

SUBJECT:	DEFINITIVE MAP MODIFICATION ORDERS, CLEDDON SHOOTS, LLANDOGO, TRELLECH
DIRECTORATE:	ENTERPRISE
MEETING:	LICENSING AND REGULATORY COMMITTEE - RIGHTS OF WAY ADVISORY PANEL
DATE:	14th June 2016
DIVISION/WARDS AFFECTED:	TRELLECH

1. PURPOSE:

- 1.1. To consider, under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981, if the route A-C shown on the consultation plan (Appendix 1), in the community of Trellech, Llandogo (location plan Appendix 2), recorded on the Definitive Map & Statement as one type of way should in fact be recorded as a different type of way.
- 1.2. The Authority is acting in a quasi-judicial capacity and must reach a decision based on the evidence presented. We are not required to resolve conflicts in the evidence and there may well be evidence on both sides of the issue. We must weigh up the evidence using the test of the 'balance of probabilities', and, if on this balance, it is reasonable to conclude that the evidence shows that change should be made, we must do so. Although officers have considered the evidence, and made a recommendation based on their appraisal, members must themselves consider the evidence and reach their own conclusions. If a modification order is made anyone has a right to object. The matter would then be determined by the Planning Inspectorate for Wales.

2. RECOMMENDATIONS:

- 2.1. That the Rights of Way Advisory Panel (RWAP) advise the Cabinet Member for Community Development to make a Modification Order (under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981) to classify the cart road bridleways 20, 21, 22 and 23 and restricted byway 24 as footpaths and to confirm or seek confirmation of the Order. The details of the case are included in the Reports (Appendix 3) as part of the background papers.

3. KEY ISSUES:

- 3.1. Ms S. Harris and Mr A. Dance submitted an application to change the status of public cart road bridleways 20 to 23 Trellech, on 13th April 2004. It should be noted that restricted byway 24 has also been investigated for reasons detailed in the Reports (Appendix 3).
- 3.2. The application includes 13 historical documents, 5 witness statements and 6 evidence forms and was submitted under section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 (WCA). The applicant seeks to upgrade existing routes to byways open to all traffic (BOAT).

- 3.3. Since the application was received two public consultations have been carried out and evidence investigated. Detailed reports have now been prepared (Appendix 3) and a decision has to be made on what the status of the various routes should be in light of this evidence.
- 3.4. Out of the 37 consultations there is, under relevant historical reasons, 1 objector to the route in question being registered as a byway open to all traffic (BOAT).
- 3.5. If the route in question is to be registered as a public footpath there are 2 objections, one from the Open Spaces Society and the other from the British Horse Society. The basis of objection from the two Societies is historical documentation and reporting of the general area which cannot be attributed to a single route. While 5 objections are based on a desire for future maintenance to a vehicular standard of the route in question and are irrelevant in regards to proving the status of the route.
- 3.6. The Definitive Map records the southern part of the route (A to B) as a cart road bridleway and the rest of the route (B to C) a restricted byway. The Definitive Map and Statement went through extensive legal procedures and scrutiny during development and therefore substantial evidence is required to change the status of these routes.
- 3.7. The committee should also note that private vehicular rights will not be altered by any changes to the status of the rights of way. Current maintenance of the route, suitability or privacy are not matters which can be considered under WCA legislation. These are things which can be considered once the status of the route is resolved.

4. REASONS:

- 4.1. There are a number of historical documents along with user evidence that when taken together argues that, on the balance of probabilities, there are no public vehicular, horse drawn cart or equestrian rights over the route in question. Such use appears to be private.
- 4.2. There is also very little evidence to support equestrian use and based on the totality of the evidence, Officers believe the routes to be only footpaths and not byways open to all traffic (BOAT) as submitted by the applicants.

5. RESOURCE IMPLICATIONS:

- 5.1. The County Council is under a duty to investigate applications. The consideration of the application by officers falls within existing budgets.
- 5.2. The decision is one that must be taken on strict legal tests:
- If the application is not determined in accordance with the tests this could lead to a successful legal challenge by way of Judicial Review.
 - In the event that an order is made and there are objections the Planning Inspectorate for Wales would consider the matter by way of written representations, hearing or public inquiry. The decision taken by the investigating officer and the Rights of Way Advisory Panel is a decision based on legal tests and the above costs cannot be a consideration in the determination of the application.

