

Agenda Item No. 4(c)

DERBYSHIRE COUNTY COUNCIL

**MEETING OF THE CABINET MEMBER – HIGHWAYS, TRANSPORT AND
INFRASTRUCTURE**

26 October 2017

Report of the Strategic Director – Economy, Transport and Communities

**REQUEST FOR A TRAFFIC REGULATION ORDER – STONEY
MIDDLETON BYWAY OPEN TO ALL TRAFFIC 15 – JACOBS LADDER**

(1) **Purpose of Report** To inform the Cabinet Member of the outcome of an initial public consultation seeking opinions in relation to a request to implement a Traffic Regulation Order (“TRO”) on Stoney Middleton Byway Open to All Traffic (“BOAT”) No 15 (also known as Jacobs Ladder) and to consider the options for the management of the Byway.

(2) **Information and Analysis**

The Route

Jacobs Ladder is 540 metres (m) long rising steeply from The Nook to New Road, Stoney Middleton (see attached plan). The route has a legal width of 3m – 3.5m between stone walls and in some places erosion has created a hollow way with steep banks on either side and exposed tree roots. The route is popular with walkers, horse riders and cyclists, as well as off-road vehicle users and a short section at the village end of the route is also used by local people to access the cemetery. The BOAT is also used to access properties on The Nook.

The route was added to the Definitive Map and Statement (“DMS”) for Stoney Middleton in November 2012 by the Secretary of State for the Department for Environment, Food and Rural Affairs (DEFRA) following a public inquiry.

Background to Consultation

As reported to the Cabinet Member on 12 July 2016 (Minute No. 85/16 refers), the County Council has received requests from several organisations, including Stoney Middleton Parish Council, Friends of the Peak District, Peak District Green Lanes Alliance and Peak Horse Power, to implement a TRO on BOAT No.15, Stoney Middleton, which is also known as Jacobs Ladder. Any reference to mechanically propelled vehicles (MPVs) within this report includes all MPVs as defined within Section 185(1) of the Road Traffic Act 1988.

The organisations expressed concern about a number of safety issues that potentially confront users and which they consider support the case for a TRO. The Parish Council's submission was accompanied by a dossier of evidence and information (some drawn from the 2012 public inquiry) which set out its concerns about public safety, amenity and sustainability of the route.

The Cabinet Member approved the carrying out of a 12 week public consultation to scope public opinion for implementing a TRO on this route.

The Consultation

The consultation was carried out between 26 September 2016 and 12 December 2016 by publishing a questionnaire on the County Council's website inviting responses from all users of the route. A total of 528 responses were received.

As the summary shows, the Council has received responses from a wide variety of users with descriptions of their experience of using the route although most users identified themselves either as walkers (42.6%) or MPV users (43.8%).

A minority of respondents (38%) stated that they felt unsafe when using the BOAT, which they said was due to the speed of some motorised vehicles, the narrowness of the track (which means there are no passing places or areas to stand out of the way), poor visibility at bends, the poor condition of the track, and/or discourteous and intimidating behaviour by motor vehicle users. However, most respondents (62%) stated that they did not feel unsafe because it is a multi-user route so they expect to see other types of use, they had rarely encountered vehicles, and other users were considerate. Several respondents considered that the question was poorly worded and designed to lead people to give a negative response.

Respondents were asked if they thought it would be unreasonable to remove vehicular rights completely from Jacobs Ladder. A total of 58.7% said it would be unreasonable as it would further reduce the number of BOATs and green lanes in the county, there may be an increase in the illegal use of other routes, better maintenance of the track including widening, drainage and tree control would improve safety, a TRO would discriminate against disabled users some of whom can only enjoy the countryside in a motorised vehicle, and there would be a loss to the local economy.

The remaining 39.8% said it would not be unreasonable because the route is too narrow for modern vehicles, the route is only used for recreational purposes and not for access, there are alternative routes for MPVs which would preserve Jacobs Ladder to be enjoyed by walkers and horse riders, motor vehicles have damaged the route, the noise and disturbance impacts on the quality of life of people who live near the route (including those who wish

to visit the cemetery), the Road Traffic Regulations Act 1984 (RTRA) gives highway authorities the right to remove vehicle rights by TRO if certain conditions are met which include avoidance of danger, improving amenity and the character of the route.

