

This response is dedicated to the memory of

**Mike Hall**

1981-2017



Winner:  
World Cycle Race  
Trans American Bicycle Race  
Tour Divide

Resident of Abbeycwmhir

**“Bikes are brilliant and the countryside is for everyone”**

## **Introduction:**

In 2016, the Welsh Government published a consultation on improving opportunities to access the outdoors for responsible recreation. Cycling UK, in conjunction with OpenMTB, British Cycling and Welsh Cycling, issued a joint response to this, and through our Trails For Wales campaign led to more than 4,000 supporters joining our call for improved access for off-road cyclists.

On 21st June 2017, the Welsh Government launched a further consultation, titled “Taking Forward Wales’ Sustainable Management of Natural Resources” which requested feedback on a number of specific proposals relevant to the revision of countryside access legislation. Our response to this is below. This response is the collective view of two organisations:

**Open MTB:** A group of volunteers representing more than forty UK mountain bike clubs and advocacy organisations across the UK

**Cycling UK:** Formally known as CTC, the national cycling charity, with 65,000 members, it is our stated aim to be the natural home for both road and off-road cyclists

In formation of our response, we have elected to answer only questions which we regard as being directly relevant to Cycling UK’s charitable objectives, namely:

- To promote community participation in healthy recreation by promoting the amateur sport of cycling, cycle touring and associated amateur sports;
- To preserve and protect the health and safety of the public by encouraging and facilitating cycling and the safety of cyclists;
- To advance education by whatever means the trustees think fit, including the provision of cycling, training and educational activities related to cycling;
- To promote the conservation and protection of the environment.

We support the call by the Outdoor Access Wales coalition for improved access to the Welsh outdoors for non-motorised recreation. Broadly, we believe that the consultation shows a bold vision from the Welsh Government, offering radical and positive improvements to existing countryside legislation. It offers clear potential benefits for both Welsh residents and the Welsh economy, allowing it to unlock the full value (both economic and social) of the country's natural capital. According to the Great Britain Tourism Survey (June 2015), cycle tourism is worth more than £90 million annually to the Welsh economy through daily visits and overnight stays, including around 300,000 overnight visits to Wales each year.

As part of the broader picture, Wales is an increasingly popular place for cycling companies to do business, with companies like Frog Bikes, Mojo Suspension and Cambrian Tyres – along with hundreds of independent bike shops, guides and other cycle businesses – all playing an important role in their local economies.

## **Consultation Response:**

**Question 4:** Do you agree with proposals to align NRW's general duties (including the balancing duty) under the Forestry Act with the sustainable management of natural resources?

**Question 11:** Should the statutory purposes of AONB and National Parks be aligned with the sustainable management of natural resources?

We fully support these proposals, and applaud the Welsh Government's commitment to ensuring the sustainable management of natural resources, while at the same time advancing the wellbeing of both current and future generations.

**Question 12:** Where the special qualities of each designated area are identified, should this be given greater weight in decision making? In considering this, how should it be done in order to most effectively add value to the governance of those areas and the connection to local communities and businesses?

We question whether there is significant need for additional protection here. Indeed we would go so far as to express concern that even existing protections have been, on occasion, misused in order to restrict development for somewhat spurious reasons. Specifically, we strongly support the Sanford Principle, correctly expressed as follows:

"Where irreconcilable conflicts exist between conservation and public enjoyment, then conservation interest should take priority".

The word 'irreconcilable' is important though. Regrettably it was committed from the Environment Act 1995, which says:

"If it appears that there is a conflict between those purposes, [the National Park Authority] shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area"

We strongly endorse the conservation objective; it is vital for the protection of species, habitats, landscapes and other aspects of the countryside which cyclists enjoy. However in the vast majority of cases, conflict between conservation and other priorities can be negated through good management and compromise. Regrettably, the omission of the word from the 1995 Act has provided spurious justification for some National Parks (outside Wales) to unreasonably restrict and prevent otherwise desirable and non-damaging recreational activities on the basis that it may affect 'cultural heritage'.

The 2007 Welsh Government policy statement for the National Parks and National Park Authorities similarly mentions the Sandford Principle and the 1995 Act without noting the omission of this 'irreconcilable' caveat.

We also draw attention to the Countryside Agency's publication 'Demand for outdoor recreation in the English National Parks' (CRN93), which commented that:

...NPAs have been ambivalent at best, and at worst quite negative about their second purpose. The evidence came from several areas:

- An assessment of National Park Management Plans indicates that the second purpose has often been interpreted to emphasise the environmental education aspect of the purpose (i.e., 'understanding'), rather than the pure recreational element (i.e., 'enjoyment'). Management Plans tend to focus on education, visitor management, and NPAs' statutory access duties, rather than a pro-active approach to outdoor recreation.
- This defensive approach is mirrored in other documentation. Straightforward promotional recreation policies or strategies are very limited. Public information and promotional material emphasises the resolution of potential conflicts and management of visitor behaviour, rather than positive, welcoming messages. Such promotional material that does exist is often dated and restricted in its distribution.
- User groups' and other stakeholders' perceptions of NPAs reflect this view that NPAs have been negative about recreation in the past. Relationships with some recreation user groups are good (the British Mountaineering Council is a good example), but productive partnerships with other user groups are less consistent. The study also found that few NPAs have a good relationship with Sport England in their regions.
- Most significantly, NPA staff themselves concur with the view that they have been less than pro-active concerning outdoor recreation activities in the past, and probably focused too much on potential conflicts with their conservation purpose without good evidence on which to base these fears.

As such, we would express concern that any additional powers prioritising the importance given to 'special qualities' in decision making may be open to abuse by those who unreasonably seek to prevent development that may fulfil the other statutory purposes of the National Park. As stated in the UK Government's 2010 Vision and Circular of the English National Parks:

"The Government believes that in most cases it remains possible to avoid potential conflicts through negotiation and well considered planning and management strategies and expects the NPAs to take the lead in encouraging mediation, negotiation and co-operation."

Hence we strongly caution against any blanket prioritisation of the "special qualities" of designated areas. This risks undermining the balance between the dual priorities, and the value of compromise and negotiation in striking that balance. As such it could have a longer term negative outcome on the management of National Parks.



**Question 15:** Will these proposals deliver consistency in the opportunities available for participation in different activities and provide effective safeguards for land management and the natural environment?

**Question 16:** Will these proposals deliver a more integrated and up to date system for identifying, designating and recording publicly accessible areas?

**Question 17:** Will these proposals provide significant clarification to ensure that the public, land managers and others are clear about their rights, responsibilities and duties in relation to access to the outdoors?

Due to the complex nature of this section and the individual proposals, we propose to respond to the questions, over the coming pages, in a narrative fashion. We would add, however (and we believe it is important for all stakeholders to consider) that some of the proposals are extensions that ought to have been achievable under existing powers.

We have had decades whereby rights of way that could have safely been extended to other users could have been opened under either voluntary or compulsory powers, and now over a decade where landowners (including government bodies) could have begun to grant higher rights to access land. Regrettably these powers have remained virtually unused.

We suggest that it is this longstanding lack of access development, allied with the failure of the system to respond to changing patterns of use under existing powers, that now makes the proposed extension of countryside rights of access both necessary and proportionate.

