

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

Purpose of the report

1. This report presents the outcome of the publication of a modification under Regulation 12 of the National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007. The proposed modification relates to a traffic regulation order (TRO) exemption for up to four historic motorcycle events, each at a frequency of no more than once annually, on the Washgate route.
2. Having regard to the representations made pursuant to Regulations 4, 7 and 12 of the 2007 Regulations, available evidence and the information in this report, it is proposed that the Authority considers proceeding with a TRO on this route in the form and manner agreed at this meeting.

Recommendation

3. **1. That Members confirm a resolution from the options set out in the report at paragraph 33.**

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. In June 2015, statutory consultees were consulted under Regulation 4 of the 2007 Regulations in relation to a restriction on the route shown in Appendix 1. Members of the Audit Resources and Performance (ARP) committee inspected the route on 16 September 2015 prior to the 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).
6. The consultation on the proposed TRO under Regulations 5-7 of the 2007 Regulations took place from March to April 2016. A further ARP Members' site visit took place on 15 September 2016 (Appendix 2). At the ARP Committee meeting on 16 September 2016, it was resolved to consider a modification of the draft order to include an exemption for the Bemrose Trial, Reliance Cup Trial, Dave Rowland Trial and Northern Experts events and to provide an opportunity for further comments in accordance with Regulation 12 of the 2007 Regulations (Minute 46/16). The full report and minutes can be found at www.peakdistrict.gov.uk/committees.

The Proposed Traffic Regulation Order

7. As a result of the impact from mechanically propelled vehicles 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 was considered at the September 2015 and 2016 ARP meetings that a TRO should be pursued on the following grounds of the Road Traffic Regulation Act 1984 (RTA):
 - 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

8. Members also considered the duty under section 122 of the Road Traffic Regulation Act (RTA) 1984 (Appendix 3) 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 and had regard to the matters specified in s122(2). The view taken was that the need to preserve the amenity and conserve the natural beauty of the route outweighed the needs of mechanically propelled vehicular users of the route notwithstanding that a restriction would affect the expeditious and convenient use of the route by mechanically propelled vehicles.
9. In addition, Members had regard to the consultation which referred variously to up to four long-established motorcycle events taking place on this route and considered that there was the potential for one or more of these events to be exempted from the prohibition subject to the identification and control of impacts arising. It was therefore resolved that an opportunity for comment be provided on a proposed modification.
10. At the same time, Members considered the exceptions provided in the draft order (Appendix 4) and were satisfied with the proposed minor modification to make a specific reference to residential use.

The Modification Consultation

11. The consultation on the proposed modification under Regulation 12 of the 2007 Regulations ran from 3 November 2016 to 25 November 2016. This followed the consultations under Regulation 4 and 5 referred to in paragraphs 5-6 above. Statutory consultees, landowners and those who had previously made representations were notified and it was advertised in the Buxton Advertiser, Derbyshire Times, on the Authority's website and on the route.
12. The consultation documents included: a notice of the modification (Appendix 5), and a statement of reasons and appendices covering details of the events, impacts and draft terms of exemption (Appendix 6). The previous consultation documents were available as background.
13. A summary of the responses received from the statutory consultees is set out in Appendix 7. In addition to the statutory consultees, there were representations from 487 individuals and 4 organisations. 434 of these representations were related to the merits of making a TRO on this route rather than the merits of the proposed modification. These wider representations did not raise any new issue that had not already been considered by Members. A number of representations were also received after the deadline raising the same issues.
14. Comments on the proposed modification are set out at Appendix 8. Those in support of the modification raised similar issues to those made in the earlier consultations:
 - The heritage of long-established motorcycle trials in this area is important
 - The route can accommodate this use
 - The measures adopted by the event organisers will allow for sufficient control and the reduction of impacts
15. Those objecting or raising concerns to the modification raised the following issues:
 - From the recollection of some of the respondents, two of the events (Dave

