

6. PROPOSED TRAFFIC REGULATION ORDER AT WASHGATE (A76226/SAS)

Purpose of the report

1. This report presents the outcome of the publication of proposals under Regulation 5 of the National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007 for a permanent traffic regulation order (TRO) on Washgate.
2. Having regard to the representations made pursuant to Regulations 4 and 7 of the 2007 Regulations, available evidence and the information in this report, it is proposed that the Authority considers a TRO on this route in the form and manner agreed at this meeting.

Recommendations

3. **1. That Members decide the appropriate option having regard to the option analysis in the report and make a resolution from those set out in the report at paragraph 45.**

Policies and legal obligations

4.
 - National Park Management Plan – Partnership for Progress 2012-17 –W14
 - Strategy for the Management of Recreational Motorised Vehicles in their Use of Unsealed Highways and Off-road, and Procedure for Making Traffic Regulation Orders (TROs).
 - Sections 5(1) and 11A of the National Parks and Access to the Countryside Act (NPACA) 1949
 - Section 122 of the Road Traffic Regulation Act 1984.

Background

5. On 20 March 2015, Audit Resources and Performance (ARP) Committee approved actions in the key areas of work required to deliver the revised Strategy on managing recreational motorised vehicles (Minute 17/15). The Green Lanes Action Plan focused on the priority routes where the need for improved management had been identified. At Washgate, this included a proposed consultation on vehicle regulation.
6. In June 2015, statutory consultees were consulted under Regulation 4 of the 2007 Regulations. An ARP Members' site visit took place on 16 September 2015 (Appendix 1) prior to the ARP Committee meeting on 18 September 2015 at which it was resolved to proceed to publish notice of proposals for a TRO to prohibit use at all times by mechanically propelled vehicles on the Washgate route (Minute 51/15). The Regulation 4 representations are dealt with in the report (with appendices) to the ARP Committee meeting on 18 September 2015 and copies of these representations are at Appendix 2 to this report.

The Route

7. Washgate runs from Tenterhill in Staffordshire to Booth Farm in Derbyshire crossing the river Dove via a narrow stone bridge. It is approximately 1.5 km long. The relevant Highway Authorities are Staffordshire County Council (SCC) and Derbyshire County Council (DCC). A map showing the route is provided in Appendix 3.
8. There are properties at either end of the route and part way along the route at Leycotes. The route is narrow and mostly walled and is not passed by any roads throughout its length. There are far reaching views in the upper sections before the route drops steeply as it approaches the River Dove. Derbyshire County Council resurfaced the eastern part

of the route in 2009. Since 2011, there have been volunteer working parties restoring the historic stone pitching on part of the route.

9. The route is adjacent to a Site of Special Scientific Interest (SSSI) and a Section 3 Semi-natural woodland/Natural Zone. The verges are species-rich. The route is considered to be post-medieval in origin and runs through two Historic Landscape Character (HLC) areas. The packhorse bridge is Grade II listed. The route lies within the South West Peak Landscape Character Area.
10. The track extends to either bank of the River Dove which forms the administrative boundary and is crossed by a narrow stone bridge (referred to above). The majority of the route is an Unclassified Road (UCR) and its legal status has not been formally determined. The route appears on Derbyshire County Council's List of Streets as a publically maintainable highway. Approximately 60m of the route in Staffordshire is shown in the County Council's Definitive Map and Statement as a public footpath. No claims for recording motorised vehicle rights have been submitted for the Derbyshire and Staffordshire sections.
11. In 2009, Derbyshire County Council placed boulders at the western end of the route and at Leycotes which have prevented access by 4-wheeled vehicles to this section. Vehicle logging shows a relatively high use by 2-wheeled mechanically propelled vehicles (MPVs). Washgate is an important recreational asset for all users. A number of rights of way converge at the River Dove. Access to Leycote Farm and its adjoining land is via the eastern part of the route.
12. Issues identified in the preparation of route management reports relate to disturbance and user conflict, the nature and condition of the route, the environmental sensitivity of the route and cross-boundary management. Detailed route management information is available at www.peakdistrict.gov.uk/priorityroutes.