#### **Proposal 10:**

*To enable cycling and horse riding on footpaths to occur under the same conditions as those provided for cycling on bridleways under section 30 of the Countryside Act 1968. These provisions allow for cycling without placing additional burdens of maintenance and liability on the local authority; and they prioritise the ordinary users of those paths. Whilst it would not place additional liabilities or maintenance burdens on local authorities, it would enable them to plan and implement surface and furniture improvements to routes that would add most value to the rights of way network. It would place the onus of checking the suitability of individual paths on users.*

We fully support this proposal. As discussed in our response to the previous consultation we believe that the vast majority of rights of way are suitable for cycling, it is our opinion that the current system is unreasonably restrictive and fails to take into account the routes' suitability for permitted use.

In support of the proposal, we would point to the results of our 2016 survey of the views and habits of off-road cyclists in England and Wales (Annex 1) that received more than 11,000 responses. Specifically we highlight our finding that if it were made legal to ride on public footpaths, 37% of respondents would ride more, and 44% would ride from home more often. We believe it to be noteworthy that in our survey results we discovered that 67% of off-road rides on rights of way began from the door, whereas more than 90% of rides at mountain bike 'trail centres' began with a car journey, often of more than an hour. This suggests to us that access to the rights of way network plays a vitally important factor in encouraging regular physical activity close to home, particularly amongst youth and other groups who do not have access to their own motorised transport.

In addition to this, an emphatic 74% of respondents felt that the existing public rights of way network is not suitable for modern cycle usage. 85% said they found it difficult to put together a legal route.

These factors together underline the important opportunity offered by liberalising use of the existing rights of way network order to promote participation and physical activity on a day to day basis. There exists the potential to encourage recreational activity across a much wider area of Wales, and with a far wider demographic profile, than those who currently benefit from forest based trail centre developments.

The vast majority of our respondents said that off-road cycling is "very important" (58%) or "fairly important" (32%) for their physical health, with an even higher proportion (66%) declaring it very important for their mental health and wellbeing. These results are consistent with those from an additional recent independent study (Annex 8).

12% of respondents stated they had a long-term disability or health issue. There is clear evidence on the benefits of countryside recreation for health and wellbeing, see for example Natural England's recent 'greening dementia' report.

62% of our respondents said that off-road cycling is their primary form of exercise. This highlights the value of the culture and passion which has grown up around mountain biking in engaging and retaining participants.

70% of respondents also participate in road cycling. Other popular activities were rambling and low level hiking (56%), hill walking or mountaineering (46%) and dog walking (31%). This crossover into other outdoor pursuits may explain why, despite widespread cycling on footpaths and the perception that this inevitably creates conflict, 49% of respondents said they had experienced no conflict at all in the last two years. Additionally, most reported conflict was very minor, consisting of comments such as 'you shouldn't be doing that here', rather than any actual problematic or dangerous interface between different users of the trail.

We note that this broadly supports conclusions from previous research work, whereby the Countryside Agency (Annex 5) revealed that conflict is remarkably rare and often overstated.

Critically, we would highlight that, in the vast majority of cases, walkers, cyclists and horse riders get along absolutely fine on the thousands of miles of the existing bridleway network, rights for which have never been assessed or allocated on the basis of width, surface, sight lines or suitability. There is no evidence that this would be any different if the majority of routes were opened up to all non-motorised users; indeed the overwhelming evidence of interactions on existing shared routes, and the experience of shared routes in other countries suggests that interactions between users are generally ruled by common

## Survey Results

### OFF-ROAD ACCESS

Cycling UK's off-road survey, designed to give us an idea of how people use the Rights of Way network in England and Wales, closed shortly before Cycle went to press. We'll have a full report soon. For background details, see [bit.ly/cyclinguk-offroadsurvey](http://bit.ly/cyclinguk-offroadsurvey)

**11,482**

**PEOPLE**  
completed  
the survey



**91**

**PERCENT**  
rate off-road  
cycling fairly or  
very important for  
their mental health

**65**

**PERCENT**  
of those using  
footpaths quote 'lack  
of choice', 52% 'to  
avoid traffic danger'



**OVER 50**  
**PERCENT**

back 'increased access'  
as the number one  
off-road campaign goal

**62**

**PERCENT**  
say off-road  
cycling is their  
primary form of  
exercise



**TWO-THIRDS**

of rights of way rides are local,  
beginning at the rider's door

**90**

**PERCENT**  
say off-road  
cycling is fairly  
or very important  
for their physical health



**74**

**PERCENT**  
consider the  
rights of way  
system unsuitable

sense and courtesy.

Throughout the previous consultation and subsequent discussions, we have always been clear in our belief that, while the vast majority of footpaths are suitable for cycling on a responsible access basis, there will always be some exceptions. We suggest that it would be impractical to survey the entire rights of way network for upgrades on a case by case basis. In addition to a statutory and enforceable code of conduct (proposal 16), there needs to be an effective process to identify those locations where restrictions may be necessary in order to prevent conflict, danger, or damage to wildlife or habitats interests. As discussed in proposal 20, we believe that the existing Traffic Regulation Order (TRO) process provides a robust framework for restriction, and that efforts should concentrate on improving and simplifying this process, rather than replacing it.

For practical purposes we accept that there would likely have to be an initial list of agreed restricted routes in place at the time of introducing the new access rights. We would, however, be keen to ensure that these were imposed on an objective basis, under the principle of 'least restrictive option'. We maintain that the application of overly simplistic criteria, such as minimum widths or surfacing, would lose overall context. For instance, shared access for all users on a two metre wide path on the edge of a busy town may have a very different impact than that for a two metre wide path in a more rural location. Research suggests that pedestrian-cyclist conflict correlates best with peak density of use and we suggest that following best practice from other countries in using guidelines based on this, rather than simple path widths, would offer a more effective method of identifying those locations with the potential for conflict.

We should also add an important factor here – that increasing access to the rights of way network is not a 'zero sum game'. Whilst groups that oppose the widespread extension of access rights might be concerned about issues of 'safety' if public footpaths were shared with cyclists and horse riders, the actual risk of serious injury or death to non-motorised users on rights of way is regarded as so extremely low that that official statistics are not even maintained on the issue. Even including those on the entire road network, risks to pedestrians from cyclists are extremely low, with annual fatalities in the same order of magnitude as those witnessed from lightning strikes.

**Table 11: Pedestrians killed by type of vehicle involved, average 2004-08 and 2011 to 2015**

Type of vehicle	Number					
	Average 2004-2008	2011	2012	2013	2014	2015
Pedal Cycles	0	0	0	0	1	0
Motorcycle	2	0	0	1	0	0
Car, taxi, minibus	20	20	12	18	9	14
Goods vehicle	3	1	2	5	2	5
Bus or coach	1	2	1	3	1	2
Others	1	1	0	0	0	0
<b>Total</b>	<b>27</b>	<b>24</b>	<b>15</b>	<b>27</b>	<b>13</b>	<b>21</b>

Source: Road Accident Statistics, Welsh Government

Rural roads account for only 32% of pedal cycle traffic, but for 58% of pedal cyclist fatalities. Nationally, we are aware of no more than a handful of serious accidents, crashes or other incidents involving rights of way users in the last decade and this risk has to be seen within the bigger picture of road safety for vulnerable users. Since 2010 over 700 cyclists, 38 horse riders and 200 horses have died in collisions with motor vehicles on British roads

We urge the Welsh Government to recognise that any potential tiny increase in risk created by shared use of footpaths would pale into insignificance when compared with the ongoing risk to cyclists and horse riders who are forced onto the roads by poor connectivity and provision in the rights of way network.