6. WELLBEING OF FUTURE GENERATIONS IMPLICATIONS (INCORPORATING EQUALITIES, SUSTAINABILITY, SAFEGUARDING AND CORPORATE PARENTING):

6.1. The Order if made will neither positively nor negatively impact on the well-being goals or the sustainable development principals. (Appendix 4).

7. CONSULTEES:

Corporate Management Team
All-Select Committee Chairmen
Head of Legal Services
Head of Finance
Head of Highways
Licensing and Regulatory Committee Members

8. BACKGROUND PAPERS:

8.1. Consultation plan (Appendix 1)

8.2. Location plan (Appendix 2)

8.3. Report 1: Section A to B (20 to 23)

8.4. Report 2: Section B to C (24)

8.5. Glossary

8.6. Appendixes bundle

} (Appendix 3)

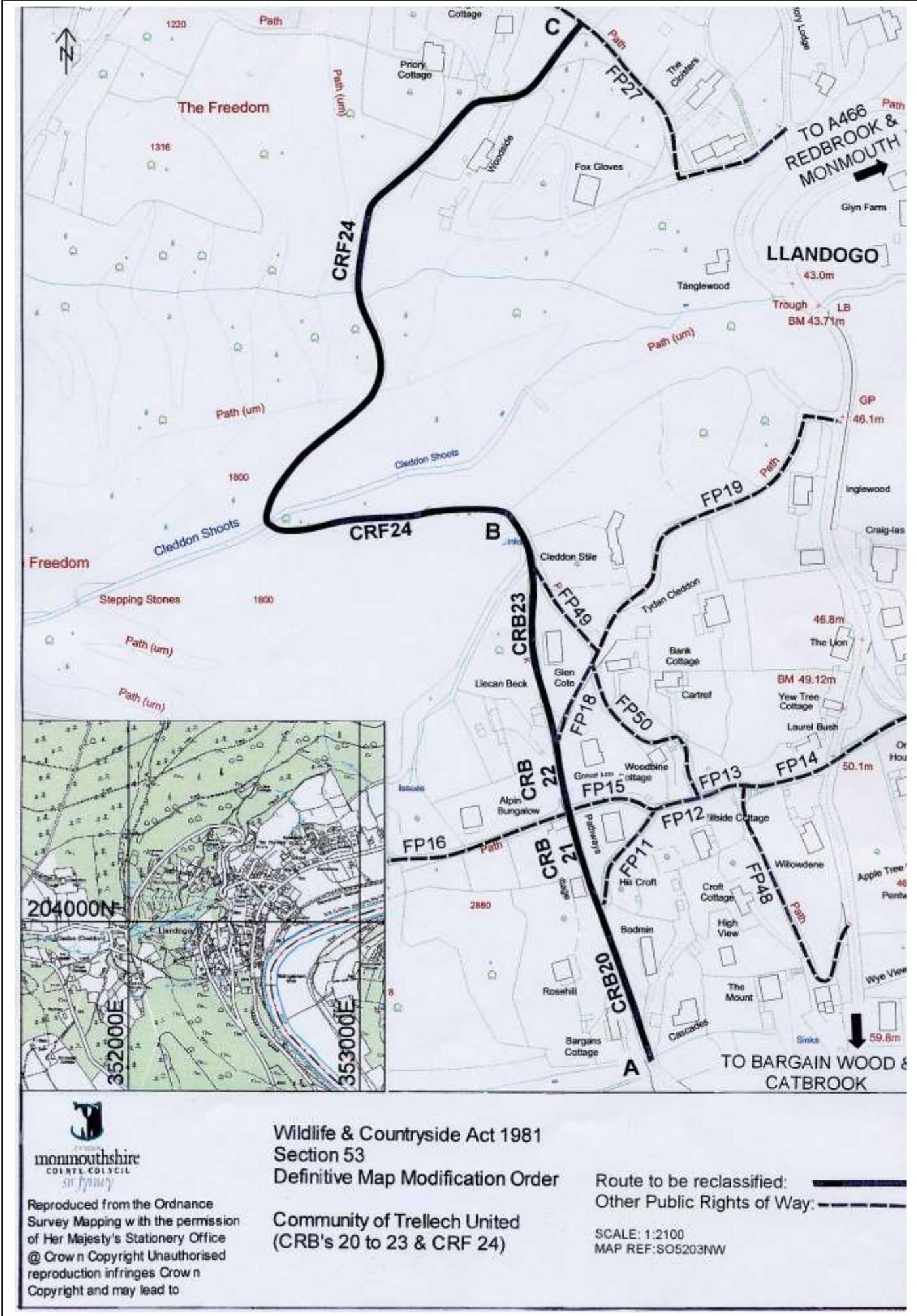
8.7. Future Generation Evaluation (Appendix 4)

