. Hampshire County Council's current approach to management of BOATs**
- 6.1. Within the Hampshire part of the National Park, the management of BOATs and other rights of way is the responsibility of HCC Countryside Service. Enforcement of illegal activities relating to BOATs (as with all highways and including contravention of TROs) is the responsibility of the police.
- 6.2. Based on the published [Defra Guidance Making the best of byways \(2005\)](#), HCC is taking a robust and consistent approach in managing the BOATs network. Whilst this document is archived due to its date of publication, it is still the most recent government guidance on byway management.

- 6.3. HCC has a statutory duty to protect the rights of all legitimate users of BOATs, including motor vehicle users. Any actions that were, or could be, interpreted as unreasonably disadvantaging a particular group or type of legitimate users of BOATs would be open to a legal challenge.
- 6.4. HCC's website *Problems on Rights of Way* is publicly accessible and sets out procedures for viewing, tracking and reporting problems and explains in detail how reports are prioritised.
- 6.5. HCC endeavours to survey all BOATs regularly. Of their 88 BOATs within the National Park, 23 have TROs on them that are applicable for twelve months of the year and 11 have TROs that are seasonal.
- 6.6. TROs that are seasonal (lasting up to 6 months and applied during winter and spring months when damage may be greatest) are most often applied where damage is more likely to occur during/after prolonged wet weather, where such damage is significant, or where it is necessary to protect previous repair works from further or subsequent (weather-related) damage. Seasonal TROs often exclude ALL users, though each route is judged on its own merits. HCC recognises that routes that are damaged by motor vehicle use can also be damaged by horse, cycle and walking use (although the extent of the damage may not be equally attributable).
- 6.7. When considering making a TRO, HCC undertakes an evidence based assessment. Any individual proposed TRO is assessed on its own merit. HCC considers actual, or risk of, surface/environmental damage to be a key determinant.
- 6.8. The SDNPA, through the South Downs Local Access Forum, was consulted and engaged with HCC in the development of their current Operating Procedure for BOATs. This approach is supported by SDNPA officers.
- 6.9. HCC has special regard for the National Park in its assessment of BOATs through its Operating Procedure, which can be found in appendix 3, and route scoring matrix. Any route within the National Park is given an additional 5 points in the scoring matrix, thereby prioritising BOATs within the National Park over those outside the National Park.
- 6.10. Following a survey and assessment of a BOAT, HCC first endeavours to undertake any necessary repairs, consistent with network priorities and budgets. This is consistent with the duty to assert and protect the rights of all users - a BOAT that is in good, robust repair provides appropriate access for all. An example of recent repairs includes Hawkleys 745, before and after photos can be found in appendix 4.
- 6.11. HCC has a full policy for the management of traffic on Hampshire's public rights of way network and the use of TROs which can be found at the end of this report (in the background documents section). HCC's TRO process flow chart can be found in appendix 5.

7. The powers available to the South Downs National Park Authority

- 7.1. National Park Authorities were granted the power to make TROs on public rights of way and unsealed roads within their areas pursuant to the Natural Environment and Rural Communities Act 2006. The procedure is laid out in [The National Park Authorities' Traffic Orders \(Procedure\) \(England\) Regulations 2007 \(legislation.gov.uk\)](#)
- 7.2. To accompany these Regulations, DEFRA published its [Guidance for National Park Authorities making Traffic Regulation Orders under section 22BB Road Traffic Regulation Act 1984](#). This guidance is now archived due to its date of publication. The guidance can be found in background papers.
- 7.3. The Guidance states that the grounds on which a National Park Authority may make a TRO are identical to those available to the Local Highway Authority; that any TRO that may be made by a National Park Authority could also be made by the Local Highway Authority; and that the Local Highway Authority will still retain these powers and in many cases may continue to be the authority best placed to make a TRO.

- 7.4. The Guidance mentions alternatives to TROs, listing seven principles that make the best use of existing powers. It also describes how the provision of barriers and signage are likely to be necessary if a TRO restricting public use is made.
- 7.5. The power for National Park Authorities to make TROs was granted in response to difficulties faced by some which had been given delegated rights of way management responsibilities. Whilst these National Park Authorities received some funding from their Local Highway Authorities in relation to delegated matters, the legal powers to assist with the management of rights of way could not be passed over. Some National Park Authorities found that they were dedicating significant resources, both officer time and budgetary, to the management of BOATs, but that in situations where a TRO was considered to be the most appropriate form of management, a request to the Local Highway Authority for an order was unlikely to be successful.
- 7.6. The SDNPA does not have any delegated rights of way management responsibilities from any of the four Local Highway Authorities (although this does not affect its power under the section 22BB of the Traffic Regulation Act 1984 to make TROs) and does not receive any funding or other resources specifically for rights of way management.