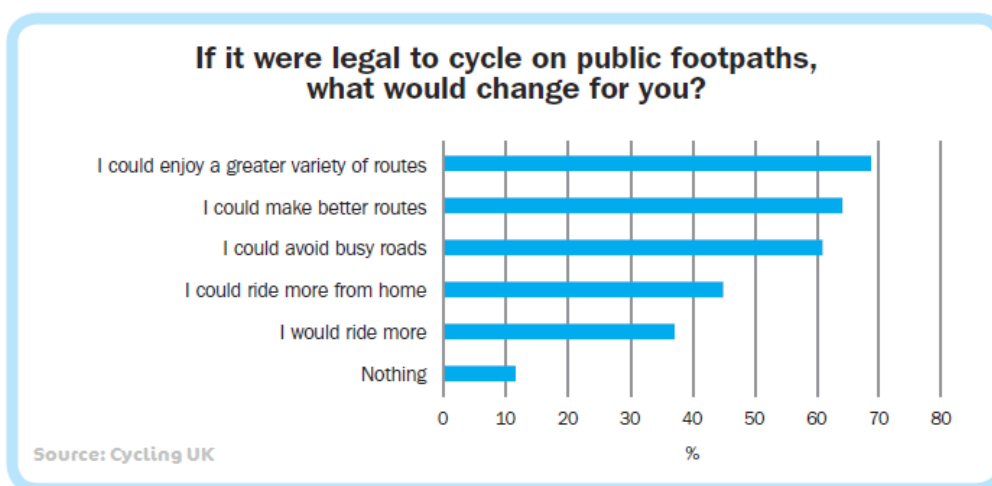
Regarding impact on landowners, we suggest that in the vast majority of cases the effect of the proposal will be minimal. Footpaths are widely used on a de-facto basis by cyclists, and have been for many decades, as evidenced by the statement by Lord Kennet in the parliamentary debates over the 1968 Act (Annex 6):

*Before the appearance of this Bill cyclists had certain rights on bridleways and footpaths. The situation varied according to the individual path, to custom, usage by law, and so on. The last clause I introduced here would have given the public an undoubted right to ride a bicycle on footpaths and bridle-ways unless stopped by a by-law. The present clause gives the public an undoubted right to ride bicycles on a bridle-way unless stopped by a by-law, but it does not change the existing, long-established right of the public to ride bicycles on certain footpaths. It does not establish a new general right.*

Essentially, all these routes already have public access, the only practical difference in most cases is that existing de-facto access will be formalised into a right of access. This would allow users to feel more confident about engaging in outdoor activities, as well as allowing local authorities, tourist boards and other bodies to sign and promote them.

Finally, we suspect the issue of ‘erosion’ by bicycles will be brought up at some point. There have been arguments for many years over which countryside user group causes more, or less, damage to existing tracks and paths – with fears expressed that opening up more tracks to cyclists or horse riders could result in more erosion. It would be easy for us to point you to dozens of scientific papers claiming that horses cause more erosion, that cyclists cause less, that the effect of all three user groups is broadly similar, that it depends on gradient and rainfall, or that by opening up more paths would spread the load and thereby dilute the effects. However we intend to tackle this question somewhat differently.

This year Snowdonia National Park and the National Trust announced that repairing erosion on Yr Wyddfa’s footpaths would cost more than £250,000. Millions of pounds have been spent over the years repairing erosion caused by walkers across Wales... however nobody has seriously suggested restrictions on walkers’ access to the countryside as being a realistic or proportionate answer to this problem. Instead it is tackled through proactive management, education and promotion of suggested routes. We fail to see why the same principles cannot be applied to other countryside users.





**Proposal 11:**

*To amend or revoke the following list of restrictions on access, provided in Schedule 2 (1) of the CRoW Act 2000:*

*(b) uses a vessel or sailboard on any non-tidal water;*

*(c) has with him any animal other than a dog;*

*(i) bathes in any non-tidal water; and*

*(s) engages in any organised games, or in camping, hang-gliding or para-gliding.*

We cannot begin to describe how disappointed we were to see that access land was going to be opened to pretty much every form of non-motorised countryside recreation except cycling.

The questions asked in this section were:

- Will these proposals deliver consistency in the opportunities available for participation in different activities and provide effective safeguards for land management and the natural environment?
- Will these proposals deliver a more integrated and up-to-date system for identifying, designating and recording publicly accessible areas?
- Will these proposals provide significant clarification to ensure that the public, land managers and others are clear about their rights, responsibilities and duties in relation to access to the outdoors?

Regrettably, to us, the answer to all three questions regarding this specific proposal (as drafted) therefore has to be an emphatic no. We think it is inconsistent and unfair that walkers and horse riders will be allowed unrestricted access to open access land, regardless of condition or suitability, while bicycles will remain banned, even from existing well-surfaced tracks.

One of the key arguments we made in our response to the initial consultation was that the current legislation led to perverse outcomes, where cyclists could ride a muddy bridleway, but not a well surfaced footpath. However the equally perverse outcome under proposal 11 is that in the photograph below, cyclists will potentially have access to track on the left, but not the one on the right:



(Alwyn williams,  
Via Wiki CC)

Extensive research from Scotland (Annex 2) suggests that there is no good reason to continue a distinction between cycle access and other use. Users generally get on well together and conflict is minimal. As stated on page 12 of the James Hutton Institute report:

*Management measures based on temporal zoning will be hard to 'sell' given that the practice of responsible access may change on a much more rapid timescale. Likewise, fixed spatial zones or designated areas (e.g. Special Protection Area or a Special Area of Conservation) are also unlikely to provide credible justification for blanket bans. Any efforts to restrict or curtail mountain biking in upland areas (whether seasonally or spatially) should aim to be even-handed in their consideration of the impacts of other recreational use relative to, and alongside, mountain biking.*

There can be no rational grounds for continuing a blanket restriction on cycling on access land while permitting walking and horse riding. Moreover, the proposal as drafted would create particularly acute problems where the 'best' route (both to cyclists and from the perspective of suitability and sustainability) lay along an existing path or track over which cyclists still had no access rights, as it was neither a footpath or bridleway.

As an organisation which plays both an active part in developing rural tourism and in encouraging participation in off-road cycling to achieve benefits in health, fitness and wellbeing, we would remain unable to promote the **best** routes for riders to use to access the countryside, only the 'legal' ones.

We would also comment that the evidence from utilities such as Strava (a GPS data based ride-sharing web application) shows that, in reality, cyclists rarely stray from existing tracks and paths covering access land. Indeed, our earlier consultation response even suggested that a practical compromise would be to extend permission for cycles and horses to use all existing tracks on access land, rather than granting them unrestricted access.

