

Individual Cabinet member Delegated Decision

CABINET MEMBER FOR HIGHWAYS AND TRANSPORT – CLLR. PHILIP WHITEHEAD

OFFICER CONTACT: Kevin Gale tel. 01225 718023

Email: kevin.gale@wiltshire.gov.uk

REFERENCE: HT-xx-15

PROPOSED APPLICATION TO DIVERT BYWAYS 8, 9 & 10 AND RESTRICTED BYWAY 10, SHREWTON

Purpose of Report

To ask the Cabinet Member for Highways and Transport to consider whether the Council should grant a request from the Ministry of Defence to apply to the magistrates' court for an order diverting parts of Shrewton Byways 8, 9 and 10 and Restricted Byway 10 on the ground that the proposed new routes are nearer or more commodious to the public. The proposed new routes are shown on the plan at **Appendix 1**.

Consultation

On 16 March 2015, Shrewton Parish Council consented to the application being made and completed a consent form which is shown at **Appendix 2**.

The local member, Cllr. Ian West (Till and Wylve Valley), has been consulted and has made no objection or representation.

Options Considered

The Cabinet Member may resolve to:

- (i) Give consent to the application
- (ii) Refuse to give consent to the application, in which case reasons should be given for doing so.

Reason for Decision

Officers consider that the highways concerned can be diverted so as to make it more commodious for the public and the Council should accordingly apply to the court for diversions.

INTENTION TO MAKE DECISION

Following consultation with officers I give notice that I intend to make the decision as set out in the attached report. If you would like to make any representations to me on this issue please do so by _____

The following supporting documents are attached:

Appendix 1 Plans A, B and C showing the proposed diversions

Appendix 2 Consent forms from (i) Shrewton Parish Council; (ii) The Ministry of Defence,

Appendix 3 Consent form for tenants (i) Simon Collins; (ii) Neil Harley

The following supporting documents are available from the officer named above:

None

Date

.....

Cllr Philip Whitehead
Cabinet Member for Highways and Transport

CABINET MEMBER HIGHWAYS AND TRANSPORT – CLLR PHILIP WHITEHEAD

HIGHWAYS AND TRANSPORT

OFFICER CONTACT: Kevin Gale tel. 01225 718023

REFERENCE: HT-xx-15

PROPOSED APPLICATION TO DIVERT PARTS OF BYWAYS OPEN TO ALL TRAFFIC SHREWTON 8, 9 & 10 and RESTRICTED BYWAY SHREWTON 10

Purpose of Report

- 1 To ask the Cabinet Member to consider whether the Council should apply to the magistrates' court for orders diverting parts of byways open to all traffic Shrewton 8, 9 and 10 and restricted byway 10 on the grounds that the diverted routes would be nearer or more commodious to the public.

Relevance to the Council's Business Plan

- 2 Working with the local community to provide a rights of way network fit for purpose.

Main Considerations for the Council

- 3 Case law has clarified that in deciding whether to make an application, the Highway Authority has to consider all the factors which would be relevant to the consideration by a Magistrates' Court of whether an order should be made. In the case of a proposed application for a diversion of a highway, the new route must be 'nearer or more commodious'. 'Commodious' has a flavour of convenience, roominess and spaciousness'.
- 4 The central question to be addressed is whether the highway concerned can be diverted to make it either nearer or more commodious to the public. If the answer is that it can, the authority should consider whether there are reasons why an application should not be made?

Background

- 5 All of these routes lead over land owned by the Ministry of Defence that forms part of the Salisbury Plain Training Area (SPTA). The area is used for military training and covered by the Salisbury Plain Military Lands Byelaws. The byelaws have no effect on public rights of way in the area though they do permit use of the adjoining land for recreation when it is not in use for training.
- 6 In practice, use of the area west of the village of Shrewton (Maddington Downs) is criss-crossed by public rights of way and it is likely that the majority of public use is over these rights of way rather than across the land as a whole.
- 7 Much of the surrounding land is grazed by cattle though an area to the west, over which part of Shrewton 9 leads, is a grass airstrip used for military training purposes.

- 8 The character of the area west of Shrewton is open chalk downland and the majority of public use is likely to be vehicular as there are no centres of habitation within at least three and a half kilometres.
- 9 Officers consider that the network, and hence the public would benefit from the three following alterations:
- (i) **Plan A** – divert all public rights on Shrewton no. 9 between points A and B to route A to C created as a byway open to all traffic. Width 9.144 metres (30 feet)
 - (ii) **Plan B** – divert all public rights on Shrewton no. 8 between points B and D to route A to B created as a byway open to all traffic. Width 9.144 metres (30 feet). Also divert all public rights on Shrewton no 10 A to C though D to route B to C created as a restricted byway. Width 9.144 metres (30 feet).
 - (iii) **Plan C** – divert all public rights on Shrewton no. 8 between points A and B to route A to C to B created as a byway open to all traffic. Width 9.144 metres (30 feet).
- 10 The route in **Plan A** leads across the grass airfield landing strip. The route suffers significant rutting and damage in wet weather but cannot be surfaced owing to its use as part of the airfield and its position within an SSSI (Site of Special Scientific Interest). As a result the public seeking a better-drained route, deviate east along route A to C which is a hard chalk track: a route considered more commodious than the route A to B even if it is a little further. Using route A to B to get the junction with Shrewton 10 is 900 metres long whereas using the proposed new route the distance is 1300 metres. Given that the majority of users will be using vehicles for recreation, this additional distance is not considered less convenient and although it is clearly not nearer, it is more commodious.
- 11 The routes in **Plan B** shown between B and D and A-C all lead across rough grassland and are indiscernible. The proposed diversion would divert them onto tracks which are easily identified, well drained and are, in all likelihood, the preferred choice for users anyway. The absence of any visible used route on the rough grassland supports this view. The proposed diversion is more commodious and is also nearer: new route A to B is 390 metres compared to existing route B to D to A at 475 metres and new route B to C is 300 metres compared to existing route D to C at 340 metres.
- 12 The route in **Plan C** crosses the B390 road on a long straight section that is adversely affected by hidden dips and - being aligned east to west - by strong sunshine at certain times of the day. Several road traffic accidents (some fatal) have occurred on this stretch of road, though none associated with the crossing of the road by the right of way Shrewton no. 8. However, the proposed diversion, whilst clearly not nearer (670 metres long compared to 430 metres) is considerably more commodious since visibility is improved, not just for users of the right of way crossing the B road but also for users of the B road seeing that there is a crossroads. The proposed crossing point at C is wide and can be clearly seen from the B390. Since it is likely that the majority of users of the right of way will be recreational vehicle users it is considered that the additional distance is not inconvenient.

- 13 Under Section 116 of the Highways Act 1980, Magistrates' Courts have a power to authorise the stopping up or diversion of highway, as follows:

(1) Subject to the provisions of this section, if it appears to a magistrates' court after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway (other than a trunk road or a special road) as respects which the highway authority have made an application under this section –

(a) is unnecessary, or

(b) can be diverted so as to make it nearer or more commodious to the public,

The court may by order authorise it to be stopped up, or as the case may be, to be so diverted.

[sub-section 2 has been repealed]

(3) If an authority propose to make an application under this section for an order relating to any highway (other than a classified road) they shall give notice of the proposal to –

(a) if the highway is in a non-metropolitan district, the council of that district; and

(aa) if the highway is in Wales, the Welsh council for the area in which it is situated if they are not the highway authority for it; and

(b) if the highway is in England, the council of the parish (if any) in which the highway is situated or, if the parish does not have a separate parish council, to the chairman of the parish meeting; and

(c) if the highway is in Wales, the council (if any) of the community in which the highway is situated;

and the application shall not be made if within two months of the date of service of the notice by the authority notice is given to the authority by the district council [or Welsh council] or by the parish or community council or, as the case may be, by the chairman of the parish meeting that the council or meeting have refused to consent to the making of the application.

(5) An application under this section may include two or more highways which are connected with each other.

- 14 Officers are satisfied that the diversions as shown on the plans at **Appendix 1** would be nearer or more commodious to the public than the present routes and are therefore willing, subject to the Cabinet consent, to make the proposed application.
- 15 Shrewton Parish Council and the MoD as landowner have consented to the proposed application. Consents have also been received from tenants occupying part of the land, namely Mr Collins of Gore Cross Farm, West Lavington and Mr Harvey of Valley, Chitterne. All of the consents are attached at **Appendix 2**.

Safeguarding Considerations

- 16 There are no relevant safeguarding considerations.

Public Health Implications

- 17 There are no relevant public health implications.

Environmental Impact of the Proposals

- 18 There is no negative environmental impact to the proposals as all the diversions would be onto existing tracks.

Equalities Impact of the Proposals

- 19 The proposed diversions will make the network more accessible for all users including those who rely on using mechanically-propelled vehicles to access the countryside for reasons of mobility or other impairment.