The respondents also submitted suggestions for how the route should be used in the future. Many users call for a TRO to ban motor vehicle use but others suggest that better signage could assist as could more limited restrictions on the use of the route with MPVs, such as seasonal restrictions; education and awareness; repairs and drainage improvements.

Policies and Guidance

- 1) *'Making the Best of Byways'* (DEFRA December 2005) advises that where there is conflict between different categories of users of a byway, the highway authority should examine the nature and causes of the conflict and establish measures to minimise its occurrence. The publication acknowledges that voluntary restraint is widely seen as ineffective in managing MPV use of byways and it can reduce but not eliminate unsustainable use.
- 2) *'Regulating the Use of Motor Vehicles on Public Rights of Way and Off Road'* (DEFRA December 2005) states that before making a TRO, the order making authority needs to be able to demonstrate that there is a reasonable risk that the situation the TRO is intended to prevent would otherwise arise and that the TRO will achieve its aim of preventing danger to other users, etc.
- 3) Aim 3(f) of the County Council's *Rights of Way Improvement Plan* is to improve the management of recreational MPVs in the countryside
- 4) Policy Statement 1 of the County Council's *Policy on the Management of Green Lanes* is that:

"The Council aims to protect opportunities for recreational driving where conflict with other types of use is kept to a minimum and where this activity does not have an unacceptable detrimental impact on the environment or communities".

- 5) Policy Statement 5 provides that:

"Traffic Regulation Orders shall be considered where

5a) no other reasonable solution exists to resolve conflict between types of use;

5b) there is a clear danger to vehicle users;

5c) the safety of other users is compromised through continued use by vehicles;

5d) any other relevant legal criterion is satisfied.”

Officer Comments and Options for Future Next Steps

In response to the issues raised by the consultation, officers would make the following comments:

1. Repair Damage and Maintain Route Suitable for Public Use

The route is in a poor condition. A combination of a lack of maintenance, water run-off and use, particularly by vehicles, has contributed to its decline over the years. Low priority routes like Jacobs Ladder have not featured as a priority within the highways maintenance programme and have been left to decline whilst strategic routes are maintained.

Providing and maintaining a sustainable surface will be expensive but will have to be taken into account as part of the future management of this route irrespective of whether the County Council decides to implement a TRO. It should also be borne in mind that a TRO may be implemented to prevent damage to a highway but should not be implemented to avoid maintaining a highway. The duty to maintain will persist irrespective of its use.

2. Voluntary Restraint

Voluntary Restraint is a process that regulates use of the route with the co-operation of users. The aim is to avoid using a route when it is vulnerable to damage, for example, or to avoid conflict during busy periods. In the case of Jacobs Ladder, there would be little advantage to negotiating a voluntary agreement because the County Council, at this juncture, is being pressed to consider a TRO.

3. Better Signage

Improved signage could be provided, however, this would not resolve the pressing concerns expressed by members of the public that the route is narrow and potentially dangerous.

4. Making a Traffic Regulation Order

The power to make a TRO exists to support the management of the highway network. Before deciding whether to promote a TRO, the Council will need to identify the risks and decide whether there is an alternative solution before considering using its powers which could adversely affect a class of user which has enjoyed the use of the highway. The options available to the Council, as set out in Section 1 of the RTRA which outlines the criteria that need to be met in order that a TRO may be implemented, are discussed below.

This analysis examines each of the criteria and the likelihood of the success of a TRO achieving its purpose of preventing use by motorised vehicles. The issue for the Council is whether a ban on the use of MPVs will improve the management of the route by reducing risk to the majority of users whilst protecting this asset into the future.

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

Jacobs Ladder is narrow over much of its length to the point that larger vehicles cannot pass when travelling in opposite directions and, in some sections it is so narrow that other users may be forced off the route to avoid oncoming traffic.

Criteria met: Yes.

b) For preventing damage to the road or to any building on or near the road

The route is already in poor condition. However, this provision of the RTRA may be applied as a pre-emptive measure, as well as a preventative measure. Evidence of use by MPVs is clear on the ground. Given the current condition of the route, it would be very difficult to draw any conclusions based on the effect MPVs have had on the structure of the route when balanced against the lack of preventative maintenance which would normally keep a route in a sustainable condition.

There are no buildings near the route.