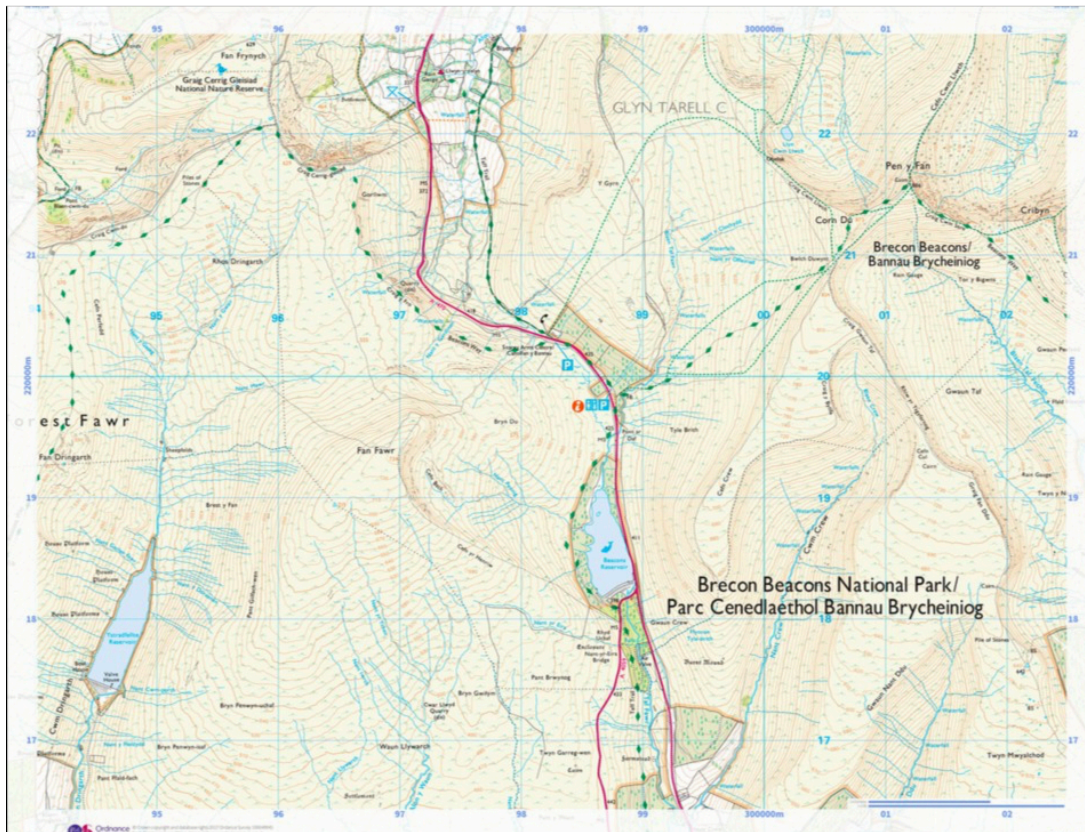
The crux of our issue remains that there are a great many well surfaced paths and tracks on access land that are not recorded on the definitive map as rights of way, to which we will have no lawful right of access, despite them being on land with statutory access rights. All that we are suggesting is an incremental change in the permitted mode of access. Prior to the introduction of the CROW Act in 2000, there were extensive predictions of doom, gloom and devastation as a result. However, in the vast majority of cases, the effect was fairly minor. The evidence from Scotland (Annex 2) appears to indicate that there has been no significant difference in impact between different classes of user.

Returning briefly to the question "Will these proposals provide significant clarification to ensure that the public, land managers and others are clear about their rights, responsibilities and duties in relation to access to the outdoors?" We would point out that one of the potential issues is that of Section 15 land, which also carries rights of access, but is not technically "access land" within the provisions of CROW. Therefore the new rights encompassed in the proposals will not automatically extend to these large areas of countryside.

This already creates a complex paradox, as not all land that is shown on Ordnance Survey or official access land maps has the same rights of access. We can only suggest that the sensible solution is to extend the same minimum rights of access to all accessible land which, were it not afforded rights of access under separate legislation, would otherwise be subject to access rights under CROW.

In order to better understand the impact of proposal 11 as written, we decided to carry out a sample survey of access land. We were able to identify, from Ordnance Survey mapping, the rights of way network that would allow access under the proposal, and to compare this with the potential wider network of accessible tracks and paths that could be identified from satellite data and aerial photography analysis:





For the map area shown above, the image below details all existing tracks and paths that have been identified from aerial photo analysis, which we have marked with the following colour codes:

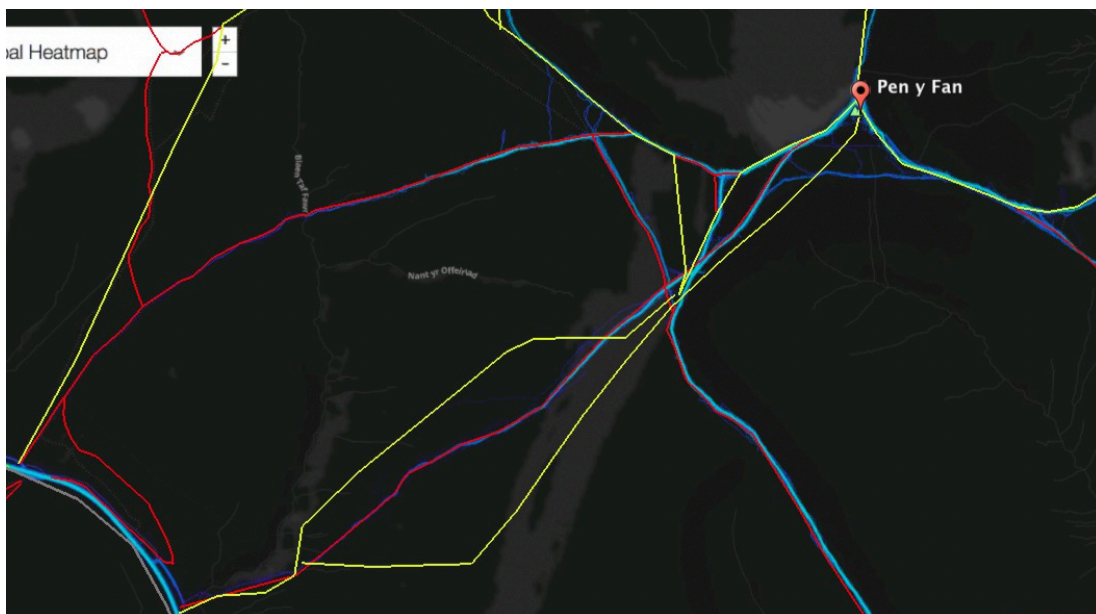
- Grey: Metalled Roads;
- Green: Paths with cycle access under current legislation (public bridleway, BOAT, RB, UUCR);
- Yellow: Paths that will gain cycle access rights under proposal 10 (public footpaths);
- Red: Visually identifiable existing paths and tracks which will remain off limits to cyclists under proposal 11



To us, the outcome is less than satisfactory. Almost 100% of the land in the above images will have unrestricted rights of access for walkers, horse riders, paragliders, campers and paddlers, whereas cyclists will only be able to use the few paths highlighted in green and yellow. Even well known and publicised routes such as the Beacons Way (which is shown in red) will remain off limits, while often less suitable and sustainable routes will be open.

Due to the significant use of GPS devices and social media by cyclists, we already know the desire lines and patterns of use of some of these areas through applications such as Strava. For example, even though there is currently no right of way for cycles to access the top of Pen y Fan, we have clear evidence of significant numbers of cyclists already doing so on a de-facto basis.

If we overlay this data with the routes that will be open and closed to riders under proposal 11, we are able to compare the proposed solution with actual recorded patterns of use. Therefore, in the picture below, we can see the different routes that would be open to riders (under proposal 10) shown in yellow, the routes that would remain prohibited for cyclists in red, while the blue lines underlying this data reveal the existing patterns of use recorded on cyclists GPS devices via Strava, displayed in differing intensities of blue according to levels of use.



We can therefore conclude that the primary cyclist desire lines would remain off limits under proposal 11 as drafted. We suggest that the inherent factors which already make these routes a natural draw point for cyclists (despite already being 'banned') will not go away under this proposal. It would, perhaps regrettably, be unrealistic to think that riders will magically stop using these tracks, which they already have no right to ride, therefore it will only result in ongoing problems for both riders and land managers unless reviewed. As a realistic compromise the proposals should at least permit cyclists and other non-mechanically propelled vehicles to use all existing tracks and paths on access land.