8. The situation in other National Parks

- 8.1. Of the ten National Park Authorities in England only five have delegated rights of way responsibilities. These are Dartmoor, Exmoor, the Lake District, the North York Moors and the Yorkshire Dales. The level of delegation varies, with some Local Highway Authorities retaining legal and order making functions.
- 8.2. Three National Park Authorities have specific policies about motor vehicles on unsealed roads. These are the Lake District, the Peak District and the Yorkshire Dales. Links to all their policies can be found at the end of this report (in the background documents section).
- 8.3. The National Park Authority officers that have been involved with the making of TROs have all stressed the significant level of staff time, expertise and resources involved over an extended time period. As an example, the Yorkshire Dales National Park Authority employed 2 FTE staff for two years (in addition to their regular access staff) solely to deal with vehicles in the countryside and TROs. The Lake District National Park Authority employs 1.4 FTE staff to deal with all rights of way legal issues, including closures and dealing with motorised use.
- 8.4. Legal challenges associated with BOAT management are not uncommon and there is a need to consider carefully any proposals to make a TRO. For example, the Lake District National Park Authority was challenged in the High Court by Green Lanes Environmental Action Movement (GLEAM) for their decision NOT to make a TRO. This followed a well-organised campaign including a 350,000 signature petition calling for the closure of Tilberthwaite & Oxenfell route. The National Park Authority won the challenge and the application for a Judicial Review was dismissed. A link to the details of the case and the High Court judgement can be found at the end of this report (in the background documents section).

9. SDNPA's current position

- 9.1. The SDNPA does not have any formal delegated rights of way responsibilities, other than for the South Downs Way National Trail (where it lies on public highways) through the National Trail Partnership.
- 9.2. SDNPA officers, and Local Highway Authority officers, believe that the Local Highway Authorities are best placed to manage BOATs as a part of the rights of way network within their respective areas. This is consistent with the existing formal Rights of Way Accord between SDNPA and the four Local Highway Authorities. The SDNPA would only exercise its powers in exceptional circumstances, with Member approval and in liaison with the relevant Local Highway Authority.
- 9.3. SDNPA and HCC officers consider that HCC's current approach to the management of BOATs is robust and consistent and it is not believed that there would be any legal or procedural advantage to the SDNPA attempting a TRO process within the National Park.

- 9.4. In the event that the SDNPA decided to investigate the making of one or more TROs, significant additional resources would be required. The SDNPA has not currently made budgetary provision to manage a TRO process and would be unable to do so in the current financial climate, without significant impact on the wider delivery programme. This would require a decision by Members as to the reallocation of the budget. Additional resources would be required to provide specialist expertise, both in the physical management of BOATs (e.g. whether repairs would be practical, how to use barriers and signage to best effect, etc) and in the legal process (e.g. drafting a legally robust policy and procedure, assessing/selecting BOATs with defensible justifications, ensuring the legislative TRO-making process was rigidly adhered to, defending legal challenges, etc). Resources would also have to be made available for the provision of any associated infrastructure (e.g. barriers, signage, etc including provision for replacements if vandalised/removed) and BOAT repair works.
- 9.5. The distinction between making a TRO and defending a TRO in the event of any legal challenge should be noted. Whilst the costs of the latter may be recovered in the event a legal challenge is unsuccessful, the costs of making a TRO will always be required.
- 9.6. The SDNPA supports HCC in its approach to the management of BOATs through consistent joint statements to stakeholders.

10. Future changes to legislation

- 10.1. DEFRA, in its recent consultation on the Landscapes Review, asked the question; *Should we legislate to restrict the use of motor vehicles on unsealed and unclassified roads for recreational use, subject to appropriate exemptions?* (The SDNPA responded with the answer: Yes everywhere.) That the question was asked indicates that the issues associated with motor vehicle use on BOATs and unsealed roads are already being considered by government organisations.
- 10.2. A future introduction of restrictions on recreational motorised vehicle use on unsealed highways (including BOATs) would negate the need for bespoke local restrictions or regulations and avoid the potential for perceived discrimination between users of the rights of way network. It is likely that any such restrictions would become the responsibility of the authority that manages the affected highways to physically implement (and of the police to enforce). However, it is recognised that any such changes are unlikely to be legislated for in the near future.
- 10.3. It is also recognised that should any changes to legislation be enacted that would restrict motor vehicle use across the network, additional resources would be required in order to implement such changes, for example, communication, signage, physical barriers, enforcement aids, etc.

11. Options & cost implications

- 11.1. Table 2 below summarises four potential options for members to consider, along with some of the strengths and weaknesses of each approach. Further details on costs and resources are subsequently presented.