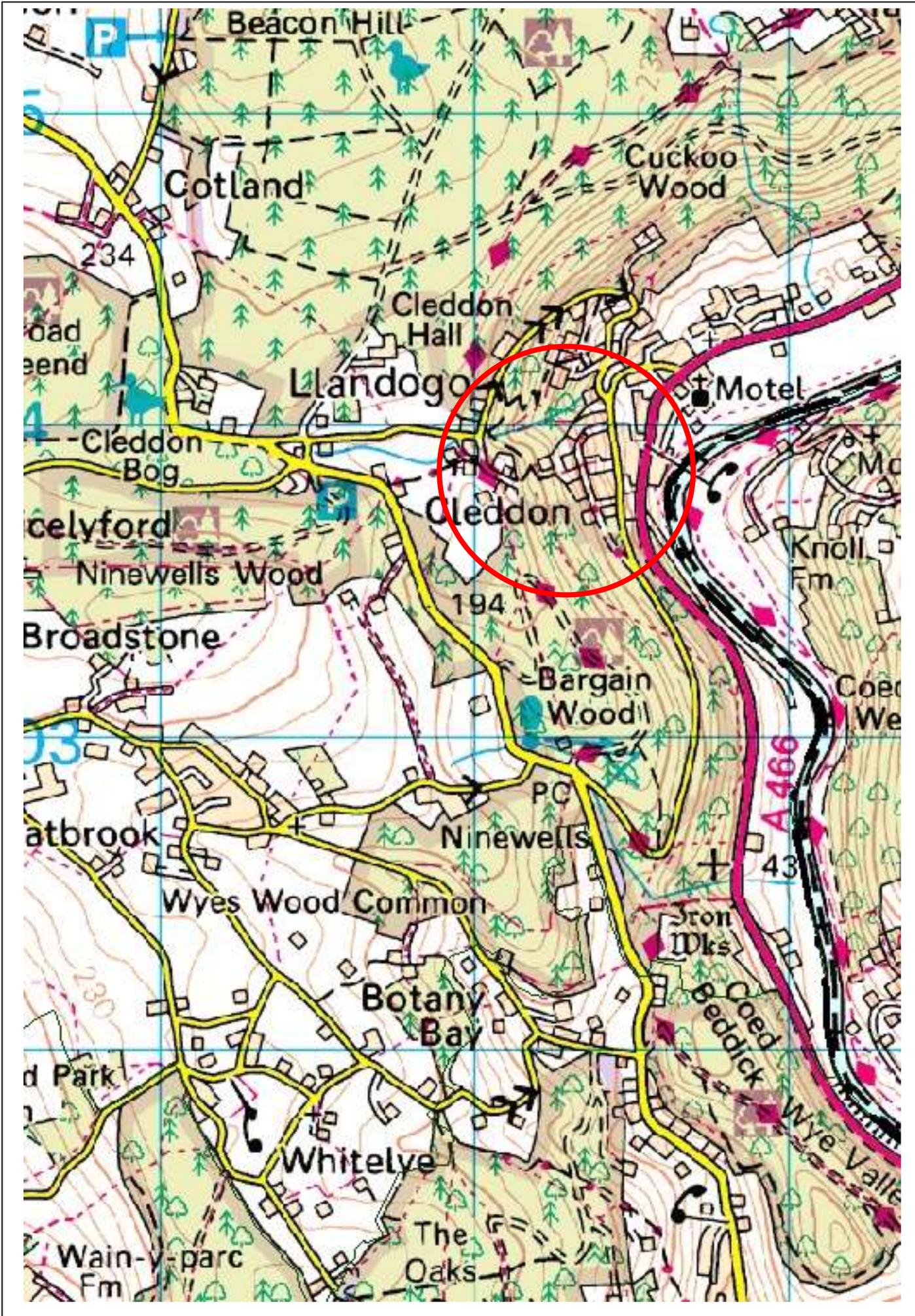
9. AUTHOR: Ruth Rourke Principal Countryside Access Officer