Criteria met: Not quantifiable at present.

c) Facilitating the passage on the road or any other road of any class of traffic (including pedestrians)

It is the view of a number of consultees, and the Parish Council, that use by MPVs restricts the use and enjoyment of Jacobs Ladder by other users owing to the likelihood of conflict with motorised vehicles.

Jacobs Ladder offers a unique opportunity to visitors and residents to enjoy quiet recreation, however, the nature and type of recreation will have a material effect on any person's enjoyment of the countryside. This is a vehicular highway and therefore legally available to users of MPVs. It is part of the road network but in practice only by a type of vehicle adapted to use a route of this nature. It is therefore restricted to a small number of users. It is possible to take a view that the normal traffic of the area, by definition the greatest volume, which includes pedestrians, cyclists and horse riders, should receive priority where there is the possibility of conflict with motorised users on a route that is narrow in parts.

Criteria met: Yes.

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
Jacobs Ladder is a walled track between points A–B on the attached plan and this narrowness precludes normal carriageway use as there is no opportunity for larger MPVs to pass each other and no escape for other users. It is, therefore, unsuitable for larger motorised vehicles.

Equally, motorcycles will occupy a significant width of the route on narrower sections between A-B and therefore the use of motorcycles is incompatible with the narrowness of the route.

Criteria met: Yes.

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

As referred to above, the general character of this route is a tranquil rural track. It passes from the village and ascends a wooded hillside, passing the local cemetery. It is the view of officers that this route provides an opportunity for safe recreation for persons on horseback and on foot. Given the narrowness of the route it would be beneficial to persons on horseback or on foot to preserve the character of the route by preventing the use of the route by motorised vehicles.

Criteria met: Yes.

f) For preserving or improving the amenities of the area through which the road runs

The amenity of the area, in this context, may best be defined as a combination of the benefits derived from open air recreation, tranquility and the landscape. If these are affected by the use of MPVs then the Council may conclude that there are grounds to implement a TRO in order to preserve and indeed work towards improving the amenity of this route.

Criteria met: Yes.

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)
This section deals with air quality and associated strategies/regulations that may be introduced. It is not considered to be relevant to whether a TRO should be considered for this route.

Options

The options available to the Council in the light of the above assessment are set out below.

Do Nothing

The consequence of doing nothing is likely to lead to further damage to walls and infrastructure. It will lead to further conflict and the likelihood of injury to members of the public, although this latter aspect cannot be quantified. Continued MPV use will lead to a reduction in use by other users who may feel unsafe and overall, the loss of amenity and recreational value to the majority of the public is threatened.

Implementation of a Traffic Regulation Order

A TRO would be justified on grounds (a), (c), (d), (e) and (f) of Section 1 of the RTRA 1984 and be in accordance with Policy 5 of the Council's Green Lanes Policy (set out in the policies and guidance section above) which lists the situations in which a TRO should be considered. However, the type of TRO and its extent will need careful consideration. Wherever possible, in the County the Council has not discouraged MPV access. This route does require a managed solution to ensure that a TRO is practical and workable, and of course, that it does not unreasonably restrict access without consideration of those classes of user that may use it at present.

The decision to make a TRO on this route must be based on the considerations outlined above as Section 1 (a-g) of the Act. The key issues that have been identified are as follows:

- The narrowness of the route preventing classes of user from passing safely.
- The risk of injury to some classes of user as a consequence of the narrowness of the route.
- The loss of amenity as a consequence of the displacement of some users, particularly horse riders, as a consequence of use by MPVs.
- The damage caused by continued use by MPVs.

In exercising its functions as Highway Authority, the Council must have due regard for the purpose of the National Park as required by sections 5 and 11A of the National Parks and Access to the Countryside Act 1949. The Act lays great weight on the concept that the conservation and enhancement of the natural beauty, wildlife and cultural heritage shall have a greater role to play in decision making. In relation to the consideration of a TRO, the fact the route lies within a National Park is a key consideration.

The Council should consider whether vehicular access on this route is incompatible with the purpose of the National Park. Opinion will always be

divided but, in order to reach a decision, the Council will need to consider the following:

What purpose does this route serve in the context of the wider carriageway network and its consequential effect on the purpose of the National Park?