Option	Strengths	Weaknesses
<p>Option 1</p> <p>Continue with the current arrangements and engage via National Parks England in the national debate on legislative change as part of Defra's response to the Landscapes Review.</p>	<p>Partnership working is in line with the current Rights of Way Accord between the SDNPA and four Local Highway Authorities.</p> <p>The four Local Highway Authorities are already set up with the resources and expertise to manage the rights of way network, including</p>	<p>There is a reputational risk that the SDNPA is perceived by some as not doing enough to protect the special qualities of the National Park.</p>

	<p>BOATs.</p> <p>Potential to achieve long-term outcomes through legislative change, without the cost and divisions that will occur when assessing the creation of TROs on BOATs on a case by case basis.</p> <p>This is the least resource intensive option.</p>	
<p>Option 2 – Approach a</p> <p>Develop an enhanced partnership arrangement to support the four Local Highway Authorities in managing the BOAT network.</p>	<p>Additional public communications support would show that the SDNPA is actively engaged and supporting approaches of the four Local Highway Authorities.</p> <p>Increased evidence collated by the SDNPA and provided to the Local Highway Authorities to support the use of RTRA 1984 s.22A (to conserve and enhance the natural beauty of the area), may hold more weight if challenged. (Note: evidence is already provided by the SDNPA when requested by a Local Highway Authority).</p>	<p>Any enhanced SDNPA support would require significant additional resources (staff and budget), to those currently allocated and which are not included in the current approved Corporate Plan (see below for estimate).</p> <p>Any proposed TRO would still have to be assessed and prioritised using the existing Local Highway Authorities policies and procedures and the NPA would not have discretion in relation to this process. Going against existing procedure would risk challenge.</p> <p>There is no conclusive evidence that the use of Road Traffic Regulation Act 1984 s.22(2) has increased the likelihood of successfully making a TRO.</p>
<p>Option 2 – Approach b</p> <p>The SDNPA lead on the assessment and any potential TRO process deemed appropriate for one or more BOATs.</p>	<p>The SDNPA clearly seen as being proactive.</p> <p>In cases involving further restrictions on motorised use on BOATs, walkers, equestrians and cyclists are likely to be supportive.</p>	<p>Significant additional resources (staff, budget and legal), greater than those for Option 2 – Approach a, would be required, to those currently allocated and which are not included in the current approved Corporate Plan (see below).</p> <p>In cases involving further restrictions on motorised use on BOATs, there is a potential reputational risk that the SDNPA is labelled as discriminating against a well-informed section of society.</p> <p>There is no evidence to suggest that the SDNPA would have any greater chance of success in making a TRO than the four</p>

		<p>Local Highway Authorities.</p> <p>Initially, the TRO process would be delayed, as SDNPA would first need to put in place appropriate policies and process, before starting to gather evidence.</p>
<p>Option 2 – Approach c</p> <p>Management of the rights of way network is delegated to the SDNPA from one or more of the four Local Highway Authorities, along with appropriate resources.</p>	<p>Could provide greater consistency of the standard of rights of way across the National Park.</p> <p>In practice, it is usually those National Park Authorities that have delegated responsibility for managing the rights of way network that make TROs, as TROs would normally form one part of the management of the network.</p>	<p>The SDNPA is unlikely to receive a sufficient level of funding from Local Highway Authorities that delegated management of the rights of way network and therefore significant additional resources (staff, budget and legal), greater than those for Option 2 – Approach b, would be required. This would be dependent on the level of delegation (i.e. practical management, legal/order making functions).</p> <p>Depending upon the extent of the delegation the NPA might be bound by the Highway Authority’s policies so would have less discretion regarding the TRO making process than Option 2 – Approach b.</p> <p>This would be a lengthy process. Detailed negotiations with Local Highway Authorities that were agreeable to delegating management of the rights of way network to the SDNPA would be required over an extended period of time.</p>

Table2: Potential options and approaches for the management of BOATs and TROs within the National Park.

Option 1

- 11.2. To continue with the current arrangements and engage in the national debate on legislative change is the least resource intensive option available to the SDNPA.

Option 2 – Approach a

- 11.3. To develop an enhanced partnership arrangement to support the four Local Highway Authorities in managing the BOAT network would require additional resources, above that of Option 1, to implement. This would mean that either additional resources were allocated - which is unlikely given the current level of future settlements and budget cuts - or existing resources are diverted away from current work. This option would also require the agreement of partner Local Highway Authority/Authorities. Additionally, it would be prudent to update the Rights of Way and Access Accord to reflect any enhanced partnership working.