This is, of course, only one location, however our analysis suggests very strongly that this outcome is repeated in a great many others, and have attached another extensive example at Moel Famau as Annex 3.

We respectfully urge the Welsh Government to revise proposal 11 in order to extend access for pedal cyclists to CROW and section 15 land, thereby bringing pedestrian, cycle and horse access to the countryside in line with each other.



### **Proposal 12:**

*To allow, with appropriate authority, organised cycle racing on bridleways in order to bring rules relating to bridleways into line with footpaths.  
We would welcome any further suggestions for change in relation to anomalous or unreasonable restriction on public rights of way.*

We support this proposal, and look forward to seeing the reintroduction of the annual Man v Horse v Bike race, along with the potential arrival of other world class long distance off-road races.

We believe that the extensive legislation already in existence to regulate racing on highways, including public footpaths, offers more than adequate protection for the rights of other users, and that when viewed in conjunction with the wider liberalisation of access under proposals 10, 11 and 13 will not prove detrimental to other legitimate users. We also recognise that there may need to be significant differences between the impact of races held on private land which affect or use existing rights of way, and the concept of long distance or stage races held on rights of way. We suggest that this is clearly an issue that falls within the remit of regulation and authorisation rather than justifying the current blanket legislative ban.

We would take the opportunity to briefly point out, for the sake of clarity, that this provision is a technical revision applying only to formal, organised races, the running and notification of which are already heavily regulated by existing legislation. Other, often much larger, events such as 'off-road sportives' and mass events are unaffected, as they currently do not fall within the existing restriction. Concern has been expressed to us over the issue of cyclosportives by a number of bodies recently, however we suggest that the regulation of large scale commercial events (of all forms) using rights of way and accessible land is a wider issue that might be better dealt with under the statutory access code as discussed in proposal 26.

### **Proposal 13:**

*To extend CRow Act access land to the coast and cliffs.*

We fully support this proposal, however again highlight our disappointment at the fact that under proposal 11 (as drafted) there will be a clear disparity in access between cyclists and other users. We believe the ability to access beaches and coastal tracks is just as valuable for cyclists as it is for other users. Indeed over recent years a type of bicycle specifically adapted for this type of riding has become popular, with 'fat bikes' now forming a significant proportion of sales nationally.



(Bruce Mathieson)

Cycling UK has written about this style of riding in our magazine and website (Annex 7) and we note that news articles have even drawn attention to businesses in Wales that have begun to benefit from the tourist value of coastal cycle access using them, such as:

<http://porthcawlbikehire.co.uk>

Specialist bicycles that allow riders to experience the beaches of Porthcawl on two wheels are now available in the town for the first time.

Corum Champion has opened the resort's first ever bike hire business with a focus on 'fat bikes', which have larger, wider tyres that allow the rider to go along the sand and even to the edge of the sea without sinking.

The former business manager for Vauxhall only officially opened his business on the weekend, but he said interest has been strong, particularly from visitors from other parts of the UK, many of which are staying at the Trecco Bay caravan site just a stone's throw from his shop.

"I've had a family come in from Manchester and they wanted to hire bikes but had no idea where to go," said dad-of-three Corum, 41.

'You can cycle from Trecco Bay to Rest Bay'

"I was able to show them how they can access the seafront just across the road from the shop via the road that used to lead to the old Sandy Bay caravan park."

"From there, you can ride all the way along to Rest Bay at the other end of Porthcawl if you want without going onto the road at all, so it's perfect."

<http://www.walesonline.co.uk/business/business-news/porthcawls-new-fat-bikes-whet-11609936>

#### **Proposal 14:**

*To extend Part 1 of CROW Act access land provisions to rivers and other inland waters*

We support this proposal. We believe that the established mechanisms for restriction of access that already exist within CROW offer an identifiable and practical method to minimise conflict with other legitimate activities. We also support the call of the Cambrian Caving Council for this right to extend to land including caves and potholes beneath the surface of the earth

#### **Proposal 15:**

*To establish NRW as the authority responsible for:*

- *identifying appropriate access and egress points;*
- *implementing measures to promote responsible use, including the use of river level indicators*
- *mediating between the different user interests to facilitate user access agreements.*

We broadly support this proposal, but suggest that it ought to be expanded to give NRW authority to intervene in a similar fashion to identify, negotiate and secure access routes for other areas of accessible land (such as isolated pockets or 'islands' of access land) and to cliffs and caves which are not otherwise able to be reached from existing rights of way or access land.

**Proposal 16:**

*To establish a statutory caveat on all users to behave responsibly whilst exercising their right to participate in recreation on access land, inland water and on public rights of way.*

We fully support this proposal, and note that the Scottish introduction of a 'right of responsible access' has been extensively reviewed and found to have worked well. We believe that by offering a statutory responsibility on users to act responsibly, it will reinforce the importance to **all** parties of how their conduct affects the rights of others, and will offer clearer indications to all bodies of where isolated problems might occur, and thus where revision of policy or the introduction of restrictions might be necessary.

We additionally suggest that the statutory nature of the access code should carry significant weight in limiting landowner liability, for example if the landowner has acted in conjunction with the Code, and there is no negligence, then his responsibility and liability towards anyone accessing his land for the purposes of recreation should be effectively limited to the lowest possible level in law. Outdoor activities will always carry an inherent low level of personal risk and the consequences of this must be accepted by both user and landowner, without either feeling the need to restrict access for fear of consequences from foreseeable and consciously accepted risk.

We suggest that it might also be appropriate to consider how the creation of a statutory caveat ought to work within the wider context of a statutory code of conduct (as per proposal 26) as the idea of 'responsible access' on the part of the user could be argued to indicate a presumed burden and duty of responsible and reasonable behaviour on behalf of the landowner too. Issues such as blocked rights of way and deliberate obfuscation of access rights ought to be dealt with as swiftly and effectively as irresponsible behaviour by users.

Of course, there will always be a small minority of any group of people who abuse rights of access or act unreasonably. Regrettably this is human nature, however we think that it has been all too easy for parties on all sides of the access debate to point fingers at others and rely on isolated problems to castigate an entire group or legitimate activity. Such minor and manageable problems should not be a reason to stall or prevent the much more welcome development of access rights that is proposed in this consultation.

**Proposal 17:**

*To enable temporary diversions and exclusions to be applied across all accessible land and water where circumstances require them and after the safety and convenience of the public have been considered.*

We broadly support this proposal, but suggest that further clarity is needed on the precise process and notification for such an exclusion. We note that at present there is an established process for the issue of statutory restrictions of access rights and we agree that this regime could potentially be expanded to cover all accessible land, including common land and other forms of accessible land excluded from CROW under section 15.

We would however have concerns about the use of this format to extend to public rights of way without the existence of a proportionate, objective justification for restriction and a clear right of appeal or independent oversight such as through arbitration. We would also suggest that any simplification in the methodology for diversion of rights of way or similar measures ought to be

caveated with a clear test whereby diversion would only be permitted if the diversion was safe and not substantially less convenient to lawful users of the highway.

That is not in any way to suggest that we do not support access restrictions where necessary. On the contrary, we fully support them, but would be keen to see the principles of independent oversight and 'least restrictive option' applied in a way that is transparent and fair to all parties, not just those who shout loudest, and offers appropriate checks and balances in order to protect public rights of access from arbitrary restriction.