Risk Assessment

- 20 There is no perceived risk to the Council in applying for these diversions. The diversion of rights of way onto well-drained and identifiable tracks is likely to present a lesser risk to users and the proposed improvement to the crossing of the B390 is also likely to present a lesser risk to users of the right of way and the B.390.

Financial Implications

- 21 The landowner has agreed to pay all legal costs and any costs related to bringing the new ways into use. This is unlikely to extend beyond the provision and erection of new signs.

Legal Implications

- 22 Applying for a diversion under section 116 of the Highways Act 1980 is a discretionary power, not a duty of the Council.
- 23 If the Magistrates are minded not to make the Orders envisaged by this proposal, Wiltshire Council will continue to have a legal responsibility for the maintenance and signage of the existing rights of way.

Options Considered

- 24 The Cabinet Member for Highways and Transport may resolve to:
- (i) Refuse to give consent to the application, in which event reasons should be given for doing so.
 - (ii) Consent to the application.

Reason for Proposal

- 25 Officers are satisfied that the sections of highway can be diverted so as to make them more commodious to the public as the diverted routes would provide greater accessibility for all users. It would therefore benefit the public.

Proposal

- 26 It is proposed that the Cabinet Member adopt the option at 24(ii) above. If the proposal is accepted the consent for attached at Appendix 3 should be completed and returned to Legal Services.

The following unpublished documents have been relied on in the preparation of this Report:

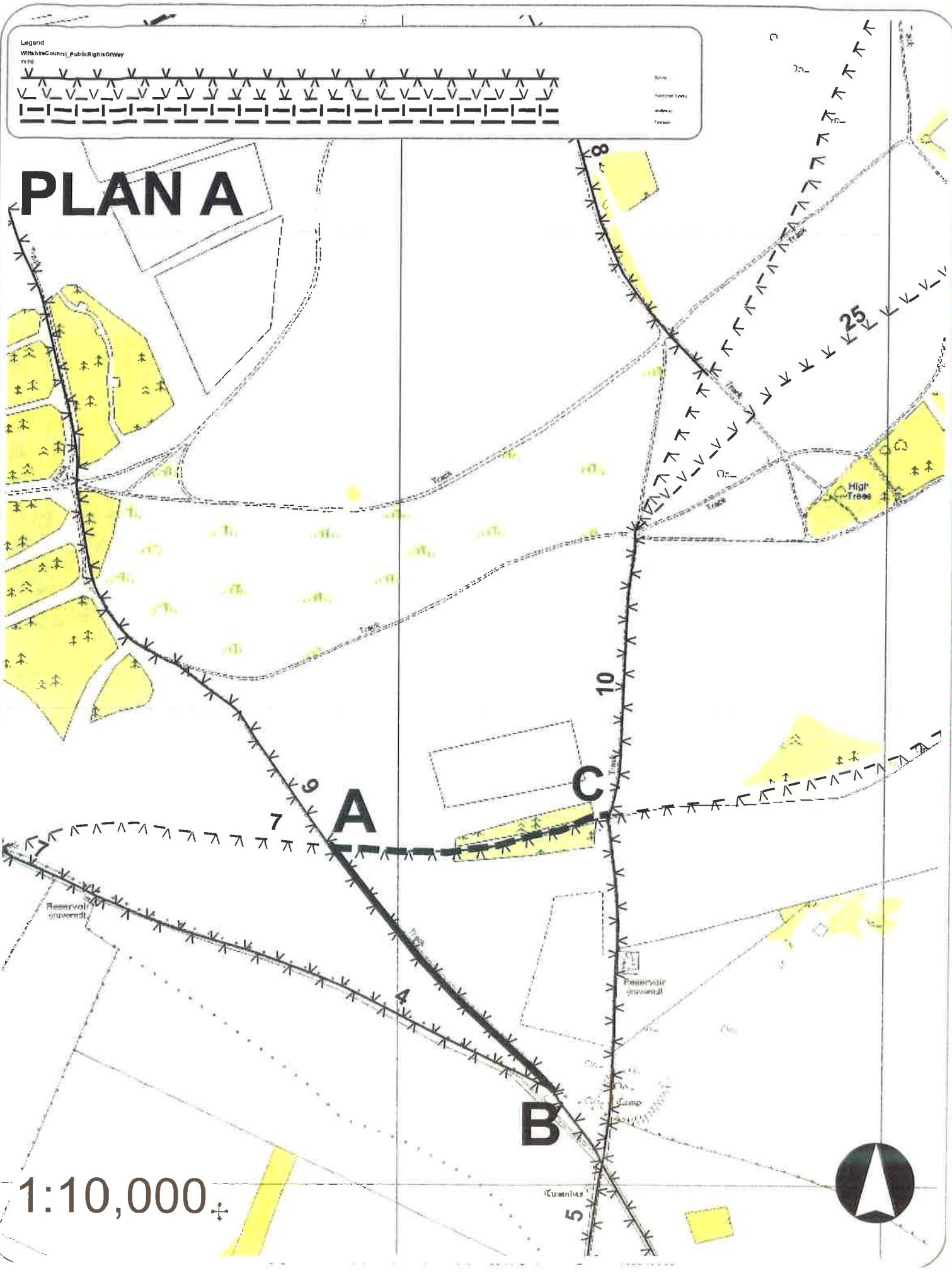
None

Section of BOAT to be stopped up

A ————— B

Section to be created as BOAT

A - - - - - C



Diversion of Shrewton Restricted Byway 10 and Byway Open to All Traffic 8 (parts)

Shrewton 10 to stop up **A** ——— **D** ——— **C**

Shrewton 8 to stop up **B** ——— **D**

Byway Open to All Traffic to create **A** - - - - - **B**

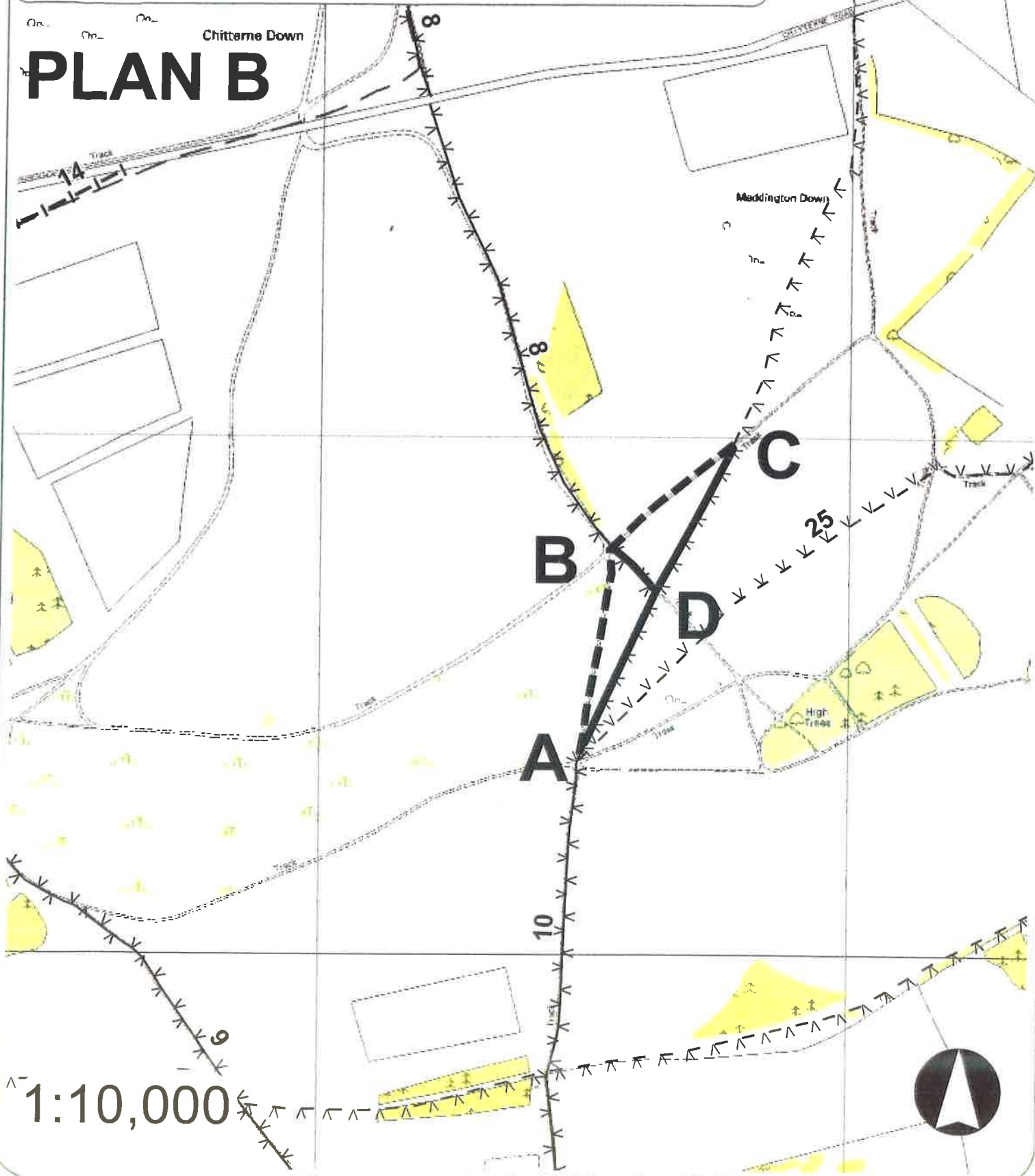
Restricted Byway to create **B** - - - - - **C**