- 11.4. The exact level of additional resources required would be determined by the additional support the SDNPA offered. For example, providing enhanced communications support would require either additional staff resource within the communications team or corresponding reduction in other activity. Some cash resource would also be required for the potential production of communications assets. If SDNPA also offered enhanced partnership working around evidence gathering, then the SDNPA's Access, Areas and Evidence & Research teams would also likely need additional staff and cash resource or have to reduce existing commitments. Many of these teams have already been reduced in both staffing and budget levels.
- 11.5. As an initial estimate, Option 2 – Approach a, would likely require between 0.5FTE additional staff time. In addition, it would likely require a budget of £10,000 - £25,000 per year. This is an initial estimate that would require further refinement based on the level of agreed support to the four Local Highway Authorities.

Option 2 – Approach b

- 11.6. The SDNPA lead on the assessment and any potential TRO process deemed appropriate for one or more BOATs would require the additional resources mentioned in the above paragraph, and in addition both a dedicated staff resource to oversee the work and specialist legal support (see 9.4). The exact level of additional resource required is unknown; it would vary considerably depending on the complexity of the route and evidence required.
- 11.7. The cost of making a successful unchallenged TRO is considered, on the experience of other order making authorities, realistically to be c. £50,000; this would include additional staff costs and costs of gathering evidence. The cost per TRO would likely reduce the more that were made as the necessary resources would already be in place.
- 11.8. Overall costs could escalate rapidly if the order making process was challenged, potentially requiring a dedicated reserve (as for planning appeals). An initial estimate based on discussions with other National Park and Local Highway Authorities, is that the SDNPA should allow for the total cost of one TRO to be up to £100,000. This figure includes both making and defending a TRO, noting that the costs of the latter could be recovered if any legal challenge was unsuccessful. HCC has in the past been awarded costs for unsuccessful legal challenges to TROs. Option 2 - Approach b, does not involve a delegation of responsibilities by the Local Highway Authority, so it would be unlikely that the SDNPA could seek a financial contribution for this work.

Option 2 – Approach c

- 11.9. This is by far the most resource intensive option, both in its development and implementation and estimated costs for both elements cannot be provided at this stage. This duty however can only be delegated by the Local Highway Authority. It should also be noted that during the establishment of the National Park, all four Local Highway Authorities chose not to delegate any aspect of the management of their rights of way network within the National Park, to the SDNPA.
- 11.10. In the event the NPA indicates a preference for any of the Option 2 approaches, whereby officers are instructed to liaise with the Local Highway Authority/Authorities as required and to prepare a detailed plan including timetable, resource requirements and opportunity costs to be considered, together with the Local Highway Authority's response, at a future meeting of the NPA prior to a decision being taken, resources would be required (staff and budget) to undertake this work, as it is not included in the current approved Corporate Plan.

II. Other implications

Implication	Yes*/No
Will further decisions be required by another committee/full authority?	If Option 2 Approaches a, b or c are selected as the preferred option a further decision of the NPA will be required.
Does the proposal raise any Resource implications?	<p>Option 1 can be delivered predominantly from within existing resources, however, following the review of the Authority's Business Model it is likely that some limited additional resource would be required, possibly through the engagement of consultants as needed, to support officers..</p> <p>If any of the Option 2 approaches are selected as the preferred option there will be significant resource implications for the Authority, the details of which will be worked up as part of the decision required to be taken on the preferred option. The undertaking of this work will also require resources (staff and budget), as it is not included in the current approved Corporate Plan.</p>
How does the proposal represent Value for Money?	<p>Option 1 seeks to avoid duplication and promote partnership working and can be delivered with the least additional resources, as highlighted above.</p> <p>The value for money implications of any of Option 2 approaches will be explored as part of any future decision to be taken on these options.</p>
Which PMP Outcomes/ Corporate plan objectives does this deliver against?	As set out at in section 2.
Links to other projects or partner organisations	Work on BOATs is undertaken in partnership with the four Local Highway Authorities as set out in the report.
How does this decision contribute to the Authority's climate change objectives?	Not applicable.
Are there any Social Value implications arising from the proposal?	None.
Have you taken regard of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010?	<p>There are no direct equalities implications arising from the report.</p> <p>This paper considers possible approaches to the management of BOATs. Any future decisions in relation to the approach to be adopted by the National Park Authority or in relation to specific access to or the management of BOATs will need to consider Equalities implications to ensure the Authority's</p>

