

Committee: ACCESS
Date: 25 October 2007

Report: NATIONAL PARK AUTHORITIES'
TRAFFIC ORDERS REGULATIONS 2007 SI 2007 No 2542

Purpose of this Report

1. The purpose of this report is to consider the commencement of section 72 of the Natural Environment and Rural Communities (NERC) Act 2006 and associated Regulation and Guidance. (This gives powers to National Park Authorities (NPAs) to make Traffic Regulation Orders (TROs)). Specifically the implications, for the Authority, in relation to:
 - procedures for using the new powers, considered at the Access Committee meeting on 19 April 2007.
 - the current policy framework 'Management of the use of green lanes (unsealed routes) in the Yorkshire Dales National Park – November 2006';

Strategic Planning Framework

2. The information and recommendation(s) contained in this report are consistent with the Authority's statutory purposes and its approved strategic planning framework.
 - **National Park Management Plan**
AR2. Identify the most appropriate measures to manage the use of motorised recreational vehicles on each sensitive 'Green Lane', and put all such measures in place by 2011.
 - **Integrated Access Strategy**
AS3 Safeguard the National Park from overall or irreversible damage through inappropriate activity and minimise conflict between different users:
 - (a) Use existing legislation and guidance to limit inappropriate activity in the National Park, including supporting and encouraging the Police Authority in controlling illegal and anti-social use.
 - (b) Work with the County Councils and users to explore, identify and implement appropriate management of green lanes on a regional basis.
 - (c) Work with landowners, farmers, users and user groups to try and resolve any actual or potential conflict through positive visitor management.
 - AS4 Maintain the quality, diversity and scope of the National Park's recreational assets: Consider each recreational activity in terms of where it should take place, in what volume and at what time. It must be recognised, though, that in many situations we have no legal means of control and so can only do so through education and encouraging users' voluntary restraint.

Background

3. The National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007 have now been issued and came into effect on 1st October 2007. This enables the Yorkshire Dales National

Park Authority to make TROs using powers under sections 22BB and 22BC of the Road Traffic Regulation Act (RTRA) 1984. These powers were introduced by Section 72 of the Natural Environment and Rural Communities Act 2006, and enacted through The Natural Environment and Rural Communities Act 2006 Commencement Number 1 Order 2007. A copy of the Regulations (Statutory Instrument) can be found at www.opsi.gov.uk/si/si2007/20072542.htm and the Guidance pertaining to these Regulations at www.defra.gov.uk/wildlife-countryside/issues/public/npguid-tro.pdf .

4. These new powers will enable National Park Authorities to make TROs within a National Park on roads (or ways) which are shown on the definitive map and statement as public footpaths, public bridleways, restricted byways and byways open to all traffic and other carriageways with a predominantly unsealed surface. The TRO may be permanent (of unlimited duration), experimental or temporary.

About the Legal Procedure outlined in the Regulation

Permanent TROs

5. Before publishing the Regulations and Guidance the Government set out its intended approach to the new powers in the Defra consultation document 'consultation on the power for National Park Authorities to make Traffic Regulation Orders.' The Authority's response to this document was considered by the Access Committee on 19 April 2007. At this meeting Members also considered the processes and procedures for making a TRO, together with the role of the Yorkshire Dales Green Lanes Advisory Group (YDGLAG). As anticipated in this earlier report, the National Park Authority Regulation does require a 4 stage process when making a traffic regulation order:

1. **Consultation before publication of proposals (Part 2 Section 4)**

This is consultation on the possibility of making an order and consideration of those consultation responses before publishing a notice - no statutory period for consultation stated in the Regulation. (For list of statutory consultees to be consulted see **Annex 1**).

2. **Publication of proposals (Part 2 Sections 5 and 6)**

Publishing a notice, and send the notice to consultees, (and reasons for proposing an Order, a copy of the draft Order to be made, to be made available for public inspection for six weeks). Regulation requires a minimum of 21 days for representation after all notices displayed.