Legend
 Wiltshire Council Public Right of Way
 Type

	Byway
	Byway Open to All Traffic
	Byway
	Byway
	Byway

Chitterne Down

PLAN B



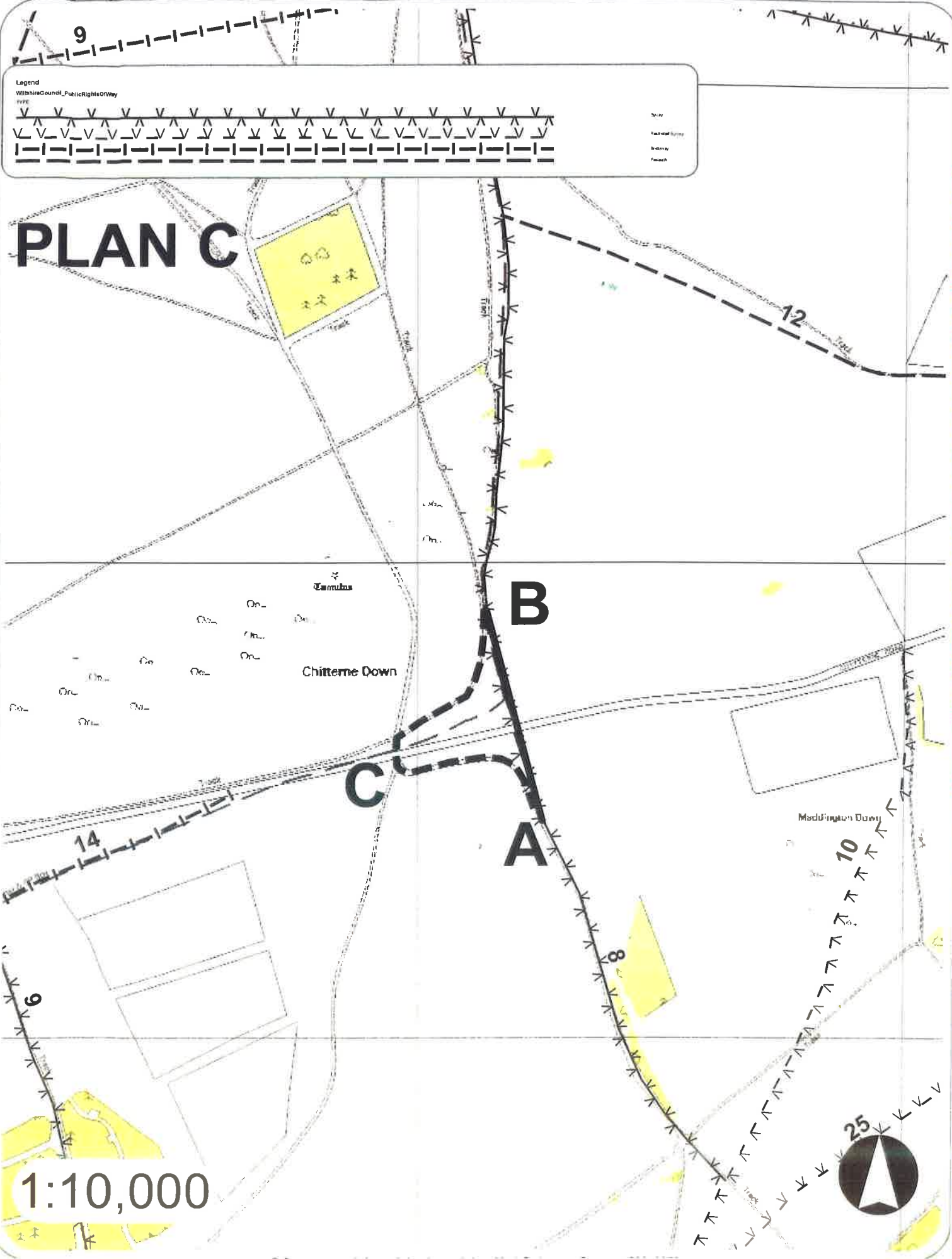
Diversion of Shrewton Byway Open to All Traffic 8 (part)

Shrewton 8 part to be stopped up





A  B

Byway Open to All Traffic to be created

A  C  B



Legend
Wiltshire Council Public Rights of Way
TYPE

	Byway
	Restricted Byway
	Byway
	Footpath

PLAN C

1:10,000





**Defence
Infrastructure
Organisation**

04/36//85

Ministry of Defence
DIO
Building 21
Westdown Camp
Tilshead
Salisbury
Wiltshire
SP3 4RS

24 MAR 2015

Telephone: 01980 674778

E-mail: DIOODC-LMSSW3@mod.uk

Mr K. Gale
Rights of Way and Countryside
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

13th March 2015

Dear Mr Gale,

Right of Way at Shrewton – Path numbers 8, 9 and 10

Thank you for your letter of 3rd March 2015. As requested, please find enclosed duly completed form.

Should you require any further information, please do not hesitate to contact me.

With kind regards,

Yours sincerely

Kate Birnie

Kate Birnie MRICS
Senior Estate Surveyor
DIO LMS

WILTSHIRE COUNCIL

HIGHWAYS ACT 1980 - SECTION 116 APPLICATION

Proposed diversion of Shrewton Byways 8 & 9 and Restricted Byway 10

I. KATE BIRNIE... ON BEHALF OF SECRETARY OF STATE FOR DEFENCE
hereby certify that I consent to Wiltshire Council making an application to the magistrates' court for Orders under Section 116 of the **Highways Act 1980** providing for the diversion of the highways specified above as shown on the plans attached to this form. I also certify that . SECRETARY OF STATE FOR DEFENCE owns the land over which the orders sought would divert the said highway(s).

*I know of no other person or persons with a legal interest in the land over which the highway(s) would be diverted.

*I believe that the following has / have a legal interest in the land over which the highway(s) would be diverted

MESSRS HARLEY (licensee)

MR. J. COLLINS (licensee)

Signed..... KATHRYN BIRNIE..... Please print name..... KATHRYN BIRNIE.....

Date..... 13/3/15.....

Please return this form to: Solicitor to the Council, (Ref. 106314),
Wiltshire Council, County Hall
Trowbridge
Wiltshire BA14 8JN

* Please delete as applicable

Diversion of Shrewton Byway Open to All Traffic (BOAT) no. 9 (part)

