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

### **Purpose of the report**

1. This report presents the outcome of consultation with statutory consultees under Regulation 4 of the National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007 for the proposed future management of this route.
2. On the basis of the consultation, available evidence and the information in this report that no rights exist for mechanically propelled vehicles to use part of the route and the rights being unproven for the remainder of the route, it is recommended that the Authority should defer action on proceeding with a traffic regulation order on this route at this current time.

### **Recommendations**

3.
  1. **That the Authority defers action on proceeding with a traffic regulation order under s22BB2(a) of the Road Traffic Regulation Act 1984 on the route known as Washgate.**
  2. **An update on the actions set out in the report at paragraph 40 and the use of the route will be provided to the ARP Committee no later than March 2016.**

### **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.

### **The Route**

6. 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 1.
7. 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. In the upper sections there are far reaching views. 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.
8. 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. The conservation interest is summarised in Appendix 2.

9. 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 is as yet undetermined. The route appears on Derbyshire County Council's List of Streets as a publically maintainable highway. Approximately 60 m 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.
10. 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). It 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.
11. The sustainability analysis undertaken in 2007 illustrates the scale of management problems associated with this route. 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](http://www.peakdistrict.gov.uk/priorityroutes).

### **Consultation**

12. A consultation letter under Regulation 4 of the National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007 was sent to consultees on 10 and 18 June 2015. The list of those persons consulted is set out in Appendix 3. Consultees were asked to comment on whether they thought a restriction was necessary and if so to state the nature, extent and duration of any restrictions. They were also asked to comment on any alternative management options. A summary of the responses are set out in Appendix 4.
13. A number of comments were also received from individuals/bodies who were not consultees. Those from organisations have been reported where they endorsed the comments made by statutory consultees.
14. On 21 August 2015 a consultation update was sent out clarifying issues arising during the consultation relating to this route, how these could be addressed by a possible traffic regulation order, the status of the route, and its use. Consultees were invited to comment further to that letter and those comments are included in this report.

### **Issues Arising from the Consultation**

15. Various actions regarding the management of this route have been undertaken including logging vehicle use, repairs to the route, a consultation by Derbyshire County Council on a potential TRO, and signage and barriers to seek to reduce use above 1.3 m. However, the need for improved management remains.
16. The first stage of the consultation has identified that the majority of consultees that

responded consider that management issues could best be resolved by some form of TRO but there are differences as to the nature and extent of such an order. Suggested TRO options include:

- A restriction on all mechanically propelled vehicles at all times on the full extent of the route
- 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 the two existing motorcycle trials (the Bemrose and Reliance)
- A width restriction

17. Some of the other consultation responses did not believe that there was any need for any restrictions or a restriction on 2-wheeled motorised vehicles over and above that presently provided by the signage and the placement of boulders.
18. A number of the consultation responses referred to the status of the route and whether the route continued through the ford or via the stone bridge. Whether there were public rights for vehicles was also raised along with consideration of whether a National Park Authority would be empowered to make traffic regulation orders on routes where the status was uncertain.
19. 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 rest of the route is primarily a matter for the relevant Highway Authorities, although if there were sufficient evidence available to the Authority establishing the existence of public vehicular rights of passage over the route it would be possible for the Authority to exercise its powers under s22BB.
20. The condition of the route was also highlighted. The Authority has similar powers to the Highway Authorities (HA) in relation to TROs but only the HA has 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 could be one of the considerations which may contribute to the NPA's assessment of the impact on natural beauty and amenity.
21. A number of the consultation responses also referred to the safety of the route for other users. Safety concerns may be relevant to consideration of the impact on amenity. There may also be other management options which can seek to address risks of danger or harm.

