

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Culture, Recreation and Countryside
Date:	25 September 2013
Title:	Proposal to make an Experimental Traffic Regulation Order on Bentworth Byway Open to All Traffic Nos. 23, 27 & 28 and Wield Byway Open to All Traffic Nos.17, 19 & 20
Reference:	5117
Report From:	Director of Culture, Communities & Business Services

Contact name: Harry Goodchild

Tel: 01962 846044

Email: harry.goodchild@hants.gov.uk

1. Executive Summary

- 1.1. The purpose of this paper is to consider requests to make an Experimental Traffic Regulation Order on Bentworth Byway Open to All Traffic Nos. 23, 27 & 28 and Wield Byway Open to All Traffic Nos.17, 19 & 20 as shown on the attached plan, under section 9 of the Road Traffic Regulation Act 1984.
- 1.2. This paper seeks to provide the Executive Member with the necessary information to determine whether to give authority to make the aforementioned Experimental Traffic Regulation Order (ETRO).
- 1.3. The Executive Member is asked to consider the Council's duty under Section 122 of the Road Traffic Regulation Act 1984, to conduct an adequate balancing exercise to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians).

Extract from the **Road Traffic Regulation Act 1984**

1. The Traffic Authority for a road outside Greater London may make an order under this section (referred to in this Act as a 'Traffic Regulation Order') where it appears to the authority making the order that it is expedient to make it -
 - a) 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
 - b) for **preventing damage to the road** or to any building on or near the road, or
 - c) for facilitating the passage on any road or any other road of any class of traffic (including pedestrians), or

- d) 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
- e) (without prejudice to the generality of paragraph (d) above) 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
- f) for preserving or improving the amenities of the area through which the road runs.
- g) For any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).

9. Experimental Traffic Orders

(1) The traffic authority for a road may, for the purposes of carrying out an experimental scheme of traffic control, make an order under this section (referred to in this Act as an “experimental traffic order”) making any such provision—

(a) as respects a road outside Greater London, as may be made by a traffic regulation order;

(2) An experimental traffic order made by a local traffic authority outside Greater London may, with the consent of the Secretary of State, extend to a road in relation to which he is the traffic authority if the order forms part of a scheme of general traffic control relating to roads of which at least one has a junction with the length of road in question.

(3) An experimental traffic order shall not continue in force for longer than 18 months.

(4) Subject to Parts I to III of Schedule 9 of this Act, where—

(a) an experimental traffic order has been made for a period of less than 18 months, and

(b) the order has not ceased to be in force,

the authority by whom the order was made may from time to time by order direct that it shall continue in force for a further period ending not later than 18 months after it first came into force.

122. Exercise of functions by local authorities.

- 1) It shall be the duty of every local authority upon whom functions are conferred by or under this Act, so to exercise the functions conferred on them by this Act as (so far as practicable having regard to the matters specified in subsection (2) below) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway or, in Scotland the road.
- 2) The matters referred to in subsection (1) above as being specified in this subsection are—
 - a) the desirability of securing and maintaining reasonable access to premises;

- b) the effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run;
 - bb) the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);
 - c) the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and
 - d) any other matters appearing to the local authority to be relevant.
- 3) The duty imposed by subsection (1) above is subject to the provisions of Part II of the Road Traffic Act 1991.

2. Background

- 2.1. Hampshire County Council has been working in conjunction with user groups and local residents to find a solution to the issues of surface damage that have arisen on the Byways Open to All Traffic (BOATs) that are marked on the attached plan. Some of these routes have been temporarily closed in recent months owing to significant surface damage - repairs are on-going and the routes will remain closed whilst the newly repaired surfaces settle. They will then be gradually reopened to each user group, with walkers being followed in turn by cyclists, horses, horse-drawn carriages and motorcyclists, and finally all traffic. This measure will allow the impact of this increasing use to be monitored.
- 2.2. In addition to the above staged re-opening of the routes following repairs, officers propose to implement an Experimental Traffic Regulation Order (ETRO). The effect of this will be that as the temporary closure is lifted, motorcycles and other motor vehicles will only be legally able to use the routes if they have applied for and been issued with a permit by the Council. Wield BOAT 17 is already the subject of a permanent Traffic Regulation Order (TRO), which was imposed in 1992 and which prohibits use by vehicles with four or more wheels. This Order will remain in force and will be unaffected by the current proposals.
- 2.3. An ETRO differs from a permanent TRO in that it may include a provision which enables the order making authority to modify or suspend the provisions of the order if it is deemed to be "*in the interests of expeditious, convenient and safe movement of traffic*", or for the purposes of "*preserving or improving the amenities of the area through which any road affected by the order runs*". This facility would help to address any issues raised by the public after the introduction of the ETRO. Officers will closely monitor the effectiveness of the ETRO so as to determine its impact on issues such as how well the recent repairs are withstanding use and whether there has been any deterioration of the surface, and also whether the permit system is functional.

- 2.4. An ETRO may remain in force for a maximum of 18 months, after which time the order will lapse. During the lifespan of the ETRO, it can be superseded by a permanent TRO provided that no modifications have been made to the ETRO during the preceding 6 months. In effect, this means that unless there is confidence that all the restrictions of the ETRO can be completely lifted after a period of 18 months, then it should be ensured that any modifications are made only during the first 12 months of the order being in place.
- 2.5. The ETRO will be enforced by use of gates fitted with combination locks, the code for which will be given to permit holders only. Responsible use of each route will be ensured by requiring permit holders to adhere to a code of conduct – if officers consider that any user has contravened this code, it may result in their permit being withdrawn. As with permanent TROs, anyone found to have contravened the ETRO itself would be guilty of a criminal offence, which would be a matter to be dealt with by the police. In this way it is anticipated that the irresponsible use that has caused so much damage to some of these routes can be better controlled without the need to prevent access for responsible motorised users.
- 2.6. The ETRO will enable the effectiveness of the permit scheme to be tested and for any adjustments that may become necessary once the scheme is operational to be made. It will remain in force for up to 18 months. During that time the required evidence will be gathered to inform any proposal for future management of the route. Regular monitoring of the condition of the routes will be undertaken, and we will gain an understanding of how effective the permit system is. The experiment may demonstrate that it would not be beneficial to continue to restrict access, or it may lead to the conclusion that some form of permanent restriction is necessary.
- 2.7. The routes which have recently been closed to enable repairs to be made are Bentworth BOATs 23, 27 & 28, and Wield BOAT 17, and officers initially intended to introduce the ETRO to protect these four routes. However, during the consultation, comments were received expressing legitimate concerns about the knock-on effect that displacing motorised users would have on the other BOATs in the immediate vicinity, and so officers consider that it would be prudent to expand the coverage of the ETRO to include the nearby Wield BOATs 19 & 20 which are contiguous with Bentworth BOAT 23. The pressure upon these byways as a result of motorised use is already significant, and it was believed that unless the permit system was extended to these routes their condition would suffer considerably as uncontrolled and potentially irresponsible motorised use over them would inevitably become more concentrated as a result of closing neighbouring routes.
- 2.8. The Council has a duty under section 122 of the Road Traffic Regulation Act 1984, to conduct an adequate balancing exercise to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians). It is the Council's policy to adopt the least restrictive solution that will be effective in addressing problems on a BOAT. Further details regarding the use of motorised vehicles in the countryside can be found on the HCC website here <http://www3.hants.gov.uk/row/vehicles-row.htm>.