Section of BOAT to be stopped up

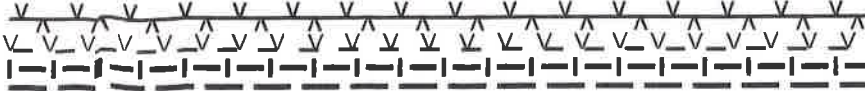
Section to be created as BOAT

A ————— B

A - - - - - C

Legend

Wiltshire Council Public Right of Way

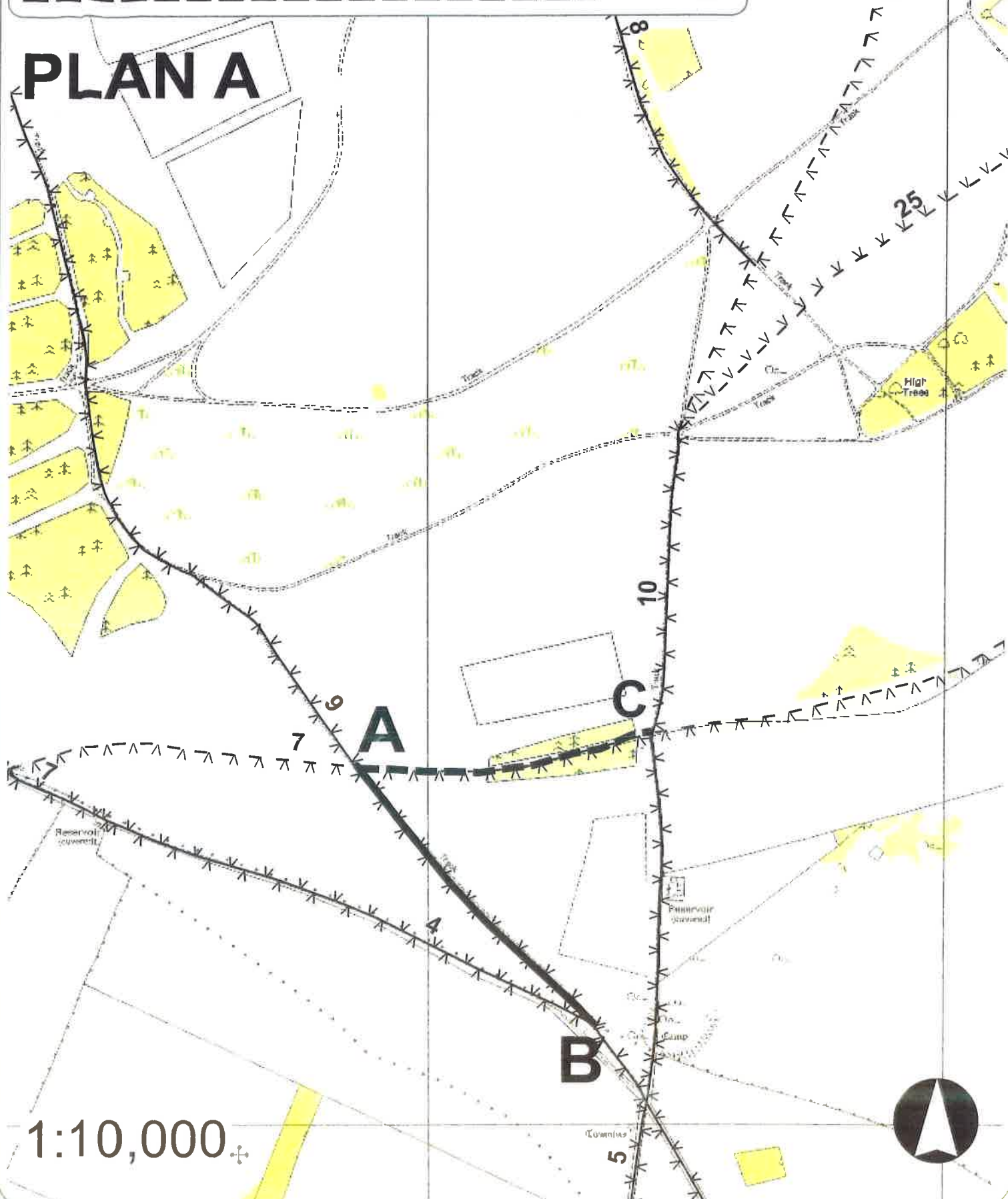


Way

Footway

Footpath

PLAN A



1:10,000

Diversion of Shrewton Restricted Byway 10 and Byway Open to All Traffic 8 (parts)

Shrewton 10 to stop up A ——— D ——— C

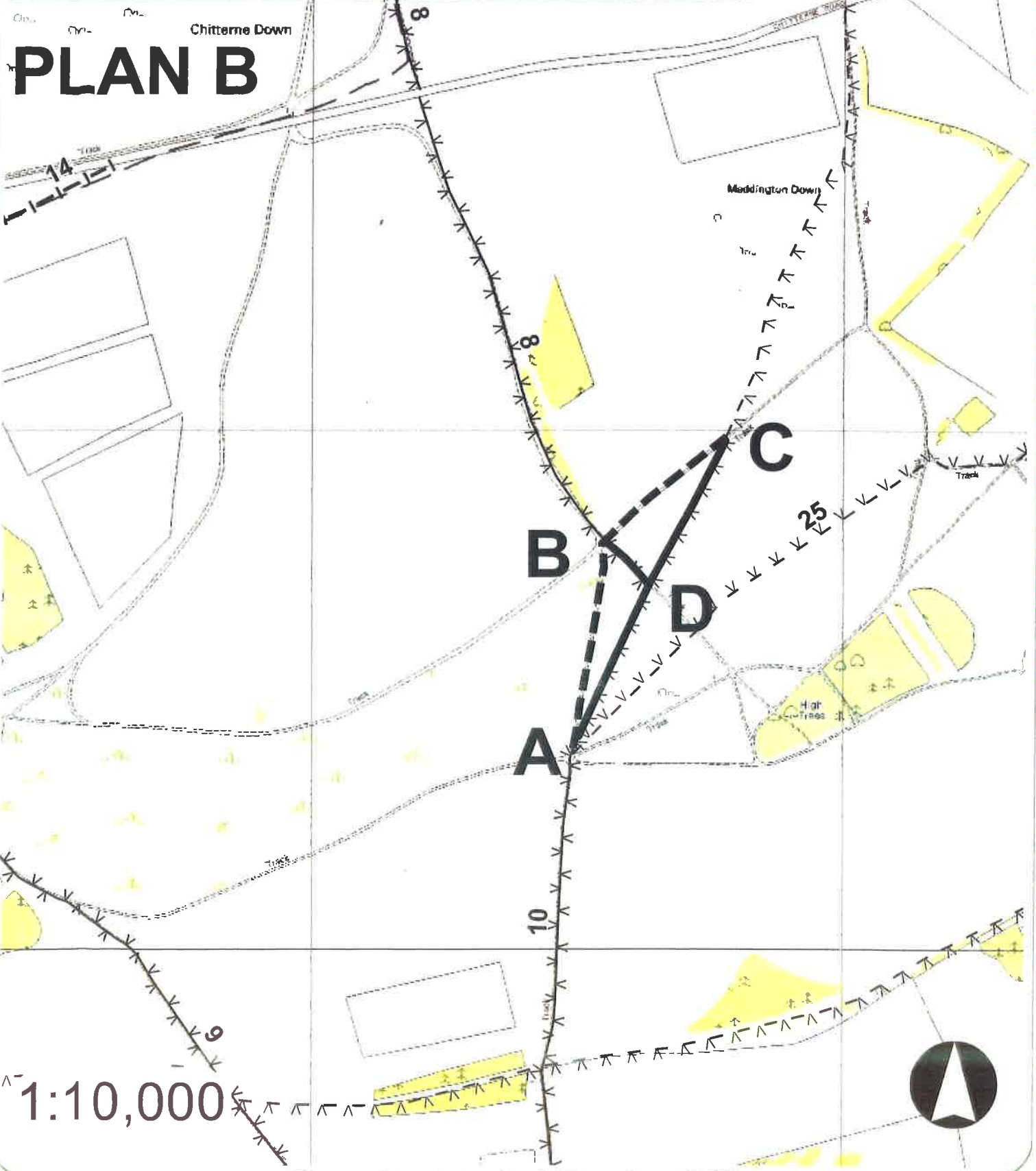
Shrewton 8 to stop up B ——— D

Byway Open to All Traffic to create A - - - - - B

Restricted Byway to create B - - - - - C

Legend
 WiltshireCouncil_Pub/HCRightsORWay
 TYPE

	Byway
	Aerial Easement
	Railway
	Fences



WILTSHIRE COUNCIL

HIGHWAYS ACT 1980

SECTION 116 APPLICATION

Shrewton Byways Open to All Traffic 8 & 9 and Restricted Byway 10

Shrewton Parish Council hereby consents / ~~does not consent~~ * to Wiltshire Council making an application to the Magistrates for an orders under Section 116 of the **Highways Act 1980** providing for the diversion of the above-named rights of way on the ground that the diversions would make the them nearer or more commodious to the public. The proposals are shown on the attached plans.

Signed

Marion Barton

Please print name...

MARION BARTON

Post held...

PARISH CLERK

Date

16 MARCH 2015

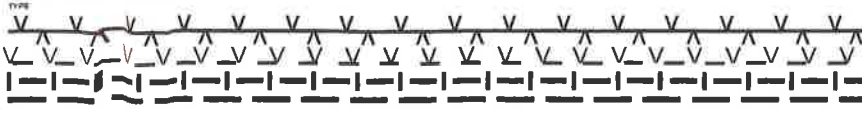
***Please delete as applicable**

Please return this form to:-

Solicitor to the Council
Wiltshire Council (Ref: 106314),
County Hall,
Trowbridge,
Wiltshire BA14 8JN

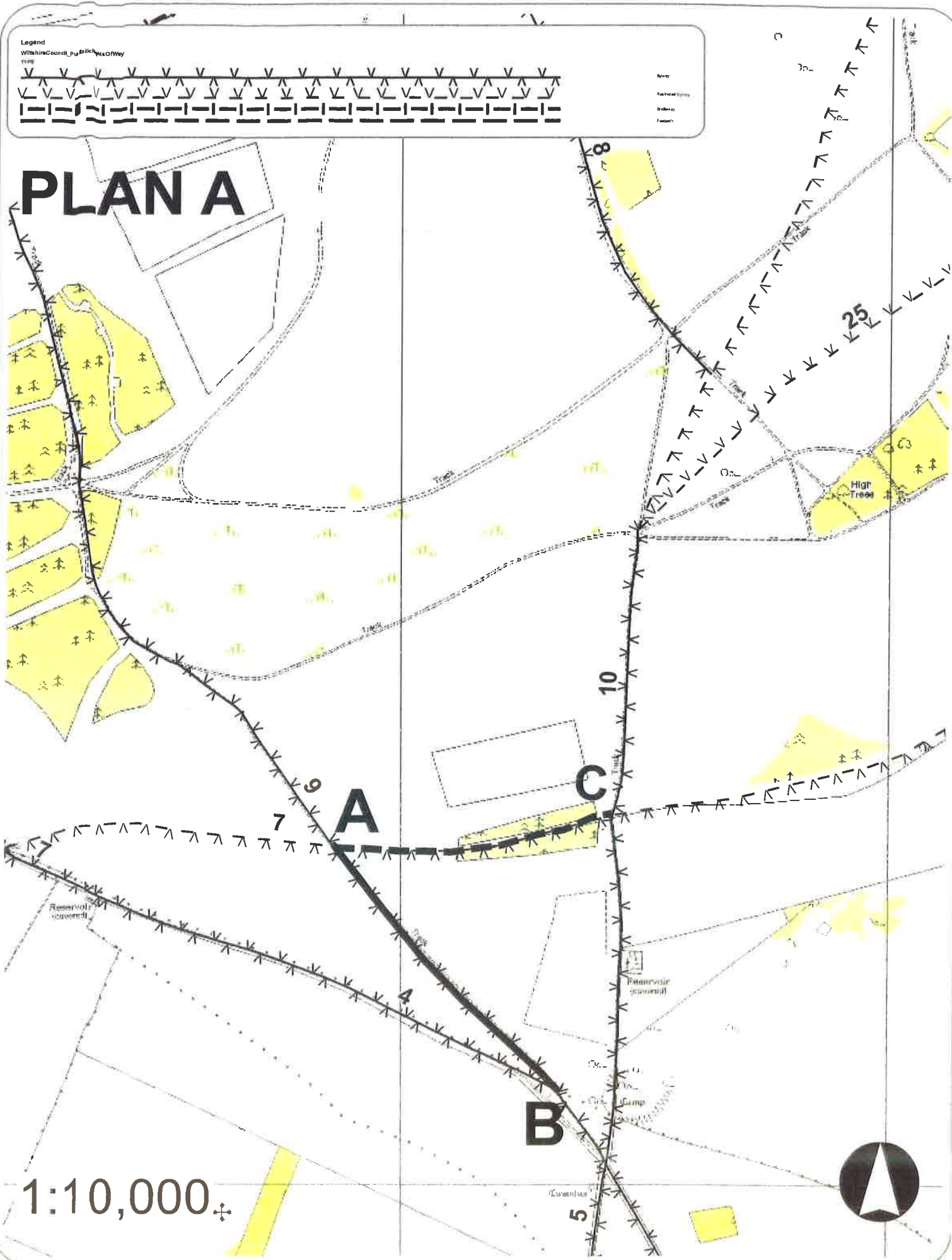
Diversion of Shrewton Byway Open to All Traffic (BOAT) no. 9 (part)
Section of BOAT to be stopped up A ————— B
Section to be created as BOAT A - - - - - C

Legend
 Wiltshire Council Public Highway
 1990



Boundary
 National Grid
 Railway
 Footpath

PLAN A



1:10,000



Diversion of Shrewton Byway Open to All Traffic 8 (part)

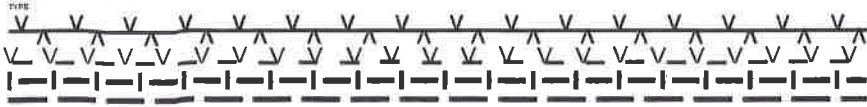
Shrewton 8 part to be stopped up

A  B

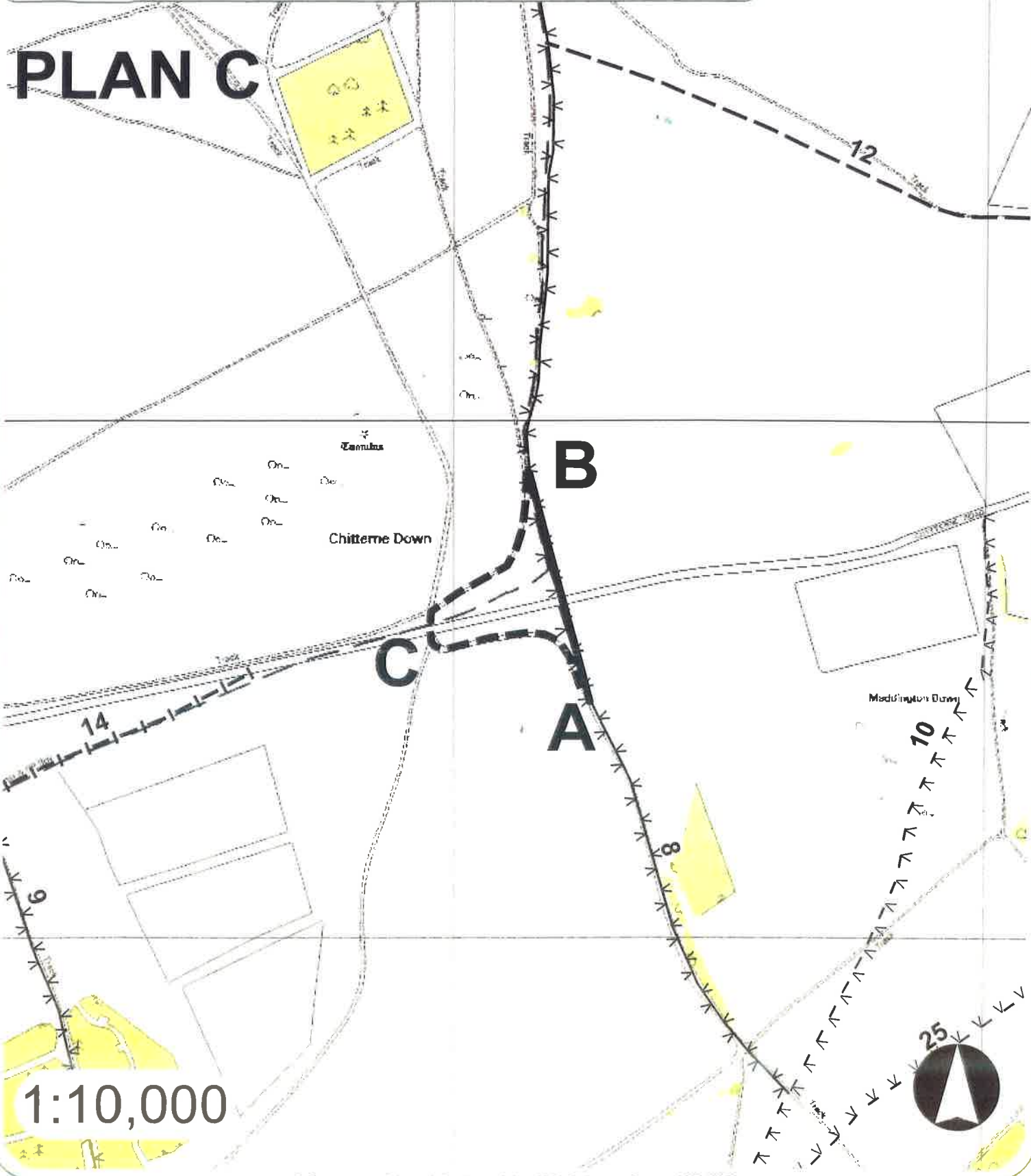
Byway Open to All Traffic to be created

A  C  B

Legend
Wiltshire Council_Public Right of Way



PLAN C



1:10,000



HIGHWAYS ACT 1980 - SECTION 116 APPLICATION

Proposed diversion of Shrewton Byways 8 & 9 and Restricted Byway 10

I/~~we~~ SIMON COLLINS

Of G. COLLINS (FARMS) LTD, GORE CROSS FARM,
WEST LAVINGTON, DEVIZES, WILTS,
SN10 4NS

hereby certify that I/~~we~~* consent/~~do not consent~~* to Wiltshire Council making an application to the magistrates' court for Orders under Section 116 of the **Highways Act 1980** providing for the diversion of the highways specified above as shown on the plans attached to this form.

Signed 

Please print name SIMON J. H. COLLINS

Signed.....

Please print name.....

Date 13/04/2015

Please return this form to: Solicitor to the Council, (Ref. 106314),
Wiltshire Council, County Hall
Trowbridge
Wiltshire
BA14 8JN

* Please delete as applicable

Diversion of Shrewton Byway Open to All Traffic (BOAT) no. 9 (part)

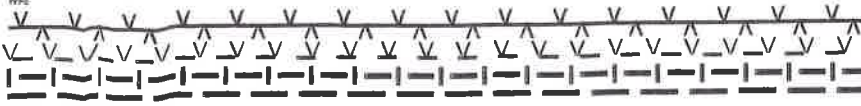
Section of BOAT to be stopped up

A ——— B

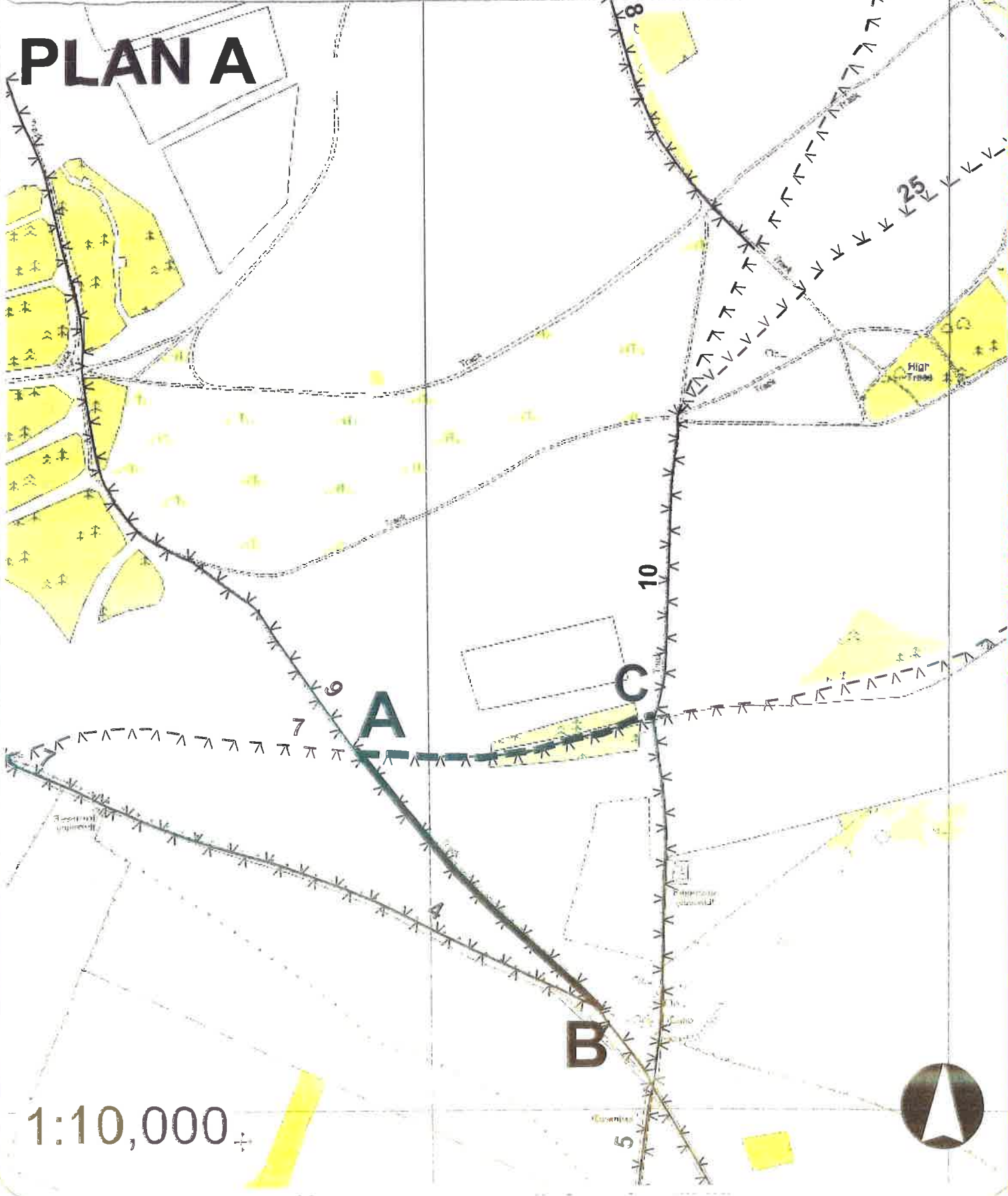
Section to be created as BOAT

A - - - - - C

Legend
Wiltshire Council Planning Rights Overlay



PLAN A



Diversion of Shrewton Restricted Byway 10 and Byway Open to All Traffic 8 (parts)

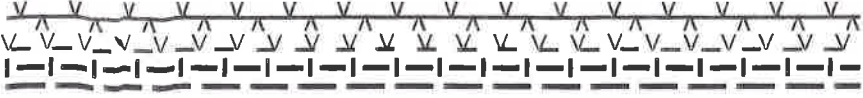
Shrewton 10 to stop up A ——— D ——— C

Shrewton 8 to stop up B ——— D

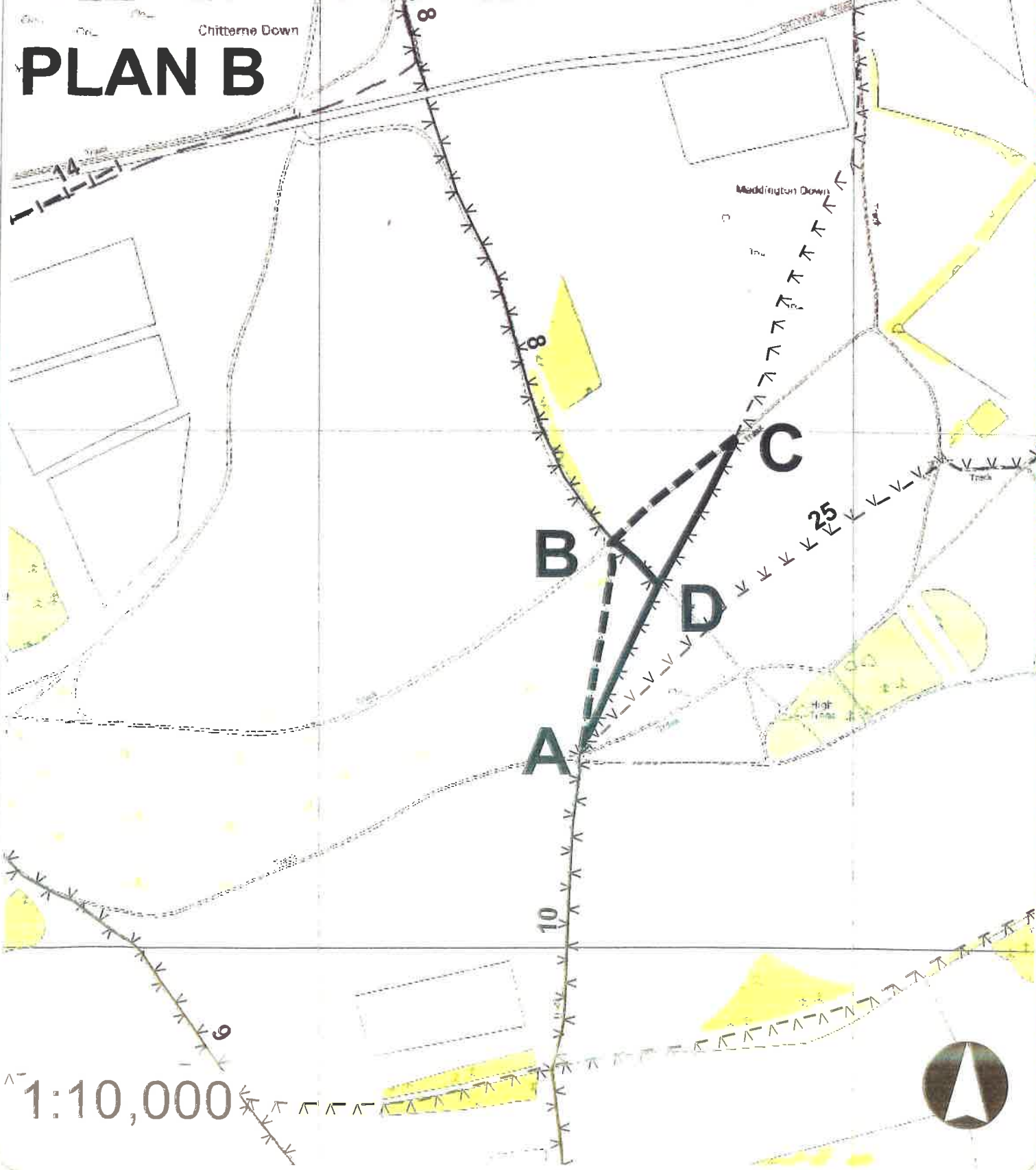
Byway Open to All Traffic to create A - - - - - B

Restricted Byway to create B - - - - - C

Legend
Wiltshire Council Public Footway
TYPE



PLAN B



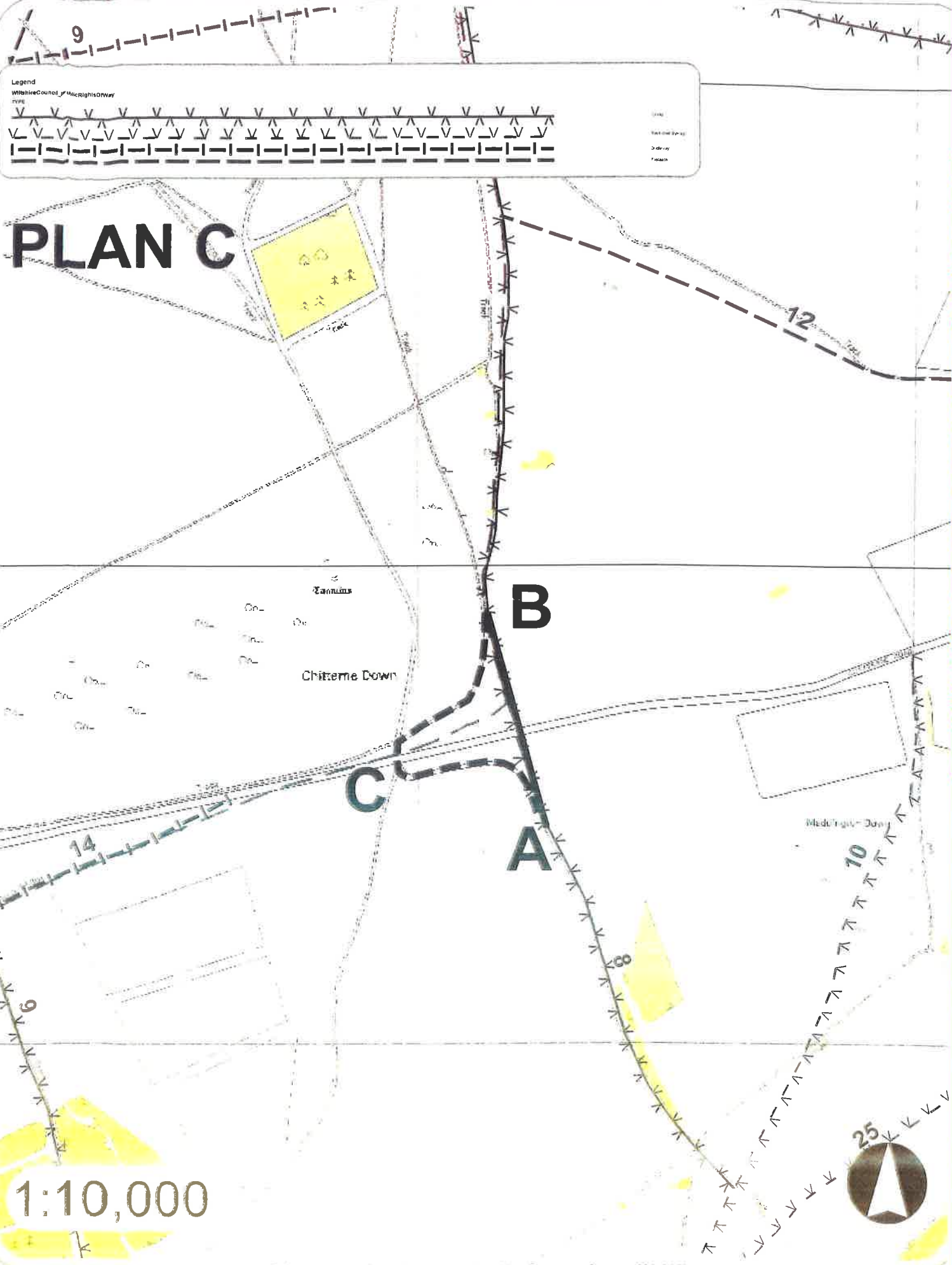
Diversion of Shrewton Byway Open to All Traffic 8 (part)

Shrewton 8 part to be stopped up

A ————— B

Byway Open to All Traffic to be created

A - - - - - C - - - - - B



HIGHWAYS ACT 1980 - SECTION 116 APPLICATION

Proposed diversion of Shrewton Byways 8 & 9 and Restricted Byway 10

I/~~we~~*

NEIL SINCLAIR HARLEY

Of

VALLEY FARM,

CHITTERNE

WARMINGSTON

BA12 0LT

hereby certify that I/~~we~~* consent/~~do not consent~~* to Wiltshire Council making an application to the magistrates' court for Orders under Section 116 of the **Highways Act 1980** providing for the diversion of the highways specified above as shown on the plans attached to this form.

Signed.....

Please print name..... NEIL SINCLAIR HARLEY

Signed.....

Please print name..... JACK HARLEY

Date..... 14/01/2015

Please return this form to: Solicitor to the Council, (Ref. 106314),
Wiltshire Council, County Hall
Trowbridge
Wiltshire
BA14 8JN

* Please delete as applicable

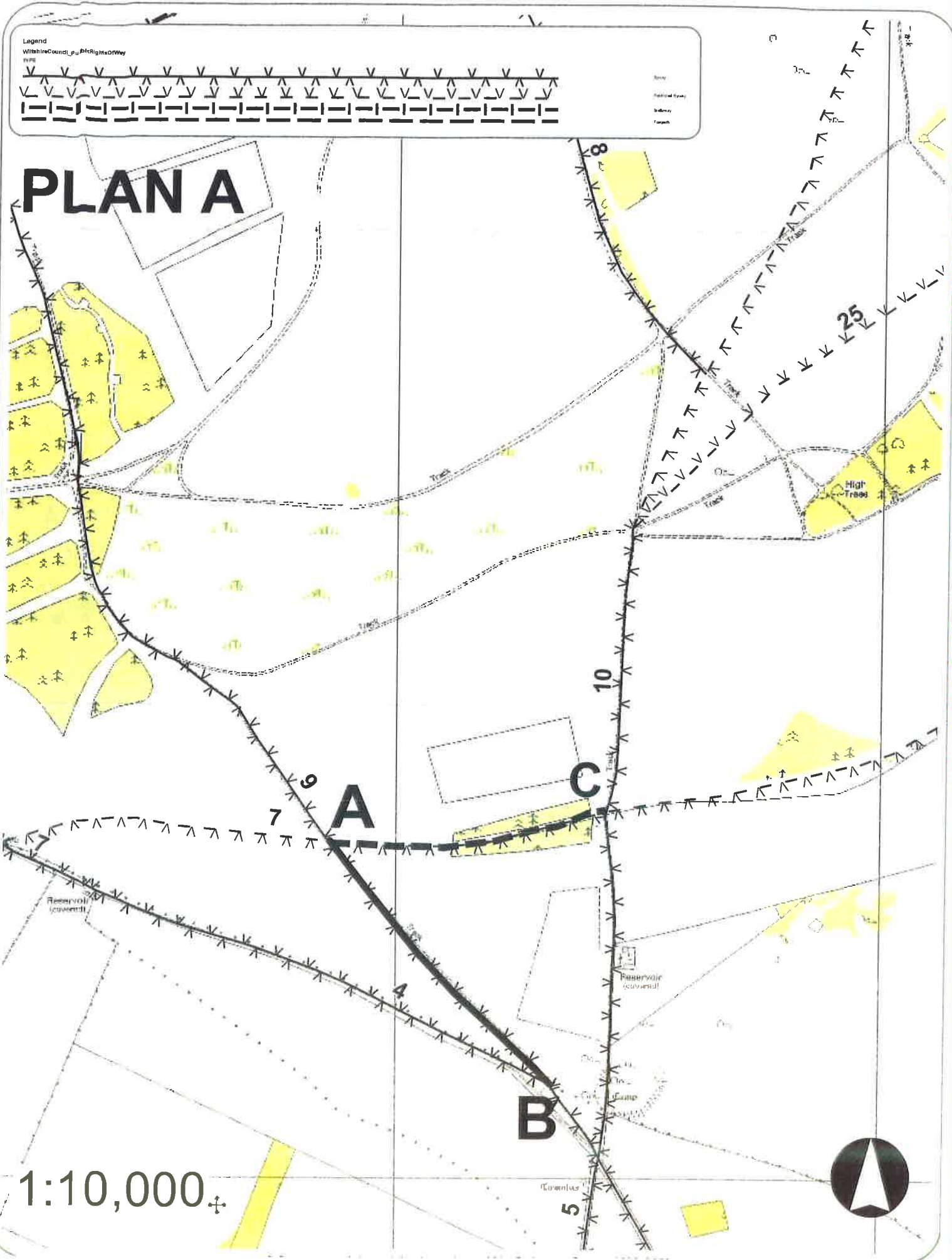
Diversion of Shrewton Byway Open to All Traffic (BOAT) no. 9 (part)