### **Grounds for Making a TRO**

22. Where it is proposed to make a TRO the Authority must be satisfied that a TRO would fulfil at least one of the purposes set out in s1(1) or s22(2) of the Road Traffic Regulation Act 1984 (Appendix 5). In the case of the Washgate route, the following purposes are considered relevant:
  - 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

23. Factors which contribute to natural beauty include landscape quality, scenic quality, relative wildness, tranquillity, natural and cultural heritage features and associations. Amenity is viewed as the benefits afforded to people from what is seen and experienced and is dependent on the natural beauty of an area and the opportunities offered for recreation.
24. Natural Beauty - The route is in a National Park designated for its exceptional natural beauty and in an area of Natural Zone. As such it is particularly important to conserve that natural beauty. The landscape, habitat and wildlife in this area is of national importance. There are cultural heritage, habitat, wildlife and features of national importance. These and other undesignated assets all make a significant contribution to the character of the Natural Zone. The route has panoramic views and a sense of remoteness.
25. The historic nature of the route and its setting in the landscape as well as the variety of natural and cultural heritage features adds to the experience of using the route. The route also gives the opportunity for quiet enjoyment and to experience tranquillity, one of the special qualities that people value most about the Peak District National Park. Tranquillity and the freedom from intrusion is encompassed by the Natural Zone designation. Within this area there are no major sources of noise generation.
26. Amenity - Although not all the features and interests are directly affected by mechanically propelled vehicles using the route, the presence, or anticipation of their presence, and/or evidence of their passing has an impact on the natural beauty in this area and can detract from the experience and enjoyment by other users. A relatively high level of recreational motor vehicle use leads to greater disturbance to the tranquillity of an area and an increased potential for conflict with other users.

#### **Section 122 of the Road Traffic Regulation Act 1984**

27. Before reaching a decision, the Authority must consider its duty under section 122 of the Road Traffic Regulation Act (RTRA) 1984. The duty under s122(1) is 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).
28. This is an important route as a means to link in with other rights of way. It is also an important route for recreational mechanically propelled vehicle users including those passing through the area on part of a longer journey or circuit. For these MPV users, there is an alternative available in the form of metalled roads.
29. No safety incidents have been reported to the Police. However, concerns over conflict with vehicle users have been raised and this may have deterred/inconvenienced some users. The safe and convenient use of the route by pedestrians and other possible users such as horse-riders, cyclists and carriage drivers could, therefore, be improved by the regulation of motor vehicle users. There are no opportunities for parking at either end and along the route.
30. In considering the factors set out in relation to s122(2):
  - Access to premises - any proposed restriction would only be for vehicles using the route as a through-road or for recreational use. Vehicular access to land adjacent to the route (for agricultural or land management purposes) would be unaffected.

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- Amenities of 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. 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.
31. To ensure expeditious and convenient use any TRO if made would contain exceptions in order to permit the following mechanically propelled vehicle usage:
- Use by emergency services or by any local authority or water authority in pursuance of their statutory powers and duties.
  - Use to enable work to be carried out in or adjacent to the UCR
  - Use for the purposes of agriculture or land management on any land or premises adjacent to that UCR
  - 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
32. In balancing the duty in s122(1) and the factors set out in S122(2), the Authority believes 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. Where a TRO is to be pursued, s122 would not require the Authority to proceed in stages starting with a least restrictive option. However, if a less restrictive option may achieve the desired outcome then it is a factor for consideration. Paragraph 16 and 17 highlight the principal alternatives which have been identified from the consultation process. Two main alternatives are considered more fully in the paragraphs below.
34. Width restriction - The route is narrow, comprises sections of steep hollow-way, and meets a narrow stone bridge at the River Dove. Over the period since the boulders were placed to prevent 4-wheeled use, the width of the track has reduced as has deviation onto the verges. This is particularly obvious on the Derbyshire section following its repair. Along this route, there are very few areas for large motorised vehicles to pass each other and there are also difficulties for other users (MPV and non-MPV) in passing and avoiding these users. The route widens out at the river which provides a passing/stopping point, despite its sensitivity to any erosion and pollution. The stone bridge has not been confirmed as providing a through-route nor is there a proven right to ford the river. A restriction which limits the use by four-wheeled motorised vehicles would reduce the overall numbers of MPVs. However as shown by the on-site restriction from the use of the boulders, the conflict with other users and visual, physical and auditory impacts from 2-wheeled motorised vehicles remains.
35. Permanent restriction with exemption for specified events - The nature of the route and its drainage means that the route and areas adjacent to the route are susceptible to damage and the designated areas through which the route passes are of wildlife and landscape value. In addition, use by all users is generally higher at weekends and on