10. CONTACT DETAILS:

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Future Generations Evaluation

(includes Equalities and Sustainability Impact Assessments)

<p>Name of the Officer Mandy Mussell – Definitive Map Officer Countryside Access Phone no: 01633-644183 E-mail: mandymussell@monmouthshire.gov.uk</p>	<p>Please give a brief description of the aims of the proposal To determine whether or not to register the route in question as a public footpath on the Definitive Map and Statement.</p>
<p>Name of Service Countryside Access</p>	<p>Date Future Generations Evaluation 4th May 2016</p>

NB. Key strategies and documents that may help you identify your contribution to the wellbeing goals and sustainable development principles include: Single Integrated Plan, Continuance Agreement, Improvement Plan, Local Development Plan, People Strategy, Asset Management Plan, Green Infrastructure SPG, Welsh Language Standards, etc

- 1. Does your proposal deliver any of the well-being goals below?** Please explain the impact (positive and negative) you expect, together with suggestions of how to mitigate negative impacts or better contribute to the goal.

Well Being Goal	Does the proposal contribute to this goal? Describe the positive and negative impacts.	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
<p>A prosperous Wales Efficient use of resources, skilled, educated people, generates wealth, provides jobs</p>	<p>The Order if made will not change route’s availability which will continue to be a resource for locals and tourists to walk for the use and enjoyment of the area.</p>	<p>N/A</p>
<p>A resilient Wales Maintain and enhance biodiversity and ecosystems that support resilience and can adapt to change (e.g. climate change)</p>	<p>The Order if made will not change the environment in which this route extends.</p>	<p>N/A</p>

Well Being Goal	Does the proposal contribute to this goal? Describe the positive and negative impacts.	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
A healthier Wales People's physical and mental wellbeing is maximized and health impacts are understood	The Order if made will not reduce people's ability to walk in the area.	N/A
A Wales of cohesive communities Communities are attractive, viable, safe and well connected	The Order if made does not impact on the community.	N/A
A globally responsible Wales Taking account of impact on global well-being when considering local social, economic and environmental wellbeing	N/A	N/A
A Wales of vibrant culture and thriving Welsh language Culture, heritage and Welsh language are promoted and protected. People are encouraged to do sport, art and recreation	The Order if made will not change route's availability which will continue to be a resource for locals and tourists to walk for the use and enjoyment of the area.	N/A
A more equal Wales People can fulfil their potential no matter what their background or circumstances	N/A	N/A

2. How has your proposal embedded and prioritised the sustainable governance principles in its development?

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 <p>Long Term Balancing short term need with long term and planning for the future</p>	<p>The long term result if this Order is made will be that the route is recorded correctly on the Definitive Map and Statement. The status of the route will be clarified for future reference.</p>	<p>N/A</p>
 <p>Collaboration Working together with other partners to deliver objectives</p>	<p>N/A</p>	<p>N/A</p>
 <p>Involvement Involving those with an interest and seeking their views</p>	<p>All the adjacent property owners have been consulted and all their concerns have been included within the body of the reports.</p>	<p>N/A</p>