3. **Considering representations (Part 2 sections 7 and 11(1))**

Before deciding whether to make an Order the Authority must consider all of the representations received, and then decide whether to still make the Order. The Authority could decide to call a public inquiry at this stage.

4. **Making the Order**

Finally making the Order a minimum of one month after publishing notice of its intention.

6. At the April 2007 meeting, Members also agreed to recommend to the Authority that the 'Scheme of Delegation to Committees and Officers' be amended to authorise the Head of Park Management to undertake consultation in relation to stage 1 - the possibility of making a TRO, before publication of a formal proposal without referring to the Access Committee. Consideration of the response to this initial consultation, together with the advice of the Green Lanes Advisory Group, will then be brought to the Access Committee for decision on the next stages of the process. The Authority accepted the amendment as proposed at its meeting in May 2007.

7. The April Access Committee paper included a flowchart based on the then current Regulations, and Members asked that this be up-dated to include the YDGLAG. As it was noted at this time that the existence of the Advisory Group had inserted another informal 'tier' of consultation ahead of the statutory process. **Annex 2** shows the up-dated flowchart based on the National Park Authority Regulation and Guidance, with YDGLAG added, and the 'case conference' of officers to consider the YDGLAG advice before deciding whether to consult at Stage 1 under the delegation scheme.

Temporary and Experimental TROs

8. The Regulation also includes a power to make Experimental and Temporary TROs. At the present time Temporary TROs are most often used for health and safety reasons, to allow physical 'works' to a route to be undertaken, and for the route to stabilise afterwards. The Authority currently may make temporary TROs under powers delegated to it by the Highway Authorities. There is no requirement under these delegated powers to consult any other bodies. However should we wish to make a Temporary TRO under part 4 of the National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007, we must consult the Local Access Forum, Parish Council, Highway Authority and, in some circumstances, Natural England. The statutory consultation period for temporary TROs under these Regulations is 'not less than 7 days'.
9. Changes to the delegation scheme, in anticipation of the new powers, were introduced as described in paragraph 6 above. The additional power to make temporary orders under the new regulations requires further consideration. At present the Authority's delegation scheme enables the Head of Park Management to carry out the responsibilities of the Authority contained within the Highway Authority agency agreements with NYCC and CCC. Whilst it is likely that most temporary orders will continue to be made for the purposes of repair and therefore done under the existing agreements with the Highway Authorities there may be instances when the Authority will wish to use its new powers. Given the timescales usually needed for temporary orders and the 7 day statutory consultation it is considered that the delegation scheme needs to be amended to enable the Head of Park Management to make temporary TROs under powers given to the Authority by S72 of NERC Act 2006.

About the Guidance

10. The Guidance, accompanying the Regulation, is aimed primarily at National Park Authorities who are considering making traffic regulation orders (TROs) using their powers under sections 22BB and 22BC of the Road Traffic Regulation Act (RTRA) 1984.
11. The background to the Guidance states 'that these powers are part of a package of measures introduced by Government to help control excessive or inappropriate use of mechanically propelled vehicles away from the ordinary roads network. However the National Park Authority will be able to use these powers to regulate all forms of traffic in a wide variety of circumstances, and are not limited to tackling problems specifically related to use by mechanically propelled vehicles. TROs can restrict all or certain specified types of users. They can restrict use to certain times or certain seasons, or ban use altogether where there is a serious problem and can be used to prevent problems from happening, not just stopping a problem once it has already occurred. If a National Park Authority identifies a TRO as a possible management option, the next stage is to consult with all relevant bodies and organisations listed in Schedule 1 of the Regulations, this includes the Local Access Forum. A National Park Authority would need to demonstrate a reasonable risk that the situation it was intended to prevent would arise.'
12. It is pleasing to see that many of the Authority's comments have been picked up in the Guidance and that the Government recognises the importance of this power to National Park Authorities in

pursuing their two statutory functions. Emphasis is placed on National Park Authorities having this power to conserve both the 'amenity' and 'natural beauty' of a National Park, and attention is drawn to two parts of the Road Traffic Regulations Act (RTRA) 1984 which are seen as particularly relevant, given the statutory purposes of to National Park Authorities:

- (s1(1)(f) RTRA84) enables a TRO to be made when it is expedient for preserving or improving the amenities of the area through which the road runs, and
- (s22(2) RTRA84) enables a TRO to be made 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.

