

Report to **Policy & Resources Committee**  
Date **21 November 2024**  
By **Nigel James, Countryside & Policy Manager – Western Downs**  
Title of Report **The Splash Route, Mill Lane, Droxford**  
**Decision**

---

**Recommendation: The Committee is recommended to**

- 1. Note the history to date with regard to the South Downs National Park Authority’s involvement in Byways Open to All Traffic within the Hampshire Area of the National Park and the Splash Route, Mill Lane, Droxford.**
  - 2. Endorse the Authority’s continued work as a member of the Meon Valley Partnership to:**
    - i. Work with Hampshire County Council, the Trail Riders Fellowship and Green Lane Association to develop a code of conduct for use of the Splash Route;**
    - ii. Undertake ecological monitoring of the Splash Route;**
    - iii. Undertake an assessment of flow priorities to consider potential ecological improvements and flood risk mitigation at this location; and,**
    - iv. Should it be recommended following assessment, with partners, investigate potential works to divert the primary flow away from the definitive line of the Splash Route.**
- 

**I. Introduction**

- 1.1.** At the meeting of the Policy and Resources (P&R) Committee on 19 September 2024 the committee was informed of concerns raised by a Member around potential negative impacts to the River Meon caused by a vehicular route being in place along a section of the river (**Appendix 1**). The Member asked that committee consider:
  - a) Recommending to the Authority that it formally request Hampshire County Council (HCC) Highways to extinguish highway rights from the riverbed stretch of Mill Lane, Droxford, known as the Splash Route.
  - b) That this be used to test the new duty on relevant authorities to ‘seek to further the purposes’ of the National Park (Levelling Up and Regeneration Act, section 245).
- 1.2.** Officers were asked to provide the committee with a report to ensure the committee was aware of relevant information to assist Members in their consideration of this matter. This report looks to inform Members on the Splash Route and proposes recommendations on, what officers consider to be, the most appropriate way forward. Information is also included on Byways Open to All Traffic (BOATs) (**Appendices 2,4 and 5**) and Traffic Regulation Orders (TROs) (**Appendix 3**) which are considerations that overlap this matter.

## 2. Background

- 2.1. In the South Downs National Park (SDNP), 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 the roads and rights of way networks.
- 2.2. The South Downs National Park Authority (SDNPA) is a Statutory Access Authority having duties relating only to Open Access Land under the Countryside and Rights of Way (CRoW) Act 2000, but it is not a Highway Authority. It is important to note that the SDNPA can only achieve outcomes with partners who own the land and/or are responsible for the roads and rights of way networks.
- 2.3. Whilst the Splash Route is not a BOAT, Members should note the review of the management of BOATs in the Hampshire area of the SDNP undertaken by the SDNPA in 2022 which reported to the Authority in October 2022. The Authority supported the continuation of the partnership arrangements with HCC rather than the SDNPA looking to take the lead in assessing and potentially making Traffic Regulation Orders (TROs).
- 2.4. The Authority continues to work with various stakeholders in the Meon Valley, such as HCC and the Meon Valley Partnership (MVP), particularly through the Western Area Team, on access and nature recovery projects. Community Infrastructure Levy funds have also been awarded to HCC in 2022 and 2024 to deliver a key access project in this area - The East Meon Five Ways project.

## 3. Extinguish the highway rights from the riverbed stretch of Mill Lane

- 3.1. The Splash Route section of Mill Lane is classified by HCC as an ‘unclassified, adopted unmetalled highway’. It is not recorded on the definitive map of public rights of way. As the route is recorded in this manner, extinguishment/stopping-up of highway rights are undertaken in accordance with section 116 of the Highways Act 1980. Only a highway authority can make a section 116 extinguishment order.
- 3.2. HCC has an application process for highway extinguishments and any application for a highway extinguishment must satisfy key criteria. The extinguishment of the Splash Route under section 116 would have to meet the legal test set out in section 116(1) which sets out that the court may authorise a highway to be stopped up or diverted if:
  - a) It is unnecessary, or
  - b) It can be diverted to make it ‘nearer or more commodious’ to the public.
- 3.3. Case law on this has also established:
  - If it is used and there is not a reasonably suitable alternative route, it is necessary. \*
  - Landowner convenience is not a relevant factor.
  - “Unnecessary” is not equivalent to “in the public interest”.