Implication	Yes*/No
	<p>obligations under the legislation are met.</p> <p>The effective management of BOATs can contribute to the accessibility of the National Park to a wide range of users, including those with protected characteristics.</p>
<p>Are there any Human Rights implications arising from the proposal?</p>	<p>The Human Rights implications of any decision taken in relation to any BOAT would be considered as part of the appropriate process.</p> <p>This paper identifies no additional Human Rights implications at this stage.</p>
<p>Are there any Crime & Disorder implications arising from the proposal?</p>	<p>The Crime & Disorder implications of any decision taken in relation to any BOAT would be considered as part of the appropriate process.</p> <p>This paper identifies no additional Crime & Disorder implications at this stage.</p>
<p>Are there any Health & Safety implications arising from the proposal?</p>	<p>The Health & Safety implications of any decision taken in relation to any BOAT would be considered as part of the appropriate process.</p> <p>This paper identifies no additional Health & Safety implications at this stage.</p>
<p>Are there any Data Protection implications?</p>	<p>None directly arising from this paper.</p>
<p>Are there any Sustainability implications based on the 5 principles set out in the SDNPA Sustainability Strategy?</p>	<p>The report contributes to principle 4 (promoting good governance) of the sustainability strategy</p>

ANDY GATTIKER

National Trails & Rights of Way Lead

South Downs National Park Authority

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Email: andy.gattiker@southdowns.gov.uk

Appendices	<ol style="list-style-type: none">1. Accord for the Management of Rights of Way and Access in the South Downs National Park2. Map showing the location of all BOATs within the National Park3. Hampshire County Council Operating Procedure for the assessment of BOATs4. Before and after photos in relation to BOAT repair on Hawkley 745.5. Hampshire County Council TRO process flow chart
SDNPA Consultees	Director of Countryside Policy & Management; Countryside & Policy Manager (Access, Farming & Western Area); Head of Governance; Monitoring Officer.
External Consultees	Jonathan Woods, Countryside Strategic Manager – Access & Wellbeing, Hampshire County Council.
Background Documents	<p>Defra Guidance Making the best of byways (2005)</p> <p>Road Traffic Regulation Act 1984 (legislation.gov.uk)</p> <p>The National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007 (legislation.gov.uk)</p> <p>Guidance for National Park Authorities making Traffic Regulation Orders under section 22BB Road Traffic Regulation Act 1984</p> <p>East Sussex County Council Policy for the management of motorised vehicles on public byways.</p> <p>Hampshire County Council Policy for the management of traffic on Hampshire's public rights of way network and the use of Traffic Regulation Orders.</p> <p>West Sussex County Council Traffic Regulation Order policy.</p> <p>Lake District National Park Authority Position statement on unsealed roads.</p> <p>Peak District National Park Authority Vehicles Strategy - Feb 2012 (peakdistrict.gov.uk)</p> <p>Yorkshire Dales National Park Authority Microsoft Word - Green Lanes Framework - 2017 - no track changes (yorkshiredales.org.uk)</p> <p>Tilberthwaite & High Oxenfell road Judicial Review hearing Tilberthwaite and High Oxen Fell roads : Lake District National Park</p>

Accord for the management of
Rights of Way and Access
in the South Downs National Park
with



**Brighton & Hove
City Council**



eastsussex.gov.uk



**Hampshire
County Council**



**west
sussex
county
council**



South Downs
National Park Authority

Signed on behalf of Brighton & Hove City Council:



Gillian Marston, Head of Service, City Infrastructure

Date: 18/5/12

Signed on behalf of East Sussex County Council:



Karl Taylor, Assistant Director, Economy, Transport and Environment

Date: 30/5/12

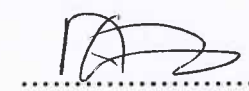
Signed on behalf of Hampshire County Council:



Andrew Smith, Head of Countryside.

Date: 14.6.12

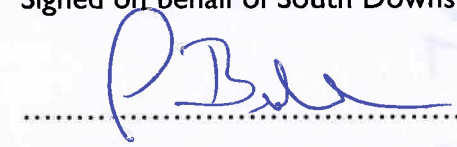
Signed on behalf of West Sussex County Council:



Andy Ekinsmyth, Divisional Manager, Transport and Countryside Services

Date: 8/6/12

Signed on behalf of South Downs National Park Authority:



Phil Belden, Head of Operations.

Date: 20/6/12

Accord for the management of Rights of Way and Access in the South Downs National Park

Introduction

Public Rights of Way form a network of paths providing public access across the South Downs National Park. The many Footpaths, Bridleways, Restricted Byways and Byways Open to All Traffic total approximately 3,300km. Access Land, country parks, permissive paths and other permitted access complement this.

Purpose of the Accord

This Accord is between the four Local Highway Authorities (LHAs) and the South Downs National Park Authority (NPA) and sets out a basis to achieve shared outcomes for the South Downs through joint working. The aim is to have a high quality Rights of Way (RoW) and access network which meets the recreational needs of the 21st century. To achieve this aim this Accord is a commitment from the partners to manage and to seek to improve the RoW and access network where opportunities arise.