This route links two surfaced and publicly accessible surfaced carriageways. Its construction and condition restrict use to certain types of motorised vehicle that are capable of negotiating rough terrain. It is of little value to the drivers of normal road vehicles and now provides only recreational value to a limited number of users. It does not therefore provide any useable connectivity with the wider carriageway network for the majority of road users as a route for motorised vehicles. Given the location of the route and its character its continued use by MPVs may deter the enjoyment of this area of the County by other users. This is inferred in the responses to the consultation.

The conclusion, therefore, is that on balance, its continued availability as a route for MPVs will have a negative impact on wider goals of the National Park.

How does its use complement the economic and social well-being of local communities within the National Park?

There is no data available to indicate whether its use as a motorised vehicular route contributes to the economic and social well-being of the community. The only evidence that is available is that the local community is opposed to its continued use by motorised vehicles. The only conclusion that may be drawn, therefore, is that the continued use of the route by MPVs does impact on the social well-being of the community.

Does the continued use of this route by MPVs undermine the conservation, natural beauty, wildlife and cultural heritage of the area?

The Council should have regard to the special purpose of the National Park when considering the management of traffic on this route. There is, therefore, the need to consider whether the continued use of this route by MPVs undermines the role of the National Park and its purposes.

Conclusion

There is considerable support for a TRO to prevent MPVs from using the route. The Council is required to have due regard of the activities of the National Park and the conclusion that has been reached is that MPVs are incompatible with aims and objectives of the National Park at this location and a TRO should be made and implemented to prevent the use at all times by MPVs with the exception of emergency vehicles and the management of adjoining premises.

To promote an Order the requirements of the Local Authorities' Traffic Orders (Procedure) (England and Wales) 1996 must be met which are that the Council must publish notice of its intention to make a TRO in a local newspaper allowing 21 days for objections, consult with statutory consultees and take such other steps as may be considered appropriate for ensuring adequate publicity about the order is given to persons likely to be affected by its provisions.

Extent of the Order

The restriction imposed on the route should relate to the area of concern and to not cover sections of the route where a TRO is/cannot be justified. It is proposed, therefore, to consult on the imposition of a TRO to preclude the use of the section A-B which is the narrowest part of the route, shown on the attached plan, by MPVs at all times. Exceptions will include access for emergency vehicles and access to premises. A total distance of 145m or thereabouts.

(3) **Financial Considerations** The cost of the promotion of this Order, excluding a Public Inquiry, will be in the region of £2,000. If a public Inquiry is convened, the total cost to the Council is likely to be in the region of £10,000 - £15,000 which includes the hire of an Inspector, hire of a venue and legal/technical support as required. The cost will be met from the Public Rights of Way Revenue Budget.

(4) **Legal Considerations** As outlined in the body of the report, the County Council may consider using its powers under the RTRA to make a TRO. Given the nature of the route, it is observed that several criteria under Section 1 of the RTRA are met and therefore an Order could be made. In making an Order the Council shall take account of the purpose of the National Park.

The Council's Constitution provides that the Strategic Director for Economy, Transport and Communities can exercise the powers of the County Council to make TROs under the RTRA. The Council is required to observe the procedures laid down in The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 as described in Section 2 above.

The Council has the discretion to hold a Public Inquiry in the event of objections being received to this proposal.

(5) **Equality and Diversity Considerations** Imposing a TRO to prevent use by MPVs will have the effect of preventing use by persons who may be reliant on a vehicle to access parts of the County that offer scenic views. In the case of this route, this negative impact is recognised, however, the aim of the Order in part, is to safeguard users and the use of MPVs on the narrowest

section will not safeguard other users. It is unfortunate that this class of user will be precluded.

Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, human resources, social value, environmental, health, property, social value and transport considerations.

(6) **Key Decision** No.

(7) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(8) **Background Papers** Held on file within the Rights of Way Section of the Economy, Transport and Communities Department. Officer contact details – Peter J White, extension 39673.

(9) **OFFICER'S RECOMMENDATIONS** That the Cabinet Member notes:

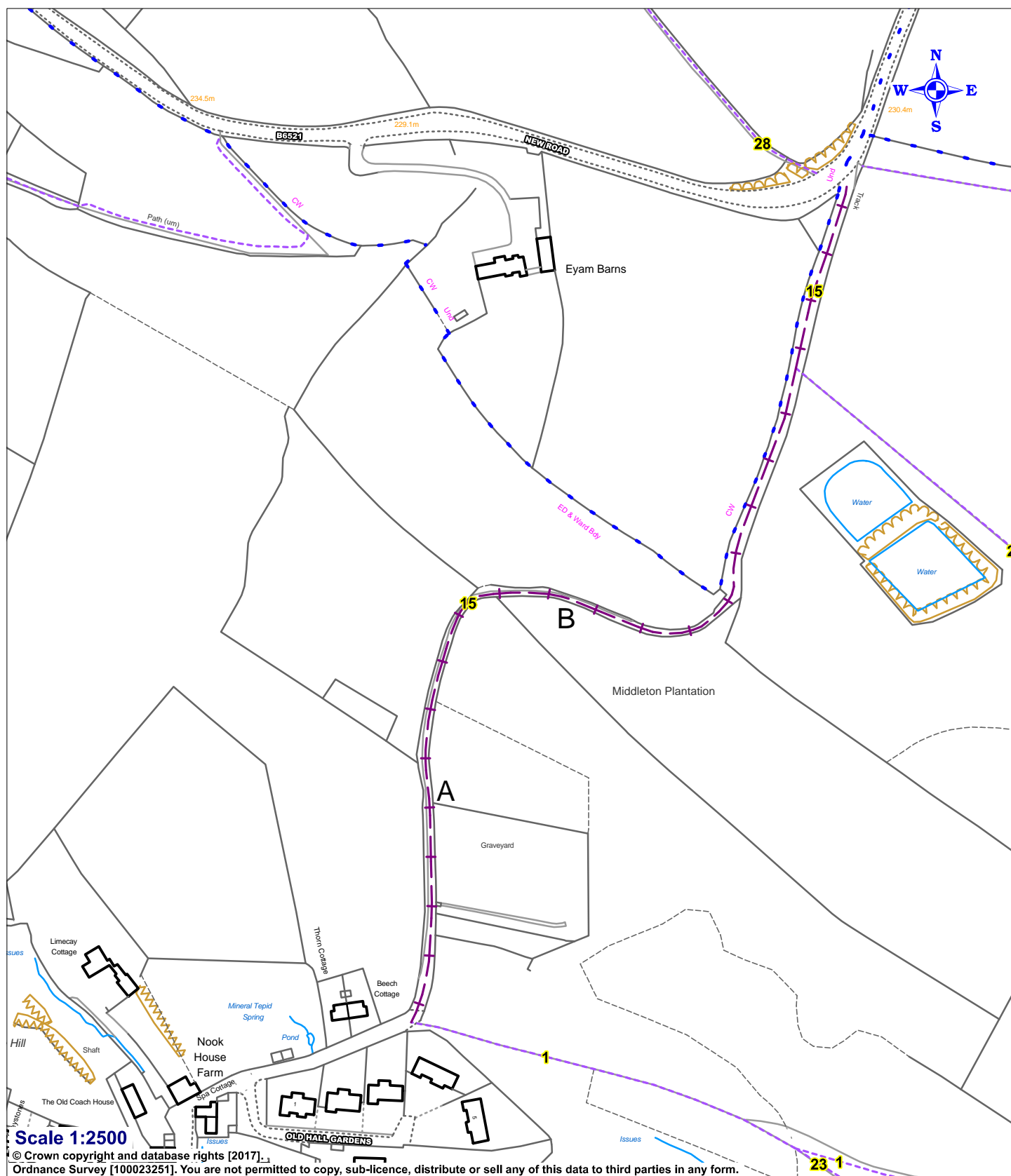
9.1 The outcome of the informal public consultation.

9.2 That the Strategic Director – Economy, Transport and Communities intends to undertake the necessary steps required by the Local Authorities' (Traffic Procedure) (England and Wales) Regulations 1996 to make a Traffic Regulation Order to prohibit Mechanically Propelled Vehicles from using Jacobs Ladder between points A and B shown on the plan attached to the report.

9.3 That a further report will be submitted to the Cabinet Member in the event that objections to the proposed Traffic Regulation Order are received.

9.4 That if no objections are received, the Traffic Regulation Order will be confirmed.

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Stoney Middleton Byway Open to All Traffic 15

Proposed Traffic Regulation Order

A - B Extent of Proposed Traffic Regulation Order

Key:	Public Footpath	---
	Public Bridleway	---
	Byway Open to All Traffic	---
	Restricted Byway	---
	Temporarily Stopped-up	---
	Path Number	32