The Proposed Traffic Regulation Order

13. In September 2015, ARP resolved that a TRO should be considered on the following grounds of the Road Traffic Regulation Act 1984 (Appendix 4):
 - s1(1)(f) – for preserving or improving the amenities of the area through which the road runs
 - s 22(2) – for the purpose of conserving or enhancing the natural beauty of the area, or of affording better opportunities for the public to enjoy the amenities of the area, or recreation or the study of nature in the area
14. In the draft order (Appendix 5) the Authority proposed a permanent restriction on all mechanically propelled vehicles at all times save for the following exceptions:
 - Use by emergency services or by any local authority or statutory undertaker in pursuance of their statutory powers and duties
 - Use to enable work to be carried out in, on, under or adjacent to the road
 - Use for the purposes of agriculture or land management on any land or premises adjacent to that road
 - Recognised invalid carriage
 - Use upon the direction of or with the permission of a Police Constable in uniform
 - Use with the prior written permission of the Authority.
15. The statement of reasons (Appendix 6) identified the factors which contribute to natural beauty and the benefits afforded to people from that seen and experienced and the opportunities offered for recreation. Vehicle use and the effects of vehicular use on the special qualities of the area are also identified.

Section 122 of the Road Traffic Regulation Act 1984

16. In September 2015, Members considered the duty under section 122 of the Road Traffic Regulation Act (RTRA) 1984 (Appendix 7) to secure twin objectives, namely the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway. The duty takes effect in 'so far as practicable' having regard to the matters specified in s122(2).
17. In considering the factors set out in relation to s122(2):
 - Access to premises – any proposed restriction would only be for mechanically propelled vehicles using the route as a through-road or for recreational use. Vehicular access to Leycotes Farm and land adjacent to the route (for agricultural or land management purposes and for residential access) would be unaffected.
 - Amenities of locality – the removal of MPVs from the route is likely to improve the amenities of the locality. To access this route it is necessary to use metalled roads. These offer an alternative for recreational vehicle users, albeit not of the same character as an unmetalled track. A UCR is not part of the road transport network. Heavy commercial vehicles do not use this route.
 - Air quality –recreational motorised vehicle use has a negligible impact.
 - Public Service Vehicles – as this is an unsealed route it is not used by such vehicles.
 - Disabled access – Recognised invalid carriages will not be affected by the TRO. There are no parking and very limited turning opportunities along the route. Any TRO would not prevent the use by wheel chairs and trampers and would enhance the safety and enjoyment of such access, subject to the physical limitations of the route, in accordance with the exemption set out in paragraph 14 above. Access by other means by disabled users could also be obtained on application to the Authority.
 - Natural beauty/amenity – the restriction of MPVs would have a beneficial impact on the natural beauty of the area and amenity of other users.

Consultation

18. The consultation on the proposed TRO under Regulations 5-7 of the 2007 Regulations ran from 10 March 2016 to 22 April 2016. This followed the consultation under Regulation 4 referred to in paragraph 6 above. Statutory consultees and landowners were notified and it was advertised in the Buxton Advertiser, Derbyshire Times, on the Authority's website and on the route.
19. The consultation documents included: a draft order (Appendix 5), a statement of reasons and appendices covering use, interests and impacts (Appendix 6), a notice of proposal (Appendix 8) and a map.
20. The organisations listed in Appendix 9 (the statutory consultees) were consulted at the first and second stage of the process, as required by the Regulations. Manchester 17 Motorcycle Club were included at the second stage of the process as a discretionary consultee. There were 4 consultees – Derbyshire Constabulary, Byways and Bridleway Trust, National Farmers Union and the Green Lanes Association - that responded to the first consultation but not this second specific consultation. The responses were split between those supporting a permanent order to prohibit MPVs on the route at all times as per the proposal, those believing a less restrictive option would be sufficient and those that considered restrictions were unnecessary including over and above that presently provided by the signage and boulders. Those objecting to the proposal comprised:

- Auto Cycle Union
- Land Access and Recreation Association
- Trail Riders Fellowship
- Association of Peak Trail Riders
- Manchester 17 Motorcycle Club

Those in support of the proposal for a permanent order to prohibit MPVs on the route at all times included:

- Hartington Upper Quarter Parish Council
- Peak District Local Access Forum
- Derbyshire Dales Group of the Ramblers
- Ramblers Association Staffordshire Area
- British Horse Society
- Peak and Northern Footpaths Society
- Peak Horsepower
- Peak District Green Lanes Alliance

Two consultees - Natural England and Derbyshire CC – stated that they did not object to the proposal. Hollinsclough Parish Council supported the proposal but with an exemption or permit system for local use. Friends of the Peak District supported a TRO on the section between Leycote and Tenterhill.

21. A summary of the representations received within the above consultation period from the statutory consultees is set out in Appendix 10. Consultee responses at the Regulation 4 stage are dealt with in the report and appendices at Appendix 2. In addition to the statutory consultees, there were objections to the proposal from 158 individuals and organisations, and support for the proposal from 96 individuals and organisations.
22. Objections – Other than the statutory consultees, 4 organisations objected to the proposal. Their representations are set out in Appendix 10. There were also 153 individual representations, 1 objection with no grounds provided and a petition with 85 signatories. The representations are summarised in Appendix 11.
23. The objections to the proposed order are summarised in Appendix 11 with comments provided relating to consideration of these objections. The main issues raised by objectors are:
 - The heritage of long-established motorcycle trails in this area is important
 - The route can accommodate motorcycle use
 - The proposal is unnecessarily restrictive for the level of use
 - A permanent prohibition will displace use onto other nearby routes
 - There are limited alternative routes
 - The proposal promotes the amenity of one user type over another and is discriminatory
24. Many of those objecting acknowledged that motor vehicular use of Washgate needed to be managed in some way but considered that there were alternative management options to that proposed. Motorcycle users pointed to the fact that their disturbance is less than four-wheeled vehicles due to weight/width issues and that the motorcycle events named in those objections were carefully managed. The most commonly mentioned alternatives included:
 - A restriction on all mechanically propelled vehicles at all times on the section between Leycotes and Tenterhill
 - A restriction on all mechanically propelled vehicles at all times with exemptions for established named motorcycle events (the Bemrose, Reliance, Dave Rowland and Northern Experts)

- A width/weight restriction relating to four-wheeled motorised vehicles
 - A restriction on all mechanically propelled vehicles at all times with an exemption or permit system for local use
25. A number of the consultation responses referred to the status of the route and whether the route was a through-route and if it continued through the ford or via the stone bridge. Whether there were public rights for mechanically propelled vehicles was also raised along with consideration of whether a National Park Authority would have the power to make traffic regulation orders on routes where the status was uncertain. The powers granted to NPAs allow the making of TROs on routes recorded as public rights of way on the Definitive Map and Statement or which are unsurfaced carriageways (ways over which the public have the right of passage in vehicles). Part of this route is recorded in Staffordshire County Council's Definitive Map and Statement as a public footpath. The determination of the legal status of the public's rights over the remainder of the route is a matter for the relevant Highway Authorities. The route appears in Derbyshire and Staffordshire County Council's list of highways maintainable at public expense and vehicle logging data show use of the route by vehicles in 2007, 2010, 2012, and 2014 to 2016. On the balance of probabilities, the evidence available to the PDNPA at this time leads to the conclusion that there are public vehicular rights over the route and, as the route is unsurfaced, the view of officers is that the Authority has power to make a traffic regulation order over the whole route.
26. A number of the consultation responses referred to the condition of the route. Whilst the Authority has similar powers to the Highway Authorities (HA) in relation to TROs, only the HA have the duty to maintain routes. Maintenance and condition of the route will therefore be relevant to a TRO proposed by a NPA only in so far as changes to the condition of the route influence the effect that vehicles are having on other users and the environment of the area. The NPA would not normally consider making a TRO on the basis of disrepair alone, but the state of disrepair and prospective timing and extent of repair may be one of the considerations which may contribute to the NPA's assessment of the impact on natural beauty and amenity.
27. The importance of access for disabled users was also raised by many respondents. An exemption for invalid carriages and access on application is provided within the draft order (Appendix 5) and the NPA will investigate other means to ensure reasonable access for registered disabled users.
28. Support - Other than the statutory consultees, 3 organisations supported the proposal. Their representations are set out in Appendix 10. There were also 93 individual representations. The comments are summarised in Appendix 11.
29. The reasons for supporting the proposal are summarised in Appendix 11. The main issues raised by supporters of the proposal are:
- The use by motorised vehicles on this historic route is unsuitable and unsustainable
 - The route forms an important means of access to the wider area
 - There are safety concerns from other users meeting motorised vehicles
 - Motor vehicle use impacts on this particularly peaceful and quiet area of the National Park