This Accord will be reviewed annually when the partner organisations will assess whether the Accord has achieved its purpose and aims, and to report on work carried out to achieve the Shared Outcomes.

One Vision

The NPA and LHAs recognise the importance of the RoW and access network as the primary means for people to explore the South Downs and enjoy the Special Qualities of the National Park (see Appendix I. "Special Qualities"). The RoW and access network enables people to reach areas of Access Land, visitors and local communities to reach local services in a sustainable way, and plays an important role in delivering health and other social benefits. Through partnership working the Accord partners will strive to provide a high quality RoW and access network befitting a National Park.

Working in Partnership – a shared responsibility

The LHAs and the NPA must have regard to the Purposes of the National Park (ref. National Parks and Access to the Countryside Act 1949) which are to:

- conserve and enhance the natural beauty, wildlife and cultural heritage of the area;
- promote opportunities for the understanding and enjoyment of the Special Qualities of the Park by the public.

Working in partnership with the local authorities and other organisations, it is also a duty of the NPA to seek to foster the economic and social well-being of the local communities within the National Park in pursuit of the above Purposes (ref. Environment Act 1995).

The NPA will work in partnership with the LHAs and others to bring added value to the RoW and access network. This work will aim to achieve improvements to the network for

the public's benefit over and above LHAs statutory duty to maintain RoW. This will include work that will:

- a. encourage a greater diversity of people to enjoy the National Park;
- b. provide disabled or less able people the opportunity to better access and enjoy the National Park;
- c. remove barriers to allow easier access for all users to and within the National Park;
- d. meet the aims of LHAs' RoW Improvement Plans and Countryside Access Plans;
- e. create new or enhanced access that meets the identified needs of the public;
- f. provide information to the public including enhanced signage, interpretation or promotional material;
- g. support and enhance the rural economy of the South Downs; and,
- h. engage with stakeholders in the community through dialogue and enabling volunteer involvement.

The Accord in Practice

1. The NPA and LHAs commit to good communication, sharing of information and reporting. This communication will include:
 - a. regular meetings between officers of the NPA and each LHA;
 - b. all LHAs meeting together with the NPA at least annually to enable the NPA to produce an annual report on access management in the National Park;
 - c. LHAs working with and consulting the South Downs Local Access Forum on issues as necessary;
 - d. close working between the NPA and LHAs in relation to the South Downs National Park Management Plan, in which Access and Rights of Way will feature strongly; and,
 - e. regular reporting between partners on work carried out on the RoW and Access network and on the condition of RoW.
2. The LHAs will manage RoW to ensure they are freely available and easy to use by the public. This work includes:
 - a. path surface repair works;
 - b. path surface vegetation clearance;
 - c. signposts from the road and waymarking at intermediary points where appropriate;
 - d. the maintenance of bridges;
 - e. necessary enforcement action to remove obstructions;
 - f. maintaining the Definitive Map and Statement; and,
 - g. a commitment to work with landowners to remove or replace stiles where possible and appropriate with less restrictive options and to improve gates to improve accessibility when opportunities arise.
3. The NPA, as Access Authority, has responsibilities and powers under the Countryside and Rights of Way Act 2000 for all land classed as "Access Land". This work includes:
 - a. entering agreements with landowners to provide a means of access;
 - b. providing a means of access in the absence of an agreement; and,
 - c. excluding or restricting access.

4. The NPA will work in partnership with the LHAs to promote understanding about access to the countryside. This will include:
 - a. working with the public to promote an understanding of responsible access to the countryside; and,
 - b. working with landowners and managers to promote an understanding of their roles and responsibilities in relation to RoW and Access Land.
5. Opportunities will be explored to progress joint working partnerships with local, regional and national partners. This may include, for example, joint bids for national funding, or NPA and LHAs working with other local authorities, organisations and other groups.
6. In association with Natural England, an established arrangement is in place for the management of the South Downs Way National Trail with the NPA and LHAs. This is described in the SDW Maintenance Practice Note (see Appendix 2).

Shared Outcomes

- A commitment to providing a high quality and easily accessible RoW and access network for the benefit of users, visitors and residents.
- A commitment to high standards of work and design that are sympathetic to the special landscape of the National Park and are in pursuance of its Purposes.
- Meeting the needs of local communities demonstrated through engagement with stakeholders and working with volunteers.