Section of BOAT to be stopped up

A ————— B

Section to be created as BOAT

A - - - - - C



Diversion of Shrewton Restricted Byway 10 and Byway Open to All Traffic 8 (parts)

Shrewton 10 to stop up A ——— D ——— C

Shrewton 8 to stop up B ——— D

Byway Open to All Traffic to create A - - - - - B

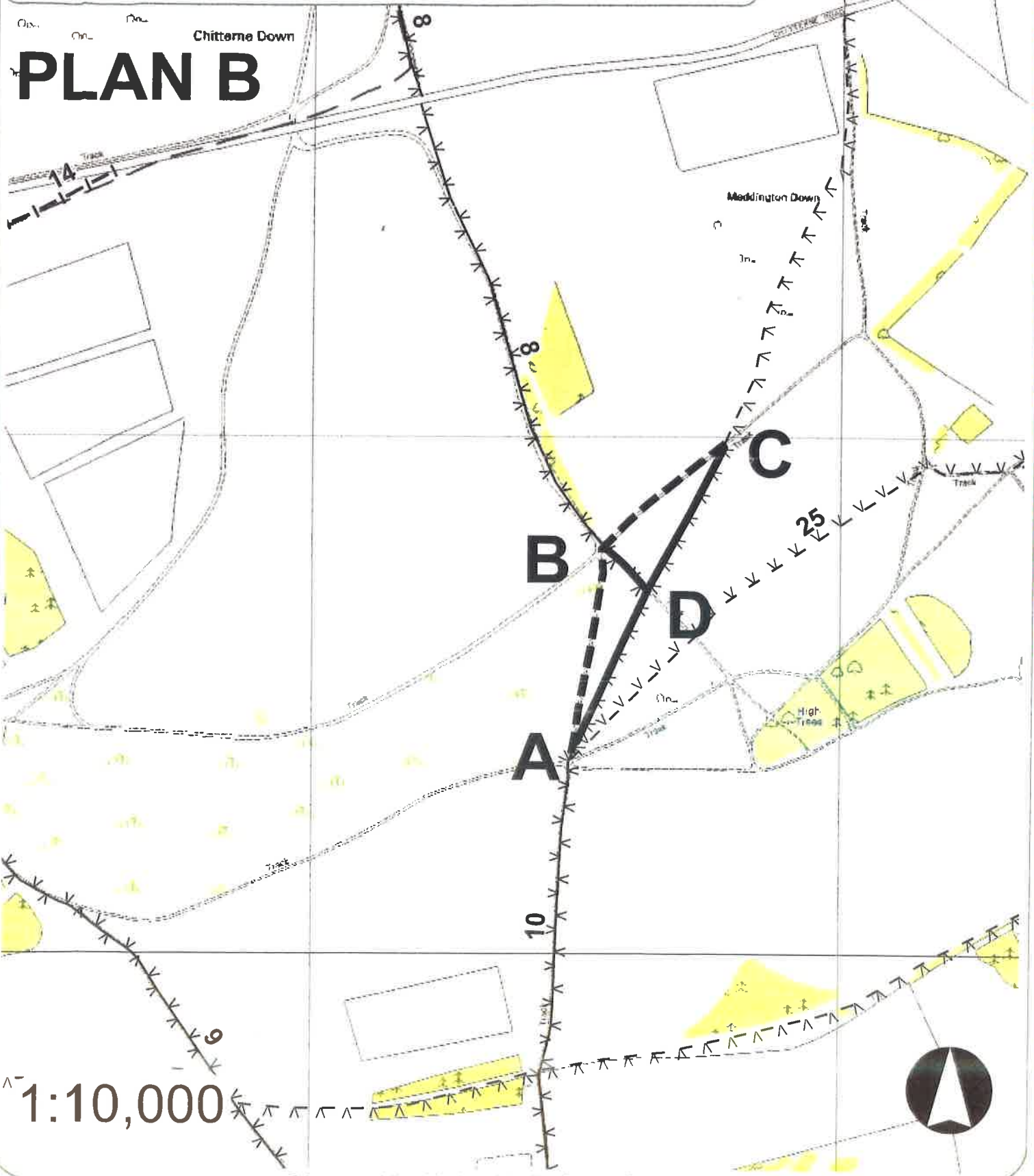
Restricted Byway to create B - - - - - C

Legend
Wiltshire Council Public Rights of Way

TYPE	Symbol	Symbol
Track	Line with V-shaped markers	Spry
Byway Open to All Traffic	Dashed line	Footpath
Restricted Byway	Line with T-shaped markers	Footpath

Chitterne Down

PLAN B



1:10,000



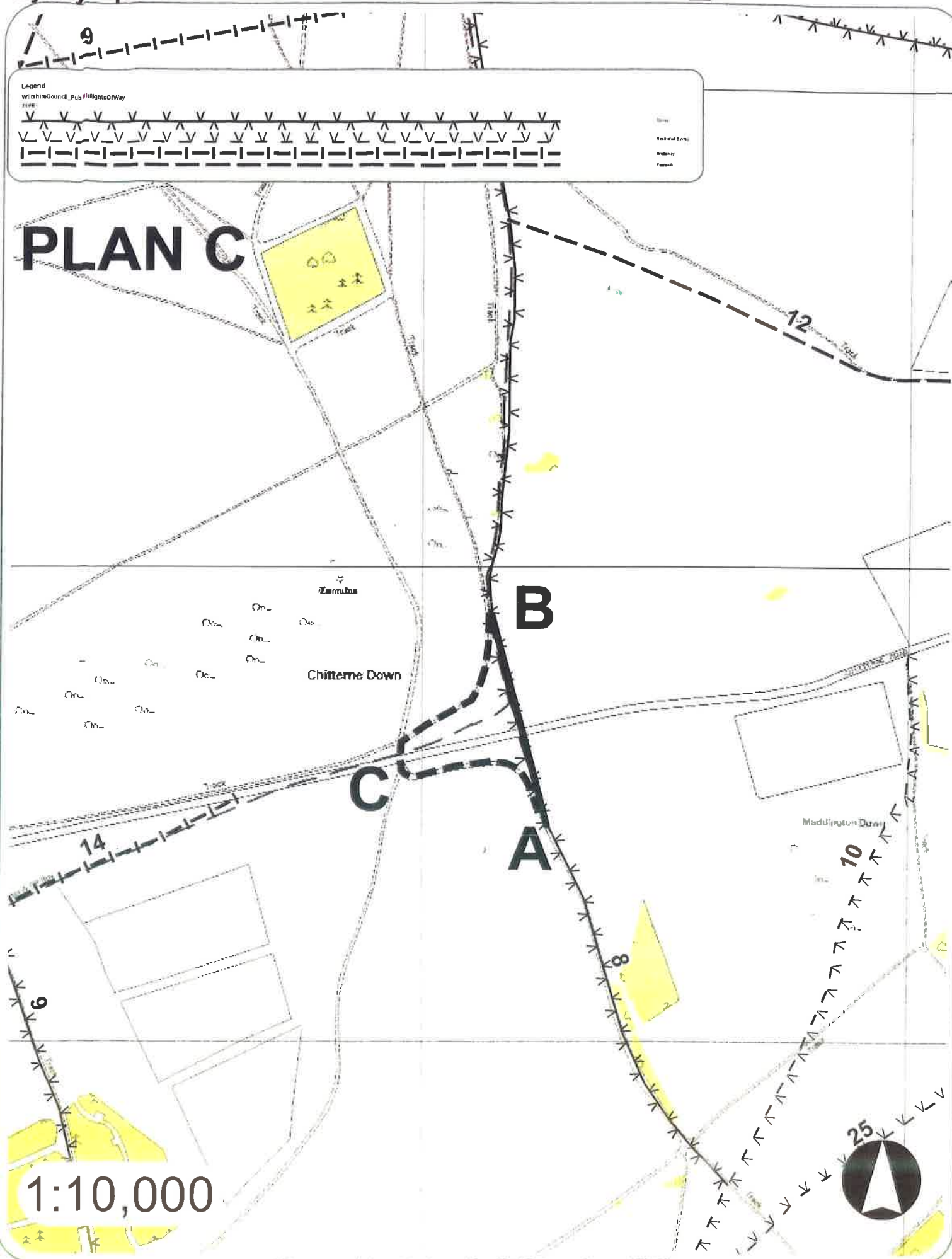
Diversion of Shrewton Byway Open to All Traffic 8 (part)

Shrewton 8 part to be stopped up

A ————— B

Byway Open to All Traffic to be created

A - - - - C - - - - B



Legend
Wiltshire Council, Public Rights of Way

TYPE	Symbol
Footpath	Line with small 'v' markers
Byway	Dashed line
Footpath	Line with small 'v' markers

PLAN C

1:10,000