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- Rowland & Northern Experts) have not taken place on the route for many years
 - The route cannot sustain the considerable level of use from four events subscribed to their maximum of 180 competitors
 - There will be an adverse effect on the River Dove and the species it supports
 - There are doubts about the Authority's ability to enforce conditions and control impacts.
16. Matters of process were also identified by a number of respondents mainly querying whether an additional exemption and consultation was necessary and whether this would afford the same level of control and flexibility as that afforded by the existing exemption (f) in the published draft order which could allow events to be granted with the prior written permission of the Authority.
17. There were also a number of comments objecting to any proposed traffic regulation order on this route which would restrict motorcycle use. These comments covered similar issues to those raised previously, queried the differentiation between trials and trail bikes, and the evidence for impacts from 2-wheeled vehicles, and considered that restricting motorcycle use to 4 trials a year would be insufficient to maintain motorcycling heritage on Washgate (Appendix 9). The Regulation 4 and 7 representations set out in the previous report have been summarised at Appendix 10.
18. The most commonly mentioned alternatives included:
- An exemption for the Bemrose and Reliance only
 - A reduction on the level of participants in each event
 - A maximum of two events each year
 - The nature and number of events and level of participants to be determined on application
 - For the inclusion of motorcycle trail rides organised and regulated by the Trail Riders Fellowship
 - No restriction on motorcycle use

Comment

19. The route is in a National Park designated for its exceptional natural beauty and is adjacent to an area of Natural Zone and Site of Special Scientific Interest with habitats of national significance. The verges and adjacent land are of high biodiversity value and the route meets the River Dove. The conservation interest is summarised in Appendix 11.
20. Washgate is a historic route with a listed bridge which is used as a means of access to the wider area. Although the formal legal status of the use of the route as a through route has not been confirmed, it is an important route for all recreational users. Mechanically propelled vehicles use Washgate for short journeys, to pass through the area on part of a longer journey and for long-established motorcycle trials and classic events. The route has panoramic views and a sense of remoteness, timelessness and seclusion contributing to the tranquillity of the area.
21. The route is steep, loose, narrow and walled with limited visibility in places and the risk of potential conflict with motor vehicle users has deterred some users from using this route. The condition of the route varies along its length with part retaining its historic stone pitching, steep stone steps, and water-logged sections. As a result of the signage and physical restrictions in place, motorised vehicle use over the last 6 years on the section from Leycotes Farm to Tenterhill has been 2-wheeled only; which tends to be concentrated during events and at weekends. Access to Leycote farm and its adjoining land is via the eastern part of the route.
22. It is considered that unrestricted motorised vehicle use has an adverse impact on the

ecological, archaeological and landscape interests, the natural beauty, amenity and recreational value of the area and the route's special characteristics and that some form of order is required to manage mechanically propelled vehicle use to meet the Authority's obligations in respect of its statutory purposes.