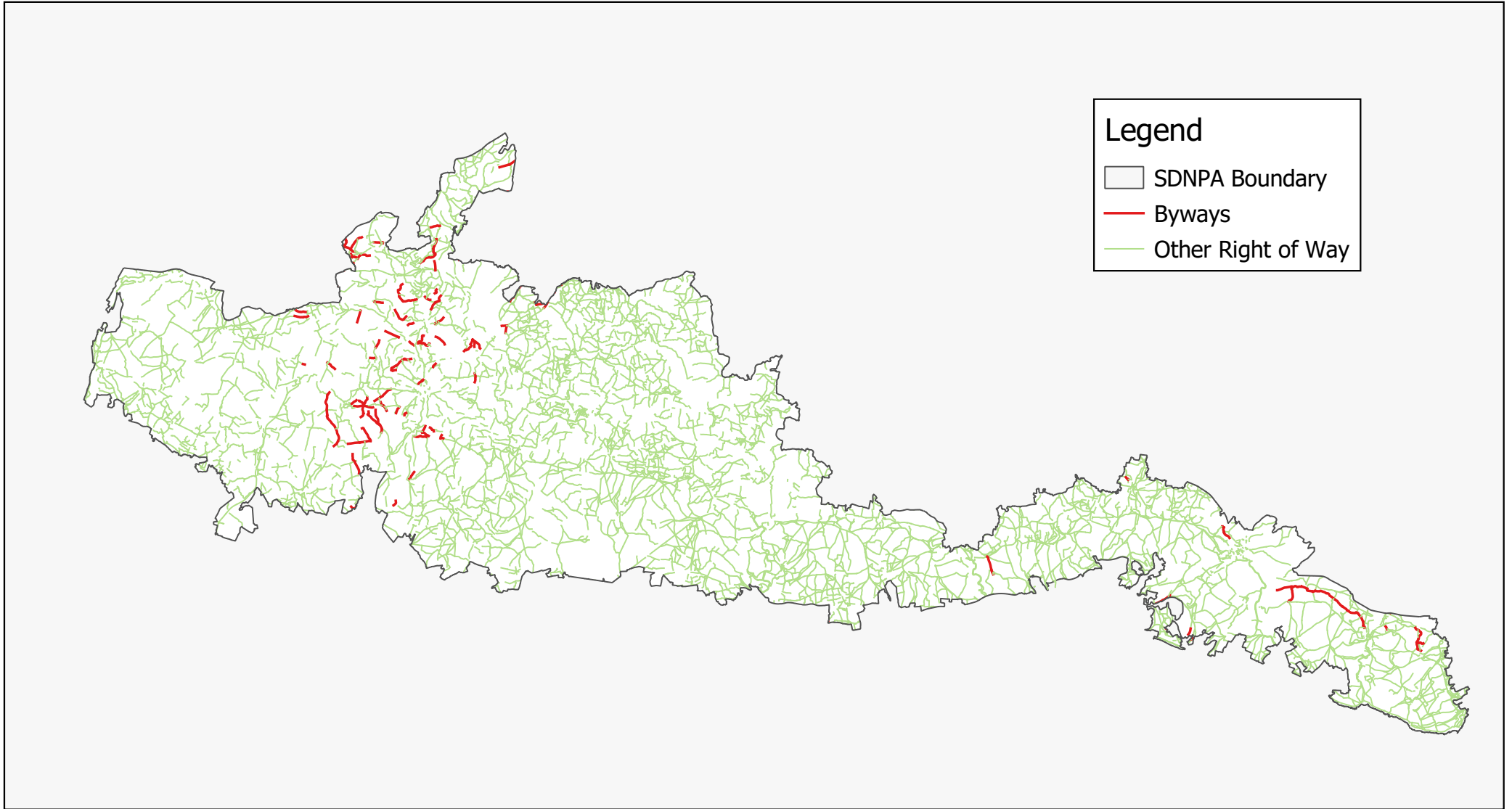
Appendices

Appendix 1. South Downs National Park Special Qualities

Appendix 2. South Downs Way Maintenance Practice Note July 2011

Other Appendices to be developed:

- a) Communications and reporting in detail (TS to set up working group)
- b) LHAs' Priorities statements (LHAs to provide simple statements for sharing internally)
- c) Signage policy/Design guidance/standard specifications (Andy Gattiker to lead)
- d) Volunteer practice note (to be looked at in summer following reviews in SDNPA and ESCC and policy from WSCC)
- e) Promotional strategies (no timetable)
- f) Funding mechanisms for SDNPA/LHA work (TS to draft May - June)



Byway network in the South Downs National Park

Created by: Andy Gattiker 4/5/22

Scale @ A4 1:450,000

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**SOUTH DOWNS
NATIONAL PARK**



Byway Open To All Traffic Operational Procedure

The procedure below will effectively implement existing byway [HCC Policy](#) and take account of Defra Guidance “[Making the best of byways](#)”. This will move towards a more proactive management of these routes, that seeks to minimise damage from over use and ensure that they can sustain use into the future.