13. Once a TRO has been made, there must be the correct on-site signage. The Guidance recognises that in some remote locations the standard traffic signs could be intrusive, but there is no 'blanket' dispensation for NPAs to be able to use smaller than normal road traffic signs. It is up to each individual Authority to apply for dispensation to use smaller signs, on a case by case basis.

The Authority's Policy Framework for Implementation

14. The Authority has been expecting the commencement of section 72 of the NERC Act for sometime. As such it has already put in place its 'policy framework' – the management of the use of 'green lanes' in the Yorkshire Dales National Park - following extensive consultation in 2006. This framework outlines factors that need to be considered in evaluating the impact of recreational motor vehicles on green lanes in the Yorkshire Dales including:

- Considerations relating to national park designation;
- The ecological sensitivity associated with the route;
- The heritage of the route and its surroundings;
- Conflict between recreational user groups;
- Concerns of local residents and landowners/managers;
- The durability of the route;
- The condition of the route;
- The uses of the route.

15. Possible options for management of individual routes, identified in the framework, include:

- Do nothing
- Repair the route
- Maintain the route
- Seek voluntary restraint on use of the route from specified users
- Place legal restriction (traffic regulation order – TRO) on use of route from specified users
eg:
 - Limit use of the route to a specified number of users each month (a permit system)
 - Seasonal restriction on use (preventing use at specified times of year)
 - Other partial restriction (eg preventing use for certain number of days or at certain times of day)
 - All year round restriction on use

16. The framework was approved by Access Committee in August 2006, subject to comments from NYCC (which resulted in a slightly amended version being produced in November 2006). Despite the framework having been produced ahead of the statutory Guidance it is still in accordance with it. As the Guidance emphasises the need to manage green lanes in accordance with National Park Authority statutory purposes, and the special qualities of the area, and this is already at the

heart of the framework. However it is suggested that to bring the framework up-to-date, now the Guidance has been published, the following changes should be made:

- the National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007; and Guidance pertaining to it should be mentioned in sections 1- 5 and Appendix 4, where appropriate;
- the new National Park Management Plan 2005-2010 (approved after the framework was drafted), should replace reference to the National Park Management Plan (2000-2005) in section 1;
- reference to the Authority's 'sensitivity assessment' should be added in Appendix 3. The sensitivity assessment builds on the Vulnerability Mapping process developed in North Pennines. The findings of this methodology were outlined in a paper to the Access Committee in January 2007.

What else has been done so far?

17. Following the Access Committee in May 2006, the LAF were asked to help set up a balanced group, (now called the Yorkshire Dales Green Lanes Advisory Group), to advise the Authority on the management of green lanes. It was recognised that engagement with those who use and have an interest in the management of green lanes was fundamental to the 'on the ground' success of the framework and the implementation of the NERC Act. Further details of the Yorkshire Dales Green Lanes Advisory group were given to the Access Committee in August 2006.
18. As Members are aware from the paper to the Access Committee in January 2007, the first advisory group meeting was held in November 2006. This considered the desktop 'sensitivity' mapping process, which provided a 'sieve' to identify 'sensitive' routes with rights for mechanically propelled vehicles and those with possible, but as yet, unproven rights. The outcome of this sensitivity assessment was reported to the Access Committee on 25 January 2007. The YDGLAG has now met a further three times and considered more detailed assessment reports for 15 sensitive routes (see **Annex 3** for a brief outline of how a detailed assessment report is compiled).