**Proposal 18:**

*Dogs to be on a short fixed length lead in the vicinity of livestock at all times of the year. In all other circumstances they will be subject to "effective control," a legally defined term already used in England under Schedule 2 paragraph 6A of the CRoW Act. Exceptional circumstances relating to safety and the protection of nature conservation will be identified and guidance provided by the access code.*

Cycling UK Response: We support this proposal.

Open MTB Response: We support a duty to keep dogs under 'effective control' at all times.

**Proposal 19:**

*To enable the development of one statutory map of accessible areas and green infrastructure. Layers of mapping would initially include CRoW access land (including water), public rights of way and designations, including, National Trails. Legislation would need to allow further layers to be identified and added.*

We support this proposal. We would request clarification that the proposal is for this map to be in an electronic format and available online for all to access. We would also suggest that it is important that other rights of access such as unsealed, unclassified county roads and 'other routes of public access' as featured on OS maps are featured within this statutory map to give absolutely clarity on the full range of countryside access opportunities.

**Proposal 20:**

*To amend technical provisions relating to procedures for creating, diverting and extinguishing public rights of way; and the recording of amendments to the definitive map and statement.*

We support the broad principle of this proposal, but feel unable to comment much further without greater detail on the amendments envisaged.

From discussions with various contacts we suspect that in practice the existing mechanism for restricting access and use of public rights of way, the Traffic Regulation Order, provides an effective and practical structure for restriction where necessary, and that most of the problems come through the methodology and costs of consultation and advertising. We agree that in principle it cannot be right that a short term closure or diversion of a right of way requires the same administrative work as a major arterial carriageway.

In the first consultation we proposed:

A process which allowed movement of the definitive line of a right of way within a short distance, for example, 50 metres from the existing definitive line, as an executive function of the Rights of Way Department. This could be done without a full Public Path Order, consultation or publication of draft orders. However, it should be subject to statutory consultation with the Local Access Forum, which may request that the formal PPO process be followed if members feel there may be a potential loss of convenience or higher rights.

We foresee this being of use in the event of, for example, temporary construction or repair works, or to move paths for health and safety or biosecurity reasons to avoid working farmyards. We would also suggest that this could provide a pragmatic and cost effective solution to problems occurring with erosion and similar issues. We believe that the proposal would result in a significant reduction in the time and cost burden on both Rights of Way departments and landowners, where minor path diversions were justified by the circumstances.

We stand by the idea of a formalised 'de minimis' rule as above, and suggest that a similar rule might usefully apply to short term closures and diversions.

Regarding extinctions, we refer again to our response to the earlier consultation:

The maxim 'once a highway always a highway' has good historic reasoning. Highway use is cyclical and waxes and wanes to reflect the needs of society over time, while the legal process to acquire new highways is laborious. At some time in future years, societal changes that we cannot predict now may see the importance of these routes return as important sustainable transport links. This would be compromised if we have terminated highway rights.

We are minded to think of the closure of railways during the Beeching era, where thousands of miles of public owned disused rail routes were disposed of, as nobody could envisage a future use for them. This has resulted in many of these routes being bulldozed and built over. As a result, the creation and connectivity of green transport links and safe cycling routes, not even considered at the time, has been put back by decades.

### **Proposal 21:**

*To introduce provisions to allow flexibility in relation to stock control measures on public rights of way.*

We feel unable to comment fully on this proposal without greater detail on the provisions being suggested. In the earlier proposal we commented that:

We would also propose that all definitive statements should, in the future, record limitations in the form of gates/stiles as "limitation constructed to the requirements of BS5709 to satisfaction of local authority." This would mean that, in time, all gates and similar structures would have to conform to the current version of the British Standard for Gaps, Gates and Stiles, and in accordance with this would also have to adhere with the principle that the least restrictive practical option was always chosen. The expectation would be that whenever initially installed or replaced all items of path furniture would have to be BS5709 compliant. This would place no immediate duties on landowners to replace any existing furniture, but support the long term aspiration of 'least restrictive option' access.

**Proposal 22:**

*To amend the requirement for a decadal review of access maps to a process of continual review.*

We support this proposal.

**Proposal 23:**

*To create a requirement on local authorities and National Park Authorities to develop integrated access plans to take effect anytime up to the date of the next review in 2027.*

We support this proposal, especially the concept of an integrated plan that considers both recreation and active travel in a holistic fashion. However we remain concerned that the proposal risks producing 'aspirational' plans without any practical duty of delivery or resourcing. Many ROWIP's have struggled to deliver for this reason.

We also note that, in many cases, the National Park Authority or district council does not act as highway authority, therefore we would challenge that highway authorities and other public bodies ought to have due regard to the integrated access plan in the exercise of relevant duties.

**Proposal 24:**

*To repeal the Cycle Tracks Act 1984. In doing this create a new type of public right of way, 'cycle paths', prioritising cycling and walking (and subject to proposal 10 above) to be recorded on the definitive map and statement. All existing cycle tracks designated under the 1984 Act would be recorded as cycle paths.*

We broadly support this proposal, particularly the inclusion of these routes on the definitive map and statement. However we would express slight concern and request clarification over the statement "and *subject to proposal 10 above*". As written this comment would suggest that the routes would be subject to "the same conditions as those provided for cycling on bridleways under section 30 of the Countryside Act 1968".

If this was the case then not only would cyclists have to give way to pedestrians and horse riders, but the expectations of surfacing and maintenance on a 'cycle path' would be no different from those on a footpath or bridleway. Landowners and highway authorities would be under no obligation to facilitate their use by cyclists, or to maintain them in a suitable condition for cycle use. We suspect this was a simple issue of unclear wording in this proposal, hence we would seek assurance that the intention is not as above.

It seems obvious to us that there should be a duty that cycle paths should be maintained to a standard allowing safe and accessible use by most cyclists.

Of course, that is not to say that all routes would necessarily be passable on all pedal cycles, but we imagine that there would be an expectation of furniture and surfacing commensurate with the usual traffic of the area. This important contextual link would allow a common sense approach to surfacing and maintenance, offering different expectations on a cycle path that formed a key utility and transport link on the urban fringe compared with a path in a rural area that was primarily accessed by mountain bikes.

For the sake of clarity, we also confirm that we fully support the principle of horses and other non-mechanically propelled vehicles being permitted to use cycle paths

We believe that the principles applied within proposal 10 adequately cover any issues of whether the route was physically suitable for use by horses and non-MPV's. We would also request clarification on the duty of user classes to give way on these routes. Would cyclists have to give way to horse and pedestrian users on cycle paths as well as bridleways and footpaths? If so that seems to us to be somewhat iniquitous.

In the wider context, we would suggest that the introduction of a new class of right of way titled 'cycle path' opens the opportunity to effectively promote use by cyclists of routes that are currently recorded as footpaths or bridleways, but are in fact especially suitable or desirable for cycle use.

Although (as a result of proposal 10) all PROW routes would have a legal right of access for all users, this solution would have the effect of allowing clear and effective promotion of use for a 'suggested user', providing cyclists and other users a greater steer as to which routes were most suitable for their use. For this proposal to work effectively, we suggest the adoption of an administratively simple way of changing formal 'status' of a route between bridleway, cycle path and footpath.

**Proposal 25:**

*To repeal unwanted provisions in the CRow Act. In particular those relating to the 2026 cut-off date for historical routes under sections 53 – 56 of the CRow Act.*

We support this proposal, particularly with regard to the 2026 cut off date, but feel unable to comment further without greater detail on the additional repeals being suggested.

**Proposal 26:**

*To develop a statutory code for access to the outdoors for recreation similar to that already in place in Scotland under the Land Reform (Scotland) Act 2003*

As per our comments on proposal 17, we fully support this proposal. We reiterate our comments in the previous consultation that:

'The Scottish example shows that an outdoor access code is vital to the good operation of any new responsible access settlement'.