Process to Follow:

1. Issue raised with HCC officers
2. Log on spreadsheet and in CAMS
3. Inspect Route using Byway Assessment Form and categorise

Add assessment form link to Spreadsheet

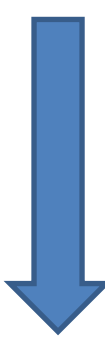
Route Category

Each route will be considered on its own merits and given a score following the inspection. It will then sit in one of 3 categories;

- **Green** (No action required)
- **Amber** (Moderate damage identified. Minor maintenance as required. Monitor for defined period)
- **Red** (Significant Damage. Major maintenance required. Voluntary Restraint or Temporary Closure needed. Monitor for defined period)

Management Options for Red routes:

Our purpose is to keep Byways open to all traffic, **open to all traffic**. Whilst preserving their nature and character and ensuring the safety of all users. Where the use of particular routes is resulting in damage that is preventing the safe use of the lane for all and sits in the **RED** category it will fall into one of the following stages of traffic management. The STAGE that a Byway enters this management protocol will be assessed on an individual basis. If a route does not revert to a more accessible state, following this intervention, it will move up to the next STAGE.



STAGE 1 Voluntary Restraint --Byways that are open, but are at risk of continued deterioration, we will request voluntary restraint. This will be circulated to user groups and be available on the web.

STAGE 2 Winter Closures – Byways that are deteriorating despite voluntary restraint requests – to have a winter closure applied from 1st October to 1st May with an additional ability to close throughout the rest of the year, on the basis of met office weather warning. This will be circulated to user groups and be available on the web.

STAGE 3 TRO – Byways that continue to deteriorate despite Winter Closures, in line with existing policy.



HCC Byway Assessment Form

Parish		
Assessment Date		
BOAT Number/ Local Name		
OS Map		
Grid Reference. From/To	From:	To:
Length and Width at widest point	L:	W:
Length and Width Unsurfaced	L:	W:
	Comments	
Comments/Observations. Please include condition of surface, type, sensitivity to weather and nature of the damage.		Score System
		1-5
Impacts. All classes of user must be considered.		4X4s 1-5 Motorbikes 1-5 Carridges 1-5 Cyclists 1- 5 Horseriders 1-5 Walkers 1-5
Links and proximity to other BOATS To consider possible diversions whilst work is carried out or impacts on other routes.	Possible Diversions whilst work is carried out:	Impacts to other routes Score 1-5
Percentage of route affected. Consider diversions around affected areas		01-20% = Score 1 20-40% =Score 2 40-60% =Score 3 60-80% = Score 4 80-100% = Score 5



HCC Byway Assessment Form

Risk Assessment Brief Explanation of potential risk to public – Please also consider Land Owner impacts (Ecological and Farming issues for example.		1-5
Designations- SSSI/NP etc		0/5
Drainage and Gradient- Flat, undulating or steep		1-5
Surface Condition justification score	NOTE: Promoted routes add 5 to the final score	Total score:
40-65	Poor- Significant Damage. Voluntary Restraint or Temporary Closure required	
20-40	Deteriorating- Moderate damage. Will require Monitoring	
01-20	Good- Little to No damage. Unlikely to require monitoring	
Assessed By	Sign:	Print:



HCC Byway Assessment Form

Score Guidance Information : 1 being low – 5 being high with 3 being the middle bench mark.

Comments/Observations - score should be based on 1 being Generally Good Surface condition, Low Sensitivity to Weather, low/no level of damage and little to no identified risk factor - 5 Being serious issues with the surface condition and potential high risk weather sensitivity. Damage may also pose health and safety risk.

Impacts – e.g. If the surface condition is very boggy due to drainage issues it would be easier for 4x4s or horses than it would be for cyclists or walkers so the walker would be a 4-5 but the horse rider would be 1-3

Links and Proximity to other Boats – Please only score the impacts to other nearby routes. For example if the route was the only way to get to a well used footpath it would score a high impact 4-5

Percentage of route affected – Please see score section on assessment sheet for guidance on score linked to the percentage.

Risk assessment - 5 being high risk for either public safety or risk of potential effects on Land Owner – i.e. livestock issues/ drainage onto fields...etc. please state who is at risk in comments section.

Designations – 0 being no designation, 5 having a designation - e.g. South Downs National Park

Drainage and Gradient – Flat being a score of 1 - 5 being Very steep

Please Note: If the Byway is on a promoted route please add a score of 5 to the total due to the fact that promoted routes have a higher priority on the reporting system and this needs to be reflected.

Examples photographs of before and after restoration works completed by Hampshire County Council.



Photo 1: Byway Hawkley 745, prior to restoration works. Photo curtesy of HCC



Photo 2: Byway Hawkley 745 following restoration work. Photo curtesy of HCC.

Traffic Regulation Order Process