3. Formal Consultations

- 3.1. A consultation exercise was carried out between 08 February and 22 March 2013. This prompted 58 responses. The attached document summarises the specific points which were made in response to the consultation and the County Council's comments on those points. A detailed response was issued to everyone who made a representation, for or against, on 22 August 2013.
- 3.2. The Local Member, Councillor Kemp-Gee is aware of the issues and supports the recommendation in this report.
- 3.3. The Executive Member for Culture and Recreation, Councillor Chapman is familiar with the byways in question, having visited the site and walked the routes.

4. Comments on Formal Consultations

- 4.1. For detailed comments on both objections and support please refer to the Appendices.

5. Options

5.1. Reopen the routes to motorised traffic

Officers are of the view that the level and nature of recent motorised use on these byways are not sustainable and if allowed to continue would inevitably result in a reoccurrence of the damage previously seen. It is unlikely that funds could be made available to carry out further repairs in the foreseeable future, and to improve the routes to a degree which would sustain this use would fundamentally alter their character. There has been a significant amount of local objection to this option from non-motorised users of the routes and local residents.

5.2. Impose a permanent restriction against certain users to protect the surface of the routes from further damage

Officers are of the view that to impose permanent restrictions prohibiting use by certain users without sufficient supporting evidence does not adequately comply with the Council's TRO policy. Only monitoring of the effect of gradually reopening the routes to various user groups, and of using a permit system, will enable an informed decision to be made.

5.3. Introduce a seasonal traffic regulation order

Although this measure has been introduced on other byways in the county, due to the variable weather conditions in recent years throughout what have traditionally been drier periods, officers believe that as a result this measure has become a less effective means of minimising surface damage.

5.4. Introduce an experimental restriction that will enable use of the routes to be monitored and managed

Officers consider that this measure will offer the best compromise between protecting the surface of the routes whilst providing the least restrictive option in terms of access. As part of this measure, the existing temporary closures would be gradually relaxed so as to in turn allow pedestrian, cycle and equestrian access along the routes, before introducing the permit system described above to regulate motorised use and monitor its effects.

6. Compliance with Hampshire County Council's Traffic Regulation Order Policy and Countryside Access Plans

- 6.1. The Countryside Access Team of Hampshire County Council has published a Traffic Regulation Order (TRO) policy, which was approved by the Executive Member for Recreation and Heritage in June 2006. This policy says that each case will be assessed on its individual merits and the least restrictive option will be sought after exploring alternative methods to manage the problems that exist.
- 6.2. The proposed ETRO and permit scheme will serve to show what level of permanent restriction, if any, is appropriate in this particular case. A further report will then be provided to the Executive Member detailing the results of this experiment and recommending a more long term solution to this issue.
- 6.3. This proposal also addresses the aims of the South Downs (Hampshire) Countryside Access Plan, in particular issues 2, 3 and 4 which talk about the problems that path users encounter with poor or damaged surfacing in localised areas, the limited availability of accessible and inviting routes and the lack of awareness of each others needs among those who use the countryside and those who manage countryside access.

7. Costs and Financial Implications

- 7.1. The advertising costs for implementing this ETRO will be in the region of £300, to be met from the Access Team budget. The cost of new barriers on the byways will cost in the region of £3000 and the required traffic signs will cost around £500, to be met from the LTP capital pot (2012-2013 - North Alton Byways) and the Access Team budget.

8. Conclusions and Recommendations

- 8.1. In light of the previous surface damage that may be attributed to excessive use by motorised vehicles, officers are of the view that an ETRO to restrict motor vehicles with access being allowed to permit holders only for a period of 18 months does comply with the Council's TRO policy.
- 8.2. A further report should then be provided to the Executive Member making further recommendations based on the results of that experiment.

9. Recommendation

- 9.1 That an Experimental Traffic Regulation Order be made for a period of 18 months under section 9 of the Road Traffic Regulation Act 1984, to prohibit all motorised vehicles except for permit holders from proceeding along Bentworth Byway Open to All Traffic Nos. 23, 27 & 28 and Wield Byway Open to All Traffic Nos.17, 19, & 20, as shown on the attached plan.
- 9.2 That a provision be included in the Order to enable the Head of Countryside to, if necessary, authorise modifications to the Order, to ensure the expeditious, convenient and safe movement of traffic, or for the purposes of preserving or improving the amenities of the area.
- 9.3 That a further report should be provided to the Executive Member before the end of that period making further recommendations in light of the results of that experiment.

CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:

Links to the Corporate Strategy

Hampshire safer and more secure for all:	yes
Corporate Business plan link number (if appropriate):	
Maximising well-being:	yes
Corporate Business plan link number (if appropriate):	
Enhancing our quality of place:	yes
Corporate Business plan link number (if appropriate):	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report.

(NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
General Correspondence	HantsFile\CCRA\Countryside\Countryside HQ\Countryside Orders\Traffic Regulation Orders 1
Proposal File	VB\TRO\ Bentworth BOATs 23, 27 & 28 and Wield BOAT 17
TRO Policy	www3.hants.gov.uk/row/making-changes/traffic-regulation-orders/tro-policy.htm
Hampshire Downs Countryside Access Plan	http://www.hants.gov.uk/rh/countryside/access/hampshire-downs.pdf

IMPACT ASSESSMENTS:

This decision has been assessed to see what impact it may have in the following areas. If it has been identified that there are possible implications which may have a negative impact this grid should identify the part of the report which covers the recommendation about how those potential negative impacts are managed or avoided.

Impact Level: **S**= Significant Impact **L** = Low Impact **None** = No impact

IMPACT AREA	IMPACT LEVEL	COMMENTS	WHERE COVERED IN REPORT (Where there are details of how impact could be managed)
Equality & Diversity Impact	L	The restriction of motorised vehicles, except by permit, will enable surface improvements to be maintained, making the route more easily accessible by a wider range of path users. To deliver this objective, the least restrictive option available has been recommended to the Executive Member in line with the Council's adopted policy.	6.3
Crime Prevention (under Section 17)	None	The proposals made are anticipated to have no impact on reported crime and disorder in this area.	
Environmental	L	The proposed restrictions will reduce use of the route by motorised vehicles, reducing environmental impacts in the local area.	6.3

Summary of Representations to Proposed Experimental Traffic Regulation Order
08 February to 22 March 2013

Objection to Restricting Motorised Use

Categories;
Surface damage and maintenance
Compliance with policy/legislation
Fairness/appropriateness of proposed restrictions
Alternative solutions
Financial impact
Other

Summary of points made in objection to the proposed restriction of motorised use on these BOATs in 39 representations.

	Representation	Officer Comment
	<i>Surface damage and maintenance</i>	
1	Horses do more damage to the surface than motorbikes do. This is because a horse and rider are heavier than a motorcycle and rider, and this weight is concentrated through four small iron-shod points of contact, rather than through two soft rubber tyres. If motorbikes are to be restricted, then horses should be as well.	<p>Studies that have been published on the relative impact of different user groups have been inconclusive, owing to many variables, such as subsoil and topography. Some suggest that shod horses can cause more damage than other users, although the action of horses' hooves does not create the same sort of damage that is associated with wheel-spinning of motorised vehicles.</p> <p>The proposal to open the routes to different user groups in stages will allow the impacts of each type of use to be monitored.</p>

2	<p>Surface damage is due to lack of maintenance and drainage by HCC, especially in view of the exceptionally wet weather in recent years. All BOATs should be maintained to a standard that is suitable for all those legally allowed to use them. Lack of maintenance should not be used as an excuse to remove the rights of any group to use these lanes.</p>	<p>Section 66(1) of the Wildlife and Countryside Act 1981 defines a Byway Open to All Traffic (BOAT) as:</p> <p>“byway open to all traffic” means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used;</p> <p>BOATs will be maintained to a standard suitable for use mainly by non-motorised users. It is acknowledged that all routes have suffered due to the exceptional weather conditions in recent years.</p> <p>BOATs came into existence owing to their use as highways prior to the advent of motorised vehicles being in common use. Some of them are simply not capable of supporting the level of use that is made of them today owing to fragile subsoils or adverse topography. Powers exist under section 1 of the Road Traffic Regulation Act 1984 to restrict any use that is inappropriate for a particular route in order to protect it for its main purpose as a route used as a bridleway or footpath. Each route will be assessed individually and a decision made according to the unique circumstances of each case.</p>
3	<p>Restricting these routes will only serve to concentrate use/damage on other nearby routes.</p>	<p>BOATs Wield 19 and 20 are contiguous with BOAT Bentworth 23, and all three BOATs share similar topography and geology. Increased damage to these three BOATs resulting from the temporary closure of part of BOAT 23 is starting to be evidenced during wet periods. We therefore propose to expand the scheme so that the ETRO will apply to the entire length of Bentworth 23 and also to Wield 19 and 20.</p> <p>The purpose of the ETRO is to manage the use of the affected BOATs and to monitor the effects of this type of management. Effects on routes not included within the ETRO will also be monitored.</p>

4	<p>If damage is a result of illegal use, those responsible should be targeted and prosecuted. Responsible users should not be penalised.</p>	<p>Officers have been working with Hampshire Police with regard to managing vehicles in the countryside. The proposed ETRO will help to ascertain whether damage is being caused by illegal use or general legitimate use and we may install monitoring equipment, such as loggers, to aid in gathering this information. This will help to inform and support any action that the police are then able to take to address any illegal use that occurs.</p>
5	<p>The staged reopening proposes to allow vehicular use starting in autumn/winter, with the impacts of such use being closely monitored. This is not a fair appraisal as surface conditions will naturally be poor at this time of the year and more vulnerable to damage. For a fair appraisal motorised use should be prohibited until the following spring/summer when a more accurate assessment of the impacts of this use can be made. Also, motorbikes should be reintroduced prior to 4x4s to accurately assess the impact of each.</p>	<p>It is now proposed to adjust the staged reopening so that motorbikes are allowed to begin using the route prior to making it available to other motorised vehicles. This will enable the relative impact of these different vehicles to be seen. Exactly when the routes are opened to each type of user will be flexible depending on predominant weather conditions.</p>
6	<p>Many motorised users are happy to volunteer their time to help repair/maintain these routes, in exchange for allowing their continued use of those routes.</p>	<p>The assistance of volunteer groups in maintaining public rights of way is always greatly appreciated and is of benefit to all users. However, as surface repairs have become necessary it is essential that the surface is allowed adequate time to settle and consolidate, and that the causes of the previous damage are properly assessed. This will benefit all users by providing evidence of what is causing the damage and will ensure that the future management of these routes is adequate and appropriate. The Council is working with various volunteer groups county-wide to improve the condition and management of Hampshire's rights of way and Countryside sites.</p>

7	Motorcycles do no damage to the surface of these routes. In fact they improve the condition by smoothing out ruts and hoof marks to maintain a good surface for all users. Use by motorcycles also helps to keep encroaching vegetation at bay. Motorbikes use ruts made by 4x4s and tractors, doing no additional damage.	The proposed staged reopening will allow the impact of different users on these particular routes to be demonstrated.
8	The proposed staged reopening will not adequately show the comparative impact of different users as any damage will be cumulative across all user groups. The comparison will also be highly weather-dependant as the trial progresses. If this data is to be used to inform this and other TROs, then the experimental data should be made available to users.	The proposed staged reopening will necessarily be flexible according to predominant weather conditions and any other factors that may arise. Whilst a plan has been set out, this will be adjusted as may be required to achieve the main aim of successfully repairing and reopening these routes to as many user groups as they can realistically support. This will involve actively monitoring these routes and may include the use of loggers and fixed point photography.
9	ETRO proposal is being used as a delaying tactic to avoid spending money on appropriate repairs.	An ETRO is the best tool available to deal with this situation. It is necessary to allow the repairs to settle properly and it is necessary to gather information about how various users affect the surface to inform any longer term solutions to ensure that they are maintained to at least bridleway standard.
10	Surface problems are largely due to the unusually wet weather in recent years, and not misuse by any user group.	The staged reopening will help to provide evidence of the real impacts on these routes. The surface problems on these routes have been on-going for a number of years, throughout various predominant conditions.
11	Wield 17 has been closed to 4x4s for many years and it has still fallen into a state of poor repair requiring temporary closure for repairs. This is evidence that it is not 4x4s that are responsible for the damage.	Each of the routes included in this proposal is different and may be able to take different levels of use in the long term. The pre-existing TRO against 4x4s on Wield 17 will be reviewed as part of this experiment, in line with the Council's policy, which can be viewed here; http://www3.hants.gov.uk/row/vehicles-row.htm

12	Once the repair works have settled, all the routes should be reopened to motorised users, as they currently are. These lanes can support use by motorised vehicles once appropriate repairs have been carried out and allow to bed in.	The proposed staged reopening will allow the impact of different users on these particular routes to be demonstrated.
13	Damage is mainly caused by private use by farm machinery. It is unfair to penalise public vehicular users for this damage.	The staged reopening will help to provide evidence of the real impacts on these routes. Should evidence be found of damage being caused by private use, this will be addressed.
<i>Compliance with policy/legislation</i>		
14	Closing these BOATs to any users is contrary to HCC's vision statement which is 'A network that provides the highest quality countryside access for everyone to enjoy, now and in the future'.	This experiment is designed to ensure that these routes are available, and in a fit condition, for use by as many user groups as possible in the long term.
15	Under s130 of the Highways Act 1980 it is the duty of Hampshire County Council, as Highway Authority, to assert and protect the rights of all users, including vehicular users.	The use of a permit system to enable and promote responsible use of the BOATs by those with motorised vehicles is intended to help protect the fabric of the BOATs against damage caused by irresponsible vehicular use. Several of the BOATs have previously been closed to allow necessary repairs to be undertaken. With the approach proposed, it is hoped that the BOATs will remain in good repair and open to all user groups.
<i>Fairness/appropriateness of proposed restrictions</i>		
16	Closing these BOATs to motorised users is discrimination against a minority group.	Motorised users are not classified as a minority group.
17	Motorised users currently only have access to a very small percentage of the rights of way network, so any further restriction is unacceptable.	There is an extensive network of vehicular roads throughout the County that far exceeds the length of the rights of way network. Whilst in the past these were well used by horses and other non-motorised users, they are now generally unsuitable for all non-motorised users, but are uniquely designed to support motorised use.

18	Motorised users value these off-road routes and some have helped to clear and maintain them in conjunction with HCC working parties.	The assistance of volunteer groups in maintaining public rights of way is always greatly appreciated and is of benefit to all users. However, as surface repairs have become necessary it is essential that the surface is allowed adequate time to settle and consolidate, and that the causes of the previous damage are properly assessed. This will benefit all users by providing evidence of what is causing the damage and will ensure that the repairs are protected for the future.
19	Most motorised users are polite and courteous to other users and do very little damage to the surface. It is the minority that are causing problems and responsible users of all kinds should not be restricted because of the actions of the few.	The staged reopening will help to provide evidence of the real impacts on these routes through active monitoring and will help to inform their long term management. The ETRO should reduce the occurrences of illegal and irresponsible use
20	Many motorised users come from urban areas and this is their only access to enjoy the countryside. To take this away is unfair.	The rights of way network is available for use by people from all areas to enjoy in the ways that are appropriate according to the status of a particular route.
21	These BOATs are highways and should be treated as such. You would not gate a tarmac road and issue permits, so it should not be done on BOATs either.	Traffic Regulation Orders of various kinds are commonly used on vehicular roads, particularly where inappropriate traffic use is of concern in urban areas. BOATs are distinct from ordinary vehicular roads in that, whilst they are open to use by all traffic, their main public use is by walkers, cyclists and horse-riders. This is taken into account in their maintenance and management.
<i>Alternative solutions</i>		
22	Installing gates will not prevent illegal use and the funding would be better spent on educating all users on how to use the routes responsibly.	Education is one strand of the solution to this kind of problem and officers are working with various parties to promote the appropriate use of multi-user routes. New signs to clearly convey who can use a particular route have been developed for use on BOATs in particular.

23	Funding should be used to maintain the routes to a suitable standard to include motorised use, instead of on imposing and managing restrictions.	As detailed above, whilst BOATs are open to use by all traffic, they are intended for mainly non-motorised use. This is taken into account in their maintenance and management. The only surface that would adequately support significant vehicular use is a metalled surface. However, this would be unsuitable for many non-motorised users and would represent an inappropriate intrusion into the countryside.
24	Alternative routes dedicated to motorised use should be provided away from sensitive woodland areas.	Routes dedicated to motorised use are provided and constitute the main vehicular road network. Most BOATs cross land that is in private ownership. It is open to any landowner to provide new routes for public access should they choose to do so. Organised events and unmetalled motorised tracks are provided on private land in some areas (for a fee) and users are free to make use of these facilities.
25	A seasonal TRO would be more appropriate than a year-round permit scheme.	A seasonal TRO is one of the options that were considered. However, as seasonal weather patterns are now less distinct than in the past (e.g. very wet conditions can persist at any time of the year), seasonal restrictions may not be as useful as they have been in the past.
26	Restriction should be on three wheels or more only as this would be enforceable using appropriate barriers. Most of the damage is done by 4x4s and not motorcycles.	The staged reopening will help to provide evidence of the real impacts on these routes of each user group through active monitoring and will help to inform their long term management.
27	HCC should open more BOATs to spread out the impact of vehicular use, rather than concentrating it on fewer and fewer routes as more of them are closed off to motorised users.	Most BOATs cross land that is in private ownership. Whilst it is open to any landowner to provide new routes for public access, few choose to do so, particularly for motorised use.

28	<p>Could a gap (rather than code-locked gate) for motorcycles be considered to reduce the impact on responsible motorcyclists? The inconvenience of negotiating so many gates in this area is significant and will only serve to prolong disturbance around the gated access points. Motorcycles would still require a permit and anyone riding without one could be prosecuted, but legitimate users would not be inconvenienced by the gates. Non-permit holders could still get through if/when codes are circulated, so having the physical gates in place adds little to the scheme without enforcement anyway. If it becomes necessary gates could be reinstalled for use by all at a later date. This would be in line with the Council's policy of seeking the least-restrictive solution.</p>	<p>This option was considered. However, due to the past history of use of the routes, which has included irresponsible and illegal use even when the routes were subject to temporary closures, it is felt that stronger physical restriction of unauthorised use is required, although it is acknowledged that as the use of bespoke structures to restrict unauthorised motorbike access is not being proposed, the use of gates will not be a fool-proof solution.</p>
29	<p>Effective enforcement of the permit scheme (rather than a permanent exclusion) is achievable if local residents, parish councils and user groups can work together in a coordinated way. This could involve the issuing of day permits and use of key-locks with local key holders, rather than code locks which are open to abuse. Keys could be issued with permits in exchange for a small deposit and be returned at the end of the day.</p>	<p>This approach could work, but would require the support of local residents, parish councils etc as HCC cannot be on site on a daily basis.</p>
30	<p>If most of the damage is caused by illegal/irresponsible use then this is a police matter and should be addressed through enforcement against those responsible, rather than against all users. Such enforcement would create a deterrent effect against future abuse of these lanes.</p>	<p>This kind of enforcement requires police action as the County Council does not have this kind of enforcement power. Officers are working with the police to find the best way to tackle the issues that exist. The proposed scheme will provide evidence to inform and support any action that the police might take.</p>

	<i>Financial impact</i>	
31	The gates installed to enforce the current temporary closures and proposed ETRO must have been expensive and are likely to be vandalised or stolen by frustrated motorised users. There is also a cost in manpower to administer and regulate the experimental closure and permit scheme. This money should be used to maintain the BOATs to a suitable standard for motorised use instead.	The gates used can be reused elsewhere if they are not needed on these routes in the longer term. The costs of these structures and the administration of the permit scheme are small compared to the cost of repeated or more substantial surface repairs.
	<i>Other</i>	
32	These BOATs provide an important off-road link for motorised users, so no restriction should be placed on them that prevents this use.	Noted.
33	No information has been provided on how the proposed ETRO will be assessed or how the permit scheme will work and how to apply for a permit. How will HCC prevent/control the lock codes being quickly distributed to non-permit holders? How long will it take to obtain a permit? How will new codes be circulated when changed? Will carriage drivers also need a permit? Will permit holders be able to allow non-permit holders in their group through? How will this be policed/enforced? Can the results of the experiment be made available to users? How will adherence to the code of conduct be monitored? Would keys be more effective than codes? How will the gates impact horse riders and disabled people?	<p>Full details of the permit scheme will be made available in due course.</p> <p>To answer a few of the questions raised, anyone will be able to apply for a permit by submitting an application form and signing up to a Code of Conduct. There will be no charge for this.</p> <p>Each user must hold their own permit and not allow non-permit holders to access the route. A permit will be supplied within a month and must be carried so it can be produced if requested on site by police officers.</p> <p>A lock code will also be issued with the permit. Should the code need to be changed, new codes will be circulated by email.</p> <p>If anyone is found to be abusing the system their permit will be withdrawn and the code changed.</p> <p>Permit holders will be encouraged to report abuse by other users to help ensure that these routes can remain open and available to them.</p> <p>Adjacent gates will allow unhindered access to non-motorised path users.</p>

34	Motorised users already pay 'road tax' and have a driving licence, which horse riders (and cyclists) do not, although they do more damage. This entitles motorised users to use these public BOATs without further need for a permit.	Whilst vehicular users do pay vehicle tax (as opposed to road tax) no part of this tax is made available for the maintenance of BOATs. It is not proposed to charge a fee for permits to use these routes and they are being employed to reduce the damage that results from excessive or inappropriate vehicular use.
35	The proposed ETRO will not prevent illegal/careless use.	Through on-going active monitoring, the ETRO will provide evidence that can then be used by the police to target their resources to deal with any illegal use that is highlighted.
36	Motorcycles can pass through a gate or gap that is wide enough for horses, bicycles, pushchairs etc. Any structure, such as sleepers, that may physically restrict a motorcycle will also prevent use by those with mobility issues and as such would be inappropriate on any public route. In any case, sleepers would merely present a welcome challenge for trail riders to overcome. As such a restriction on motorcycles is unenforceable.	The challenge of permitting access to legitimate users, whilst preventing access by others is common to many rights of way, especially those with bridleway status or higher. The management of any unauthorised vehicle use on these BOATs will be undertaken in the way that is deemed to be most appropriate. It should be remembered that the police have powers available to them which they can use in the event of illegal use of public rights of way; the ETRO would mean that motorised vehicular use of the BOATs was legal only by permit holders.
37	Motorised use should be reinstated as soon as possible. These repairs are inadequate and involve an unnecessary delay in reopening the routes to motorised users.	It is essential that the repairs to the unbound surface of these routes is allowed sufficient time to settle. This process is being hampered, particularly on Wield 17, by the persistent wet ground conditions and cannot be hurried. If the routes are reopened prematurely they will not stand up as well to continued use and this could result in their permanent closure to motorised vehicles.

38	There appears to be much confusion about who can legally use these routes, with many non-motorised users believing that any motorised use is prohibited already. There needs to be education amongst all user groups as to what is or is not allowed on these lanes and how to use them respectfully with tolerance to all legitimate users.	This is outlined in the Council's guidance on vehicles in the countryside, which can be found on our website here; http://www3.hants.gov.uk/row/vehicles-row.htm In addition, new information signs have been developed that will be installed on site to make it clear exactly who can use these lanes.
39	Motorised users often travel from far and wide to use these lanes, spending money in the local area and benefitting local businesses. Riders who are not local may not know about restrictions in advance and so may disregard them.	Any restrictions that are in place can be viewed on our interactive maps here; http://whereilive.hants.gov.uk/rightsofway/webform1.aspx It has always been recommended that users of all kinds check for any restrictions when planning a route prior to setting out.
40	When the TRF (and other groups) are organising 'runs', members often travel from far away and at short notice. On those occasions, could the run leader be issued with a day permit for the group, rather than each individual needing to have their own permit?	Any application for a permit will be considered on its own merits.
41	Gates and locks will be vandalised, so the permit scheme is inherently unworkable.	If the permit scheme proves to be unworkable, then alternative solutions will need to be considered. The ETRO is being proposed to trial potential approaches in order to arrive at the most appropriate solution in the circumstances. The existing gates have been in place for several months now and have not been significantly vandalised.
42	What is the purpose of the staged reopening?	The staged reopening will provide evidence of the relative impact of different user groups and help to inform any long term solutions that may be introduced.

43	Please clarify the difference between TROs and Temp closures on your website as only one of these routes appears to be subject to a TRO currently.	<p>A TRO under section 1 of the Road Traffic Regulation Act 1984 (RTRA 1984) is a permanent restriction.</p> <p>An Experimental TRO (ETRO) under section 9 of the RTRA 1984 can remain in force for up to 18 months to enable the effect of a particular restriction to be tested prior to a permanent TRO being introduced (or to show that a permanent TRO is not needed).</p> <p>A Temporary closure under section 14 of the RTRA 1984 is a temporary restriction to allow for repairs to be carried out.</p> <p>Wield 17 is currently subject to a TRO imposed in 1992 against 4x4 use. The other routes in this proposal are currently subject to Temporary Closures whilst works are being carried out and allowed to settle. It is proposed to introduce an Experimental TRO on these routes to provide evidence to inform any permanent TRO that may be introduced later.</p>
----	--	---

Summary of Representations to Proposed Experimental Traffic Regulation Order
08 February to 22 March 2013

Support of Restricting Motorised Use

Categories;

Surface damage and maintenance

Compliance with policy/legislation

Fairness/appropriateness of proposed restrictions

Alternative solutions

Financial impacts

Other

Summary of points made in support of the proposed restriction of motorised use on these BOATs in 19 representations.

	Representation	Officer Comment
	<i>Surface damage and maintenance</i>	
1	Surface damage and ruts caused by 4x4 use has rendered these routes impassable to non-motorised users and further damage of this kind should be prevented by prohibiting such damaging use. 4x4s enjoy the challenge of the churned up surface, but this excludes all other users.	<p>Up until the current closures, motorised vehicles have had a legitimate right to use these lanes. The Council's policy, in line with government guidance, is to seek the least restrictive option that addresses the problems that exist. This means that evidence must be gathered as to exactly what has been impacting these routes and that any solution must not be more restrictive than is necessary in all the circumstances.</p> <p>The proposed staged reopening, followed by introduction of an ETRO and permit scheme, will provide evidence of exactly what has been causing the damage to these routes and how best to deal with it in the long term.</p>

2	Motorbikes can do as much damage as 4x4s as they sometimes ride up and down the same section repeatedly on a single visit to the area.	The best way to demonstrate this is by the staged re-opening, combined with close monitoring of the surface conditions.
3	If motorised use is not also restricted on adjoining BOATs in this area, then further damage will be concentrated on those lanes by users who are unable to use the routes restricted under the current proposal.	<p>BOATs Wield 19 and 20 are contiguous with BOAT Bentworth 23, and all three BOATs share similar topography and geology. Increased damage to these three BOATs resulting from the temporary closure of part of BOAT 23 is starting to be evidenced during wet periods. We therefore propose to expand the scheme so that the ETRO will apply to the entire length of Bentworth 23 and also to Wield 19 and 20.</p> <p>The purpose of the ETRO is to manage the use of the affected BOATs and to monitor the effects of this type of management. Effects on routes not included within the ETRO will also be monitored.</p>
4	The large flints used to resurface the BOATs are not suitable for equine use and alternative surfacing material should be used. This material is also not in keeping with the character of the routes and local area. Details of the on-going repairs need to be clarified.	The surface repairs are still on-going and have been hampered by the persistent wet ground conditions, particularly on Wield 17. The coarse-grade material must be allowed time to settle as the surface dries out - this has happened more quickly in some areas than others. The need for a finer-grade wearing course to be applied will then be assessed and used as appropriate.
5	The experiment is pointless as it is plainly obvious that motorised vehicles do most damage to the surface. In some cases motorcycles are worst as they go around deep ruts and widen the area of damage.	The availability of supporting evidence is a powerful tool for supporting the introduction of any permanent restriction, or other form of management. The best way to gather such evidence is by carrying out experimental restrictions like the one being proposed here.
6	Motorbikes generally do less damage than 4x4s, but are also generally more courteous.	The proposed staged reopening is the best way to demonstrate this.

Compliance with policy/legislation		
7	HCC has a guidance document on Vehicles in the Countryside. The code of conduct is regularly disregarded by motorised users. If causing damage to the surface may be an offence, then the offenders (motorised users) should be banned.	The proposed ETRO will provide the evidence required to enable Hampshire Police to target their resources to deal with any illegal use that is highlighted. The Council's guidance on managing vehicles in the countryside can be found here; http://www3.hants.gov.uk/row/vehicles-row.htm
8	The Wildlife and Countryside Act defines a BOAT as a route which is mainly used by the public for the purposes for which a footpath or bridleway is used. The increasing vehicular use is not in keeping with this purpose and restrictions should be applied accordingly.	Section 66(1) of the Wildlife and Countryside Act 1981 defines a Byway Open to All Traffic (BOAT) as; "byway open to all traffic" means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used; BOATs will be maintained to a standard which is appropriate for this public use i.e. mainly for use by non-motorised traffic. The public use of individual BOATs will not be restricted unless there is a specific reason that makes such a restriction necessary.
Fairness/appropriateness of proposed restrictions		
9	Motorised use on these routes is increasing every year and this pushes vulnerable non-motorised users onto the busy local road network or other inappropriate routes.	The current proposals have been initiated in order to ascertain exactly what level of use is sustainable on these routes to ensure they remain open and available for as many users as possible.
10	Non-motorised activities such as walking, cycling and horse riding are being promoted by the government for the intrinsic benefits to health and wellbeing. Allowing continued motorised use of these BOATs is contrary to that aim.	It may be that some level of motorised use does not conflict with that aim and it is important to gather evidence to inform the future management of these routes. Motorised use of BOATs is entirely legitimate, unless restricted by a valid TRO or temporary closure.

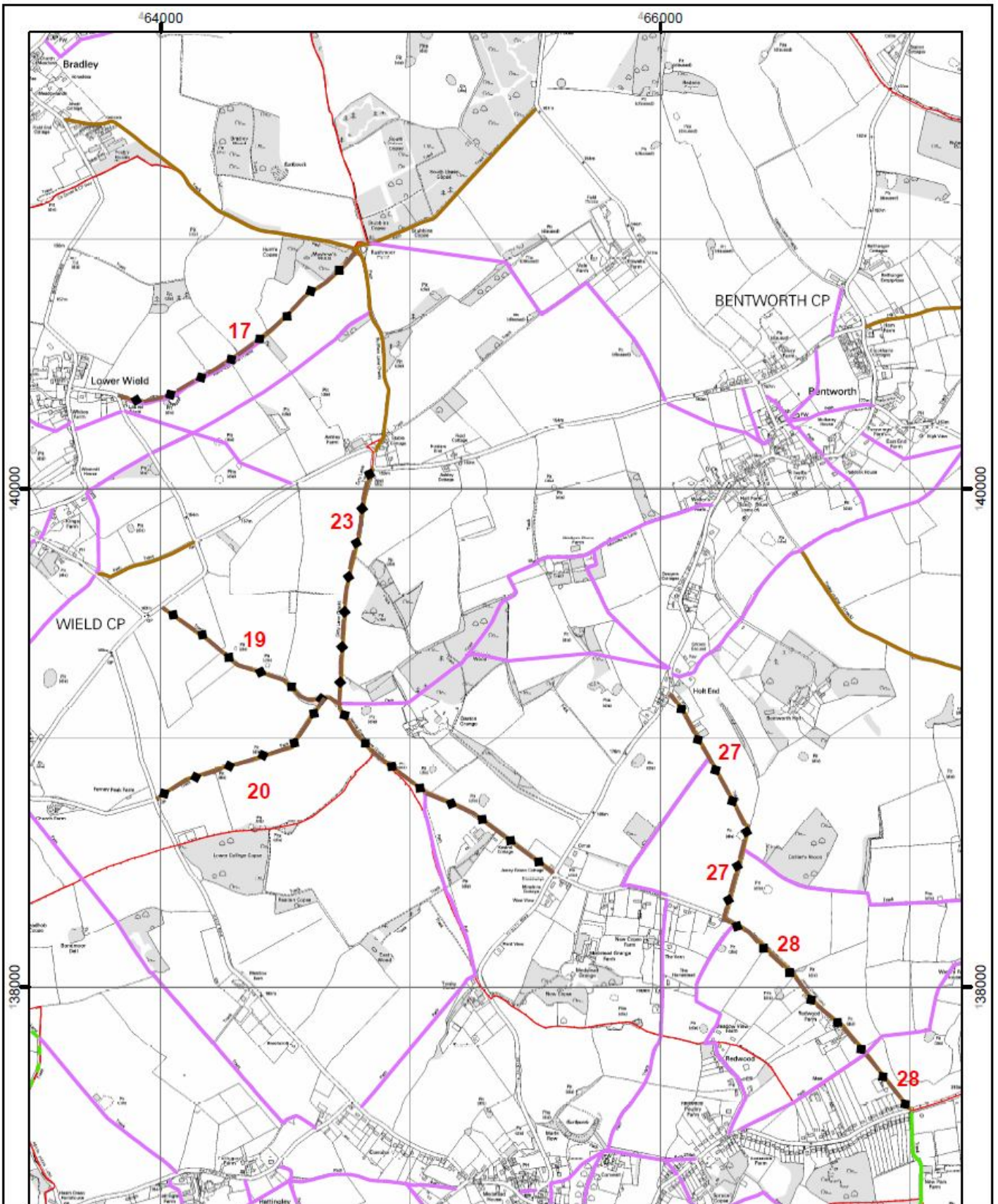
11	The motorised users that have caused so much damage to these routes travel to the area from far afield, whilst those non-motorised users that have been severely disadvantaged by this damage are primarily local to the area.	The public rights of way network is available to all members of the public, restricted only by the status of a particular route (and any TROs or closures imposed on it) and not by geographical area.
12	Motorised users should be banned from these routes by permanent TRO to prevent further damage in the future, and the cost of repairing it.	The introduction of any permanent restrictions MUST be supported by evidence. The only way to gather that evidence is by carrying out experimental restrictions like the one proposed in this area.
13	Motorised users can use the entire vehicular road system, most of which is unsuitable for vulnerable non-motorised users. They should make use of those routes that are designed for them and leave the un-surfaced routes to non-motorised users. This would be much more appropriate.	Whilst BOATs are intended primarily for non-motorised use, they are legally open to motorised traffic as well (unless affected by a valid TRO or temporary closure). Any permanent restrictions must be based on evidence that a particular route cannot support motorised use, rather than on the subjective principle that all such use is inherently unsuitable.
<i>Alternative solutions</i>		
14	All the BOATs in this area should be reclassified as Restricted Byways/Bridleways under the provisions of the relevant legislation.	The current legislation does not provide for the simple reclassification of a BOAT. Changing a BOAT to a Restricted Byway would require the extinguishment of motorised vehicular rights. The Magistrates court can only grant such an extinguishment if it is satisfied that the route is not needed for public use. Case law provides that this test is not likely to be met if the route is used by the public.
15	All BOATs in the county should be subject to TRO against motorised use, as has been done in many other counties. This would save significantly on maintenance costs in the future.	It is not appropriate to introduce a blanket prohibition against a particular user group simply to reduce future maintenance costs. Each route must be considered individually and the least-restrictive solution must be chosen that effectively resolves the main issues in each case. This is in line with both government guidance and the Council's policy, which can be viewed here; http://www3.hants.gov.uk/row/vehicles-row.htm http://archive.defra.gov.uk/rural/documents/countryside/crow/bestofbyways.pdf

16	Permits should be time limited, i.e. not after 11pm or before 6am, unless by special arrangement.	A procedure exists whereby the provisions of an ETRO can be modified after the order has been put in place. If it becomes apparent that time limits would be beneficial, then the option of applying these to the permits through this procedure is something that can be looked at.
17	How will the type of use by permit holders be monitored?	The routes will be actively monitored, which may include the use of loggers, fixed point photography and regular site inspections. Permit holders will also be encouraged to report any misuse by other permit holders.
18	Issue permits to user groups only. If the lane is abused, then the permit can be removed from the user group as a whole.	Not all motorised users belong to recognised groups and these normally incur a membership fee of some kind. It is not appropriate to require such membership in order to obtain a permit.
19	Could a Kent carriage gap or similar be used to prevent use by vehicles, but allow other user unhindered access? This has been done elsewhere.	These may be used as part of the longer term management of these routes, once it has been determined what level of restriction is needed.
20	If motorised vehicles are not banned from these routes, the routes should be surfaced with tarmac. This will make them unappealing to those that are destroying them and will provide a much longer lasting solution.	As detailed above, whilst BOATs are available to motorised users, they are intended for use primarily by non-motorised users. As such a tarmac surface would be both inappropriate and prohibitively expensive.
Financial impacts		
21	The cost of these repairs is very high. This money must not be wasted by allowing routes to be damaged again by future motorised use.	Various large figures have been quoted by respondents for the cost of these repairs, between £100,000 for these routes and £800,000 for all BOAT repairs in 2013/14. The actual cost of repairs to these particular BOATs is approximately £40k and this includes the surfacing works, gates and the necessary advertising. The proposed staged reopening, ETRO and permit scheme are designed to protect this investment, whilst also protecting the rights of legitimate users by ascertaining the least restrictive option that will effectively resolve these issues.

22	These funds should have been used instead to improve the village roads and verges, which are badly in need of repair/improvement.	The cost of repairing these BOATs is very much lower than the cost of any repairs to tarmac roads. In addition the Council has a duty to maintain and repair BOATs (to bridleway standard) as well as vehicular roads.
Other		
23	Other routes in this area are also in a very poor condition and should also be repaired and closed to motorised users.	One of the purposes of the ETRO is to monitor the effects of this type of management. As well as the use of the affected BOATs, the effects on routes not included within the ETRO will also be monitored. The information gathered from this proposal will inform the Council's future management decisions.
24	HCC should negotiate alternative off-road riding routes whilst these BOATs are closed for repair.	Most public rights of way cross land that is in private ownership. It is open to any landowner to provide additional routes for public access if they wish, but few are willing to do so.
25	The combination locked gates used to enforce the proposed permit scheme are unlikely to be effective as motorised users come out in large groups and are unlikely to lock the gates behind them. They will also cause a nuisance gathering in large groups at the gates in order to open and close them.	It is essential that any proposal for permanent restrictions be supported by evidence. It is necessary to carry out this experiment, which requires the use of gates to enforce, in order to gather that evidence.
26	Motorised users are often inconsiderate of non-motorised users and pass them at speed, often in convoy. This necessitates vulnerable users moving quickly out of the way and risks injury, especially to vulnerable non-motorised users.	Guidance on the appropriate use of these share-use routes can be found on the Council's website here: http://www3.hants.gov.uk/row/vehicles-row.htm Officers have been working with motorised user groups to promote good conduct and this work is on-going. The perception that other user groups are inconsiderate is consistent throughout the rights of way network.

27	It will be impossible to prevent lock codes being widely distributed to non-permit holders.	If anyone is found to be abusing the permit system, their permit will be withdrawn and the code changed. Permit holders will be encouraged to report abuse by other users to help ensure that these routes can remain open and available to them.
28	Motorised users, being responsible for the majority of the damage to these routes, should bear more of the cost of imposing and managing the proposed restrictions.	Noted.
29	Irresponsible use of BOATs and village roads has had a negative impact on both residents and livestock, particularly in the Bradley and Wield area, due to noise, speed and generally inconsiderate behaviour.	Any proposal for a permanent restriction must be supported by specific evidence, and not a general perception of disturbance. If anti-social behaviour is causing concern then it must be reported to the police in order to enable them to allocate resources to deal with it.
30	The barriers put in place to enforce the temporary closure have already been vandalised a number of times by motorised users. Motorised users, which are the minority, abuse these lanes and spoil them for everyone else. The current temporary closures are not being observed (even by TRF members), so how can a more permanent restriction be enforced? Riders love the mud and ruts and don't want them repaired. Gates are viewed as nothing more than an additional challenge.	The metal barriers that have now been installed to enforce these closures have not been significantly vandalised and appear to be successful.
31	Local people and the parish should be involved in the decision on how to resolve these problems	Local people, the parish councils, local County Councillors and the affected user groups have all been involved in the decision on how to deal with these routes via this consultation. All those who have responded have been added to a contact list and will be kept informed as issues affecting these routes progress.

32	A more extended consultation should be carried out to give time for a proper investigation by the parish council in the interests of localism. This will also allow time for anyone unable to submit comments during the earlier consultation to respond.	When an ETRO comes into force there is a six month period for further representations to be made that will be taken into consideration when deciding whether or not that ETRO should be made permanent in the future, or whether an alternative approach should be trialled instead. In addition to the consultation already carried out, this provides ample opportunity for parish councils and other groups to carry out their own research and make any representations they feel appropriate.
33	Local residents/landowners should be issued with an automatic permit.	Any landowners who have a private right to use the routes will be provided with a key to unlock the gates (bypassing the code lock). There is no charge for permits and local residents will be free to apply for a permit if they need one. No permit will be needed for foot, horse or cycle use once the current temporary closure has been lifted.
34	In addition to surface damage, motor vehicles cause much noise nuisance and disturbance in quiet rural areas. This has a significant impact on the quality of life of local residents who have to listen to it constantly.	Local residents are free to provide evidence of this impact to inform decisions about the future management of these routes. Note that these BOATs have been in existence for very many years and have always been open to legitimate motorised use. They also connect with the main vehicular road network and some vehicular noise is to be expected.



BENTWORTH & WIELD
Proposal to Implement Experimental
Traffic Regulation Order (ETRO)

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. HCC 100019180 2013

SCALE 1:20 000
 DRAWN HG
 DATE 30.07.2013

- ◆◆ Route affected by ETRO
- BOAT
- Public Footpath
- Parish Boundary

Countryside Access Team
 Culture, Communities & Business Services
 Castle Avenue
 Winchester
 SO23 8UL