Next steps

19. It is anticipated that consultation on the first routes to be considered for a TRO under Part 2 section 4 of the Regulation (ie stage 1 outlined above) under the Authority 'Scheme of Delegation' will be undertaken in November/ December 2007, with responses being considered by Access Committee in January 2008. The DEFRA guidance stresses that we consult 'before the mind of the decision maker has become unduly fixed' and that the consultation is a genuine opportunity for consultees to comment, not just a box ticking exercise. As part of this consultation process consultees will be sent a copy of the detailed route assessment report for the individual route as background information.
20. Consultees will be given 21 days to respond (it should be noted that the Regulation does not state a period for response – but 21 days is suggested because of precedents elsewhere in the Regulation).
21. The consultation responses, under section 4, on the possibility of making a TRO, together with the YDGLAG advice, Head of Park Management view under the scheme of delegation and detailed assessment report will be considered at the Access Committee on 17 January 2008. Here Members will decide whether there are grounds for making a TRO and whether the consultation should proceed to stage 2 (section 5 of the Regulation) and a notice of proposals be

formally published. At this stage Members' minds should still be open to all of the possible management options outlined in the policy framework document. The Solicitor's report to the July Access Committee, advised Members on the issues of pre determination and Code of Conduct in the context of decision making in respect of TROs.

22. Members must consider all representations made under section 5, and only then can it formally be 'decided' to make a TRO. Representations under section 5 of the Regulations will be considered at the Access Committee in April 2008.

Staffing Implications

23. It takes 75 hours spread over 135 days to make an uncontested Traffic Regulation order. However this figure does not allow for much of the preparatory work required ahead of this decision. Implementing the new power involves the Head of Park Management, the Solicitor, Access and Recreation Manager, Access Officer, Senior Definitive Map Officer, Access Technician, and Rangers which equates to approximately 2.5 fte. Work has been re-arranged across the Park Management Department to reflect the status of 'Green Lanes' as a priority area of work.

Financial implications

24. The cost of making an uncontested Traffic Regulation Order, based on advertising in a local newspaper, statutory consultation etc is approximately £2000 for each TRO. Budget allocation has been made to cover the expected costs.

Conclusion

25. The Natural Environment and Rural Communities Act 2006, Section 72 sets out new powers for National Park Authorities, which will amend the Road Traffic Regulation Act 1984. The Authority has been keen to see the introduction of these powers and has undertaken a lot of work in preparation for the commencement of Traffic Regulation Order powers, and procedures are already in place to implement these new powers.

RECOMMENDATION

26. It is recommended that:

- (a) The Green Lanes framework is amended to take account of changes since it was first published - as outlined in this report;
- (b) It be recommended to the Authority that the delegation scheme be amended to authorise the Head of Park Management to make temporary TROs pursuant to powers given to the Authority by S72 of NERC Act 2006.

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Access and Recreation Manager

11 October 2007

Background papers:

Reports to Access Committee on

11 May 2006 management of the use of 'green lanes'

10 August 2006 management of the use of 'green lanes' in the Yorkshire Dales National Park -
response to the consultation