23. The proposed order imposes a 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.
24. In their consideration of the extent to which the desired outcome set out in paragraph 7 could be met by means other than the proposed order, Members consulted on a modification to allow 2-wheeled motorised vehicles to be permitted on specified occasions when impacts on the interest of the area and other users could be controlled through advance notification, appropriate marshalling, codes of conduct and conditions relating to frequency, timing, level of use and reporting. Four events were originally reported as being long-established in this area and identified in the proposed additional exemption (Appendices 5 & 6). However, the consultation process has not provided any evidence of the Dave Rowland and the Northern Experts having a history of using the Washgate route in recent years.
25. The effect of the proposed modification is to provide certainty and clarity over those events which have a history of using the route. An application would need to be made for each named event on each occasion and would be subject to terms set out in the authorisation guidance documents. The inclusion of named events restricts applications using this exemption to events associated with the route. The exemption is on the basis that the conditions to which the exemption are subject are complied with. If an exemption is expressed to apply only where certain conditions are met, and those conditions are not observed, the exemption would not apply. Use of the route in those circumstances would amount to an offence contrary to section 5(1) of the 1984 Act. The terms of authorisation could take into account past breaches when considering whether or not to issue an authorisation for a future event and can require reinstatement.
26. For other events or occasions when the Authority might be willing to allow the use of the route by MPVs exemption (f) would be available. As it is currently drafted however this exemption makes no mention of compliance with conditions and to avoid uncertainty about whether a breach of condition brought to an end a permit granted under exemption (f) it would be prudent to modify the wording to make sure that the exemption applies only for so long as the conditions imposed on any grant of permission are complied with. Exemption (f) could therefore be modified to say "and subject to compliance with any conditions imposed on such permission".
27. If Members are minded to allow for motorcycle events to take place on the route then the Bemrose Trail and Reliance Cup Trail, as long-standing and regular events, could be considered under the proposed additional exemption and there would be the possibility for occasional events such as the Dave Rowland and Northern Experts to be considered under a modified exemption (f). Members will however need to have regard to the level of control provided in terms of the number of days, the nature of the use, the number of vehicles and the extent of impacts.
28. In relation to the sustainability of the route, maintenance and condition of the route will only be relevant to a TRO proposed by a NPA 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 and the NPA's assessment of the impact on natural beauty and amenity.

Option Analysis

29. The following main courses of action are available:
- To make the order as proposed (subject to minor modifications) to prohibit MPVs at all times
 - To make the order as proposed incorporating an exemption for named events (one or more of those identified)
 - To make an order to prohibit 4-wheeled vehicles only
 - To hold a public inquiry and appoint an inspector
 - To delay the making of the order
 - To resolve not to make a TRO

30. Prohibition of all MPVs at all times

<u>For</u> Impacts on natural beauty and amenity reduced Increased use and enjoyment of the route	<u>Against</u> Enjoyment of recreational motorised vehicle users removed Enforcement issues including selection and replacement of barriers Displacement issues Legal challenge
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Prohibition of MPVs with an exemption for 1 or more specified events

<u>For</u> Impacts on natural beauty and amenity reduced Increased use and enjoyment of the route at times when no vehicle users present. Certainty over times of use Vehicle user groups part of the solution	<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
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Prohibition of 4-wheeled vehicles

<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	<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
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Public Inquiry

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

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

<u>For</u> Potential for clarification of legal use and repairs by the Highway Authorities and further monitoring and surveys to determine action	<u>Against</u> Impacts on natural beauty and amenity remain
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Proposal

31. 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, 7 & 12 (Appendices 7-10)
 - whether it is expedient to make a traffic regulation order on this route on the grounds specified in the draft order (Appendix 4)
 - 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 3)
32. 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.
33. Depending on which of the options Members wish to adopt for this route, the following possible resolutions are relevant:

(i) Traffic Regulation Order

(a) the Authority proceeds to make a 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) Traffic Regulation Order with additional exemption

the Authority proceeds to make a 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 including the exemption for use by motorcycles in connection with the named events to be identified by Members on such terms as may be required by the Authority

(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.

34. 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 Appendices 7-10, which will form the basis of reasons for not accepting objections.

Are there any corporate implications members should be concerned about?

35. **Financial:**
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.
36. **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.
37. **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.
38. **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.
39. **Background papers(not previously published):**
40. **Appendices**
The following documents are appended to this report:
1. Map of the route
 2. Site Inspection notes
 3. S122
 4. Draft order
 5. Notice of proposed modification
 6. Statement of reason for proposed modification
 7. Regulation 12 responses – statutory consultees
 8. Regulation 12 representations on proposed modification
 9. Regulation 12 objections to traffic regulation order
 10. Regulation 4 and 7 - Summary of responses and comment
 11. Conservation interest

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41. **Report Author, Job Title and Publication Date**
Sue Smith, Rights of Way Officer, 23 February 2017.