bank and public holidays. A restriction which gives an exemption for trials on specified days could increase the likelihood of other users coming across mechanically propelled vehicles if not adequately notified in advance. Although there would remain impacts from the passage of motorised vehicles, these could potentially be addressed by identification of times and stewardship and monitoring and review. The narrowness of the route remains an issue as does its routing and more information would be required on the nature and timing of such trials.

36. The consultation process has highlighted the nature of use by recreational motorised vehicles along this route in that there are at this current time no proven rights nor a right to use as a through-route. Continued use by mechanically propelled vehicles on this route has an adverse impact on the significant ecological, archaeological and landscape interests, the amenity and recreational value of the area and the special characteristics of the route.

### **Summary**

37. Leaving aside the legal status of the public's rights over the route, a key issue is the extent to which it is necessary to restrict mechanically propelled vehicles to address the impacts arising from the hearing, meeting and seeing of recreational motor vehicles, or their passage, or the works required to manage that use.
38. Mechanically propelled vehicle use of the route impacts on the natural beauty and amenity of the National Park in the following ways:
- Loss of vegetation adjacent to the route
  - Damage to the surfacing of the route
  - Disturbance to the watercourse and the drainage
  - Impact on the setting and the significance of nationally designated and undesignated cultural heritage assets
  - Visual impact of vehicle movement in the landscape
  - Noise impact on wildlife and people
  - Deterrence of use by non-MPV users from presence or anticipation of vehicles
39. Although these factors indicate that a TRO may be appropriate, information obtained during the consultation process suggests that there is a no through route for mechanically propelled vehicles along the section of the route recorded as a public footpath (it is an offence under s34 of the Road Traffic Act 1988 to drive a vehicle without lawful authority on a footpath), and that the rights for motorised vehicle use on the rest of the route are unproven. Therefore it is not considered expedient at this time to proceed with the making of a TRO on this route, but a TRO could be pursued where the evidence shows that issues arising from continued vehicular use persist and that the Authority has power to make a TRO over the affected sections(s) of the route.

### **Proposal**

40. The boulders and signage on site effectively limit the width of vehicles accessing the route. However the fact that a public footpath runs along part of the route and the route is a no-through route for vehicles is to be publicised in an attempt to address the continuing use and the impacts arising from that. Enforcement will be undertaken in consultation with the Highway Authorities and the police over signage and barriers and having regard to the character of the route and impacts on the special qualities of the National Park. Monitoring will be reported as part of the Authority's annual action planning to the March meeting of this committee. If further investigations or clarification of rights require issues to be managed prior to then a further report and recommendations will be taken back to this committee.

41. On this basis and on the evidence and consultation responses and duty under s122 it is proposed that the Authority defers action on proceeding with a traffic regulation order on the route at this current time.

**Are there any corporate implications members should be concerned about?**

42. **Financial:**  
The Authority budget planning (for 2014-15) included increased resources for this area of work in addition to delivering other action relating to the management of recreational motor vehicles and provision has been made to extend this until March 2016. 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.
43. The Authority's Resource Management Team have a standing item on their agenda to monitor external legal costs in relation to TROs.
44. **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.
45. There is a risk that enforcement and prevention of illegal use will not be wholly effective. There will be a need to monitor and review over the longer-term. Physical measures and signage may be the target of vandalism and may need regular replacement.
46. **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.
47. **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.
48. **Background papers:**  
None

**Appendices**

The following documents are appended to this report:

1. Map of the route
2. Summary of the conservation interest
3. List of consultees
4. Consultation responses
5. Grounds for making a TRO

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

Sue Smith, Rights of Way Officer, 10 September 2015