25 January 2007 Yorkshire Dales Green Lane Advisory Group

19 April 2007 management of green lanes and Yorkshire Dales green lanes advisory group advice

19 April 2007 Proposed Regulations and making Traffic Regulation Orders

26 July 2007 Decision Making – Issues of Pre-determination and Code of Conduct

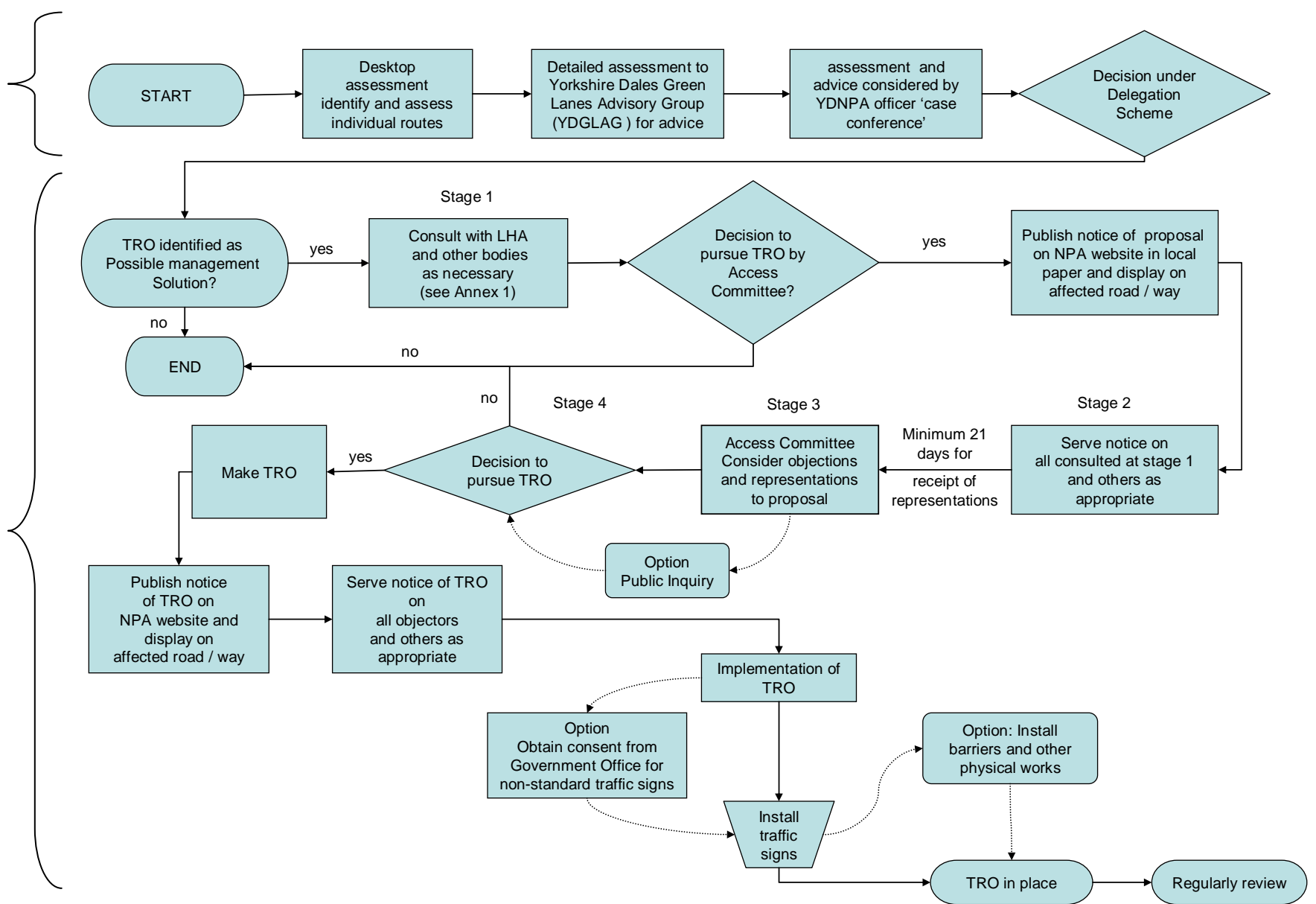
Statutory consultees

Table 1. List of Organisations and Bodies proposed to be consulted on / notified of TROs.		
<i>Person</i>		<i>Cases in which consultation is required</i>
1	The highway authority for the area in which the road is situated.	In all cases
2	The appropriate Crown authority	Where the proposed order relates to or appears to the National Park authority to be likely to affect traffic on a Crown road.
3	The fire and rescue authority for the area in which the road is situated.	Where it appears to the National Park authority that the order is likely to affect the passage on any road of fire fighting vehicles.
4	The NHS trust or NHS foundation trust providing an emergency ambulance service for the area in which the road is situated.	Where it appears to the National Park authority that the order is likely to affect the passage on any road of ambulances.
5	The chief officer of police for the area in which the road is situated.	In all cases
6	The parish or town council for the area in which the road is situated.	In all cases
7	Any local access forum for the area in which the road is situated.	In all cases
8	Auto Cycle Union #	In all cases
9	British Driving Society #	In all cases
10	British Horse Society #	In all cases
11	Byways and Bridleways Trust #	In all cases
12	Open Spaces Society #	In all cases
13	Ramblers' Association #	In all cases
14	Cyclists' Touring club #	In all cases
15	Land Access and Recreation Association #	In all cases
16	Natural England	Where the order relates to a road which is within or partly within an SSSI.
17	Campaign to Protect Rural England #	In all cases
18	National Farmers Union #	In all cases
19	Country Land and Business Association #	In all cases
20	Council for National Parks #	In all cases
21	Such other body representing persons that the National Park authority considers are likely to be affected by any provision in the order	In all cases which the National Park authority considers appropriate

#Consultations and notifications may be addressed to a local representative for the area in which the route affected by the order lies, where such a local representative has been notified to the NPA for this purpose.

Non-statutory process with interest groups - to understand views at an early stage

Regulation Statutory Process (in four stages, with diamonds showing key decisions)



Sensitivity assessment (for further information see report to Access Committee – 25 January 2007)

The routes that have been assessed initially, using a desktop approach, are unsealed routes which were believed to have possible or proven rights for recreational motor vehicles, and which were identified as having some recreational motor vehicles use, in 2005, by ranger service staff. There were many other unsealed unclassified county roads in the National Park which have little or no recorded use by recreational motor vehicles. These latter routes had been assessed and found to have low sensitivity.