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 <p>Prevention</p> <p>Putting resources into preventing problems occurring or getting worse</p>	<p>The Order if made will clarify the status of the route and prevent confusion of responsibilities in the future.</p>	<p>N/A</p>
 <p>Integration</p> <p>Considering impact on all wellbeing goals together and on other bodies</p>	<p>N/A</p>	<p>N/A</p>

3. Are your proposals going to affect any people or groups of people with protected characteristics? Please explain the impact, the evidence you have used and any action you are taking below. For more detailed information on the protected characteristics, the Equality Act 2010 and the Welsh Language Standards that apply to Monmouthshire Council please follow this link:<http://hub/corporatedocs/Equalities/Forms/AllItems.aspx> or contact Alan Burkitt on 01633 644010 or alanburkitt@monmouthshire.gov.uk

Protected Characteristics	Describe any positive impacts your proposal has on the protected characteristic	Describe any negative impacts your proposal has on the protected characteristic	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?
Age	N/A	N/A	N/A
Disability	N/A	N/A	N/A
Gender reassignment	N/A	N/A	N/A
Marriage or civil partnership	N/A	N/A	N/A
Pregnancy or maternity	N/A	N/A	N/A
Race	N/A	N/A	N/A
Religion or Belief	N/A	N/A	N/A
Sex	N/A	N/A	N/A
Sexual Orientation	N/A	N/A	N/A
Welsh Language	N/A	N/A	N/A

4. **Council has agreed the need to consider the impact its decisions has on important responsibilities of Corporate Parenting and safeguarding. Are your proposals going to affect either of these responsibilities?** For more information please see the guidance <http://hub/corporatedocs/Democratic%20Services/Safeguarding%20Guidance.docx> and for more on Monmouthshire's Corporate Parenting Strategy see <http://hub/corporatedocs/SitePages/Corporate%20Parenting%20Strategy.aspx>

	Describe any positive impacts your proposal has on safeguarding and corporate parenting	Describe any negative impacts your proposal has on safeguarding and corporate parenting	What will you do/ have you done to mitigate any negative impacts or better contribute to positive impacts?
Safeguarding	N/A	N/A	
Corporate Parenting	N/A		

5. **What evidence and data has informed the development of your proposal?**

The Definitive Map Modification Order, Cleddon Shoots, Llandogo, Trellech (41Mod) Report and two background reports along with all relevant appendixes consists of all the evidence and data that has informed the development of this proposal.

The evidence consists of the applicant's submissions of 13 historical documents, 5 witness statements and 6 evidence forms. The Authority has investigated these and along with this evidence has included within the reports all the available historical maps; 2 pre-order consultations with all the adjacent landowners, various public rights of way user Associations and Societies and Utility providers. Along with all this evidence other case law and legislation such as the 1981 Wildlife and Countryside Act and the 2006 Natural Environment and Rural Communities Act has been applied and discussed in these reports.

6. **SUMMARY: As a result of completing this form, what are the main positive and negative impacts of your proposal, how have they informed/changed the development of the proposal so far and what will you be doing in future?**

The Order if made will neither positively nor negatively impact on the well-being goals or the sustainable development principals.

7. ACTIONS: As a result of completing this form are there any further actions you will be undertaking? Please detail them below, if applicable.

What are you going to do	When are you going to do it?	Who is responsible	Progress
N/A			
N/A			
N/A			

8. MONITORING: The impacts of this proposal will need to be monitored and reviewed. Please specify the date at which you will evaluate the impact, and where you will report the results of the review.

The impacts of this proposal will be evaluated on:	Three years after the Order has been confirmed.
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9. VERSION CONTROL: The Future Generations Evaluation should be used at the earliest stages of decision making, and then honed and refined throughout the decision making process. It is important to keep a record of this process so that we can demonstrate how we have considered and built in sustainable development wherever possible.

Version No.	Decision making stage	Date considered	Brief description of any amendments made following consideration
1	The Rights of Way Advisory Panel (RWAP) in assessing the evidence and assisting the Community Services Cabinet Portfolio Member to determine whether or not to make a Definitive Map Modification Order.	14 th June 2016	N/A