Partial TRO Options

30. In deciding to pursue a consultation on a permanent restriction on the Washgate route, Members had regard to the extent to which it is necessary to restrict mechanically propelled vehicles. S122 of the RTRA does not require the Authority to proceed in stages starting with a least restrictive option. However, if a less restrictive option might achieve

the desired outcome then it is a factor for consideration. Paragraph 24 highlights the principal alternatives which have been identified from the representations received. These are considered below:

31. **Restriction on part of the route**

<p><u>Pros</u> Reduces conflict and impacts on the more sensitive sections No requirement to enforce on section to Leycotes Farm</p>	<p><u>Cons</u> Some user conflict remains Some visual, physical and auditory impacts remain</p>
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Restriction with exemption for specified motorcycle events

<p><u>Pros</u> Manage type of use to restricted times and levels Manage conduct of users Prior notification, site notices, and presence of marshalls reduce safety concerns.</p>	<p><u>Cons</u> Some user conflict remains Some visual, physical and auditory impacts remain</p>
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Width/weight restriction

<p><u>Pros</u> Removes impacts and conflict from 4x4s Reduction in overall numbers of vehicles Lessens conflict with other user types and deviations</p>	<p><u>Cons</u> 2-wheeled use impacts remain Some user conflict remains</p>
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Restriction with exemption or permit system for locals

<p><u>Pros</u> Manage type of use Flexibility</p>	<p><u>Cons</u> Some user conflict remains Some visual, physical and auditory impacts remain Practicalities of enforcement</p>
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Summary

32. The route is in a National Park designated for its exceptional natural beauty and is adjacent to an area of Natural Zone with habitats of national significance and where it is particularly important to conserve that natural beauty.
33. Washgate is a historic route which is used as a means of access to the wider area. It is an important route for all recreational users and is used by mechanically propelled vehicle users for short journeys, to pass through the area on part of a longer journey and for long-established motorcycle trials and classic events.
34. The route is steep, loose, and narrow with limited visibility in places and the risk of potential conflict with motor vehicle users has deterred some users from using this route. As a result of the signage and physical restrictions in place, motorised vehicle use over the last 6 years has been 2-wheeled only; which tends to be concentrated during the events and at weekends.

35. It is considered that unrestricted motorised vehicle use on this route has an adverse impact on the ecological, archaeological and landscape interests, the natural beauty, amenity and recreational value of the area and the special characteristics of the route. It is therefore considered that some form of order is required to manage mechanically propelled vehicle use on this route. The extent of that restriction revolves around whether it may reduce to an acceptable level the impacts on the interests and amenity of the route and area and other users and conserve the natural beauty of the area to meet the Authority's obligations in respect of its statutory purposes.
36. The proposed order imposes a permanent restriction on all mechanically propelled vehicles (MPVs) at all times (subject to specified exceptions) and seeks to address issues of user conflict and impacts on the landscape, ecology and cultural heritage of the area and the nature of the route through reducing the use by MPVs. This would meet the desired outcome of conservation and enhancement in accordance with National Park purposes and the preservation of the amenity of the route and area and of other users. Any partial TRO should also address these matters and requires consideration of the type, the timing and the level of use.
37. In their consideration of the extent to which the desired outcome could be met by means other than the proposed order, Members may consider a partial TRO containing, for example, the following elements: a prohibition on 4-wheeled motorised vehicles at all times and for 2-wheeled motorised vehicles to be permitted on specified occasions when impacts on the interest of the area and other users may be lessened through appropriate marshalling and codes of conduct (details of the events identified in the consultation responses are at Appendix 13). In relation to any specific written requests received to allow the continuation of use for local journeys, these could be dealt with under the exceptions within the order.
38. In any event, it is recommended that an additional exception be inserted to any order to allow for residential use in addition to that for agricultural and land management purposes.
39. In relation to enforcement of any TRO, this would be undertaken in consultation with the Highway Authority and the police having regard to signage, the selection or retention of barriers and the character of the route. Routine monitoring should identify if there are any problems.

Option Analysis

40. The following main courses of action are available:
- To proceed to make a permanent order to prohibit MPVs at all times as proposed
 - To make an order incorporating one or more measures for management of the route as suggested in paragraph 31 above (a partial TRO)
 - To hold a public inquiry and appoint an inspector
 - To delay the making of the order
 - To resolve not to make a TRO

41. **Permanent TRO (permanent prohibition of all MPVs at all times)**

<u>For</u>	<u>Against</u>
Impacts on natural beauty and amenity reduced	Enjoyment of recreational motorised vehicle users removed
Increased use and enjoyment of the route	Enforcement issues including selection and replacement of barriers
	Displacement issues
	Legal challenge

Partial TRO (partial restriction)

<p><u>For</u> Impacts on natural beauty and amenity reduced Increased use and enjoyment of the route at times when no vehicle users present Vehicle user groups part of the solution</p>	<p><u>Against</u> Some impacts on natural beauty and amenity remain Enforceability/non-compliance/selection of barriers Displacement issues Management of level of use Delay if re-consultation/notification required Potential for legal challenge from disaffected parties</p>
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Public Inquiry

<p><u>For</u> Independent analysis of options having regard to evidence</p>	<p><u>Against</u> Cost and time Order delayed Impacts on natural beauty and amenity remain during the inquiry process</p>
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Deferment

<p><u>For</u> Potential for clarification of legal use and/or trialling, monitoring and surveys to determine action</p>	<p><u>Against</u> Impacts on natural beauty and amenity remain</p>
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Abandonment

<p><u>For</u> Potential for clarification of legal use and repairs by the Highway Authorities and further monitoring and surveys to determine action</p>	<p><u>Against</u> Impacts on natural beauty and amenity remain</p>
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42. In further consideration of the options:
- a) Partial TRO - if an order is made in substantially different terms to the proposed order, the 2007 Regulations require the Authority to take such steps as appear to it to be appropriate for informing people likely to be affected by the modification. This includes providing the opportunity to make written representations and to consider those representations before making the order. A re-consultation period of 21 days would be adopted. A partial TRO could be perceived to be a substantive change from the published proposed order and consequently require further consultation.
 - b) Public inquiry – The cost of a public inquiry would be borne by the Authority and the Inspector would provide a report and recommendations which the Authority would not be bound to follow but would have to provide good reasons for not doing so.
 - c) Deferment – an order cannot be made more than 2 years after the proposal has been publicised in accordance with Regulation 5. This period expires in March 2018.

Proposal

43. In their consideration of the most appropriate course of action, it is necessary for Members to have regard to the following:
- the representations received in accordance with Regulations 4 and 7 (Appendices 2, 10 & 11)
 - whether it is expedient to make a traffic regulation order on this route on the grounds specified in the draft order (Appendix 5)
 - alternative courses of action as set out in the option analysis
 - the statutory purposes of the National Park, in accordance with ss 5 and 11A of the NPACA 1949
 - the balancing exercise set out in s122 of the RTRA (Appendix 7)
44. In relation to s122, Members will need to be satisfied that the preservation and enjoyment of the amenity and conservation of the natural beauty of the area outweighs unrestricted recreational motor vehicular use of the route notwithstanding that such a restriction will affect the expeditious and convenient use of the route by mechanically propelled vehicles.
45. Depending on which of the options Members wish to adopt for this route, the following possible resolutions are relevant:
- (i) Permanent TRO (permanent prohibition of all mpvs at all times)**
Resolution: the Authority proceeds to make a Permanent Traffic Regulation Order under Section 22 BB(2)(a) Road Traffic Regulation Act 1984 that will have the effect of prohibiting use by mechanically propelled vehicles at all times on the Washgate route (subject to specified exceptions).
- (ii) Partial TRO (partial restriction)**
Resolution: (i) the Authority proceeds to make a Permanent Traffic Regulation Order under Section 22 BB(2)(a) Road Traffic Regulation Act 1984 that will have the effect of prohibiting use by mechanically propelled vehicles on the Washgate route in the manner identified by Members (ii) that if a substantive change is made to the TRO as previously proposed, an opportunity for further comments to be made is given in accordance with Regulation 12 of the 2007 Regulations and representations arising from this consultation reported thereafter to this Committee.
- (iii) Public Inquiry**
Resolution: the Authority appoints an inspector to hold a public inquiry and publishes notice of the public inquiry in accordance with Regulation 9 of the 2007 Regulations.
- (iv) Deferment**
Resolution: the Authority defers a decision on making a TRO on the Washgate, route such deferment being subject to review .
- (v) Abandonment**
Resolution: the Authority abandons pursuing a TRO on the Washgate route at this present time.
46. If the order is made as proposed, subject to any minor modifications as may be required (to be finalised by officers), a notice of proposals, order and map will be prepared and publicised. A decision notice giving reasons for not acceding to the grounds for objecting will also be provided within 14 days of making the order. To this end, Members are asked

to consider the comments on representations at Appendix 11, which will form the basis of reasons for not accepting objections.

47. If Members decide to make an order in substantially different terms to those in the proposed order, an opportunity of 21 days will be provided for further comments to be made and considered.

Are there any corporate implications members should be concerned about?

48. **Financial:**

Resources have been allocated to this area of work until March 2017. In May 2016, Members supported an investment proposal framework which included adding £26k to the baseline budget to deliver the green lanes action plan.

Supplementary costs relate to:

- advertising and site works for any order that is made
- public inquiry, where the decision is taken to hold one
- defending potential High Court challenges, including Counsel's fees and an award of costs if unsuccessful.

49. **Risk Management:**

There is an element of reputational risk to the Authority for deployment of a TRO or for not using this power. This issue is likely to be of considerable public interest. The Authority must be confident that the grounds for action are clear, objective and defensible.

50. **Sustainability:**

This report addresses sustainability issues in the context of both the National Park Management Plan and the Authority's statutory purposes, duty and legal powers.

51. **Equality**

The requirements of the Equality Act 2010 have been met in the consideration of proposals on this route and the ongoing requirements to have regard to the duty.

52. **Background papers:**

None

53. **Appendices**

The following documents are appended to this report:

1. Site Inspection notes
2. Regulation 4 responses – statutory consultees
3. Map of the route
4. Grounds for making a TRO
5. Draft order
6. Statement of reasons
7. S122
8. Notice of proposal
9. List of consultees
10. Regulation 7 responses - organisations
11. Representations and comment
12. TRO checklist
13. Motorcycle events at Washgate

54. **Report Author, Job Title and Publication Date**

Sue Smith, Rights of Way Officer, 8 September 2016