We would be keen to offer our cooperation in the drafting of any such Code, and our assistance in disseminating this Code to the cycling community.

We suggest that the thrust of the Scottish code has the balance of information and responsibilities and the messages within broadly correct. However would also suggest that there is potentially room for 'headline' aspects of the code with applicability to all to be presented in a much more simple and clear fashion, more akin to the simplicity of the country code, with the full code acting to expand upon and provide detail on those headline messages.

We believe that the detailed code should also give clear indication as to exactly where rights apply, such as the exact extent of access rights on the coastal margin or below ground, and an agreed definition and indicator for where rights do not apply (such as the curtilage of properties).

We would also comment at this stage that the issue of commercial events on rights of way and accessible land has been highlighted to us on a number of occasions, and that we think it would be worthwhile if the statutory code specifically offered guidelines on this issue.

**Proposal 27:**

*To review the regulations and guidance relating to local access forums with a view to updating and clarifying their role and membership.*

We broadly support this proposal, but feel unable to comment further on without greater detail on the changes being suggested.

**Question 28:** Do you agree the Welsh Government should introduce powers in Wales that will allow local authorities to be able to issue a financial penalty to a registered keeper of a vehicle if litter has been dropped from that vehicle, regardless of whether the identity of the individual who committed the littering offence is known?

Please consider if there are alternative legislative changes the Welsh Government should consider to help tackle littering from vehicles?

We support these measures, since litter and other objects in the road may be hazardous to cyclists.

**Question 37:** Do consultees have any other comments or useful information on the costs and benefits in relation to any of the proposals in this Consultation ?

As regards **proposal 17** and **proposal 26**, we additionally suggest that a fixed penalty notice enforcement system (as per question 28) ought to be considered to deal with minor rights of way and access infringements, and other transgressions of the statutory access code.

For example, fixed penalty notices against landowners could be used as a sanction for deliberate rights of way blockages and obstructions, such as:

- locked or blocked footpath or bridleway gates,
- unlawful signs that sought to deter access
- unauthorised gates or stiles
- failure to reinstate rights of way after ploughing or crop operations

We suggest that this would offer significant savings in rights of way officer time and allow quicker and more effective resolution of these issues than exists at present.

We also consider that use of such a fixed penalty system might well be an appropriate and proportionate enforcement response where patterns of irresponsible and unreasonable use have been identified. We note here that this is now in practice in the Loch Lomond and the Trossachs National Park area where, in conjunction with byelaws and a camping permit scheme, it has been



used to effectively manage problems caused by littering connected with an irresponsible minority of wild camping activity.

We certainly would not rule out the extension of similar measures as part of a graduated enforcement programme against breaches of the responsible access code by either users or landowners.

## **Summary of our responses:**

Question 4: Support

Question 11: Support

Question 12: Express concern

Proposal 10: Support

Proposal 11: Extend to permit cycle use on CROW access & Section 15 land

Proposal 12: Support

Proposal 13: Support, but extend to permit cycle use

Proposal 14: Support

Proposal 15: Support and extend

Proposal 16: Support

Proposal 17: Support with concerns

Proposal 18: Support

Proposal 19: Support and seek extension

Proposal 20: Support but needs more detail

Proposal 21: Further details required

Proposal 22: Support

Proposal 23: Support

Proposal 24: Support but need clarification

Proposal 25: Support

Proposal 26: Support

Proposal 27: Support

## Annex 1: Off-Road Survey Report

<http://www.cyclinguk.org/press-release/2017-02-15/first-road-cycling-report-gives-unique-insight-uk-scene>

Please also see below results from an additional question not shown in the main report, that shows the important crossover between outdoor activities.



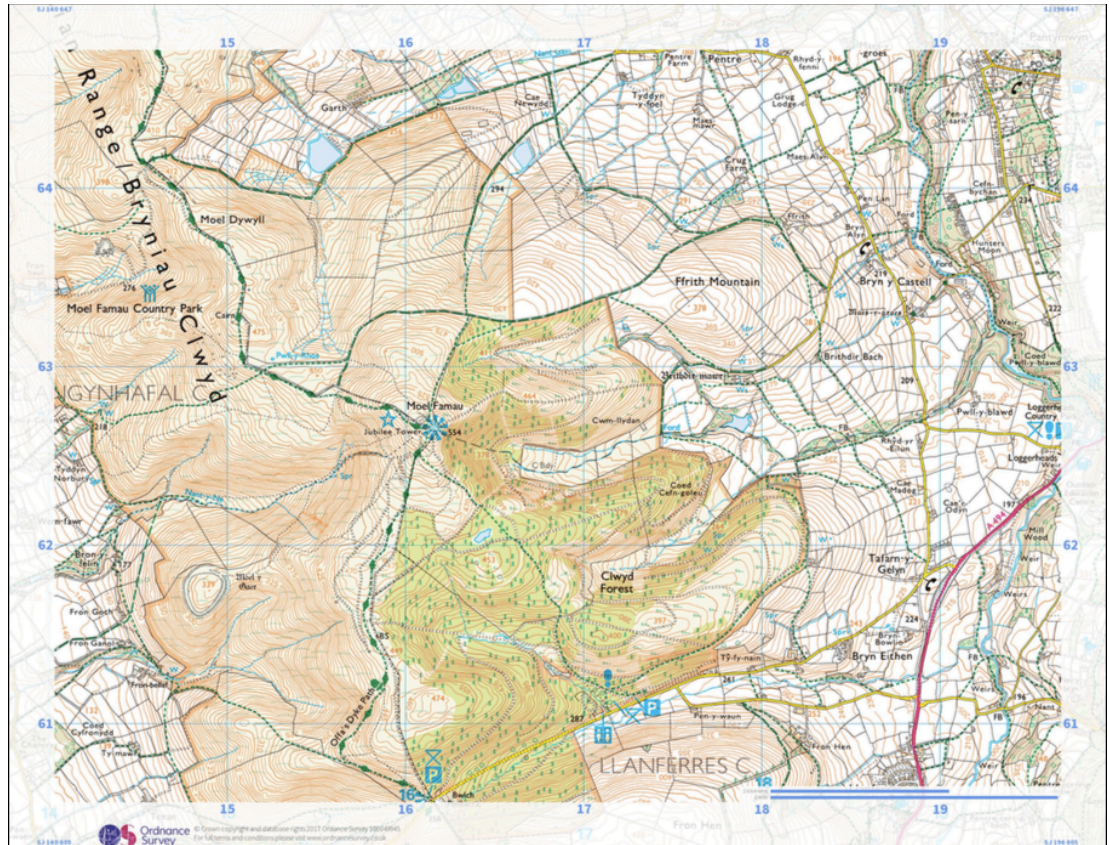
**Annex 2:** James Hutton Institute report on managing land use conflicts relating to mountain biking in Scotland

<http://www.hutton.ac.uk/sites/default/files/files/publications/Mountain-biking-in-Scotland.pdf>