\* When an annual log of vehicles using the route was completed in 2021, 50 periods of usage were recorded, with 64 vehicles in total for the year (i.e. some periods of usage recorded more than one vehicle).

- 3.4. The evidence suggests that the test would likely not be met and an application would be unsuccessful.

## 4. Application for a Traffic Regulation Order

- 4.1. A potential course of action could be to place a TRO to the Splash Route which would restrict user rights. The process for making a TRO on an unclassified road is identical to the process for making a TRO on a BOAT for which HCC has a robust process in place (Appendix 3).

- 4.2. It would be feasible to make a TRO to prevent certain classes of traffic (e.g. motorised vehicles) using the Splash Route if it was considered that the restriction was necessary on one or more of the grounds specified by the legislation (**Appendix 3**). However, HCC Highways has recently investigated the making of a TRO on the Splash Route and decided against such a course of action.
- 4.3. Such a course of action would inevitably be subjected to a high degree of scrutiny, and a restrictive TRO would likely be challenged if the decision-making involved was not in line with HCC's formal process.
- 5. Test the new duty to 'seek to further' the purposes of the National Park**
- 5.1. The new duty in the Levelling-up and Regeneration Act 2023 section 245, which came into effect on 26 December 2023, is that, relevant authorities in exercising or performing any functions that relate to or affect land in the National Park, must seek to further the purposes of the National Park and, if it appears that there is conflict between the purposes, must attach greater weight to the first purpose. This duty replaces the previous duty to 'have regard to' the National Park Purposes.
- 5.2. In assessing the current situation at the Splash Route, HCC have undertaken an environmental and ecological survey. HCC must consider the new duty in its response to the findings of the survey and any subsequent actions. There is no evidence to suggest HCC have not considered the duty in reaching their decisions about a stopping up order or a TRO. It is also important to note that the route being open could in itself be considered in relation to Purpose 2 – 'to promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public'. The attaching of greater weight to any decision is only required if conflict between the purposes is identified and it would appear that HCC do not currently consider there to be any conflict between the purposes at the Splash Route.
- 5.3. Officers are aware that, despite a survey having been undertaken, there is disagreement between various parties about whether the current situation at the Splash Route is damaging to the ecology of the River Meon at this location. Therefore, actions are recommended as part of this report for continued ecological monitoring of the Splash Route.
- 5.4. Enjoyment of the countryside is legitimate and, outside of CRoW Open Access Land, public highways are often the main means by which the public can access and enjoy the countryside. Public access rights, of all types, are highly valued by the public and highly protected by legislation. The extinguishment of public access rights in isolation (e.g. not as part of an overall improvement plan) is almost always contentious, and public authorities are normally expected to defend public rights of access.
- 6. Conclusion and Proposals for Potential Action**
- 6.1. The concern of the community that the condition of the riverbed may be suffering as a result of motorised traffic is acknowledged by both the SDNPA and HCC. HCC have already investigated these concerns through an environmental and ecological survey of the Splash Route.
- 6.2. The request that the committee recommend to the Authority that it should formally request HCC Highways to extinguish highway rights from the riverbed stretch of Mill Lane, Droxford, known as the Splash Route, is not recommended as a course of action by officers as it is considered by HCC Highways that the criteria for extinguishment, as set out in section 3, are not satisfied. Additionally, the application of a TRO along this stretch has been investigated and tested by HCC, but ruled out as a course of action, as set out in section 4.
- 6.3. From the concerns raised by the Member it seems there may be conflicting evidence about the condition of the riverbed at the Splash Route. Working as a member of the MVP, actions are therefore proposed with the aims ensuring the Splash Route is used appropriately, monitoring the habitat at this location and considering potential improvements.
- 6.4. As a member of the MVP, the Western Area team have been involved in the issues related to the Splash Route for a considerable length of time. Through the MVP and working in

partnership with the landowner, it is therefore recommended that the following actions be taken:

- Work with HCC, the Trail Riders Fellowship (TRF) and Green Lane Association to develop a code of conduct for use of the Splash Route. E.g. use of the Splash Route at appropriate times to reduce potential disturbance to wildlife. (Note: the SDNPA is already working with both HCC and the TRF with regard to promoting the appropriate use of BOATs in the National Park).
- Undertake ecological monitoring of the Splash Route (e.g. signs of water vole activity).
- Undertake an assessment of flow priorities to consider potential ecological improvements and flood risk mitigation at this location.
- Should it be recommended following assessment, with partners, investigate potential works to divert the primary flow away from the definitive line of the Splash Route (with the potential creation of wet woodland/marshy areas providing significant habitat benefits).

**7. Other implications**

Implication	Yes*/No
Will further decisions be required by another committee/full authority?	Not under the recommendations set out. However, should the committee make recommendations to the NPA on this matter, a decision would be required by the NPA. Also, if further works were undertaken in the future, these may have financial and resource implications requiring decision by the committee or the NPA.
Does the proposal raise any Resource implications?	The recommendations set out can be undertaken within existing resources and budgets. If further works were undertaken in the future, the financial and resource implications would be assessed at the time and subject to the usual approval processes for budget or resources.
How does the proposal represent Value for Money?	The recommendations seek to make best use of the resources of two publicly funded authorities and to promote partnership working with HCC, following the pattern previously established through consideration of BOATs. This can also be delivered predominantly within existing resources.
Which PMP Outcomes/ Corporate plan objectives does this deliver against	Outcome 5 of the PMP, which states “Outstanding experiences for communities and visitors are supported by high quality access and sustainable transport networks”.
Links to other projects or partner organisations	Hampshire Country Council, Meon Valley Partnership.
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.

<b>Implication</b>	<b>Yes*/No</b>
Have you taken regard of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010?	Yes – there are not considered to be any equalities implications arising from the recommendations. However, any decision affecting access to the National Park on the highway network could have implications for a range of users, including those with protected characteristics.
Are there any Human Rights implications arising from the proposal?	None arising from this report. The Human Rights implications of any potential traffic restrictions or extinguishing of highway rights would be considered as part of the appropriate process.
Are there any Crime & Disorder implications arising from the proposal?	None arising from this report. The Crime and Disorder implications of any potential traffic restrictions or extinguishing of highway rights would be considered as part of the appropriate process.
Are there any Health & Safety implications arising from the proposal?	None arising from this report. The Health & Safety implications of any potential traffic restrictions or extinguishing of highway rights would be considered as part of the appropriate process.
Are there any Data Protection implications?	None arising from this report.

## 8. Risks Associated with the Proposed Decision

<b>Risk</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Mitigation</b>
Risk of alienating different audiences through unpopular response to concern or any next steps	3	3	Important to work in partnership with the MVP and allow all next steps taken to be inspired by what is best for the river and what is achievable

### **Nigel James**

#### **Countryside and Policy Manager – Western Downs**

#### **South Downs National Park Authority**

Contact Officer: Nigel James

Email: [nigel.james@southdowns.gov.uk](mailto:nigel.james@southdowns.gov.uk)

Internal Consultees National Trails and Access Lead, Lead Ranger (Western Downs), Director of Landscape and Strategy, Head of Governance and Monitoring Officer, Chief Executive.

External Consultees Sarah Manchester, Consultant specialising in rights of way and access

Appendices

1. Location of the Splash Route, Mill Lane, Droxford
2. Background on Byways Open to All Traffic (BOATs)
3. Background on Traffic Regulation Orders (TRO's)
4. Hampshire County Council's Current Approach to the Management of BOATs

Background Documents

5. BOAT Network in the South Downs National Park

[Report NPA 22/23-08 Management of Byways Open to all Traffic within the Hampshire area of the South Downs National Park](#)

[Minutes of South Downs National Park Authority Meeting held on 20 October 2022](#)

[HCC Extinguishment \(Removal\) of Highway Rights](#)

[Defra Guidance Making the best of byways \(2005\)](#)

[Road Traffic Regulation Act 1984 \(legislation.gov.uk\)](#)

[The National Park Authorities' Traffic Orders \(Procedure\) \(England\) Regulations 2007 \(legislation.gov.uk\)](#)

[Guidance for National Park Authorities making Traffic Regulation](#)

[Meon Valley Partnership](#)

[Trail Riders Fellowship](#)

[Green Lane Association](#)