



# Cabinet report

Date **13 OCTOBER 2022**

Title **HAWTHORN MEADOWS TRO PROPOSAL - THE ISLE OF WIGHT COUNCIL (VARIOUS STREETS, EAST COWES) (TRAFFIC REGULATION) ORDER NO 1 20221**

Report of **CABINET MEMBER FOR INFRASTRUCTURE, HIGHWAYS PFI AND TRANSPORT**

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## EXECUTIVE SUMMARY

1. Proposed Traffic Regulation Order (TRO) - The Isle of Wight Council (Various Streets, East Cowes) (Traffic Regulation) Order No1 2022.
2. This report provides the details of recommendation for introducing new parking restriction as detailed in the map in Appendix 1 (TRO Map) – No Waiting at Any Time in some parts of Hawthorn Meadows residential development and in Saunders Way, East Cowes.
3. The proposal is aiming to ensure safety for all road users, whilst securing the movement of the traffic – by increasing visibility at junctions and bends and by removing unregulated parking that obstructs footways and limits accessibility.
4. Overall, there is a minimal net loss of parking spaces, as the restrictions only remove parking from sections of the carriageway where it is not safe to park and the drivers shouldn't be parking in any event.
5. The extent of the proposed restrictions is kept to a minimum, in order to preserve as many parking spaces as possible. However, as the local highway authority, the Council has a duty to ensure road users' safety and the movement of the traffic, which means that where necessary, it is prioritised above the preservation of parking spaces, especially where this has been identified as unsafe.

## RECOMMENDATION

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| <p>6. Cabinet approves the proposed restriction that is subject to this report in relation to The Isle of Wight Council (Various Streets, East Cowes) (Traffic Regulation) Order No1 2022 as proposed.</p> |
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## BACKGROUND

7. The proposal is based on a Section 38 Agreement dated 1 March 2021 between the Isle of Wight Council (IWC) and the developer BDW Trading Limited (Barratt Homes).

8. According to the agreement Para 13, at the end of the agreed maintenance period where the developer was responsible for maintaining the roads within the new estate, the Council will adopt the roads and they will become a highway maintainable at the public expense.
9. Inspections of the roads' condition and potential safety issues were carried out by the IWC's Highways service provider Island Roads (IR) prior to the adoption, see Appendix 2 (Pre-adoption assessment). As a result of these inspections, the need for new parking restrictions was identified in some specific locations, which resulted in this TRO proposal.
10. According to the Schedule 2 Pt 7 of the Agreement, all costs and applications involved in the creation of any traffic regulation orders and subsequent implementation required will be covered by the developer.

## CORPORATE PRIORITIES AND STRATEGIC CONTEXT

11. The proposed new regulations are in line with the IoWC's [Corporate Plan 2021 – 2025](#) and more specifically with its vision and clear aim to work together openly and with our communities to support and sustain our economy, environment and people.

### Responding to climate change and enhancing the biosphere

12. The proposal, if implemented, is unlikely to have a measurable positive or negative effect on carbon emissions. There may be some minor reduction in local air pollution and carbon emissions owing to fewer cars idling in the area, but it would most likely be a very small impact. Likewise, if the recommendation is approved, it may encourage residents/visitors to adopt more sustainable modes of travel.

### Economic Recovery and Reducing Poverty

13. It is not anticipated that the new regulations would have a direct impact on reducing the number of residents living in poverty.

### Impact on Young People and Future Generations

14. The recommendation, if approved, would have a positive impact on young people and future generations living on the island, as the safety of all road users plays a big role in citizens' wellbeing on a daily basis – as pedestrians, drivers, cyclists and public transport users.

### Corporate Aims

15. The key priorities within the plan, that this report is supporting are: 'Listen to people' – a 28-day island wide consultation was conducted; 'Encourage Sustainable transport and Active travel' – the recommended option would encourage walking, cycling and use of public transport.

## CONSULTATION

16. Following the legal TRO making process and its requirement for a Formal Consultation, a public Notice, outlining the proposals and inviting public comments, was published in the Isle of Wight County Press on 22 April 2022. Notices and

plans were also displayed on-street for a period of 28 days, which is a week longer than the legally required 21 days. The closing date for representations was 20 May 2022.

17. The Authority received 21 valid representations (from 15 households, the Town Council and the Ward Councillor), summarised in Appendix 3 (Representations), where the concerns raised in the representations were addressed by the Local Highway Authority as appropriate.

#### FINANCIAL / BUDGET IMPLICATIONS

18. There will be no financial impact for the Council as the total cost for making of the TRO and implementing the restriction will be covered by the Developer.

#### LEGAL IMPLICATIONS

19. The Statutory Authority for making new TROs is contained within the Section 1 (1) of 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”) in respect of the road 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 the 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, or
    - (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).
20. Orders are progressed in accordance with the Local Authority’s Traffic Regulation Order (Procedure) (England and Wales) Regulations 1996.
21. The Statutory Authority for signs and road markings are by virtue of the Traffic Signs Regulations and General Directions 2016.
22. The council is under a duty pursuant to Section 16 of the Traffic Management Act 2004 to manage their road network, whilst having regard to their other obligations,

policies and objectives at the same time, with a view to facilitate the passage on the road or any other road of any class of traffic (including pedestrians) and 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.

23. Consideration will need to be given to the duty under Section 122 of the Road Traffic Regulation Act 1984 when deciding whether to make, or to refuse to make a traffic regulation order.
24. Section 122 requires the local authority to secure the expeditious, convenient and safe movement of traffic (including pedestrians) and the provision of adequate parking facilities. In carrying out this exercise the council must have regard to the:
  - (a) desirability of securing and maintaining reasonable access to premises;
  - (b) the effect on the amenities of any locality effected 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 road(s) run;
  - (c) any strategy prepared under section 80 of the Environment Act 1995 (the national air quality strategy);
  - (d) 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;
  - (e) any other matters appearing to the local authority to be relevant.
25. Regulation 13 of the 1996 Regulations confirms that before making an order, the traffic authority shall consider all objections duly made to the TROs that have not been withdrawn.
26. The validity of any traffic regulation order made by the council can be challenged by application to the High Court to challenge the validity of a TRO, or any of its provisions, within six weeks following the date the order on the grounds identified in paragraphs 35-36 of Schedule 9 to the Road Traffic Regulation Act 1984.
27. The court has the power to suspend an order or any of its provisions until the final determination of the proceedings.
28. A person aggrieved by a decision of the council to refuse to make a traffic regulation order can seek a judicial review of the exercise of those functions. That challenge can be brought on the grounds of illegality, irrationality, and/or procedural impropriety.
29. A public body which is charged with the power to make a decision in the course of a statutory process must exercise this discretion in accordance with public law principles, that being that it must have regard to all material facts and make a decision that is reasonable having regard to the relevant provisions of Section 122 above and not immaterial consideration. In exercising this judgement it should apply appropriate weight to the decisions made in the relevant planning process. This weighting process is a matter for the highway authority; albeit, subject to review by the courts if it is alleged that it has acted perversely.

## EQUALITY AND DIVERSITY

30. The Council as a public body is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
31. Under the Equality Act 2010 the Council is required to have due regard to its equality duties when making decisions, reviewing services, undertaking projects, developing and reviewing policies.
32. Due regard to the Council's responsibilities under the Equality Act 2010 has been given at the formative stage of this proposal. An Equality Impact Assessment form has been completed in Appendix 4 (EIA form).

## OPTIONS

33. Option 1: To approve the proposed restrictions that are subject to this report in relation to The Isle of Wight Council (Various Streets, East Cowes) (Traffic Regulation) Order No1 2022 as proposed.
34. Option 2: Not to approve the restrictions that are subject to this report in relation to The Isle of Wight Council (Various Streets, East Cowes) (Traffic Regulation) Order No1 2022 and to abandon the proposal.
35. Option 3: To approve the proposed restrictions that are subject to this report in relation to The Isle of Wight Council (Various Streets, East Cowes) (Traffic Regulation) Order No1 2022 with amendment..

## RISK MANAGEMENT

36. Section 122 in the Road Traffic Regulation Act 1984 requires the local authority to secure the expeditious, convenient and safe movement of traffic (including pedestrians) and the provision of adequate parking facilities.
37. Therefore, a thorough consideration is needed on what material factors might weigh in the balance of approval or refusal of this proposal, in form of justification for the decision made.
38. Inspections of the roads' condition and potential safety issues were carried out by the IWC's Highways service provider IR prior to the Council's adoption of the private roads within the development.
39. A risk has been identified to pedestrians, cyclists and efficient movement of vehicles, as well as to the emergency vehicles access, due to the increased number of vehicles and traffic since the development was constructed.

40. The TRO proposal, if implemented, will ensure safety for all road users, whilst securing the movement of the traffic – by increasing visibility at junctions and bends and by removing parking that obstructs footways and limits access.
41. A risk has been identified for a loss of on-street parking space for the public if the proposed restriction is implemented.
42. The design of the roads in the estate is compliant with legal requirements for new developments and all properties in the development have allocated parking spaces.
43. The extent of the restrictions was kept to a minimum, in order to preserve as much parking spaces as possible. However, as the local highway authority, the Council has a duty to ensure road users' safety and the movement of the traffic, which means that sometimes we need to prioritise the road safety above the preservation of parking spaces.
44. The Authority will monitor the impact of the changes and review the restriction if necessary.

## EVALUATION

45. Section 122 of the Road Traffic Regulation Act 1984 requires the local authority to secure the expeditious, convenient and safe movement of traffic (including pedestrians) and the provision of adequate parking facilities. In some cases a balance needs to be made between the requirement for a TRO for the reasons provided above and the need to take account of the impacts to any loss of residential on-street parking.
46. Option 1: To approve as proposed - The road safety and highway engineers in Island Roads strongly advised the approval on grounds of safety.
47. Option 2: Not to approve – The road safety and highway engineers in Island Roads strongly advised against this option on grounds of safety: once a safety risk on the highway has been identified, the Local Highway Authority has an obligation to address it.
48. Option 3: To approve with amendment – As per Option 2 the road safety and highway engineers in Island Roads strongly advised against this option on grounds of safety, as the extent of the restrictions was kept to a minimum and there is no scope for a further reduction of the proposed extent.

## APPENDICES ATTACHED

Appendix 1 – TRO Map

Appendix 2 – Road Safety Assessment

Appendix 3 – Representations

Appendix 4 – EIA form

## BACKGROUND PAPERS

Section 38 Agreement

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