Many routes which are currently shown on the Definitive Map, and have been used by recreational motor vehicles, and are considered 'sensitive' to such use, eg Occupation Road, Dent, have had any public motor vehicular rights that may have existed, extinguished, through the NERC Act. As such these were excluded from the assessment; the list of routes that have been assessed for their 'sensitivity' included few public rights of way, with the majority of the routes being those shown on the list of streets only.

Results of the desktop mapping process was as follows:

- 102 routes with possible or proven rights for motor vehicles were studied
- 24 are potentially highly sensitive
- in addition to the 24 above the four routes currently covered by a NYCC TRO had all been assessed as 'sensitive'.
- 23 have a moderate or unknown sensitivity
- 51 have a low sensitivity

The second stage of the process, and the subject of reports to the Yorkshire Green Lanes Advisory Group, is to look at the routes which were identified as 'sensitive' in terms of the effect of recreational motor vehicular use on the enjoyment of special qualities of the National Park.

The reports pull together all available evidence, and the factors being considered as part of the assessment include:

- the location of the route, status and history;
- the nature of the route's topography and drainage;
- ecologically sensitive sites along, or close to it;
- archaeological sites on the route or close to it;
- details of any comments and complaints made/received – with details of when and by whom to whom (as far as possible);
- levels of use of the route by walkers, horse riders, cyclists and motor vehicles and other users eg agricultural vehicles, and when this use occurs;
- Any changes in the use by motor vehicles or other users, in recent years;
- the effect of current use on the local community;
- the effect of current use on and land owning or management interest;
- surface condition of the route and assessment of the risk of deterioration of the routes surface from the use of recreational motor vehicles and/or other users;
- the importance of the route as part of the rights of way network; and
- the effect of current use on the special qualities of the National Park particularly the landscape and peace and tranquillity.

As part of the process of gathering information, key individuals and interest groups have been consulted, these include:

- The Parish Councils along the route

- Landowners and farmers along the route
- User groups: Ramblers' Association, British Horse Society, International Mountain Bike Association, Carriage Drivers, North Yorkshire Trail Management Advisory Group.

These consultees were also asked for their views on a range of possible management options (as outlined in the Green Lanes Framework) together with any evidence they had to support this view. It was made clear to consultees that this would be considered by the Advisory Group, but that any management solution proposed would need to be 'evidence' based.