**Annex 3:** Moel Famau, patterns of existing access and outcomes of proposal 10 and 11

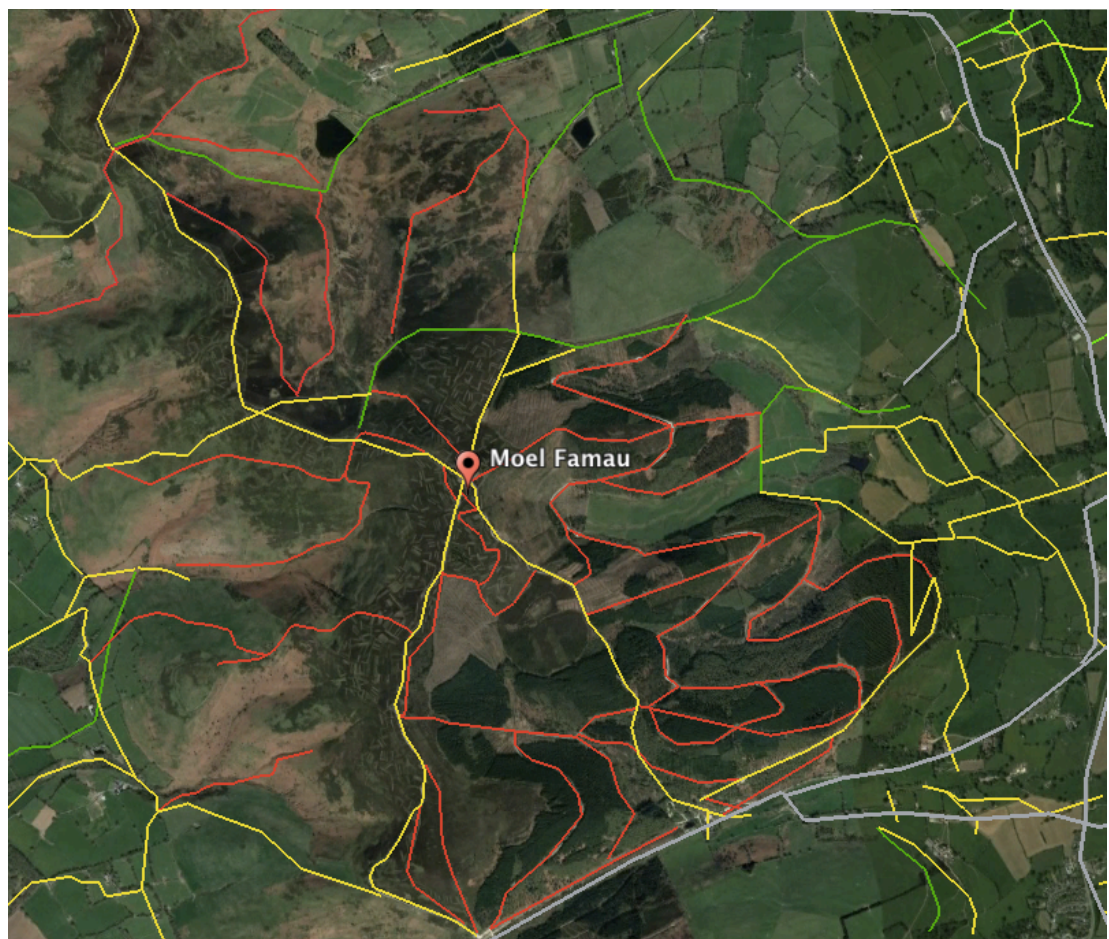
3.1

OS MAP of Moel Famau area



3.2

Existing tracks versus ROW under access proposal (from aerial photo analysis)





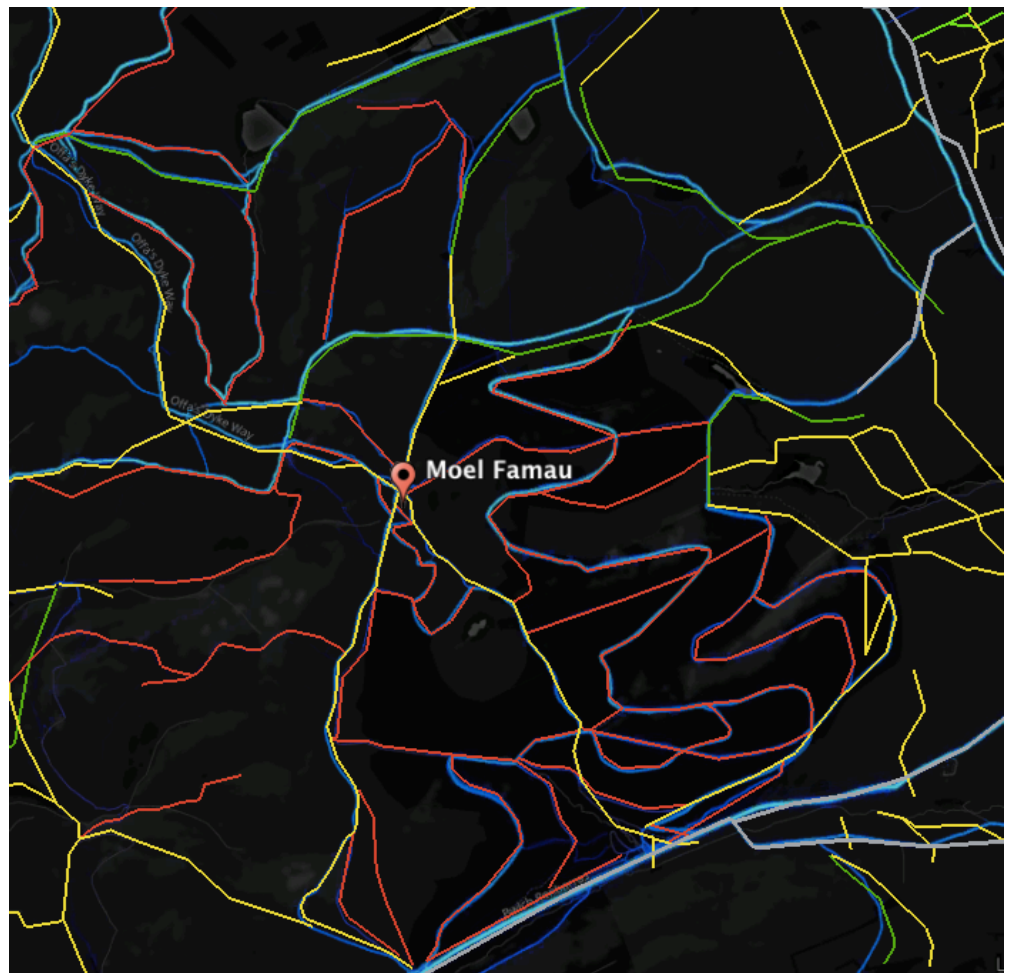
### 3.3

STRAVA existing recorded cycle use patterns (GPS data)



### 3.4

STRAVA data overlaid with tracks and ROW under current access proposal. (Majority of tracks currently in use by cyclists will remain prohibited)



**Annex 4:** Background on the development and promotion of mountain biking in Wales

<http://www.outdoorrecreation.org.uk/stories/the-rise-of-mountain-biking-in-north-wales-the-achievements-and-the-future/>

**Annex 5:** Countryside Agency research notes on interactions between users on off-road routes

<http://publications.naturalengland.org.uk/file/80047>

<http://publications.naturalengland.org.uk/file/83036>

**Annex 6:** Hansard discussion showing that in 1968 it was widely accepted that cyclists had a right to use many, but not all, footpaths, and common land, and that the original proposals of the Gosling committee report sought to extend this right to all footpaths.

<http://hansard.millbanksystems.com/lords/1968/may/20/countryside-bill-1>

**Annex 7:** Cycling UK article on coastal cycling and fat biking

<http://www.cyclinguk.org/cycle/coasting-along>

**Annex 8:** Results of an independent survey on mountain biking and health issues:

