



Lake District  
National Park

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**FUTURE MANAGEMENT OF UNSEALED SECTIONS OF  
PUBLIC ROADS U5001 HIGH TILBERTHWAITE TO FELL  
FOOT, AND U5004 HIGH OXEN FELL TO HODGE CLOSE**

**LAKE DISTRICT NATIONAL PARK AUTHORITY  
RIGHTS OF WAY COMMITTEE REPORT  
8 OCTOBER 2019**

**ASSESSMENT REPORT**



## **FUTURE MANAGEMENT OF UNSEALED SECTIONS OF PUBLIC ROADS U5001 HIGH TILBERTHWAITE TO FELL FOOT, AND U5004 HIGH OXEN FELL TO HODGE CLOSE ASSESSMENT REPORT INTRODUCTION**

These routes are both public roads, partly tarmac and partly unsealed. As such pedestrians, horse riders, cyclists, motorcyclists, and motorists can use their whole length.

During the past 20 years or so, motor vehicular usage of both these roads has increased. At the same time, minor maintenance of the surface and drainage appears to have declined, and there have been at least three severe weather incidents (2005, 2009, 2015). The combination of all this has led to a deterioration in the surface of the Tilberthwaite road in particular, to a degree where some agricultural traffic was having difficulty in accessing the land for farming purposes.

In 2017 we initiated a project in conjunction with Cumbria County Council (responsible for these roads as highway authority) and the National Trust (who own the farms and surrounding land) to establish the most appropriate long term management solution including assessing the relevance of a Traffic Regulation Order (TRO).

The consideration of a TRO must be informed by evidence and we have collected evidence from all types of road users; information on levels of use; the impact of motor vehicular use on their enjoyment of the roads and the area, and the impacts on aspects such as natural beauty, tranquillity and amenity. We have also completed practical works to repair the Tilberthwaite Road followed by subsequent monitoring of the surface of both roads. This report is the conclusion of the project.

The main options are:

- a. Do nothing
- b. Maintain the surface, but do nothing else
- c. Prohibit all motor vehicles (except agricultural / emergency / service)
- d. Prohibit some motor vehicles, or for some activities (such as commercial operators), or in certain circumstances (such as during winter, or one way)
- e. Develop a Partnership Management Group (consensus working)

**The main decision that Members have to make is: Does the evidence show that recreational motor vehicular use of these two unsealed roads is so inappropriate and unacceptable that it should be prohibited?**

**And if traffic is not prohibited, then which other option is the most appropriate.**

Our recommendation is that the evidence supporting the grounds for prohibition through a TRO is not conclusive, and as we have not exhausted other management options to see whether any conflict is reconcilable, options other than making a TRO are more appropriate at present.

This is only a recommendation, and the decision is with Members of the Rights of Way Committee to make. Members may consider the recommendation is not appropriate based on the evidence, and may agree a different option for route management. If such an option included a TRO; the decision would have to be based on the grounds for an order being met. If this was the case, the exact proposal, reasoning for the proposal, and the relevant grounds on which any prohibition should be made, and how these grounds are met, must be agreed within the committee meeting, so that staff can make the required order, and defend it against any potential challenge.

**FUTURE MANAGEMENT OF UNSEALED SECTIONS OF PUBLIC ROADS U5001 HIGH TILBERTHWAITHE TO FELL FOOT, AND U5004 HIGH OXEN FELL TO HODGE CLOSE - ASSESSMENT REPORT**

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\*\*Please note that any emails, petition threads, social media site comments and so on, have been downloaded or copied exactly as they were sent/posted without any amendments being made by us.

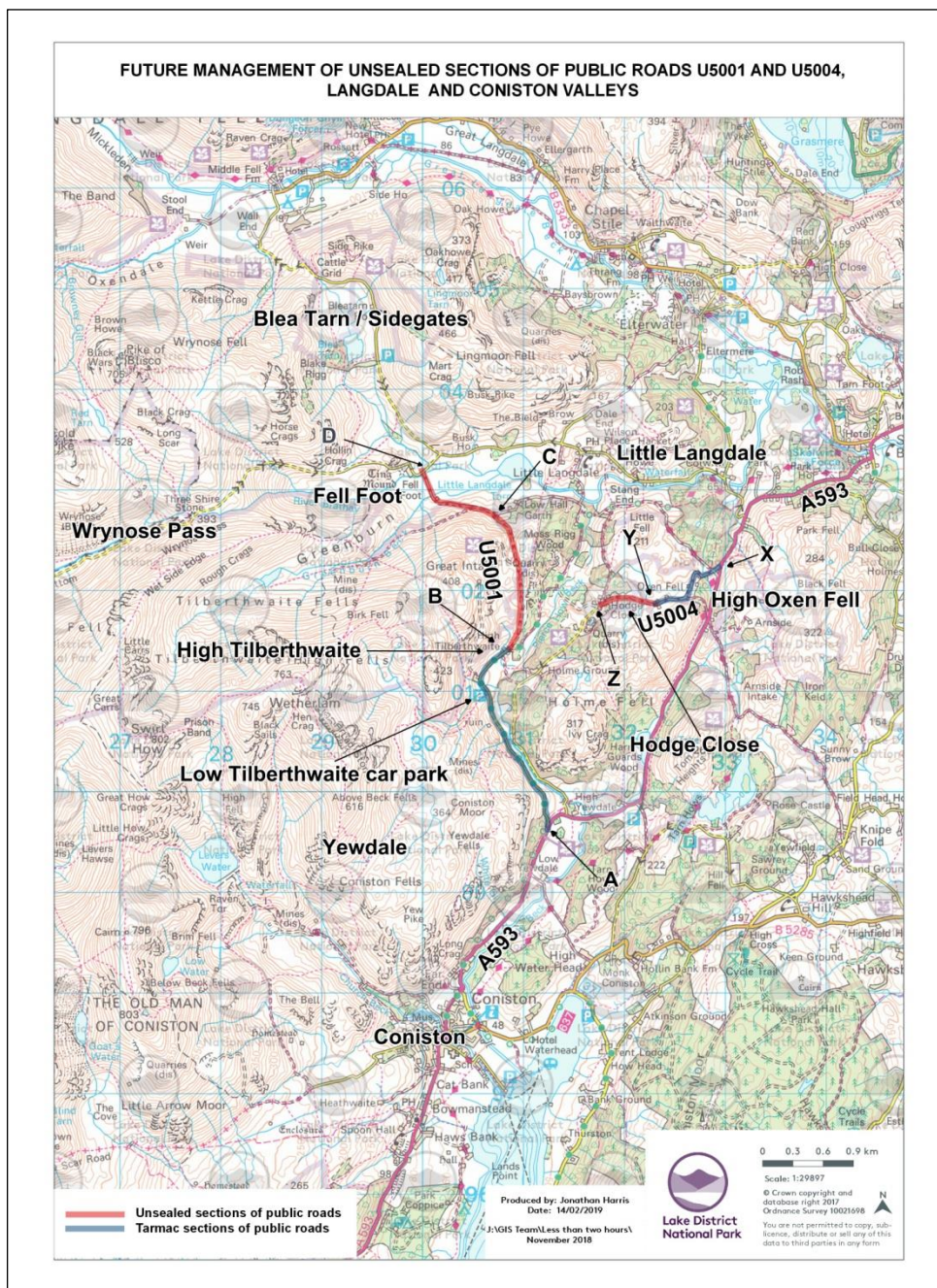
**BACKGROUND**

**1 Background**

**1.1 Location of the two roads**

1.1.1 The two roads concerned are shown on the map below in red/blue (larger format map is at Appendix 1.1):

- Public road U5001: “*Tilberthwaite*”. This road runs between the A593 at Yewdale and Fell Foot, Little Langdale (A-D), and the section we are concerned with is northwards from High Tilberthwaite (B-C-D [red] on the attached map).
- Public road U5004: “*High Oxen Fell*”. This road runs between the A593 south of Colwith, and Hodge Close (X-Z), and the section we are concerned with is west of High Oxen Fell (Y-Z [red] on the map).



### 1.1.2 Glossary, definitions and abbreviations used within this report:

- 4WD / 4x4 – four wheel drive vehicles / Landrovers, for example
- FP / BW / BOAT – Footpath / Bridleway / Byway Open to All Traffic
- GLEAM – Green Lanes Environmental Action Group
- HoTR – Hierarchy of Trails Scheme
- Kankku – a commercial company running 4WD trips in the Lake District
- LARA – Land Access and Recreation Association
- LDNPA – Lake District National Park Authority
- MPV – Mechanically Propelled Vehicles
- NERC - Natural Environment & Rural Communities Act 2006
- OUV – Outstanding Universal Value
- SLD Campaign – Save the Lake District Campaign
- TMAG – Trails Management Advisory Group
- TRF – Trail Riders Fellowship
- TRO – Traffic Regulation Order
- YDNPA – Yorkshire Dales National Park Authority

## 1.2 The issue in brief

1.2.1 Motor vehicular usage of both these roads has increased over the last 20 years. At the same time, minor maintenance of the surface and drainage appears to have declined, and there have been at least three severe weather incidents (2005, 2009, 2015). The combination of all this has led to a deterioration in the surface of the U5001 in particular, to a degree where agricultural traffic was having difficulties in accessing the land for farming purposes.

1.2.2 A campaign group, [Save the Lake District<sup>a</sup>](#), has asked us to make a Traffic Regulation Order (TRO) prohibiting motor vehicles on the unsealed portions of these roads. As a National Park Authority, we have been granted powers to prohibit traffic on unsealed public roads of this nature. (*Full web page links are provided as endnotes*).

1.2.3 Imposing a prohibition is not a simple matter. The campaign group have referred to the Yorkshire Dales and the North Yorks Moors National Parks where more TROs are in force – but the situations in all three National Parks is different with regard to special qualities, existing policies and management strategies, ground conditions and so on. It should be noted that although both National Parks have made TROs on some roads (as have we), there are many more unsealed roads on which they have not prohibited vehicles. For instance there are twelve TROs in the Yorkshire Dales National Park; but the YDNPA identified 102 routes with proven or presumed vehicular rights, 55 of which had known MPV usage. There are no TROs on the remainder of these routes.

1.2.4 There are currently four TROs in force on unsealed roads in the Lake District, the most recent one dating from 2004 (Gatescarth Pass). We have a total of around 75 sections of unsealed public roads and byways open to all traffic in the National Park, with a combined length of 120.6km (it is difficult to be precise with actual numbers of routes as some have more than one road or path number, whilst others are very short links).

1.2.5 A TRO is a mechanism to suspend people's rights to use a route or control the way they use a route either permanently or temporarily and wholly, or in part. As removing the rights of people is a significant issue, any decision to do so must be based, as far as is practicable, on robust evidence.

- 1.2.6 Some people believe that as over 300,000 members of the public have signed a petition, and many people have made comments on the campaign website and direct to us – we should be making a TRO immediately. But we have to assess these comments, as we can only robustly consider making a TRO with evidence specifically relating to these two routes rather than generic comments on vehicles in the countryside.
- 1.2.7 Our investigation cannot be limited solely to motor vehicles, as the ability to prohibit traffic extends to all types of traffic. Until the recent campaign here, in the last ten years or so anecdotally we received more complaints from walkers about mountain biking impacting upon their enjoyment and creating a perception of danger than we did about motor vehicles.
- 1.2.8 As a result of the request to impose a TRO, we planned a comprehensive project to monitor and survey the roads over time; collate the numbers and types of users of the roads over time; and to find out the attitude of different user types to each other. We designed this process to be robust and complete; which is important, as a decision to apply, or not apply, a TRO on the roads may reviewed through the courts. We have followed this plan to the stated timescales.
- 1.2.9 In addition to this, many of the comments have focussed on the damage to the surfaces of the routes. As part of the project, the surface of the U5001 has been repaired, and the surface of the U5004 is being monitored (no repairs were / are considered to be required). The impact of vehicles using the new and unrepaired surfaces forms part of our consideration, and obviously this could not have happened until the works had been carried out.

### **1.3 Public status of the two roads**

- 1.3.1 They are both public through roads, with around half of their length being tarmac, and half being unsealed (that is: not tarmac covered). Both tarmac and unsealed sections are covered by the same highway legislation as other public roads such as Wrynose Pass and the A593 or the A6. They are maintained by Cumbria County Council. Although the roads are part tarmac, and part unsealed, we are being requested to restrict motorised traffic only on the unsealed sections.
- 1.3.2 No legal process has formally been undertaken to determine who precisely can use either the tarmac and unsealed portions of these roads, this would be decided by the historic nature, usage and the effect of legislation and case law. Although the SLD Campaign have raised a query as to whether there are public motor vehicular rights over these two roads, it doesn't actually appear to be in much doubt.
- 1.3.3 The public have been using these roads with motor vehicles (cars and motorbikes) for an unknown time. The previous tenant of Tilberthwaite Farm has mentioned occasional cars and more motorbikes using it from the 1960s, we definitely know there was MPV usage in the 1990s. There has been greater public vehicular use of most of the tarmac section of the Tilberthwaite Road (A to Low Tilberthwaite Cottages) than over the unsealed section north of the farm (B-C-D), and so there is greater certainty there. The situation with regard to the tarmac part of the High Oxen Fell Road (X-Y) is less certain, as public traffic (rather than traffic going only to High Oxen Fell Farm, point Y) has probably mainly been through traffic (X-Y-Z) – and so it is likely that whatever public rights apply to X-Y also apply to Y-Z.

- 1.3.4 Both roads have been recognised as part of the minor road network of the area for an extremely long time. They are shown as roads on maps such as [as Yates' map of Lancashire from 1786](#)<sup>b</sup> and [Greenwood's Map of 1824](#)<sup>c</sup> (see also Appendix 1.1, and pages 33-37 in Appendix 2.1). The U5001 was described as an Ancient Highway in an 1857 enclosure award, and the U5004 was set out as a public highway in a separate enclosure award.
- 1.3.5 They have been listed on the county highway maps since at least 1929 (these maps did not include footpaths or bridleways, only roads). They are currently included on Cumbria County Council's 'List of Streets', which is a list kept by them under section 36 of the Highways Act 1980 of the highways maintained at public expense. This [list is publicly available here](#)<sup>d</sup> and the actual routes can be seen on [CCC's interactive map here](#)<sup>e</sup>. Again, this is a list of roads rather than footpaths or bridleways (although there are a few cross-overs).
- 1.3.6 It is almost certain that there is a public right of access with mechanically propelled vehicles (MPVs) over the entire lengths of both routes.
- 1.3.7 There is sometimes a misperception amongst users and members of the public that the unsealed sections of these roads are footpaths or bridleways. They are not, but obviously pedestrians, cyclists and horse-riders can use them, and make up the majority of the users.

#### 1.4 Context of these two roads within the rights of way and access network

- 1.4.1 In the Lake District National Park, there are just under 3,300km of unsealed public minor roads, byways open to all traffic, restricted byways, bridleways and footpaths. There are legally established, or presumed, motor vehicle rights on around 120.6km of these<sup>1</sup>. That's about 3.7% of the linear network.
- 1.4.2 Put in context, the public rights of way and linear access routes available are:

Type of User	Length (km)	Percentage
Walkers	3281.9	100.0%
Cyclists & Horse-riders	1073.6	32.8%
Carriage Drivers	150.8	4.6%
Motor Vehicles	120.6	3.7%

- 1.4.3 The unsealed section of the Tilberthwaite Road (B-D) is 2.5km, and the unsealed section of the High Oxen Fell Road (Y-Z) is 0.59km long. The combined length of around 3.1km of road is 0.09% of the unsealed linear network.
- 1.4.4 In addition to the legal rights of way, there are many permitted access routes for walkers and riders. We do not have exact knowledge of all of these routes which are offered to the public by landowners – but they can be found around the National Park, often on land owned by bodies such as the National Trust, United Utilities, and the Forestry Commission.
- 1.4.5 There is also statutory open access land, available for access on foot (and in places, on horseback and possibly cycling). This covers 51,789ha within the National Park.

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<sup>1</sup> This comprises all Byways Open to All Traffic, and those unsealed public roads that have not also been recorded as public rights of way on the Definitive Map of Public Rights of Way.

- 1.4.6 The 120.6km of the unsealed motor vehicular routes do not all run through open access land, and we have calculated that approximately 4,284ha (8.3%) of open access land lies within 0.5km of an unsealed motor vehicular route.
- 1.4.7 189ha of open access land (0.36% of the total) lies within 0.5km of the two unsealed roads under discussion.
- 1.4.8 The Rights of Way and open access land can be seen on [Ordnance Survey Maps](#)<sup>f</sup> of the area.

## 1.5 Reasons cited for the request to prohibit vehicles using TROs

- 1.5.1 The reasoning behind the requests is set out by those requesting a TRO in a [petition](#)<sup>g</sup> and on the [website](#)<sup>h</sup>. The issues of concern raised by campaigners are:
- Increasing vehicular usage over the last 15+ years;
  - Levels of use are damaging the surface of the roads;
  - Damage is such that farming is becoming unviable, and the local farmer(s) can no longer access their land easily or safely;
  - Levels of use (and an increase in use) have a negative impact on the amenity, natural beauty, and tranquillity of this area,
  - Levels of use (and an increase in use) negatively impacts the ability of most users to enjoy this area of the National Park;
  - The levels of use are impacting upon the Outstanding Universal Values for which the Lake District has been designated a World Heritage Site.
  - MPV usage create conflict between types of user.
  - This conflict with vehicular use contravenes the Sandford Principle.

## 1.6 2017-2019 Project

- 1.6.1 In 2017 we initiated a project to look at the future management options for these two unsealed roads. In autumn 2017 we produced a detailed timetable for the project.
- 1.6.2 We have delivered this project in conjunction with Cumbria County Council (the Highway Authority) and the National Trust (who own the farms and surrounding land). This report and the subsequent decision at the committee meeting will be the end of this project, but will trigger a new project to implement the decision made by committee.
- 1.6.3 A key piece of work was the repair of the Tilberthwaite Road, and the previous tenants of Tilberthwaite (from 1960) know of no similar work being done within their time at the farm. There are certainly no records within our organisations of the route being repaired to this level before. The practical work cost around £50,000, mainly funded by Cumbria County Council, with £10,000 being provided by the National Trust. We provided a large amount of staff time overseeing the work (at least 30 days). Photographs of some of the improvement works (before and after) are in the briefing note at Appendix 1.2.

- 1.6.4 To put this into context, we have just completed a £3 million project to repair some of the rights of way network following damage caused by Storm Desmond in December 2015, and are currently overseeing a £7.9 million project to repair the Keswick Railway Path damaged in the same storm. Individual bridges can cost in the region of £50,000, and the [Fix the Fells](#) <sup>i</sup> projects have spent many millions over the last decade or so repairing erosion scars caused by a combination of walkers, land management practices, and weather.
- 1.6.5 Another major element of the project was to collate evidence from actual users of the roads and information on the impact of all usage, particularly motor vehicular use on their enjoyment of the roads and the area, and the impacts on aspects such as natural beauty and amenity.
- 1.6.6 A summary of the project plan is below. All stages have been completed on time, with the final ones still outstanding, being this report and the subsequent decision.

<b>Proposal</b>	
<b>Project Management</b>	Develop project, set up working groups, steering groups, and so on
	Responding to inputs from public
<b>Survey Routes and Monitor Condition</b>	Initial survey
	Regular fixed point photography of condition of routes for two years
<b>Monitor Usage Levels</b>	Install data loggers on the routes, and collate data for two full years
<b>Practical Repairs</b>	Consider whether practical repair work required
	Cost works and develop work plan
	Seek funding from CCC and elsewhere
	Deliver works
	Temporarily close route to vehicles for works and bedding in period
<b>Future Maintenance</b>	Agree with partners a future maintenance regime for surface and drainage
<b>Surveys of users on site</b>	Face-to-face surveys of users on the U5001, 2018-2019
	Face-to-face surveys of users on the U5004, 2019
<b>Determining local priorities</b>	Survey users on-line to gather evidence
	Local Drop-in sessions
<b>Compile Report from above evidence and information</b>	Report to relevant LDNPA committee
<b>Present report to Committee</b>	Committee to make decision on most appropriate future management options

## **1.7 Traffic Regulation Orders – grounds, scope, and enforcement (see Appendix 2.4 for Defra guidance)**

- 1.7.1 A National Park Authority can make a TRO for any relevant road or part of road where it appears expedient [appropriate] under the following grounds:
- a. for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising;
  - b. for preventing damage to the road or to any building on or near the road;
  - c. for facilitating the passage on the road or any other road of any class of traffic (including pedestrians);
  - d. for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which is unsuitable having regard to the existing character of the road or adjoining property;
  - e. (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot;
  - f. for preserving or improving the amenities of the area through which the road runs;
  - g. for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality);
  - h. 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. This includes conserving its flora, fauna and geological and physiographical features.
- 1.7.2 Effectively a TRO can prohibit or regulate any form of traffic, including, but not exclusively (agricultural and emergency service traffic would not be included in any prohibition):
- a) Prohibit all traffic (walkers, cyclists, horses, all vehicles)
  - b) Prohibit all motor vehicles
  - c) Prohibit all 4-wheel motor vehicles
  - d) Prohibit some classifications of motor vehicles, such as size, axle-width, weight
  - e) Prohibit motorbikes
  - f) Prohibit any of the above and/or others such as pedal cycles, horses, walkers, carriage drivers
  - g) Prohibit pedal cycles, horses but not vehicles
  - h) Prohibit any of the above except in circumstances such as:
    - o Permit days
    - o Specific days (such as a prohibition at weekends)
    - o One way traffic
    - o Limited usage per day
    - o Prohibit groups or limit groups to a maximum number
  - i) Prohibit any of the above on a seasonal basis
  - j) Prohibit any of the above on a weather basis
- 1.7.3 Using a road in contravention of a TRO is a criminal offence under the Road Traffic Acts, and is a matter for the Police to enforce.
- 1.7.4 Practical measures may also be required, such as locking gates – although consideration would need to be paid as to whether this can actually be achieved, and whether it would unnecessarily inconvenience other, non-prohibited users.

## 1.8 Natural beauty, amenity, and open-air recreation

1.8.1 To judge what the impacts are on these aspects, it is useful to know what they mean. Defra have provided some guidance on this (full guidance at Appendix 2.4), which is included in the boxes below and overleaf.

1.8.2 National Parks are designated because of their natural beauty and the opportunities they afford for open-air recreation. National Park Authorities are charged with managing the Park in accordance with National Park purposes as set out in Section 5(1) of the National Parks and Access to the Countryside Act 1949 (NPACA 1949), which are:

- to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park, and
- to promote opportunities for the understanding and enjoyment of its special qualities by the public.

When National Parks carry out these purposes they also have the duty to seek to foster the economic and social well-being of local communities within the National Parks

### ***From the Defra Guidance (in full at Appendix 2.4)***

***Opportunities for open-air recreation*** is a term derived from Section 5(2) of the National Parks and Access to the Countryside Act 1949 (as amended and informed by Sections 59 and 99 of the Natural Environment and Rural Communities Act 2006). The wording of Section 5(1) of the Act on National Park purposes suggests a strong link between opportunities for open-air recreation and understanding and enjoyment of a National Park's special qualities by the public. The term '**markedly superior recreational experience**' has been used by the Countryside Agency (now Natural England) to indicate that the recreational experience and opportunity afforded by a National Park should be of national importance.

The reference in legislation to understanding and enjoyment of special qualities suggests a focus on quiet outdoor countryside recreation, associated with the wide open spaces, wildness and tranquillity to be found within the National Parks. Aspects may include:

- **access to high quality landscapes, memorable places and special experiences** -opportunities to enjoy scenic quality, relative wildness, and peacefulness and so on
- **presence of a wide range of natural or cultural heritage features**, landmarks and designations that cumulatively enrich the landscape experience;
- range of outdoor recreational experiences which enable people to enjoy the special qualities of the area and do not detract from the enjoyment of the area by others i.e. quiet outdoor recreation.
- **scope for management of recreation** to enhance recreational opportunities or protect the conservation interest of the Park.

***Amenity and Natural Beauty*** is a statutory term derived from Section **5(2)** of the National Parks and Access to the Countryside Act **1949** (as amended and as informed by Sections **59** and **99** of the Natural Environment and Rural Communities Act **2006**), and one of the two principal criteria for designating National Parks, the other being opportunities for open - air recreation (see below). A National Park landscape is considered to have exceptional natural beauty of national or international importance.

The amenity of an area may be considered to be the benefits afforded to people as a consequence of what is seen and experienced. The amenity is thus dependent to a considerable extent on the natural beauty of the area and the opportunities offered for recreation. Factors which contribute to natural beauty include landscape quality, scenic quality, relative wildness, tranquillity, natural and cultural heritage features and associations.

Recreational use that adversely affects these factors for other people may therefore be a ground for considering a TRO.

There are some generic aspects to 'special qualities' such as 'natural beauty', 'extensive tract of land', and 'markedly superior recreation experience'

Factors that are used to help evaluate natural beauty include:

- **Landscape quality** - condition, that is the intactness of the landscape, the condition of its features, its state of repair, and the absence of incongruous elements;
- **Scenic quality** - appeal to the visual senses, for example due to important views, visual interest and variety, contrasting landscape patterns, and dramatic topography or scale;
- **Relative wildness** - the presence of wild (or relatively wild) character in the landscape due to remoteness, and appearance of returning to nature;
- **Intrusiveness** - freedom from undue disturbance. Presence in the landscape of factors such as openness, and perceived naturalness.
- **Natural heritage features** - habitats, wildlife and features of geological or geomorphological interest that may contribute strongly to the naturalness of a landscape;
- **Cultural heritage features** - archaeological, historical and architectural characteristics or features that may contribute to the perceived beauty of the landscape;
- **Associations** - connections with particular people, artists, writers, or events in history that may contribute to perceptions of beauty in a landscape or facilitate understanding and enjoyment.

## 1.9 Special Qualities of the Lake District National Park

- 1.9.1 The main purpose of the special TRO powers are to enable National Park Authorities to do something which is appropriate in a National Park that is over and above what a highway authority would do. And the reason these powers have been given to us is because the National Parks have 'Special Qualities' that led to our designation, and that require higher levels of protection than similar features outside of a National Park. Each National Park has different special qualities and it is therefore the case that expectations are different for different National Parks, and activities that may be appropriate in one place may not be appropriate in another – despite both places being designated as a National Park.
- 1.9.2 To give an example, North Yorks Moors National Park is renowned for its vast areas of continuous heather moorland, whereas the New Forest is renowned for its forest, heathland, and medieval working landscape. Different activities may be acceptable in one place but not the other.
- 1.9.3 It is therefore important that the issues raised must be considered in relation to the special qualities of the National Park concerned, and then considered against the attributes defined for the area within the National Park itself.
- 1.9.4 The defined special qualities of the Lake District National Park can be found in [Appendix 1 of the Partnership's Management Plan j](#) on our website, and also at Appendix 1.3 of this report.
- 1.9.5 In brief, they are:
1. A world class cultural landscape
  2. Complex geology and geomorphology
  3. Rich archaeology and historic landscape
  4. Unique farming heritage and concentration of common land
  5. The high fells
  6. Wealth of habitats and wildlife
  7. Mosaic of lakes, tarns, rivers, and coast
  8. Extensive semi-natural woodlands
  9. Distinctive buildings and settlement character
  10. A source of artistic inspiration
  11. A model for protecting cultural landscapes
  12. A long tradition of tourism and outdoor activities
  13. Opportunities for quiet enjoyment

## 1.10 The Sandford Principle

- 1.10.1 The Sandford Principle as written in 1974 states that "Where irreconcilable conflicts exist between conservation and public enjoyment, then conservation interest should take priority", and this has been updated in 1995 to say "If it appears that there is a conflict between those purposes (as set out at 1.8.2 above) [the National Park Authority] shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area". Or, in the words of UK National Parks: *"If there is a conflict between protecting the environment and people enjoying the environment, that can't be resolved by management, then protecting the environment is more important."*

## 1.11 World Heritage designation, and Outstanding Universal Values

- 1.11.1 The Lake District has been designated a World Heritage Site (WHS), and 'Outstanding Universal Values' (OUV) have been ascribed to the areas through which these two roads run. These are:
1. A landscape of exceptional beauty, shaped by persistent and distinctive agro-pastoral traditions which give it special character;
  2. A landscape which has inspired artistic and literary movements and generated ideas about landscapes that have had global influence and left their physical mark;
  3. A landscape which has been the catalyst for key developments in the national and international protection of landscapes.
- 1.11.2 These three themes are interdependent and intertwined. It is their combination and interrelationship that gives the Lake District its Outstanding Universal Value as a 'continuing' cultural landscape. The attributes of OUV are both tangible and intangible – that is, they comprise both physical things and their relationships one with another, along with values, ideas, concepts and perceptions that have been and continue to be inspired by the cultural landscape of the Lake District.

## 1.12 Landscape Character and World Heritage Site Valley Descriptions

- 1.12.1 Within the WHS inscription documentation are descriptions of the 13 valleys, and the whole of these two roads lie within the Coniston Valley as defined in the documentation. The inscription documentation sets out the basic character of the area, and the special attributes. These can be found on our website [chapter 2.c.3](#)<sup>k</sup> but in summary they are:

### Themes

- Continuity of agro-pastoralism tradition and local industry in a spectacular mountain landscape
- Discovery and appreciation of a rich cultural landscape
- Development of a model for protecting cultural landscape

### Attributes

- Extraordinary beauty and harmony
- The physical natural landscape
- Farming traditions
- 16/17<sup>th</sup> Century Farmhouses
- Herdwick Flocks
- Swaledale Flocks
- Woodland industries
- Mining and Quarrying
- Writers and Poets
- Key Literary associations with the landscape
- Opportunities for quiet enjoyment and spiritual refreshment
- Conservation movement
- National Trust ownership (inalienable land)

- 1.12.2 The Distinctive Character of the areas have been set out in the [National Park Landscape Character Assessment \(on website\)](#)<sup>l</sup>. The U5001 lies on the very north-eastern edge of Area 70 - the Coniston Fells (p257) and the U5004 is within Area 47 - the Low Furness Fells (p175).

1.12.2.1 The Distinctive Characteristics of the Low Furness Fells are:

- A patchwork low fell landscape with a rich mosaic of different habitat, including woodland plantations (both coniferous and deciduous), pastoral farmland, parkland, small tarns, mires and heather moorland;
- The intimate-scale, accessible designed, naturalistic landscape of Tarn Hows, with its tarn reflecting the weather and surrounded by an intimate patchwork of green grassland, mires, bracken, spruce and larch-clad fells;
- Some of the oldest Alder in England in England near Boon Crag;
- Dramatic and long-distance views to the wrinkled dark grey ragged rock of the surrounding Coniston Fells, with long-distance framed views to the Little Langdale valley and the Langdale Pikes to the north and along the Yewdale valley to the east;
- Constantly changing perceptions of scale, enclosure and texture;
- A landscape of peaks and troughs, which vary from rough to smooth, the colour of which also varies significantly with the seasons; and
- Predominantly a tranquil area locally disturbed by traffic noise on the A593. The sense of tranquillity is due to the perceived openness and naturalness of the moorlands.

1.12.2.2 The Distinctive Characteristics of the Coniston Fells are:

- The disparity between the dominating 'natural' features of the mountains themselves, and the extensive and impressive areas of quarrying;
- The strongly textures and rough appearance of the landscape, pitted with old mineral working. Its grey colour, lack of or low growing vegetation, and dramatic glaciated scenery;
- A long history of slate and mineral extraction, which is clearly visible in today's landscape, giving it a slightly other-worldly and abandoned feel;
- Association with Arthur Ransome's 'Swallows and Amazons' novels;
- Coniston Old Man is one of the most easily accessible peaks in the Lake District, therefore popular with walkers and families;
- Predominantly a very tranquil landscape due to the openness and perception of naturalness of the open fells;
- Corrie tarns including Goat and Low Waters, Levers water (a reservoir) and Seathwaite Tarn, which nestles to the west of Seathwaite Fell;
- The lower, more knobbly and hummocky fells such as Caw and the Dunnerdale Fells running towards the south-west contain many small tarns and streams and more diverse vegetation.

1.13 Relationship between the Special Qualities, World Heritage Themes, and Attributes

1.13.1 The relationship between these aspects is shown in the table below.

Themes	Attributes	Special Qualities
Continuity of agro-pastoralism tradition and local industry in a spectacular mountain landscape	<ul style="list-style-type: none"> <li>• Extraordinary beauty and harmony</li> <li>• The physical natural landscape</li> <li>• Farming traditions</li> <li>• 16/17<sup>th</sup> Century Farmhouses</li> <li>• Herdwick Flocks</li> <li>• Swaledale Flocks</li> <li>• Woodland industries</li> <li>• Mining and Quarrying</li> </ul>	<ul style="list-style-type: none"> <li>• Unique farming heritage and concentration of common land</li> <li>• Complex geology and geomorphology</li> <li>• The high fells</li> <li>• Mosaic of lakes, tarns, rivers, and coast</li> <li>• Extensive semi-natural woodlands</li> <li>• Wealth of habitats and wildlife</li> </ul>
Discovery and appreciation of a rich cultural landscape	<ul style="list-style-type: none"> <li>• Writers and Poets</li> <li>• Key Literary associations with the landscape</li> <li>• Opportunities for quiet enjoyment and spiritual refreshment</li> </ul>	<ul style="list-style-type: none"> <li>• A world class cultural landscape</li> <li>• A source of artistic inspiration</li> <li>• Distinctive buildings and settlement character</li> <li>• Opportunities for quiet enjoyment</li> <li>• A long tradition of tourism and outdoor activities</li> </ul>
Development of a model for protecting cultural landscape	<ul style="list-style-type: none"> <li>• Conservation movement</li> <li>• National Trust ownership (inalienable land)</li> </ul>	<ul style="list-style-type: none"> <li>• A model for protecting cultural landscapes</li> <li>• Rich archaeology and historic landscape</li> </ul>

## 2 Website, petitions, updates and emails received

### 2.1 Save the Lake District Campaign Website and Petition

- 2.1.1 <https://www.savethelakedistrict.com/> is the main website for the SLD Campaign, and they have also made a formal submission (Appendix 2.1). The website and submission explain, in a fairly mixed fashion, the reasoning behind their request for us to make a TRO banning all mechanically propelled vehicles from these two roads. A summary of these is in section 1.5.1.
- 2.1.2 The Campaign's submission sets out the six special qualities they consider are vulnerable to the impact of recreational motor vehicles on these two roads at section 3 of their submission (Appendix 2.1). These are looked at in greater detail in this report, at section 14.4.
- 2.1.3 The one aspect mainly missing from this current summary is that of damage to the surface of the route. This is because by the time the survey was live, and this document published, the repair works at Tilberthwaite had been completed. However, at the outset, and throughout the petition threads, the damage to the surface has been one of the key aspects raised by the campaign – featuring as the main issue on the front page of the petition, and on the campaign home page. See Appendix 2.3.
- 2.1.4 The main campaign [petition](#)<sup>m</sup> is titled “Protect the Lake District's World Heritage status”. The front page is overleaf on the left, and contains the actual wording of the petition. By mid August 2019 some 305,785 people had signed up to the petition.
- 2.1.5 By the beginning of June 2019, some 5,850 comments had been lodged on the petition; these are at Appendix 8.1. The comments are by individual respondents, although we do not know the rigour change.org apply in ensuring that people are not able to comment from different computers, emails or IP addresses.
- 2.1.6 The main petition contained a large number of updates. Between June 2017 and late August 2019 there were 47 updates – each of which was accompanied by a thread for comments and discussion (Appendices 8.2.1 - 8.2.47). These carry a health warning in as much as they are not necessarily reflective of the people who actually use these two roads. In addition to this, the threads permit more than one comment from any one individual – so when reading through them it is often the case that numerous comments are made by the same person (they are ‘discussion’ threads, and should be read as such). It is also relevant to note that because of their nature, a large number of comments were removed from the threads by change.org, either before or after we captured them.
- 2.1.7 Reading through all the petition updates is a lengthy exercise, especially as many of the comments are repetitive in nature. However, at least a handful of the threads should be read in full to ensure that a flavour of what has been expressed is gained before any decision is made. In particular, the thread dated 10 February 2019 (Appendix 8.2.34) is worth reading as it directly relates to our briefing note – much of which is replicated within this report.

- 2.2 **GLEAM (Green Lanes Environmental Action Movement)** have also made a formal submission, which is at Appendix 2.4. Their views align mainly with the SLD Campaign's submission and points. Again, this discussed in greater detail later.

## 2.3 Counter-Petition

- 2.3.1 A [counter-petition](#) n “Keep our green lanes open in the lake district” was also started The front page is below on the right. By mid August 2019 some 8,675 people had signed up to the petition.
- 2.3.2 As at the middle of June 2019, around 1,000 comments had been lodged on the petition; these are at Appendix 8.5. These are by individual respondents, although we do not know the rigour change.org apply in ensuring that people are not able to comment from different computers, emails or IP addresses.



FG started this petition to The Chief Executive of the Lake District National Park Authority

The Lake District risks losing its UNESCO World Heritage status. One of the most beautiful and distinctive stretches of land near Little Langdale in the UK is being ruined by 4x4 cars and motorbikes that are devastating tracks, have forced a sheep farmer out of the area and are violating the terms of its World Heritage status. **We have to save it.**

We are a group of local residents and walkers. Some of us have lived here all our lives, and for the sheep farmers among us this land is our livelihood. It's truly one of the most beautiful and serene landscapes in the country - and **it's heartbreaking to see the damage now being done to it.**

The noise of these vehicles can be heard for miles in the valley, ruining the peace and tranquility of the area that were key reasons for it being recognised by UNESCO. The off-road vehicles have caused so much damage and interruption that **a local sheep farmer has had to pack up and leave** - and others could follow.

This stretch of land near Little Langdale was owned by Beatrix Potter and handed over to the National Trust in the 1930s and 40s to preserve it for future generations. **Letting off-road vehicles ruin its beauty and tranquillity** is doing a great disservice to her legacy.

**The Lake District National Park Authority has the power to stop this.** We are calling on them to protect this incredible UNESCO World Heritage site by imposing a Traffic Regulation Order to stop 4x4s and motorbikes from doing any further damage.

**Please sign our petition to help preserve the Lake District's natural beauty and World Heritage status by protecting it from 4x4s and motorbikes**

**Save the Lake District Petition**



Sam Barnes started this petition to The Chief Executive of the Lake District National Park

This is a petition to keep these rights of ways :-Little Langdale, between High Oxenfell and Hodge Close and High Tilberthwaite and Bridge End and all other legal routes open to motor vehicles.

There are many people whom travel not only from all over our country but from over sea's to drive/ride these beautiful routes and experience some of the most picturesque landscapes and scenery the UK has to offer.

Some of these drivers carry passengers with them that have ailments that would physically stop them from ever being able to access and see some of this landscape.

These lanes and routes not only in the Lake District but across the entirety of the country give them the means to access and appreciate the beauty that no one should ever be denied.

All of these guests bring added revenue to the local economy via accommodation,restaurants,fuel and tour guides.

As a member of the green laning community our/my aim is to promote the safe and thoughtful use of all the nations Green Lanes and think that the closure of the lanes of the Lake District would be a massive loss to the green laning community not only in the UK but globally.

**Counter-petition**

## 2.4 Emails received

- 2.4.1 Following some of the petition updates we received large numbers of emails. Most of these said roughly the same thing, generally what had been recommended by the campaign update to be sent. We have only included in Appendix 8.1 the additional or different comments.
- 2.4.2 For instance, after the update of 18 January 2019, we received around 870 emails, most of which used the wording of the email suggested by the SLD Campaign:

“Dear Richard Leafe. Over 300,000 people are asking you to protect the beauty and tranquillity of the area between High Tilberthwaite, High Oxenfell and Little Langdale. In 2006 you were given powers to do this by closing two ancient fell tracks to 4x4s and motorbikes with a Traffic Regulation Order.

But in your latest statement on the LDNPA website the beauty of this landscape and your duty to conserve and enhance it don't even get a mention. Instead you say that the sustainability of numbers “with regards to long term condition of the route” needs to be tested before making a decision.

Surely you know that this is beside the point. At stake are the special qualities of the Lake District, not the surface of the tracks. The Yorkshire Dales and Peak District National Parks have together issued 16 TROs since 2006, all of them to protect the beauty of their National Parks.

You have not made a single permanent TRO since then. Is the protection of the Lake District so much less important than that of other National Parks?

After 18 years it is time to address the key criterion for a TRO: the protection of the beauty and tranquillity of the Lake District, greatly diminished since 2000 by the massive influx of recreational motor vehicles around Little Langdale. Please do so now!”

- 2.4.3 Other, more detailed emails have been included as Appendix 8.3 – these are generally more specific to the roads in question. Emails encouraging us not to make a TRO, of which there are far fewer, are at Appendix 8.6.

## 2.5 Other information

- 2.5.1 Another interesting web-based discussion was held on the Institute of Public Rights of Way Facebook page, and this is included at Appendix 8.7. This gives a more balanced view of the situation, in that the contributors are, in the main, discussing the issue in the round, rather than just one-side or the other.
- 2.5.2 Some of the letters supporting a prohibition to the Westmorland Gazette are at Appendix 8.4. We do not have copies of the anti-prohibition letters referred to.

## 2.6 Discussions and Analysis of comments and emails

- 2.6.1 The Save the Lake District Campaign has been impressive in generating sheer numbers contacting us, signing up through petitions, and so on.
- 2.6.2 However, it should be borne in mind that many of these are 'duplicates', in that (for instance) the 870 or so emails in late January 2019 were stimulated by an update being sent to all those who had already signed up to the petition.
- 2.6.3 It must also be said that many of the comments on the petition and threads in particular are generic in their outlook, and in many cases are clearly from people who don't appear to have actual knowledge of the two roads – other than what they have read on the campaign website or petition. Some people acknowledge that they have never been there.
- 2.6.4 LARA in their letter to us of 3 April 2019 (Appendix 10, pages 15-19) express their views on how the campaign group's approach may have affected the comments expressed by participants. They say that the petition material "*ranges from misrepresenting historic material and misleading readers...placing considerable reliance on exaggeration, overestimation, misrepresentation, and fear; and relies heavily on the majority of the public from which it seeks support not being in a position to know any better than the false information being given to them*".
- 2.6.5 Whilst this may be an extreme interpretation, it does appear that there has been a large degree of this taking place.
- A good example of this is the petition update dated 10 February 2019 (Appendix 8.2.34). This was following our briefing note, and was titled "Banning walkers is an option, says the National Park".
  - This led to 19 pages of comments about how ridiculous the National Park were in considering banning walkers.
  - However, this was not what the briefing note said – it merely referred to what any TRO could achieve (see section 1.7 of this report).
  - It is quite clear that few people commenting on the update discussion had actually read the briefing note. Some of those that had did try and point out that the update was inaccurate.
- 2.6.6 Other examples of posters clearly not understanding the actual situation, and merely repeating information from the campaign or other posters include:
- The wording used throughout the posts - the description of the vehicles 'churning up the surface', turning it to 'mud', and so on, do not accurately describe these two roads;
  - Many references to 'ruts' – there has definitely been surface erosion on these roads – but not really in the way of 'ruts' as the term is commonly used (grooves in the surface), the surface was more loosened, rocky, and stony with washouts than vehicle ruts;
  - Comments about changing the situation – a common theme throughout from many posters is that they seem to be of the view that the LDNPA are opening up new routes to motor vehicles. Which is quite simply not the case;
  - Some posters have said things along the lines of 'I regularly go to the Langdales, but won't go now that it has been ruined with vehicles' – which implies that there has been a huge and sudden change in usage or condition (which there hasn't) or implies that vehicular usage has suddenly been introduced, or will be introduced (which is not the case);
  - Repeated references to the National Trust rather than the LDNPA;

- Repeated references to the public roads being footpaths, and for walkers only;
- Comments to the effect that the roads weren't like this when World Heritage Status was granted;
- Repeated references to damage to wildlife (of which there is no evidence);
- Repeated references to air pollution, with little recognition of the impact of all vehicles, or that the vehicles currently using these roads would still exist if they were prohibited from these two roads anyway;
- Repeated references to other routes around the county and country;
- Many calls to ban vehicles altogether from the National Park;

Just reading the comments and emails would give a reader the impression that the whole National Park is overrun by 4WD and motorbikes – which is not the case, and not supported by the monitoring data for these two roads either.

- 2.6.7 These examples highlight that the vast majority of posts on the petition and its update threads may well have been influenced to varying degrees by the information given them by the petition organisers and have often just replicated what they had been encouraged to say, or what others have said.
- 2.6.8 The language and expressions used throughout the threads and comments also imply that many of the posters (contributors to the petition / update discussion) are commenting because of generic issues and intolerance of other users – rather than through first hand experiences on these two roads. For instance, there are quite a few references to things like Chelsea Tractors, SUVs, racing, the LDNPA getting money from the MPV community and so turning a blind eye, footpaths, and so on. Some of the comments are also quite abusive or insulting towards other posters, the type of person driving 4WD (regularly referred to as morons, idiots, petrolheads, and so on), or staff at the LDNPA. (I understand that because of this change.org removed many posts, either before or after we captured the threads).
- 2.6.9 In this context, it is very difficult to place a huge amount of weight on the numbers involved, and the comments received through social media.
- 2.6.10 Nonetheless, they do give an indication of the wider, generic view of 'off-roading' as an activity. But for our purposes in considering the future management of these two specific roads, the only comments that carry much weight are those from people who reference the actual roads and their experiences of them. And these appear to be only a small proportion of those commenting within the petition, updates, and emails, other than those in Appendices 8.3, 8.4 and 8.6.
- 2.6.11 The IPROW (Institute of Public Rights of Way Management) facebook page provides a more nuanced discussion – as the comments are from professionals and other parties interested in the general process rather than with specific knowledge of the route.

### **3 Evidence Gathering**

- 3.1 The Save the Lake District Campaign threads and petitions provide a background view to people's opinions as to vehicular usage in the countryside generally. But as examined in the previous section, the comments are only rarely directly related to either of these two roads.
- 3.2 Therefore we carried out more in-depth surveys to gather direct evidence from users of the roads and the surrounding countryside as to the impact of other users on their personal enjoyment, and on aspects such as natural beauty, amenity and so on. These surveys were to test the information from the petitions and emails to see if the views were backed up by evidence in relation to these two roads.
- 3.3 What we were seeking through our surveys was set out in detail within our briefing note at Appendix 1.2, pages 21-23.
- 3.4 To gather this evidence we carried out on-site surveys, online surveys and drop-in sessions – which are discussed in separate sections (6-8) later. We also had some direct emails as a result of these, which are mentioned earlier.

### **4 Usage Data**

- 4.1 We do not have a lot of historic data for vehicular usage of either of these two routes. What we do have shows a significant increase in 4WD use over the last 15-20 years (falling back again this year), but little increase in use with motorbikes. A full analysis is at Appendix 3.4, and this should be read carefully and fully.
- 4.2 The HoTR (Hierarchy of Trails) review of 2001 mentioned 'Tilberthwaite' but only in the context of the complex of routes in the area. A data logger was used on the Hall Garth road (which runs eastwards from point C on the map on page 2) for the summer of 2000, but no logger appears to have been deployed on the U5001 or U5004 at that time.
- 4.3 Current logger data shows that usage has increased since 2006, and for the last full year it stands at around 38 4WD and 21 motorbikes a week at Tilberthwaite, with 25 4WD and 24 motorbikes a week at High Oxen Fell. There has been a noticeable drop in usage in the first six months of 2019 at Tilberthwaite, but the reasons for this are unknown, and whether this is merely temporary we do not know as yet.
- 4.4 It is important to note that an increase in usage does not automatically mean that this is a problem. The important aspect is whether this increase has had an irreversible impact on the surface, or an inappropriate impact on other matters such as amenity and natural beauty.
- 4.5 We do not have any reliable historic data for non-motorised recreational use of these routes. We have some current approximate percentage usage levels from our on-site surveys of 2018-2019. But anecdotally we are aware that usage has increased over the decades, as witnessed by the tenants of the farms. In particular, mountain biking has increased from virtually nothing in the early 1980s to constitute an estimated 14% of the usage on the Tilberthwaite Road today – a little less than MPV use between 10am and 3pm (walkers and runners make up 67% of the users in these hours). The data also shows levels of cycling being around 30% of the use on the High Oxen Fell Road, but the sample is relatively small.

## **5 Photographs and Videos over Time**

### **5.1 *Tilberthwaite Road***

5.1.1 We have a number of photographs from 2000, 2003 and 2005 - which can be compared with the photographs from 2017 and 2018 (all at Appendix 3.1). Videos from MPV users and mountain bikers show the surface changes through the intervening years (hyperlinks are on Appendix 3.2).

### **5.2 *High Oxen Fell Road***

5.2.1 In contrast to Tilberthwaite, we have not found any historical photos of the road, only those from our survey in May 2017. Subsequent survey photos show no significant changes (except at one point on next page). The photos show that the surface is stone and rock and mainly stable. The condition is similar to many bridleways and footpaths on tracks in the area.

5.3 We also have been provided with photos of vehicles on the roads in support of the TRO case (Appendix 3.3). We have not been supplied with photos of motorbikes.

## 6 Online Surveys

- 6.1 Online surveys ran between 18 March 2019 and 20 May 2019. A wide variety of user bodies, parish councils, and interested parties were emailed with an explanation of what the survey was about, and a request for the links to be forwarded to their members (see list at Appendix 4.4). The organiser of the Save the Lake District Campaign advertised the survey on their website and petition updates, and all those signing the petition at that time (around 300,000) would receive notification of these updates. We publicised the survey on our website and through our normal social media avenues, reaching over 30,000 people.
- 6.2 The surveys were carried out, gathering direct evidence from people who have actually used the roads in question, or the surrounding countryside – and to see what the impact of meeting or perception of other users is. Through this survey we sought evidence from users, and their opinions. We were not seeking wider opinions about vehicles in the countryside from the wider populace through this survey – which were adequately provided for through the Save the Lake District petition. The aim of the online survey was to test these wider opinions, and see whether they are backed up with the evidence of the users themselves.
- 6.3 The Save the Lake District Campaign published online criticism of the survey on 28 March 2019, along with guidelines on how to fill in the survey, what management options to choose and what to say (Appendix 2.2); a link was emailed to all those signing the petition.
- 6.4 We received the following completed responses:
  - Tilberthwaite: 568 (46 of whom had not used the road or surrounding countryside)
  - High Oxen Fell: 180 (14 of whom had not used the road or surrounding countryside)
- 6.5 Analysis and explanatory notes are at Appendix 4.2 (which should be read in full). All the comments made are at Appendices 4.2.1 – 4.2.8. Analysing the comments made by some respondents in relation to the evidence of usage given, coupled with the actions of the Save the Lake District Campaign in guiding people in what to put in the survey to achieve their aims has meant that we have a relatively low confidence level in the credibility of the results as a whole. The Save the Lake District Campaign also considers that the survey was flawed for different reasons, and have commented that the results with regard to users' preferred future management should be considered with very great caution.
- 6.6 We received a critique of the survey from Nelson Research on behalf of the Save the Lake District Campaign. This is at Appendix 4.3. The comments within the critique, and received through the survey itself, are discussed at the outset of our analysis – Appendix 4.2.
- 6.7 In general the criticisms levied at the survey are not particularly valid in that they do not appear to have greatly affected the outcome. The survey was designed to capture evidence in a way we considered would be most helpful to us in a) providing the evidence, and b) limiting the survey to those who have actually used the roads or the surrounding countryside.
- 6.8 It appears to have achieved this.

- 6.9 The actions of the SLD Campaign in publishing guidance on how to complete the survey and what to say has had an impact on the confidence levels that we can have in the results as a whole.
- 6.10 Overall, taking into account the points made in the paragraphs above, it could be said that the survey has fallen short of its aims to collect unbiased, detailed evidence from as wide a range of users as possible.
- 6.11 It is disappointing that so few of those contacted completed the surveys, which could be construed as the public not actually being over concerned about the issue. But the issues highlighted are consistent with those highlighted through the online petition comments.
- 6.12 Notwithstanding all the above, an overall summary is below:

1. **Headline conclusion:** The headline conclusion is that the majority of those who have not used the roads with an MPV would like to see a prohibition, and the majority of those who have used the roads with an MPV don't want to see a prohibition. Although over 40% expressed no opinion as to future management.
2. **High Oxen Fell:** Fewer people have concerns about High Oxen Fell (U5004), in as much as there were far fewer responses altogether, and fewer proportionally from non-MPV users. And within those responses, there were far fewer issues raised, and little desire to see any TRO based solutions.
3. **Negative Impact?:** A higher proportion of users consider that other users have a negative impact on the special qualities than have actually been impacted upon themselves.
4. **Frequency of Impact:** Of those who have been impacted on, almost 60% have been impacted upon every or most times, with just over 40% occasionally or rarely.
5. **Cause of Impacts:** The main negative impacts were identified as coming from MPVs (45% at Tilberthwaite, 33% at High Oxen Fell), with 11% of Tilberthwaite users reporting negative impacts from mountain bikes.
6. **Main Issues on the Road:** The main issues for those using the roads, in descending order of impact, are:
  - Noise
  - Having to move off the track to let other users pass
  - Pollution / fumes
  - Surface damage
  - Safety / speed
  - Behavioural issues
  - Intrusiveness / appropriateness

7. **Main issues in the Surrounding Countryside:** The two main issues for those using the surrounding countryside are:
  - Noise
  - Pollution / fumes
8. **Special Qualities Affected:** The key primary special qualities stated to be affected are:
  - Quiet Enjoyment
  - Cultural Landscapes
  - Habitats and Wildlife
9. **Return Visits:** A large number of people have stated that they have met MPVs on most or every visit, and have stated that their experience has been impacted upon. However, this does not appear to have prevented them from returning to use the roads subsequently – despite this knowledge, and the availability of other paths.
10. **Credibility & Veracity?:** For various reasons, we have a weakened confidence in the credibility and veracity of the detailed information as a whole. The evidence we were seeking was quite clearly set out over three pages within the briefing note – and this evidence is difficult to extract from the survey responses. A number of comments were made that lacked supporting evidence.
11. **Meeting Our Aims:** The online survey has therefore fallen short of its main aims, whether because of the design of the survey or by the approach of the respondents is not so clear.
12. Both GLEAM and the Save the Lake District Campaign have reached the same conclusion, but without actually seeing any of the results or responses.
13. However, having said that, the most frequent negative comments relate to noise / quiet enjoyment, intrusiveness/appropriateness, surface damage, and behavioural issues. Which equate to the same comments received during onsite surveys and drop-in sessions.
14. **Participation:** Over 300,000 people were emailed by the Save the Lake District Campaign petition site and encouraged to complete the survey. Almost 6,000 of these had already left some form of comment on the petition. We also contacted user bodies, parish councils, and interested parties requesting them to ask their members to provide information via the survey.
15. Despite this, and despite the perceived widespread interest in the issue, locally, nationally, and internationally, only 522 people who have used the road or surrounding countryside completed the survey for Tilberthwaite, and only 166 for High Oxen Fell. And, as the results show, only around half of these respondents were negative about MPV usage.

## 7 On-Site Surveys

7.1 The purpose of the on-site surveys was to gather direct evidence from people who were actually using the roads in question, to get a snapshot of usage levels and types of usage – and to see what the impact of meeting or perception of other users was.

7.2 The main highlights from the survey data (full results at Appendix 4.6) are:

1. **Numbers interviewed:** Over 1,200 people were interviewed, mainly at Tilberthwaite (1,000+).
2. **Types of user:** The majority (just over 80%) of these were walkers and cyclists.
3. **Who had they met?:** Almost all of them had met other users at some time on the route, with just over 20% of users at Tilberthwaite having met MPVs, a little more than the percentage of users that were in MPVs (the figures were lower at High Oxen Fell - around 10%).
4. **Issues with others?:** Less than 6% of all users, and just over 10% of non-MPV users at Tilberthwaite had experienced any issues with other users. Under 5% of users at High Oxen Fell had experienced issues.
5. **Potential Impact:** People only really expressed any issues with vehicles when they were specifically asked about them. They did not generally raise the issue as a concern of their own volition (see points above) – but when directly asked about them, 24% said that their enjoyment would be impacted if they did meet MPVs. This implies that if usage increased, then more people would actually be directly impacted upon than are currently being affected.
6. **Types of Impact:** Where MPV related, the discussion comments mainly referred to noise, and general dislike of MPVs.
7. **Surface Repairs:** More comments were made about the surface repair works (Tilberthwaite) than most other issues – especially prior to the works being carried out (mountain bikers did not want the repairs and improvements, as it would reduce the challenge and excitement of the route for them).
8. **Positive Comments:** A relatively high percentage of users (25%) made positive comments or expressed that they would not have a problem with meeting MPVs.
9. **Overall percentages of users:** Our survey times were 10-3pm. We know from logger data that this captures most MPV usage, but we also are aware from comments made by others that walking and cycling is more spread out during the day, including times outside of our surveys. Therefore, percentage-wise, the true walking/cycling use is higher than we observed (and MPV use lower).
10. **How had they got there?:** Almost all the walkers and cyclists interviewed had used personal vehicles and driven on the surrounding road network to a parking site to start their walk or ride.

### 7.3 Comparison with online surveys

7.3.1 It would appear from the on-site surveys that the people actually using the route have fewer concerns over MPV use, and less vehemently expressed, than those completing the online survey, which are in turn lower than those signing up to the petition.

## 8 Drop-in Sessions

8.1 The drop-in sessions had three main purposes:

- To provide information to the attendees about the status of the routes, the issues raised, work done so far, the project timeline, grounds for a TRO, and other matters;
- To listen to the views of residents and others in respect of the roads in question;
- To provide a venue where various parties could discuss with each other the various issues.

8.2 The intended main audience was local residents, although all were welcome. We advertised on our website, through the parish councils, and by the SLD Campaign.

8.3 National Park staff attended the sessions, along with the National Trust and Cumbria County Council. Information was displayed, such as maps of route, photos of route before/after repairs, around 10 pages of 'Frequently Asked Questions' (taken from briefing note), and information was provided to read and take away, such as our briefing note, a letter from UNESCO regarding impact on World Heritage Site, and a list of the potential management options that could be considered.

8.4 Not all attendees signed the attendance sheet, so the actual numbers were higher than recorded. At the Coniston session 29 people signed the attendance sheet - 11 feedback forms were filled in. At Skelwith 64 signed the attendance forms - 19 feedback forms were filled in.

8.5 The public feedback (taken from the completed forms) is at Appendix 5.1, and comments captured by staff, along with general impressions, are at Appendix 5.2.

8.6 A local commercial 4WD operator attended both sessions (they were not specifically invited, but it was a public meeting), the originator of the Save the Lake District Campaign attended the session in Coniston, and a representative of GLEAM attended the session in Skelwith. Other attendees were mainly a mix of local residents, TRF members, and various interested parties.

8.7 Those attending had mixed views, but those that spoke directly with staff were generally those that wished to see a prohibition of vehicles. The main issues raised during the drop-in sessions were:

1. **Majority of attendees generally wished to see a prohibition**, because of:
  - a. **Noise** and impact on **tranquillity**.
  - b. **Surface** damage.
  - c. Usage by local **commercial operators** being inappropriate.
  - d. **Impact on the farmers** at High Tilberthwaite.
  - e. **Behaviours** of all types of users interacting with other types.
2. **Mountain-Bikers not popular**.
3. Virtually no mention of High Oxen Fell Road – it was **all about Tilberthwaite**.
4. **Tourism as a whole**, and the lack of infrastructure in Langdale and the central Lake District.
5. Even at drop-in sessions about these two roads, with all the information being only about these two roads, and staff on hand to discuss the matters – **some of the feedback was about other roads and wider issues**, which are outside the scope of the sessions and this current consideration.

## 9 Evidence from Landowner and Tenants

9.1 The National Trust owns all the land over which these two roads run. The land through which the Tilberthwaite Road runs was farmed by the Wilkinson family to 2018, and now Mr Dugdale, and High Oxen Fell is farmed by Mr Charnley.

9.2 We have received letters from the Wilkinsons and Mr Charnley. We have interviewed Mr Dugdale, Mr Charnley and Mr & Mrs Wilkinson. The Appendices should be read in full to get a detailed picture of the impact on the farms.

### 9.3 *High Tilberthwaite Farm (U5001) – Appendix 9.1*

9.3.1 The Wilkinson's wrote a letter on 20 June 2017 which referred mainly to the condition of the surface of the road and the consequent impact on their ability to farm the land, and also referred to problems caused by increased access pressures.

9.3.2 The surface has since been repaired, and is in a better condition for farm access than for many decades. This issue has therefore been resolved for the time being.

9.3.3 The Wilkinson's obviously suffered other impacts from public usage of the highway as well, but from our discussion with them it is clear that the surface issue was by far and away the most important.

9.3.4 The issues mentioned directly to us in discussions, or via the SLD Campaign, or the GLEAM submission are:

- Surface damage;
- Increased numbers of walkers passing through the yard, interrupting stock gathering;
- Increased numbers of cyclists passing through the yard, interrupting stock gathering;
- Increased numbers of motorbikes and 4WD vehicles using the highway through the yard, again interrupting stock movements,
- 4WD vehicles queuing up through the yard and in front of the farmhouse whilst negotiating through the gates and up the first steep bit, causing a noise and fume issue;
- Usage of the road on the fell by vehicles and bikes making it difficult to gather and drive stock to the farm;
- Sheep escaping through gates when being used by 4WD vehicles;
- Abuse from drivers of 4WD vehicles.

9.3.5 A few points are worth noting here, but a fuller discussion of the issues is at section 14.4 later:

- The National Trust have themselves referred to the problems being 'well documented', but have been unable to provide any documentation showing this.
- No formal high level complaints were actually received by us with regard to the impact on the ability to farm the land - only comments in meetings, often passed to us second-hand.
- None of the suggestions that have been put forward over the years for mitigating some of these impacts, such as repositioning gates, installing cattle grids, and so on, have ever been tried, or seriously investigated.

- The maintenance of this road is the responsibility of Cumbria County Council, not us. The remedy for a road that is 'out of repair' is to serve a Notice on the County Council under Section 56 of the Highways Act 1980 requiring them to put the road into repair for the normal users (the farmer). Neither the landowner or tenant availed themselves of this mechanism to ensure that the road was in a fit condition for farming activities.

#### **9.4 High Oxen Fell Farm (U5004) – Appendix 9.2**

9.4.1 Mr Charnley (tenant) also wrote an open letter setting out his concerns. Combined with those raised in discussion, and comments provided by GLEAM they include:

- Disturbance at night from motorbikes, both to them and their holiday cottage guests;
- Vehicles backing up through the yard, with occupants affecting privacy;
- Noise;
- MPVs meeting on road and having to pull to one side to pass, damaging the ground;
- Anti-social behaviour;
- Problems with vehicles wishing to use the highway when washing his vehicle or loading on the highway;
- Interruptions to stock movements along the tarmac road to the north (not the unsealed road at issue);
- Risk of collision between motor bikes and agricultural vehicles;
- Prior to the recent repairs was unable to use the route with tractor;
- Drivers of 4x4s and motor bikes were deviating from the route and damaging the land;
- Camping and illegal off-road motor-biking is facilitated by use of the road;
- Impossible to pass a 4x4 on the route with own vehicles.

9.4.2 It is fair to say that many of these have been portrayed as being significant by GLEAM, but appeared to be much less of an issue when we discussed the matter with Mr Charnley himself.

#### **9.5 National Trust – Appendices 6.5, 6.6 and 9.3**

9.5.1 In February 2019 we sent a detailed question to the National Trust about their views on whether or not there is a direct link between off-roading and the sustainability of the agro pastoral system. Their response is at Appendix 6.5, in which they concluded that:

- MPV usage of the roads does not pose a sustained threat to the continuity of agro-pastoralism at valley scale;
- The magnitude of impact from the continued use at its current level on traditional farming is negligible.

9.5.2 At a meeting of project partners in December 2018, the National Trust said that they *“thought people confused personal disruption with actual farm management. They felt the route had minimal impact on the environment, as limited vehicles drive off the route, and there was an insignificant impact on the World Heritage or special qualities of the area.”*

- 9.5.3 In March 2019 The National Trust released a website statement (Appendix 9.3) encouraging us to make a TRO on the basis that the recreational use by 4WD vehicles and motorbikes was unacceptable.
- 9.5.4 The statement says that this decision had been reached on the following basis:
- a) *We have listened carefully to the concerns expressed by many of our supporters and other visitors to the area.*
  - b) *We have considered the impact that this use of the track has had on current and previous farm tenants at Tilberthwaite Farm, and we also understand the similar concerns over the use of the track at High Oxen Fell.*
  - c) *The current use of this track [Tilberthwaite to Fell Foot – U5001] by recreational 4x4s and motorbikes is unacceptable and causes harm to the recognised Special Qualities of the National Park, and in particular, Opportunities for Quiet Enjoyment.*
- 9.5.5 We met the National Trust on 5 June 2019 to collect the evidence on which they had reached their decision, and on which they had based their statements, and to understand their reasoning more fully. The file note of this meeting is at Appendix 9.3.
- 9.5.6 With regard to the three points raised in 9.5.4, little actual evidence or information was captured:
- a) The National Trust has not been able to provide direct evidence from their supporters or other visitors. The concerns appear to have been prompted by the Save the Lake District Campaign petition threads encouraging the petitioners to contact the National Trust direct (see for example Appendix 8.2.37 (March 2019) where petitioners are given the email address of the Director General).
  - b) The National Trust has not articulated in any detail what the impact on their tenants actually was (other than the initially out of condition road which is now repaired at Tilberthwaite). Reference was made to the issues being well-documented, but the Trust has been unable to provide these documents. A few specific usage levels were cited, which, in the main, do not appear to be validated by the on-site logger data.
  - c) The main issue in relation to quiet enjoyment is noise and visitor perceptions as to what people should / could expect when visiting the area – and how this could be impacted upon by MPV use. But no actual data or evidence has been provided by the National Trust.
- 9.5.7 Other concerns and issues were also raised, and these are listed in the file note (Appendix 9.3).
- 9.5.8 The National Trust agreed to make a more formal submission on the matter, setting out all the evidence and their concerns and views – but this has not been provided to us despite requests.

## 10 Comments from UNESCO, ICOMOS, and World Heritage Watch

10.1 The following section is for information only – it does not contain any evidential matters, but it is important that everyone is aware of what has been expressed. The explanatory quotes below are from the organisations websites.

- [UNESCO](#)<sup>o</sup> is the “*United Nations Educational, Scientific and Cultural Organization*”. The World Heritage Convention is an organisation of UNESCO, and they designate World Heritage Sites, which are natural or man-made sites, areas, or structures recognised as being of outstanding international importance and therefore as deserving special protection.
- [ICOMOS](#)<sup>p</sup> is “*the International Council on Monuments and Sites, is a global non-governmental organization associated with UNESCO. Its mission is to promote the conservation, protection, use and enhancement of monuments, building complexes and sites. It participates in the development of doctrine and the evolution and distribution of ideas, and conducts advocacy. ICOMOS is an Advisory Body of the World Heritage Committee for the implementation of the World Heritage Convention of UNESCO. As such, it reviews the nominations of cultural world heritage and ensures the conservation status of properties.*”
- [World Heritage Watch](#)<sup>q</sup> is “*an independent non-governmental organization founded in 2014. We promote the preservation of UNESCO World Heritage worldwide. We watch that World Heritage is protected and maintained, and not sacrificed to political compromises and economic interests. We support UNESCO in obtaining complete and accurate information about the situation of World Heritage sites. And we help local people to protect their sites and to derive an adequate benefit from them.*”

### World Heritage Watch

- 10.2 The Save the Lake District Campaign organiser wrote an article for World Heritage Watch about these two roads. This led World Heritage Watch to issue a resolution in 2018 (Appendix 6.1). This requested the UNESCO World Heritage Committee to “*make the Lake District’s continued inscription as a World Heritage site dependent on the effective protection of its Outstanding Universal Values by the Lake District National Park Authority.*”
- 10.3 This article received a rebuttal from Geoff Wilson of the TRF (and a member of the former TMAG) – Appendix 6.2. It also prompted an email objecting to comments in the article from a member of the public.
- 10.4 World Heritage Watch did not respond to Geoff Wilson, but their response to the member of the public is also at Appendix 6.2.
- 10.5 World Heritage Watch issued a further resolution in February 2019 deploring what they saw as the LDNPA’s refusal to use regulatory measures to prohibit vehicles (Appendix 6.3)
- 10.6 The information in all the Appendices are very similar to what is discussed elsewhere, and mainly concentrates on surface damage – which has been repaired.

- 10.7 It appears that the World Heritage Watch resolutions are purely based on information they have been given by the Campaign. They have not requested any information or clarification from us, and they have ignored the TRF rebuttal. In dismissing the complaint from the member of the public, the Chairman of World Heritage Watch says that he has not been to the area, and refers to the tracks being open soil with some loose stones. This was not the case, and raises concerns over whether their judgement has any particular merit.
- 10.8 This is highlighted by the second resolution, which followed the exchanges outlined, concentrating on the usage 'damaging sheep farming' – which the landowners state is not the case (see paragraph 9.5.1 above).

### UNESCO / ICOMOS

- 10.9 We received a paragraph 174<sup>2</sup> correspondence from UNESCO on MPV usage of the unsurfaced roads at Tilberthwaite and Oxen Fell, to which we responded through the Department for Digital, Culture, Media and Sport (DCMS: representing the 'State Party'). ICOMOS then sent us their Technical Review of the issue (Appendix 6.4).
- 10.10 The ICOMOS Technical Review advises the State Party to:
1. Introduce Traffic Regulation Orders (TROs) on green roads in the property;
  2. Avoid linking the sustainability of farms with income from 4x4 vehicle activities;
  3. Set out a clearer and more detailed articulation of physical attributes of Outstanding Universal Value in future Heritage Impact Assessments and base these on a more integrated landscape approach;
  4. Strengthen the interaction between the recreational community and local communities of farmers, residents and NGOs.
- 10.11 We have sent a response to DCMS to the effect that the matter of the two roads (not Park-wide) will be considered at the relevant committee meeting, and that if we have unequivocal evidence of harm to the Outstanding Universal Values we would seek the introduction of a TRO, and that we would respond more fully after this meeting.
- 10.12 A commentary on the review was sent to DCMS by the former chair of the HoTR and member of the Trails Management Advisory Group pointing out a number of perceived issues and flaws in the reasoning in the review, and this is at Appendix 6.7. An article, comments, subsequent letter, and further comments appeared in the Westmorland Gazette about the review – and these are at Appendix 6.8.
- 10.13 We agree that much of the reasoning appears to be based on inaccurate data and information, possibly using that supplied by other parties. Most importantly, the process is predicated on the premise that the 'property inscribed' (the Lake District) has seriously deteriorated [since inscription]. The evidence is clear that the usage and surface damage was present when the Lake District was inscribed, and since then usage has actually fallen, and the surface has been repaired.

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<sup>2</sup> Paragraph 174 of the Operational Guidelines for the Implementation of the World Heritage Convention - When the Secretariat to the World Heritage Committee receives information that a property inscribed has seriously deteriorated and seeks comments from the State Party on the matter

- 10.14 Taking all this into account, it is best at present to consider the information discussed in these appendices as advice. Most importantly, the ICOMOS review does not fully take into account the fact that a focussed project to repair and identify the most appropriate long-term management of the two roads was taking place. When a decision has been made at the committee meeting, and ICOMOS have full sight of the report, appendices, recommendation, and decision – then, subject to Member decision, we will ask ICOMOS to review the advice provided.
- 10.15 The request from ICOMOS in relation to the entirety of the National Park will be considered through the next Management Plan Review. This report considers just these two roads, as TROs can only be made on a case-by-case basis.

## 11 Comments from Organisations and Other Information

11.1 Summary of comments from various organisations – the full letters and any formal responses of substance by us are at Appendix 10.  
*(Clarifications where considered necessary in italics).*

11.2 We have not carried out a formal consultation. Most of these comments have been submitted without us requesting them. We understand that other organisations such as the Ramblers and Cumbria Bridleways Society have been contacted by the organiser of the save the Lake District Campaign – but we have not received a formal submission from either organisation.

<p>Herdwick Sheep Breeders Association</p>	<ul style="list-style-type: none"> <li>• Concerns over 4WD using highway through Tilberthwaite Farm, disruption by vehicles passing through interrupting normal farming management on the highway – impacting tenants on regular basis, contributing them to leave the farm and son not taking it on.</li> <li>• Personally would not ride a horse on that road.</li> <li>• <i>On questioning, declined to say how it was actually affecting the ability to breed herdwicks, other than the above.</i></li> </ul>
<p>Skelwith Parish Council</p>	<ul style="list-style-type: none"> <li>• Residents have problems with off-roading. Increasing number, everyday, from early morning to late at night, disruption to farmers, damage to infrastructure, difficult for pedestrians, driving off route and through gardens, distress and misery, disrupting quiet nature of area.</li> <li>• Followed up with further comments about usage.</li> <li>• <i>The further comments, and some of the other comments appear to relate to the Mountain Road and High Arnside – not these two roads.</i></li> </ul>
<p>Fylde Mountaineering Club</p>	<ul style="list-style-type: none"> <li>• Current high level of MPV usage is inconsistent with National Park statutory purposes.</li> <li>• Harmful to the character, amenity and quiet enjoyment of the area and interferes with the working farms, intimidating to other users.</li> </ul>
<p>The Wainwright Society</p>	<ul style="list-style-type: none"> <li>• Concerned about the damage being done by MPVs to the green road, unacceptable long-term damage to the surface of the track.</li> <li>• It is an area of exceptional beauty and tranquillity.</li> <li>• Damage caused by inappropriate vehicular access causes inconvenience and extra work for residents, and degrades the landscape making the area less attractive to walkers and tourists.</li> <li>• <i>Later clarified that the issue they were raising was <u>not</u> about damage to the surface, but issues of tranquillity and beauty.</i></li> <li>• <i>Declined to comment on the impact of usage of tarmac roads in the area on the same qualities.</i></li> </ul>

Yorkshire Ramblers	<ul style="list-style-type: none"> <li>• Damage to roads seen a dramatic increase in last few years</li> <li>• Mostly concerned by road down by Hallgarth (<i>different road</i>).</li> <li>• Concerned about the way their comments had been promoted by the SLD Campaign.</li> </ul>
Trail Riders Fellowship	<ul style="list-style-type: none"> <li>• Sympathises with farmers.</li> <li>• County road running through yard is heavily used by walkers and mountain bikers, plus, in proportion, a small number of 4WD and motorbikes.</li> <li>• Primary cause of deterioration is weather, and lack of maintenance.</li> </ul>
Green Lanes Association	<ul style="list-style-type: none"> <li>• Tenants at High Tilberthwaite more concerned about Kankku in particular.</li> </ul>
Fell & Rock Climbing Club	<ul style="list-style-type: none"> <li>• Encourages a consultation to be undertaken.</li> <li>• Landscape is very vulnerable and use of 4WD vehicles on the green lanes in Little Langdale is creating considerable damage.</li> </ul>
Land Access & Recreation Association	<p>Detailed analysis of the issues, including:</p> <ul style="list-style-type: none"> <li>• Campaign's approach and impact – misleading information.</li> <li>• Analysis of reasons given by campaign for a TRO – summary is that the reasons are not upheld.</li> <li>• Concern of the campaign groups online tutoring and orchestration of respondees to the online survey, which devalues and unbalances the survey.</li> <li>• No concern raised over World Heritage Status of the use of these roads when WHS status was being sought.</li> <li>• Comparison with Yorkshire Dales and Peak District is invalid – there <u>are</u> TROs in place in the Lake District.</li> </ul>
Friends of the Lake District	<ul style="list-style-type: none"> <li>• Support the National Trust in welcoming a TRO at High Tilberthwaite.</li> <li>• Strong case for a TRO on both roads as use is not in line with the Sandford Principle because it causes disturbance to the quite enjoyment and tranquillity of the area. Not compatible with National Park purposes.</li> </ul>

## DISCUSSION

### 12 Discussion

12.1 From all of the information we have gathered, clear themes have emerged:

- Damage to the surface by 4WDs
- Noise on the road by 4WDs and motorbikes
- Noise in the surrounding countryside from motorbikes
- Safety of other users
- Inappropriateness of vehicles on these roads
- Impact on special qualities, especially quiet enjoyment
- Air pollution
- Behavioural issues between different user types
- Impact on farming and wildlife

12.2 In considering the role of a TRO the best starting point for a discussion is to look at the grounds under which we can make a Traffic Regulation Order.

#### **A For avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising.**

The issue of safety has been raised by a number of people. GLEAM have referred to the dangers of riding horses over bare rock, difficulties in passing traffic, danger from fast-moving vehicles, and flying chippings being thrown up by motorbikes.

We have no actual evidence of any accidents, incidents or injuries to any users of either of these roads, which are largely unconfined in width. GLEAM (paragraph 46, Appendix 2.4) have provided links to videos and timings showing walkers having to move off the Tilberthwaite Road to avoid motorbikes. But watching these videos at the recommended timings merely shows walkers stepping to one side – much as they would if they were approached by mountain bikes or horses; there does not appear to be any animosity shown by the walkers who appear to be quite tolerant, and safe, passing something coming in the opposite direction.

There are also complaints about the risks posed to walkers by mountain bikers – but again, we have no direct evidence of any incidents or accidents. Studies elsewhere with regard to conflicts between users have generally tended to show that the perception of danger when creating mixed use routes is far greater than the resultant reality once the routes have been created.

#### **B For preventing damage to the road or to any building on or near the road.**

Damage to the road surface is one of the main [original] issues raised by the campaign, the petition threads, and by a large proportion of those completing the online surveys. The main issue raised is damage caused to the surface through 4WD use – as there is little evidence of damage from other users. This is discussed in section 13 below.

No issues have been raised with regard to damage to any buildings on or near the roads caused by vehicular use of the roads. One field wall was becoming undermined through erosion, and was repaired by the National Trust, crowd-funded by GLASS and the TRF (MPV users).

**C For facilitating the passage on the road or any other road of any class of traffic (including pedestrians).**

Prohibiting one type of traffic may arguably make it easier for other types – but there is little evidence to show that this would be the case. Issues of safety have been raised through our surveys, and this is discussed above.

**D For preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which is unsuitable having regard to the existing character of the road or adjoining property**

With regard to the suitability an existing character of the road – the unsealed, stone bound nature of the road lends itself to use by 4WD and motorbikes. That is, the traffic wishing to use the road is suited to the physical character of the road (which was previously used by quarry traffic, which is physically heavy in nature). With regard to the adjoining property, this is a similar ground as H (below) – as the unsuitability of vehicular / motorbike traffic is one of the key elements with regard to natural beauty.

**E (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot.**

These are public roads, with vehicular rights over them. All the MPV usage is by virtue of it being a public road, including that by the farmers. It is quite difficult to define what the ‘character of these roads’ are – but it would be fair to say that the main character is that of an unsealed stone-based track. A good comparison is the bridleway to the east that runs from Tilberthwaite to the Brathay Ford – this is also an unsealed stone based track, with a similar character and history (documents provided by the SLD Campaign [Appendix 2.1] show that this was also an old public vehicular highway). Prohibiting any MPV traffic would not really change the physical ‘character’ of these roads – they would remain unsealed stone-based tracks.

The second element is whether these sections of roads are ‘specially suitable for use by persons on horseback or foot’. The word ‘specially’ means something like ‘set-apart to’ or ‘distinguished from’. So for these roads to meet this category they would have to have something that set them apart from the other roads / bridleways / footpaths of the area that made them extra suitable for horseriders and walkers.

We have not identified any criteria strong enough to show that these roads are more specially suitable for these users than any other surrounding road or highway. In addition, any prohibition under this provision would have to consider cyclists. It is also the case that these are just sub-sections of longer roads, half of which are tarmac.

**F For preserving or improving the amenities of the area through which the road runs.**

This is best addressed alongside paragraph H (below), as it is difficult to define amenities other than through the special qualities, natural beauty and other aspects as discussed later.

**G For any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).**

Although a large number of people have commented on air pollution (and carbon / fuel usage / climate change), it is not really credible that usage of these two roads contributes in a significant way to the overall air quality. Our on site surveys show that the vast majority of walkers and cyclists using this route had driven to the start of their walk or ride, and will by definition have contributed to air pollution. And to prohibit vehicles from just these two roads without prohibiting vehicles from other roads (sealed or unsealed) in the locality would not achieve anything. It is also true to say that the vehicles currently using these roads will still exist and will still travel on other public roads, even if they are prohibited here – and so will still contribute to overall pollution levels. However, the real issue in relation to fumes and pollution is in the context of the impact on other users' enjoyment and amenity – which is discussed later.

**H 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. This includes conserving its flora, fauna and geological and physiographical features.**

This is the main area of discussion, and is addressed in detail later.

**12.3 Conclusion for grounds A, C, E, G**

- 12.3.1 On the present information, it would not be appropriate to impose any traffic regulation order on the grounds **A, C, E, or G** as listed above. Discussions on grounds **B** and **D/F/H** follow.

### **13 Ground B: For preventing damage to the road - discussion.**

- 13.1 A significant proportion of the comments in the online survey were about damage vehicles cause to the surface. This was also the main issue raised by the farmers, the initial thrust of the SLD Campaign, and a main theme running throughout the petition threads and press articles. Comments such as 'churning up the surface, trashing the routes, making holes' and so on were common.
- 13.2 The photographs in Appendix 3.1 reflect the surface condition of the roads. There was undoubtedly damage to the surface partly caused by vehicular usage, but whether this is sufficient to warrant prohibiting vehicles is much less straightforward.
- 13.3 It is arguable that it is not just recreational vehicular usage that has caused damage to the surface, but a mixture of many factors. In particular, since minor maintenance was reduced there have been at least three major weather events.
- 13.4 Many of the comments made online were not based on actual experiences of these two routes, but often on a generic feeling that vehicular usage must automatically equal damage.
- 13.5 The other issue that is impossible to fully evaluate in the timescale of the project is 'what damage has been caused by what vehicles'. The general trend of comments is that 4WD's are the vehicles that cause most damage, whilst motorbikes cause the most noise. However, there were comments that motorbikes throw up stones, but these comments were also made about mountain bikes. Motorbikes can cause ruts and damage on soft ground – but there is no real evidence of this happening on either of these two roads, which are stone based. Therefore, the conclusion is that damage specifically attributable to vehicles is more likely to be from four-wheeled vehicles than from motorbikes.
- 13.6 This then raises the question of whether it is agricultural vehicles or recreational. It is difficult to know. If all agricultural usage is with a quad-bike, then the weight and loading has less impact on the road than 4WDs. But we have not been able to determine whether all agricultural usage is with quad-bikes. Quad-bikes make up around a quarter of all 4WD vehicle use of these roads.
- 13.7 **High Oxen Fell Road**
- 13.7.1 Inspections and photographs for the High Oxen Fell road show limited signs of damage to the surface purely attributable to recreational vehicles. Indeed, the surface condition is very much like many bridleways and footpaths that do not have vehicular traffic over them.
- 13.7.2 Surface monitoring since 2017 has not shown any significant degradation with the current levels of use, and apart from a few minor works, no significant repairs have been carried out over the last decade or so. There was one rock step, where vehicles were going to the side to avoid the difficulty – but this was repaired by persons unknown (it was neither the landowner, the tenant, or any local authority).
- 13.7.3 The farmer of the land surrounding the road has expressed a preference that the surface is not improved, so it is considered suitable for his purposes. We have only recently (as part of the submissions to this project) received any complaints

that horses may have difficulty in using the road – and then these are few, and there have been no significant complaints raised by walkers or cyclists as to any problems they have experienced in using the road. That is, no complaints have really been submitted until the issue was raised.

- 13.7.4 **Conclusion for High Oxen Fell Road** - there simply does not appear to be much evidence, if any, that a prohibition would be necessary or appropriate for the purposes of preventing damage to the road.

## 13.8 Tilberthwaite Road

- 13.8.1 The situation on the Tilberthwaite Road is different. There has been obvious degradation of the surface over time – but only in some sections. This degradation co-incides in time with the following:
- increased usage of rights of way in general – including the increase in mountain biking;
  - increased 4WD usage since around 2001-2006;
  - at least three major weather incidents (2005, 2009, 2015);
  - a general increase in the severity and frequency of inclement weather;
  - minor repair works that used to be carried out on routes like this by the National Trust and the National Park Authority ceasing in around 2006;
  - a reduction in direct management and monitoring of vehicular use in the countryside led by the National Park Authority (the Trails Management Advisory Group ceased in 2007).

- 13.8.2 It is too simplistic to say that all of the degradation of the surface was solely because of vehicles – it is more likely to have been a combination of all of the above.

- 13.8.3 For instance, the same amount of vehicles have used the section of road on the left, as have on the right (these are both photos from the Tilberthwaite Road, on sections with similar gradients, taken within a few months of each other in 2018). Neither section has been repaired until recently. But the flatter (yet not level) section with a good camber and drainage has hardly received any surface damage. This would imply that a well maintained road is capable of sustaining the current, or increased levels of use.



- 13.8.4 However, it is fair to say that the increased usage; more impactful weather patterns; and reduced (no) maintenance exacerbate each other.
- 13.8.5 We have received comments to the effect that the damage due to rainfall is subsequent to the removal of the protective surface vegetation which was caused by increased recreational use since the 1980s. This is possible – but it is also important to note things like the general increase in recreational use, not just vehicles. Anecdotally, we know that there are more walkers during the winter than there were in the past, so paths and tracks in general now get less time to naturally heal. There has also been a huge increase in mountain biking since the 1980s – it would be surprising if very many bikes used the Tilberthwaite Road before 1985 (the first known mountain biking guidebook in the Lake District was 1988), and it has since become a popular route (our onsite survey shows that over 13% of the users during our survey times were mountain bikers). And cyclists and walkers are more likely to use the middle of the tracks where the majority of the grass was. Consequently, it is too simplistic to say surface change is due to increased vehicle usage alone.
- 13.8.6 Purely because something is damaged does not automatically mean that the cause of the damage must consequently be prohibited. The following photographs illustrate this. The first four are paths on the fells damaged by a combination of walkers and rain – with no vehicles present. They show comparable damage to that on the Tilberthwaite Road.



- 13.8.7 The photo below is of a bridleway in a sunken Holloway, generally seen to be a special, important, feature of the rights of way network – yet it has been caused by exactly the same erosive combinations as a similar sort of holloway (now rebuilt) on the Tilberthwaite Road (bottom). If we were to make a prohibition on a road purely because of damage caused by vehicles, we would surely be in the position of having to extend this logic to fell paths and other routes, and to consider banning walkers/riders from them to prevent surface damage.



Sunken Holloway on footpath



Sunken Road – Tilberthwaite to Fell Foot

- 13.8.8 Many people have said that the damage on the roads is 'inappropriate' because it is by vehicles, whereas foot damage is 'appropriate' because it is by walkers and 'walkers are what a National Park is for' – that argument is discussed in the natural beauty / appropriateness section below. This particular test / ground is about 'preventing damage to the surface' alone.

- 13.8.9 The main problems were on the sections with steep gradients, where the water runs faster causing more scouring, and where the vehicles have grip issues, exacerbating this scouring. The lack of maintenance, especially in relation to drainage, over 15-20 years or so is illustrated below.
- 13.8.10 The HoTR review report of 2001 (Appendix 3.1; pages 3-4) explained that: *“There is no physical evidence of either 4WDs or motorcycles on any of the routes which, given the level of use, is surprising. There is little or no grass cover on any of the four routes for vehicles to break through and although some short sections of gullying exist, the main action of water has been to remove the fine sediment from across the whole surface of the track. To prevent the condition of the U5001 from worsening, water needs to be kept off the surface and regular maintenance of the ditches, culverts and drains should be seen as a priority. [Photograph 70] shows a section of the route where a poorly maintained side ditch has allowed water to flow down the track and create a rough boulder strewn surface. This scenario is repeated at other locations and if not checked, the condition of this route could deteriorate markedly in the short to mid term.”*
- 13.8.11 The draft HoTR review report of 2005 describes what happened over the next five years with little or no maintenance being carried out (Appendix 3.1; page 7): *“This section has become much more rough and loose. In the foreground of the 2000 photo there was loose gravel overlying a solid surface but in 2005 that has been disturbed by users and water. The compact surface has gone and there is a more mobile rougher surface in its place. The cause of this is a broken concrete pipe culvert at the top of this section. Immediately above this pipe the route reverts to a good solid track as it climbs then reaches the highest point.”*



2000



2005

- 13.8.12 There are no records of this culvert ever being repaired – nor of any of the works recommended being carried out. The areas of concern in 2001 and 2005 are precisely where most degradation has taken place since then.

13.8.13 The photos below are at the same location, with 1-3 looking down the hill, with the old drainage channels to the right. They have gradually filled in and have not been cleared out or maintained – and the water has then started running down the road itself, and as in photo 4, coming off the sides and not being collected at all by the drains. The difference in the surface is noticeable.



1 & 2: Looking down – old drains on right



3: Looking down – old drains on right



4: Looking up, old drains on left, water not being collected

13.8.14 The surface and the drainage have now both been restored. When surveyed after a wet day in 2019, there was little or no water on the road surface – all being diverted into the drainage, or captured before getting onto the road.



Same location/direction as photo 3 – July 2019



- 13.8.15 The two photos above both show the amount of water running down the surface because of failed drainage channels that previously either kept the water off the road in the first place, or diverted it off quickly.
- 13.8.16 The implication is that if the drains and surfaces had been maintained, much of the surface damage may/would not have occurred in the first place. And consequently, now that the road has been rebuilt, with vastly improved drainage, so long as a proper maintenance regime is put in place, there is no reason that the surface should not be adequately preserved in the future.
- 13.8.17 It is also notable that we had not received any significant complaints from walkers, horse-riders, or cyclists that they were finding the route difficult to use. Once the petition started, we did receive adverse comments about damage to the surface – but again, few of them were actually directed around any issues of difficulty of use, they were more along the lines of *'the surface is wrecked by vehicles'*.
- 13.8.18 The repair work was carried out because the farmer was having difficulty in using the public road to access his land. It was not carried out to improve the road for walkers, cyclists, or horse-riders – that was a by-product. In fact, the repairs were the subject of vociferous complaints from the mountain biking sector, who wished it to be left as it was to provide a more technically challenging route. Since the repairs have been completed we have continued to receive complaints that the surface is now 'boring', and should have been left in its 'natural' state. Therefore, any damage, however it had been caused, did not appear to have seriously hampered most users.
- 13.8.19 Finally, the statutory duty of the highway authority (Cumbria County Council) is to keep the road in repair for the ordinary traffic of the neighbourhood, and vehicles have a right to use the road. The road is now fit for purpose following the repairs. This shows that the surface damage (caused by whatever means) is not irreparable. It would be inappropriate to prohibit traffic for the sole purpose of preventing damage to the surface without at least monitoring the repair works and any new maintenance regime for a number of years to see if it can satisfactorily withstand the levels of use. It is also worth bearing in mind that cars could use this route in the 1960s, so there was a long period of decline before it became vastly more difficult to use.
- 13.8.20 **Conclusion for Tilberthwaite Road** - consequently it is difficult to conclude that it would be appropriate to make a traffic regulation order for the Tilberthwaite Road solely on the ground of preventing damage to the road.

**14 Ground D: For preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which is unsuitable having regard to the existing character of the road or adjoining property**

**Ground F: For preserving or improving the amenities of the area through which the road runs.**

**Ground H: 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. This includes conserving its flora, fauna and geological and physiographical features.**

14.1 These three grounds, **D, E & F**, are difficult to deal with discretely, as they overlap and have connections between them. It is best to consider these grounds by discussing the Outstanding Universal Values of the Lake District World Heritage Site and their associated Special Qualities (as set out at section 1.13), and the issues raised through our surveys and evidence gathering exercises. The OUVs and Special Qualities directly relate to the grounds as they define aspects such as 'amenity', 'natural beauty' and all relate to suitability and appropriateness.

14.2 The SLD Campaign has highlighted the six special qualities they consider to be affected and damaged through recreational motor vehicular use of these two roads (listed below).

- i. A world class cultural landscape
- ii. Unique farming heritage
- iii. A source of artistic inspiration
- iv. A model for protecting cultural landscapes
- v. A long tradition of tourism and outdoor activities
- vi. Opportunities for quiet enjoyment

Their comments are included within the following discussions, and these are taken either from their online guidance on the impact on special qualities (Appendix 2.2), or from their formal submission (Appendix 2.1). They are set out under each World Heritage Theme, and then each attribute.

### **14.3 Outstanding Universal Value Theme: Development of a model for protecting cultural landscape**

Attributes:

- Conservation movement – wider conservation
- Conservation - habitats and wildlife
- National Trust ownership

14.3.1 Comments by the SLD Campaign: *Beatrix Potter bought this land to conserve it for future generations. She then left it to the National Trust – her legacy of this area to the National Trust and the nation is a milestone in the history of the NT and LDNP. Recreational motor vehicles destroy the harmony of natural and farming features, so characteristic of the Lake District. Agricultural vehicles, in any case very infrequent, do not have a negative impact. Allowing activities that destroy the harmony, beauty and tranquillity of this area reverses the protection efforts that are at the origin of the National Trust and National Park.*

#### **14.3.2 Conservation Movement – wider conservation**

14.3.2.1 Comments by the SLD Campaign: *This area is the cradle of the conservation movement in the UK. It was left to the National Trust by Beatrix Potter, under the condition to preserve it for future generations. What we are witnessing now is a reversal of these early conservation efforts.*

14.3.2.2 Conservation is the survival of the cultural landscape in its current form, with the idea of universal value of scenic and cultural landscape transcending traditional property rights and the perception that protection that the Lake District is protected for the nation.

14.3.2.3 It is not clear from the campaign literature just how the early conservation efforts are being reversed by MPV usage of these two roads, but it appears to revolve around ‘*recreational MPVs destroying the extraordinary beauty and harmony of natural and farming features*’.

14.3.2.4 There is little evidence that this is the case. The natural and farming features making up the cultural landscape are not being particularly impacted upon. There are no changes to aspects such as field boundary patterns, farming patterns, ownership patterns, hedges, walls, habitats, or other landscape features directly attributable to recreational MPV usage. And any issue caused by the surface creating difficulties in accessing the land have been resolved.

14.3.2.5 It is accepted that one roadside wall was being undermined, and the revetment was rebuilt by the National Trust, and funded by GLASS / TRF crowd-funding (that is – by vehicular users themselves). Maintenance of walls is a constant action by landowners – regardless of whether any vehicles are nearby.

14.3.2.6 The landscape through which the Tilberthwaite Road runs is dominated by old quarries and quarry workings – many of which were active when Beatrix Potter bought the land. The road formed part of these activities, and current usage does not impact on the conservation of these features.

14.3.2.7 Conclusion - It is difficult to show that MPV usage of these two roads is having a significant effect on the conservation movement or the cultural landscape.

### **14.3.3 Conservation Movement - Wealth of habitats and wildlife**

- 14.3.3.1 Comments from surveys: *Recreational vehicles scare wildlife (birds, deer) and damage the flora.*
- 14.3.3.2 There is no evidence that recreational MPV usage of these two roads are having an affect on wildlife. Quite a number of people have mentioned this in our survey – but no-one has provided any personal evidence of wildlife actually being driven away, scared, or impacted upon.
- 14.3.3.3 If there were evidence that recreational MPV usage negatively affects wildlife there is no evidence that it is an especial problem on these two unsealed roads than alongside any other road in the countryside. Nor that recreational MPV usage has a greater impact than agricultural MPV usage.
- 14.3.3.4 Nor is there any evidence that MPV usage has a different impact on animals and wildlife than walkers, dogs, or cyclists. In particular, a number of people have mentioned deer and other animals – yet anecdotally, and from experience, deer are more likely to be disturbed by walkers (especially with dogs) and cyclists than by a vehicle passing.
- 14.3.3.5 There is minimal evidence of impact on surrounding flora through MPV usage. There are a few areas where vehicles have deviated off the main surface, but when the main track has been repaired (such as at High Oxen Fell – photos at pages 21-22 of Appendix 3.1) the vegetation has quickly recovered. The landowner, (National Trust) has stated that few vehicles drive off the route, and so impact is negligible. In any case, it would appear from observations, that it is agricultural vehicles that are most likely to depart the actual road to access adjacent agricultural land.
- 14.3.3.6 The National Trust's letting particulars for High Tilberthwaite Farm (2018 – Appendix 6.4) set out their 'Nature Conservation Ambition'. This was compiled in the knowledge of the current levels of MPV usage, and the maps clearly show how small an area of the holding as a whole is traversed by the road. The National Trust has not raised any issues with us to the effect that the MPV usage will have a negative impact on their ecological conservation aims. Indeed they have effectively said that there is no impact.
- 14.3.3.7 Conclusion – there is no obvious reason that the National Trust will be unable to conserve the condition of the land for future generations. Their nature conservation ambitions (which are all about habitats and wildlife) appear to be unaffected by the existence and usage of these two roads by recreational MPVs.

### **14.3.4 National Trust Ownership**

- 14.3.4.1 There is no threat to National Trust ownership.

## **14.4 Outstanding Universal Value Theme: Continuity of agro-pastoralism tradition and local industry in a spectacular mountain landscape**

### Attributes:

- Extraordinary beauty and harmony
- The physical natural landscape
- Farming traditions
- Herdwick Flocks & Swaledale Flocks
- Woodland Industries
- Mining and Quarrying
- 16/17<sup>th</sup> Century farmhouses

### **14.4.1 *Extraordinary beauty and harmony***

14.4.1.1 This is best discussed under the 'quiet enjoyment' section below (14.5.3).

### **14.4.2 *The physical natural landscape***

14.4.2.1 This has been discussed under the surface damage section (s13), and at 14.3.

### **14.4.3 *Farming traditions / Herdwick Flocks / Swaledale Flocks***

14.4.3.1 Comments by the SLD Campaign: *Recreational motor vehicles constitute a threat to the normal workings, and severely obstruct the normal farm work of the sheep farms through which the roads run – as has been described by the farmers in their letters. They have driven one farmer off his farm. Recreational motor vehicles are an intrusive element, agricultural vehicles are part of it.*

14.4.3.2 The National Trust (owners of the farms associated with these roads and surrounding land) is quite clear that MPV usage of these roads does not pose a sustained threat to the continuity of agro-pastoralism at valley scale.

14.4.3.3 The previous tenants of High Tilberthwaite Farm have said that the overwhelming reason for them leaving the farm was the surface condition of the highway – which has since been repaired. They say that the other impacts from usage of the road were less serious, and would not have led to them leaving.

14.4.3.3 We have discussed with the National Trust some of the issues raised by the tenants, such as MPVs queuing on the highway through High Tilberthwaite yard. We have previously suggested that the gate locations are reviewed, or that cattle grids are considered – with a view to reorganising things physically to reduce, mitigate, or remove some of these issues. Although none of these options have been seriously looked at, they still remain as options to discuss.

14.4.3.4 The evidence from our surveys is that agricultural vehicles are just as much as an intrusive element with regard to noise – but that members of the public accept noise from one source, but not from another. Noise does not affect the farming heritage or traditions themselves.

14.4.3.5 It is difficult to know the precise impact of MPV usage of these two roads on the two farms concerned. It is obviously an issue, but as neatly explained by staff of the National Trust, the impact is now (post repair works) more on the people (farmers) themselves rather than the actual ability to farm the land, either in pure agricultural terms or in conservation terms.

- 14.4.3.6 Many of the issues at High Tilberthwaite revolved around the surface condition, as explained by the previous tenant – and this has been resolved for the present. The surface should not deteriorate to that state again (if maintained), and if it does look as though it is going that way, the tenant and landowner have recourse to legal action under section 56 of the Highways Act anyway. Some of the other issues that affected the previous tenant, do not appear to be affecting the current tenant (or at least to a lesser degree, or not yet). This may be because of adapting the practices to fit the situation, or simply a change in practices with changes in tenancy. It is also the case that creative solutions to the issues have not really been explored by the various bodies involved.
- 14.4.3.7 Many of the issues stressed by GLEAM, Save the Lake District Campaign, and the National Trust as being a big problem at High Oxen Fell Farm, appear to be far less of a problem to the farmer himself.
- 14.4.3.8 Many of the problems cited by the farmer at High Oxen Fell in discussions with staff are not things that can be used as grounds for a TRO, either already being unlawful, not specifically connected with vehicular use, not fitting the grounds for a TRO, or occurring on the sealed section of the road.
- 14.4.3.9 If there were an impact on the farming traditions, the issues would have to meet one of the grounds for a TRO for a TRO to be introduced. And this is difficult, as many of the impacts referred to have no direct link to the TRO grounds. For instance:
- Making use of sheep pens more difficult / making driving sheep along a road more difficult / making using the highway as a stock holding area more difficult / night-time disturbance / fumes in the house. These could possibly be put under the grounds of "for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which is unsuitable having regard to the existing character of the road or adjoining property".
  - But, we would then have to assess 'What is the character of the adjoining property?' It is a farmhouse and holiday cottage, set back slightly from a public road. That is, no different from the vast majority of houses in Britain. However, this house sees around 40 4WD vehicles and 20 motorbikes per month - vastly fewer than most other houses alongside roads. So, we would have to consider what it is that would mean that the character of the property is such that it is necessary to prohibit vehicles from passing it? And this is difficult, as the only distinguishing feature is its remoteness. But there are equally remote houses on busier roads, such as at Cockley Beck and Fell Foot, and in addition to this, Tilberthwaite and High Oxen Fell are busy and popular with walkers and cyclist – removing much of the remote feeling anyway.

#### **14.4.4 *Farmhouses / woodland industries / mining and quarrying***

- 14.4.4.1 Nothing significant has been identified that would impact on any of these attributes
- 14.4.5 Conclusion – It would seem that the continuity of agro-pastoralism tradition and local industry in a spectacular mountain landscape is not being negatively affected by recreational MPV usage of these two roads.

## **14.5 Outstanding Universal Value Theme: Discovery and appreciation of a rich cultural landscape**

Attributes:

- Writers and poets
- Key literary associations with the landscape
- Opportunities for quiet enjoyment and spiritual refreshment

### **14.5.1 *Writers and poets / Source of artistic inspiration and key literary association with the landscape***

- 14.5.1.1 Comments by the SLD Campaign: *This is the landscape that inspired writers and painters, and made them into fervent conservationists. The presence of recreational motor vehicles degrades the very characteristics they cherished through noise, pollution and an overbearing visual presence. This is part of the area Wordsworth wrote about and which inspired him to write [some] of the best known poems in the English language.*
- 14.5.1.2 There is no real explanation from the SLD Campaign as to how precisely the artistic inspiration and literary associations are actually being affected – other than the general comments about degrading the special qualities. No evidence has been forthcoming through the evidence gathering process that modern artists, authors, poets, photographers, or others with artistic tendencies are being prevented from gaining inspiration from this landscape because of the relatively small presence of vehicles on these two roads. As we are aware, there is vastly more traffic on the more visually intrusive roads such as Wrynose Pass, Side Gates, and the A593, and the presence of an occasional vehicle on the Tilberthwaite Road is unlikely to impact on inspiration to any significant degree.
- 14.5.1.3 It is also important to recognise the differences between the time referred to and the present. This area was an important mining and quarrying location for many centuries. Mines such as Greenburn and Tilberthwaite may have been worked since the seventeenth century, Greenburn was worked until 1865 and was later re-opened until around 1940. Hodge Close Quarry was worked on a large scale from the 19th century to small scale in the early 1960s. Tilberthwaite and the quarries on the slopes of Wetherlam were very productive, and were still operating when Beatrix Potter bought the land. Quarrying still takes place in the area.
- 14.5.1.4 All of this activity would have had a greater physical impact on the landscape, and greater air and noise pollution than the relatively small number of MPVs using the unsealed roads today. And yet this activity, noise, and pollution was occurring at exactly the same time as the artistic movement developed, and Wordsworth and others were experiencing the Lake District.
- 14.5.1.5 Conclusion - It would therefore seem as though there is less likelihood of artistic inspiration and literary association being impacted upon by (probably lower levels of) mechanised human activity today than there was at the very time being cited. There is no actual evidence of artistic inspiration being reduced or stifled by the presence of MPVs on these two roads.

**14.5.2 Opportunities for quiet enjoyment and spiritual refreshment – long tradition of tourism and outdoor activities**

- 14.5.2.1 Comments by the SLD Campaign: *For centuries people have come to enjoy the beauty and tranquillity and to pursue outdoor activities without spoiling the experience for other people. The influx of recreational motor vehicles since around 2000 introduced a new kind of tourism which in the long-term degrades the long-term attractiveness of the area.*
- 14.5.2.2 In the National Park as a whole, visitor numbers have increased by around a million a year over the last five years. Langdale residents have complained to us about the overall increase in visitor numbers to these valleys, and the impact on its infrastructure – and some of the comments online and at the drop-in sessions and email are on this theme. The tenants and landowners of the two farms have also stated that non-MPV users of these two roads are increasing.
- 14.5.2.3 The campaign literature, website comments, and survey comments read on their own can give the impression that vehicular usage has suddenly been introduced onto these two roads, or will be introduced - which is not the case. For instance one post said: *“I regularly go to the Langdales, but won’t go now if this is allowed”*. Basically, if this poster (and others) have been visiting the Langdales regularly for many years, and have not been impacted upon during their visits to date, then subsequent visits are likely to be the same.
- 14.5.2.4 Conclusion - It is difficult to find that limited, but increased, MPV usage is actually making the area less attractive to the degree where it is reducing tourism and outdoor activities in these areas.

### **14.5.3 Opportunities for quiet enjoyment and spiritual refreshment – visual impact, pollution/fumes, noise, and inappropriateness**

- 14.5.3.1 This is the main discussion point raised throughout this process, so the full the wording from our World Heritage bid documentation is provided (Appendix 1.3):

#### **13 OPPORTUNITIES FOR QUIET ENJOYMENT**

*The tranquillity of the fells, valleys and lakes gives a sense of space and freedom. The open character of the uplands, and the absence of modern development, is especially important. To walk freely across the fells, or climb their crags, is liberating and gives a sense of discovery and achievement. There is a feeling of wildness, offering personal challenges for some and impressive open views for everyone. To many people the Lake District is a safe place to explore: it is possible to feel remote, yet know that the nearest settlement is never far away. These characteristics provide important opportunities for spiritual refreshment: a release from the pressures of modern day life and a contrast to the noise and bustle experienced elsewhere. These are all vital components of the concept of quiet enjoyment and can be found in many places across the whole of the National Park. The value of the Lake District landscape for spiritual nourishment, originating in the Romantic recognition of the capacity of landscape to nurture and stimulate imagination, creativity and spirit, was recognised by the gift of the highest mountain land in England to the National Trust as a memorial to those who perished fighting in World War 1.*

- 14.5.3.2 In the section concerning the integrity and authenticity of the Lake District is a particularly pertinent paragraph (p299):

*Opportunities for quiet enjoyment and spiritual refreshment are also vulnerable to tourism and other development pressures. However, away from the busier towns and villages of the central Lake District, there are still many opportunities to experience the tranquillity of the area. This attribute is protected through the strategic planning system, through assessment of planning applications on a case by case basis, and by implementing visitor management strategies.*

- 14.5.3.3 Comments from SLD Campaign: *The vast majority of people come here to get away from the pressures of modern life, especially motor vehicle traffic. To encounter overbearing, noisy motor vehicles and to have to breathe in their exhaust fumes in this tranquil landscape negates this fundamental quality of the Lake District. But even the prospect that at any moment you might be faced with 4x4s or motorbikes and have to be on the alert constantly radically changes the experience of these routes and this landscape. It is impossible to enjoy this road and the surrounding countryside quietly in the presence of recreational motor vehicles. Agricultural vehicles are much less frequent and form an organic part of the landscape and its farms. ‘Tranquillity’ is more than just the absence of noise, the Oxford English Dictionary defines it as the ‘quality or state of being tranquil; freedom from disturbance or agitation; serenity, calmness; quietness, peacefulness.’ Tranquillity therefore has a visual as well as an aural dimension.*
- 14.5.3.4 The World Heritage Bid was written and accepted when the MPV usage was already well established, and comparable to today’s levels. It is not the case that this usage has developed since these attributes and qualities were identified. That is – the area was noted for offering the ability for quiet enjoyment with MPV usage already taking place.

14.5.3.5 There are four main aspects of concern that have been expressed through our evidence gathering; given that these are the main aspects, it is probably worth considering each of them in turn in separate sections.

- visual impact,
- pollution/fumes,
- noise, and
- inappropriateness of the vehicles being there.

## **14.6 Visual Impact**

14.6.1 The main comments made by people within the surveys are about the colour of the Kankku vehicles (bright orange - although many of their vehicles are now dark green). Other comments are along the lines of not wishing to see vehicles in the countryside.

14.6.2 However, there are no comments about not wanting to see vehicles on surrounding roads, such as Wrynose Pass, or on the road to Tilberthwaite Car Park (or indeed in the car park). It is therefore difficult for us to judge the actual impact of around 40 a week 4WD vehicles using these roads, when compared to the vastly greater use of the surrounding road network. Both uses have an impact on the views of the valleys and fells, and it is difficult to say that prohibiting vehicles on the Tilberthwaite Road would substantially enhance the views and the landscape as a whole.

14.6.3 With regard to High Oxen Fell Road it is harder to make any such justification. The road passes through mainly wooded pasture, and users are not really visible beyond the road itself.

14.6.4 The roads have a stone surface – whether they are used by MPVs or not, and they will remain in the landscape as a visible feature, along with the other roads.

## **14.7 Pollution / fumes**

14.7.1 As mentioned earlier – there is little wider impact on overall air quality from the limited usage of these roads, especially when compared to the overall usage of the road network, not least by those walking or cycling on these roads, almost all of whom have driven through the Lake District to reach their start point. Therefore, comments about diesel pollution, carbon, and so on are not really relevant in the context of off-road use. No-one has provided any evidence to show that the 4x4 and motorcycles that use either of these roads cause more air pollution than any other vehicle using the tarmac roads for recreation purposes.

14.7.2 The more relevant issue is the impact on other people using the roads on foot or riding a bike/horse. It is undoubted that 4WD vehicles and motorbikes pass walkers and riders in fairly close proximity – and their fumes and pollution will be directly inhaled by the other users.

14.7.3 There is an undoubted impact on those using the road, as the online survey comments make clear. Whether there is a sufficient enough impact to warrant prohibition is debatable. It is probably relevant to note that the nature of the impact is transient given that it is infrequent, and once the vehicle passes it quickly subsides. The likelihood and times of the impact are discussed at 14.8.24.

## **14.8 Noise / Tranquillity**

### Tranquillity Mapping (Appendices 7.1-7.2)

- 14.8.1 The use of these roads by motorised vehicles, whether 4WD or motorbikes, does generate noise, and such noise is often not appreciated in a rural setting. The main issues identified are the noise from 4WD vehicles affecting people when passing them on the road, and the noise from motorbikes approaching, passing and receding when on the road, and being audible from some distance away, thereby affecting people's enjoyment of both the road itself, and the surrounding countryside.
- 14.8.2 Tranquillity has been defined and mapped by the Countryside Agency and the Campaign to Protect Rural England (CPRE) (Appendix 7.1). The SLD Campaign have submitted an interpretation of this, as it has been applied elsewhere (pages 23-27, Appendix 2.1).
- 14.8.3 Tranquillity comprises links to hearing, seeing, and/or experiencing various aspects of perceived nature, with both aural and visual aspects. Some 44 different criterion have been used in the CPRE tranquillity mapping – and this led to a detailed map of every 500m x 500m grid square in England and Wales being produced in 2006 (Maps 1 and 2, Appendix 7.2). This map revolves around the average tranquillity level in England & Wales being 0, and ranges between -100 to 100; it is colour coded with the darkest blue for those places most likely to make people feel tranquil, and brightest red for those least tranquil. The pale yellow squares are those with 'average' tranquillity.
- 14.8.4 The U5001 passes through areas with scores of 5,30,30,35,15 – and therefore can be classed as mainly / partially tranquil. It is not in the most tranquil zones of the National Park, but on the edge of it – it is in the transition zone between 'neutral' and 'most tranquil'.
- 14.8.5 The U5004 passes through areas with scores of -5 and 20. That is, lower than average tranquillity (Hodge Close end of the route) and partially tranquil. This is lower than the area through which the U5001 passes.
- 14.8.6 The surrounding countryside is a similar mix.
- 14.8.7 This data was compiled in 2006 – both roads were already in existence and being used by that time. Therefore, the tranquillity scores already took into account the factors that prevail today. If the process were replicated today, it is unlikely that there would be much (if any) difference in the desk-based scoring given to the relevant grid squares, as usage has only moved from 35 to 59 4WD vehicles a week (although it has actually reduced to earlier levels in 2019 so far).

### Yorkshire Dales National Park Authority MPV Noise Report (appendix 7.3)

14.8.8 This report was commissioned in 2005. The headline conclusion was:

- Paragraph 8.2 *“It is considered likely that the use of unsurfaced routes by 4x4 vehicles during the day is less likely to cause noise disturbance to most reasonable people, provided that vehicles are maintained, travel in small groups and at slow speeds”*.

14.8.9 It is worth noting a few key things from the report:

- With regard to motorbikes, zones of annoyance and audibility can be drawn up, as described below. However, there are a number of caveats and assumptions made within this assessment.
- The assessment and zone calculation was based on the worst-case scenario, using a Kawawasaki KE100, (not all users will have a trail bike of this nature or loudness (up to 96dBA)) at ‘maximum noise level’ (para 6.12-6.15), which is defined as the ‘loudest individual bike, full open-throttle’. Obviously this will not be occurring for the whole time that the motorbike will be using the road, if at all.
  - 96dBA is above the road legal limits for motor-bikes. Under [current legislation](#), for post 1983 motorbikes 79-87 decibels is the current maximum permitted noise level for a motorcycle on a public road. So any vehicles louder than this are currently committing an offence already.
- The ‘Annoyance’ zone is defined as 5dBA above ambient background noise (10dBA is double the loudness). Although ‘annoyance’ is subjective, and different for everyone.
- The ‘Audible’ zone in the report is defined as 5dBA below ambient noise levels.
- No detailed account has been taken of the specific topography surrounding the roads in the study. For instance, on our roads, at Tilberthwaite, we know from our experiences carrying out the on-site surveys that motorbikes vehicles can be within 70 metres of the survey site before being heard, and that at 50 metres from the gate, the first some surveyors have been aware of approaching 4WD vehicles has been the gate catch. But, conversely, in other locations, they appear to be audible at a greater distance than measured.

### Audible Impact Assessment of Vehicles on U5001 and U5004 (Appendix 7.4)

- 14.8.10 Using the data from the YDNPA report, we have, to the best of our abilities, attempted to model a noise soundscape for the area in relation to vehicular noise on these two roads and the surrounding public roads – and how they interact.
- 14.8.11 There are some important caveats to this note regarding this assessment:
- It is based on industry figures of sound travel. It is not based on empirical evidence from noise measurements from around the area during times when all the roads were being used by MPVs, and therefore does not take into account the specific topography of the Tilberthwaite or High Oxen Fell Road surrounds.
  - Consequently, the propagation of noise is uniform, whereas in reality it is affected by topography and vegetation (woodland mainly).
  - The same noise levels will not apply equally to each road, or to each of the surrounding sealed and unsealed roads. They will all have a different soundscape – especially with regard to road flows, traffic speed, and so on.
  - We do not have traffic flows on the surrounding sealed road network. Cumbria County Council do have some figures for the A593, but not for any of the other roads.
  - The audible impact assessment report has been written by our GIS team analysing the relevant data – not by a Member of the Institute of Acoustics. But it is based on the YDNPA report, which uses similar methodology to create soundscapes for the surrounding area, and this was carried out by a Member of the Institute of Acoustics.
- 14.8.12 The audible impact assessment does use an explained methodology to create the soundscapes, in much the same way as the YDNPA commissioned report. For a Member of the Institute to replicate their report for us would cost around £5,000, and to carry out the further analysis as we have done would cost around a further £5,000. To carry out a full assessment using empirical evidence would cost upwards of £20,000, plus surveys of surrounding road usage.
- 14.8.13 As the YDNPA report concluded that 4WD traffic would only impact those using the roads themselves, we have looked more at the impact on the surrounding countryside – which is mainly from motorbikes. This bears out (in the main) the comments made through our on-line surveys.
- 14.8.14 However, in the YDNPA report, the outer edge of the ‘Audible’ zone in the report is defined as the point at which motorbike noise is 5dBA below ambient noise levels. We have considered this, and feel that the point at which motorcycle noise and background noise is the same is a more relevant edgepoint to use (560 metres) – especially given that the zones in the report only apply in the worst-case scenario. As we have measured the impact through buffer zones in relation to the other public roads in the area (Appendix 7.4), the ratios of land affected is likely to be similar. It is worth noting that SLD Campaign make the point in their submission that in this area, you cannot hear normal road traffic 500 metres away – so the audible zone of 560 metres appears appropriate. (The annoyance and audible zones of 320 and 560 metres are taken from the graph on p39 of the YDNPA report – appendix 7.3).

## Overall assessments – surrounding countryside

- 14.8.15 As with the visual impact, it is difficult to divorce the impacts of noise generated on this road from the impacts of noise generated by vehicles on other surrounding roads. The SLD Campaign state that the 'noise can be heard for miles in the valley', but also state that noise from other roads is not particularly audible 500 metres away. This is effectively implying that road noise on the unsealed roads is inherently louder than road noise from faster vehicles on tarmac roads – there is no scientific evidence to back this up. It is also difficult to square the statement of being 'audible for miles' with the evidence from the YDNPA noise assessment, which gives a lower distance, and even then, the 'annoyance' distance is only around 320 metres. A 1 mile radius from the centre of each track covers the following roads:
- Bottom half of Wrynose Pass
  - Bottom half of the road to Blea Tarn (side gates)
  - Little Langdale Valley
  - A593
  - Road to Hodge Close Quarry, and Byway continuation
  - The other unsealed road under consideration
  - Hallgarth / High Park / Low Oxen Fell network of sealed and unsealed roads
  - Road to Tilberthwaite Car Park (from where many of the walkers using the Tilberthwaite Track will be driving to).
- 14.8.16 It can be very difficult to determine the exact source of vehicular noise, and to pinpoint that it comes from the usage of one of these two roads without direct visual contact. No scientific evidence has been provided to show that any vehicular noise that can be heard in the surrounding fells is directly attributable to vehicles on these two tracks. If the aim is to remove noise from the roads to restore tranquillity to this part of the Lake District, then more would be achieved by reducing the number of vehicles from (for example) Wrynose, Side Gates and the A593. The traffic levels on these roads are higher.
- 14.8.17 The evidence we have been given, when actually specific, is often challengeable. For instance, respondents state that they can hear vehicles on the Tilberthwaite Road from places like Cathedral Caves, New Houses, and 1-1.5km away. You cannot see the Tilberthwaite Road from these locations, and there are other roads in between – so it would be difficult to pinpoint the noise source. In Appendix 4.2 (pages 16-27) we discuss the relationship between people commenting on hearing traffic on the Tilberthwaite Road, and where they actually were, and what they heard. This is also reflected in Appendix 7.5, where we have mapped those giving a specific location. Not only does this show that many people's understanding of distance is uncertain, but it reveals that the majority of those who have stated that their enjoyment was negatively affected by traffic noise specifically emanating from recreational MPVs on the Tilberthwaite Road were beyond the point at which the YDNPA study shows that the 'worst-case' noise from a motorbike is audible above the general background countryside noise. This is understandable in areas to the west of the road where the countryside is open, and noise is likely to travel further – but is less understandable for the other locations, where there are noise buffers such as woodland, hills, hummocks, and greater background noise such as rivers and other roads.

- 14.8.18 It is also important to look at the timescales involved, and for how long motorbike noise is likely to be affecting the surrounding area. Pages 14-15 of Appendix 3.4 show that on one of the busiest days of the year there were nine quarter hour segments where motorbikes were using the road (two and a quarter hours). On a more normal weekend day it was half-an-hour, and on some weekend days no motorbikes use the road. An average of around 20 motorbikes use the Tilberthwaite Road each week. If each of these used the route as individual journeys, this would equate to five hours a week of disturbance. In reality, the logger evidence shows that single usage is rare, and that it is on average groups of two or more. Thus reducing the disturbance time to under 2.5 hours a week.
- 14.8.19 It is difficult to conclude that prohibiting recreational MPV traffic from the U5001 would have any noticeable impact on the soundscape of Little Langdale Village, Hodge Close, Stang End and other places beyond the mapped 'Audible Zone'.
- 14.8.20 It is also difficult to make a distinction between the noise generated by other vehicles, including agricultural vehicles. Comments in the survey responses included:
- *"At a distance it is difficult to know what type of motorised vehicle I can hear, and certainly impossible to know the ownership of a 4x4, so this question is seriously flawed. However all motorised vehicles cause noise pollution, even sometimes at a considerable distance (depending on the wind). This prevents my peaceful enjoyment of the area and detracts from the unique landscape."*
  - *"These questions are faulty. When you are away from a route, but hear the noise of vehicles coming probably from the route, how can you tell if the sound of a 4x4 is from a recreational or agricultural vehicle? If the latter, and if it can be glimpsed, it doesn't detract from my enjoyment: I can see that a farmer is going about his essential business.. But if the noise can be identified as coming from a recreational 4x4 or motorbike, or convoys of either, then my enjoyment suffers. The noise of vehicles carries a long way, and can be just as disturbing to the essential peace and tranquillity of the area, as the noise I experience when I'm actually walking on the route. The general point here is that if peace and tranquillity are to be valued and protected, both on the route and on the adjacent fell sides, recreational vehicles must be prohibited."*
- 14.8.21 From these responses it would seem as though for many respondents it is not the 'noise' in itself that is the issue, but the 'source of the noise'. This is a difficult concept to understand, in that if a walker hears a vehicle, then if they can see that it is an agricultural vehicle, the noise has little, or no impact on their enjoyment, but if they can see that it is a recreational vehicle, a similar noise ruins their enjoyment. It would be difficult to prohibit traffic based on noise, when other traffic generating similar noise is allowed to remain. It would also be difficult to prohibit recreational vehicles on these two roads, when the increase in road traffic generating the same noise on the surrounding roads such as Wrynose and Side Gates is unabated, and when the traffic on those roads is far far greater.
- 14.8.22 It is especially difficult when looking at the Tilberthwaite Road. The vast majority of traffic on this road (U5001) is from the A593 at the south, to the car park at the beck. Only a small proportion of vehicles continue northwards to the unsealed section. Yet, we are not facing any calls to prohibit traffic from travelling from the A593 to the car park – despite that traffic contributing far more noise and other pollution to the surrounding countryside. Countryside which has the same attributes and special qualities.

### Overall assessments – on the roads themselves

- 14.8.23 As mentioned above, it is beyond doubt that removing recreational MPV traffic from the roads would change the experience for those meeting the traffic whilst on the roads themselves. The question then is really 'by how much', and is the impact on other users' so great that MPV traffic needs to be prohibited.
- 14.8.24 With noise, it has to be accepted that the noise is fairly localised and relatively temporary. At pages 14-15 of Appendix 3.4 we have tried to assess how long other users may be affected by looking at how long vehicles are actually using the Tilberthwaite Road in the context of a full day. We have looked in detail at three days. On one of the busiest days of the year, if walking the whole route sometime between 9am and 5.30pm, the chances of meeting at least one vehicle would be high. On a more 'normal' weekend day, the chances are far less. And during the week, you could spend all day walking up and down these two roads and you might only meet a few vehicles, or none at all. And 4WD noise does not (according to the YDNPA study and our own experience) travel great distances, so walkers and cyclists are not impacted by this for any great length of time before or after meeting the vehicle(s).

### Audible Impact Assessment / Noise – conclusions

- 14.8.25 There is undoubtedly an impact on the noise levels from recreational MPV traffic, mainly from motorbikes, and mainly in the surrounding countryside. There is also an impact from other vehicles using other sealed and unsealed roads in the locality.
- 14.8.26 The assessment shows that removing recreational motorbike traffic from the U5004 (High Oxen Fell) would achieve little overall for the surrounding countryside – which is all within earshot of remaining public roads.
- 14.8.27 With regard to the U5001 (Tilberthwaite), there would be an increase in the areas of surrounding countryside unaffected or only partly affected by road noise. However, the total area of benefit would be in the region of 0.41% of the whole area of the Coniston and Langdale Valleys as defined in the World Heritage Site.
- 14.8.28 It is undeniable that removing recreational MPV traffic from these roads will certainly remove noise from those meeting the MPVs on the road itself. It is less clear that it would lessen the amount of noise overall in the vicinity – especially if all that happens is displacement activity (that is, the same vehicles just use other roads instead). And if removing MPV traffic from these two roads did actually increase the number of walkers and cyclists using these roads – then as most people drive to the immediate locality to begin their walk/cycle, the levels of usage and noise in the surrounding area could be balanced out.
- 14.8.29 The decision is here is whether prohibiting recreational MPV traffic will actually afford better opportunities to people to enjoy the amenities of the area, in particular the ability for quiet enjoyment. And this mainly depends on individuals' interpretation (as shown in the surveys), and 'how much noise is acceptable'?
- 14.8.30 From the results of our online and onsite surveys, it is debatable whether the impact on other users' is so great that recreational MPV traffic needs to be prohibited.

## **14.9 Inappropriateness**

- 14.9.1 These last few sections relating to noise, pollution, visual impact, and so on, can probably be best summed up by discussing the ‘appropriateness’ of motor traffic on these two roads. As it does not appear to actually be noise, pollution, or visual impact *per se* that is at issue – but the fact that it is recreational use that can generate these impacts and takes place on these two unsealed roads.
- 14.9.2 Many of the comments made to us, especially on the petition website, are along the lines that it is inappropriate for vehicles to be using these paths and tracks, as they were not built for vehicles – but for walkers. The World Heritage Site status has also been raised as an issue in that part of the reason for nomination and inscription was the Lake District’s cultural heritage, partly connected to it being seen as the birthplace of climbing and recreational walking – and that off-road vehicular use is not appropriate in this context.
- 14.9.3 However, the views put forward are a misunderstanding of the development of the highway network and the cultural integrity aspects of the Lake District.
- 14.9.4 Many comments have been along the lines that these roads have been used by walkers for centuries, and were designed for walkers – and that vehicular usage is a modern phenomenon. This all really depends upon the definition of ‘historic’ and ‘modern’. The roads appear on maps from the early nineteenth century, although as the SLD Campaign point out, other roads (such as the route to the east which is now only a bridleway) were also shown, and sometimes described in a more prominent fashion.
- 14.9.5 It is true to say that all older roads in the whole of the Lake District) have developed organically with the landscape, and are an integral part of the landscape and the cultural history of the area. Very few have been purpose built or designed for any specific use. The history of roads in Britain has been explored in endless books, but all have the similar theme of an organic evolution from trod to horse routes to cart routes to vehicular highways, and eventually tarmac. The development of these two roads is not dissimilar to the development of other roads in the area which have since become tarmac – such as Wrynose Pass, Side Gates, the A593, and so on. They have all been important to the public at one time or another, for differing reasons and uses – and will continue to be so.
- 14.9.6 These two roads are not footpaths or bridleways (as described by many) – they are part of the minor road network and were given through road numbers by Lancashire County Council almost a century ago. It is worth noting that the unsealed sections do not exist as separate legal or recorded entities from the rest of the through road. The U5001 as a whole runs from Coniston to Little Langdale, and the U5004 extends far east of High Oxen Fell. Both link to other public roads at either end. We do not know for certain, but it is likely that the sections to the farms were sealed with tarmac in the 1950s when a lot of similar roads to farms were sealed by the councils to improve agricultural efficiency.

- 14.9.7 These are not ‘farmers roads’ or ‘quarry roads’ as sometimes described – they are public through roads that happen to be used by the farmer (and earlier the quarry and mining traffic, or packhorse traffic). That is – the farmers do not use these roads by reason of tenure – they use them because they are public highways.
- 14.9.8 When looking at the historic and cultural usage of these roads (and indeed the wider unsealed road network) it is difficult to know at which point in history any lines should be drawn. Where would we stop the cultural development of such highways? It could be that a line should be drawn at the point when the Lake District was designated as a World Heritage Site for its qualities as a cultural landscape. In which case, MPV usage of these two roads was very well established at that point, and so it could be argued that the MPV usage was already part of the cultural heritage of the area upon designation.
- 14.9.9 Or, we could go a bit further back, but to where, and why? The previous tenants of High Tilberthwaite have said that there were occasional cars using the road in the 1960s, as well as motorbikes. So, limited vehicular usage was already established by then. However, mountain biking did not really develop until the mid-late 1980s – so if we took the view that MPV usage was not ‘traditional’ and not part of the cultural and historical development of these highways, then we would have to argue the same about mountain biking.
- 14.9.10 Finally, part of the reason for the designation of the Lake District as a World Heritage Site is its connections with the development of climbing and recreational walking. Here is where much of this was pioneered.
- 14.9.11 But it is equally true to say the same of motorbiking and car driving on difficult and challenging terrain. The very first “[International Six Days Reliability Trials](#)” (now the International Six Days Enduro) was held in this area in 1913. Based in Carlisle, three of the five touring days involved routes through the Lake District (including Coniston). The Trials were for motorbikes and sidecars, and the first one included 161 from many nationalities. They traversed many of the Lakeland passes, most of which were still unsealed at the time. The trial has taken place every year since then (except for the war years) and was in the Lake District again in [1927](#) (based at Ambleside), including Hardknott and Wrynose passes.
- 14.9.12 Some of the other earliest motorbike challenge routes also took place in the Lake District because they were steep hills and difficult terrain to cover – and so provided ideal tests. Exactly as now. Trials took place on routes such as Walna Scar, Garburn Pass, Tow Top Hill, Blea Tarn, and Sadgill from at least 1912. In this era, trials, which meant the demonstration of ability to cover distance, and climb steep hills, and so on coupled with reliability, became a popular sport, with the Barrow & District, Cumberland, and Westmorland Motor Cycle Clubs (formed in 1910) being foremost in this region. Photographs of these events show the road conditions and the spectator appeal.

- 14.9.13 What we now generally refer to as 'off-road driving' also developed in the Lake District soon after the introduction of cars. Abraham's book 'The Motor Ways of Lakeland' [1913] describes the use of many road passes over the fells, not all of which have since been sealed, and part of the purpose of the book is '*a special feature has been made of the hills and their gradients, for to many...they are a fascinating and sporting feature of the district*'. The book also refers to a long rope being kept at Tilberthwaite Farm for pulling cars out of the Brathay Ford. A notable article in 'The Motor' magazine in 1937 described the challenge of doing 10 passes in 10 hours in the Lake District, and in 1938, Austin produced a publicity [film](#)<sup>u</sup> of their new car going over the challenging rough unsealed passes of the Lake District.

### Inappropriateness – Conclusion

- 14.9.14 So, from the above, it could be argued that driving and riding on unsealed roads for the sole purpose of a challenge in the Lake District (rather than to get from A to B) has a history going back more than a century, and is as much a part of the cultural history of the area as many other activities.
- 14.9.15 This obviously does not mean that it is automatically an appropriate activity to continue in the modern era – but it cannot be the case that it should be prohibited because some people believe it conflicts with the cultural development of the landscape. It can, as shown above, be argued that these roads and their uses are very much part of the cultural history of the Lake District.
- 14.9.16 In discussions, when people have been asked about traffic from other roads (such as Wrynose) contributing to the intrusive factors mentioned, respondents have said things like 'that's different'. However, it is not really all that different. The vast majority of usage of roads like Wrynose and Side Gates is recreational, or of a commercial nature (such as the Mountain Goat and minibus trips) in that it is mainly tourists enjoying the landscape and the Lake District, and the special challenges of the high passes, hairpin bends and narrow roads. As is the vehicular traffic using the Tilberthwaite and High Oxen Fell Roads – but of a different nature. The difference is that some roads have tarmac, and some roads don't – and therefore have a difference balance of user.
- 14.9.17 To prohibit motor vehicle use of these two roads could be taken as saying that one type of recreational vehicular use is acceptable (driving round busy and often congested narrow country roads looking at the countryside), but that another type of recreational vehicular use is unacceptable (limited levels of driving on quieter, more challenging routes that are also well used by walkers and off-road cyclists). This is the view espoused by a large number of the survey respondents, campaign website posters and so on.
- 14.9.18 **And this is the decision that Members have to make.** Is the recreational motor vehicular use of these two unsealed roads so inappropriate and unacceptable that it should be prohibited?
- 14.9.19 **And following on from that,** if traffic is not prohibited, then which of the other options is the most appropriate.

#### **14.10 Overall Impact on Outstanding Universal Values, World Heritage Site Status, and the Application of the Sandford Principle**

- 14.10.1 Whilst we respect the concerns expressed by ICOMOS, we are concerned that these may have been formed through the provision of partial and inaccurate information as opposed to actual evidence. The purpose of this project and report was to collate and examine evidence. We have done this by looking at the three themes of Outstanding Universal Value, and our conclusions regarding them are:
- 14.10.2 Continuity of agro-pastoralism tradition and local industry in a spectacular mountain landscape: The National Trust as landowners consider that there is minimal impact on the agro-pastoralism aspects of World Heritage Status.
- 14.10.3 Development of a model for protecting cultural landscape: There are no significantly identifiable impacts on the ability to retain and maintain the cultural landscape through continued low-level usage of these two roads.
- 14.10.4 Discovery and appreciation of a rich cultural landscape: There is an impact on the ability to experience quiet enjoyment of the National Park. But this has not deteriorated since World Heritage Site inscription, nor is it considered damaging enough to warrant prohibiting vehicles.
- 14.10.5 The Save the Lake District Campaign petition states as its main headline and byline: *“Protect the Lake District’s World Heritage status - The Lake District risks losing its UNESCO World Heritage status. One of the most beautiful and distinctive stretches of land near Little Langdale in the UK is being ruined by 4x4 cars and motorbikes that are devastating tracks, have forced a sheep farmer out of the area and are violating the terms of its World Heritage status. We have to save it.”*
- 14.10.6 It adds that *“The noise of these vehicles can be heard for miles in the valley, ruining the peace and tranquillity of the area that were the key reasons for it being recognised by UNESCO”*.
- 14.10.7 This implies that something has happened since inscription that detracts from the reasons for inscription. However, when considering this, it is important to bear in mind that these roads existed, and were being used, at the time that the Lake District was awarded World Heritage status. The surface condition was known at the time of inscription, and in fact has been improved since. Usage levels, and therefore the associated noise, pollution, any interference with farming, interference with quiet enjoyment, and so on, have not, so far as we can tell, dramatically risen since inscription (in fact, in the last six months, they have fallen).
- 14.10.8 That is, there has been no significant change since inscription – and inscription happened when the roads were already well used, and the condition of the roads was known. The Status was granted with this situation already existing.
- 14.10.9 With regard to the Sandford Principle it is important to note that this relates to where there is an irreconcilable conflict between conservation and public enjoyment, and where there is conflict between the purposes the greater weight should be applied to conserving over recreation. Or, in the words of UK National Parks: *“If there is a conflict between protecting the environment and people enjoying the environment, that can't be resolved by management, then protecting the environment is more important.”*

- 14.10.10 It is certainly not the case that surface damage (on it's own) is 'beyond repair' or irreconcilable – as it has clearly been shown that the surface can be repaired.
- 14.10.11 Given all the evidence collated during this project, there is a strong doubt as to whether any conflict is irreconcilable, and even whether the conflict is so great that damage is being caused to a significant degree. It is also clearly the case that the active management regime of the routes and attempts to influence the usage of them was discontinued in around 2006/2007.

## 14.11 Public opinion

- 14.11.1 It is important to also look at the overall public opinion in this matter.
- 14.11.2 GLEAM and the SLD Campaign have effectively cautioned us against using 'numbers' derived from the surveys to form the basis of any decision. However, the most relevant ground for a TRO is *"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."*
- 14.11.3 And therefore it is important to try and identify the extent to which the public's opportunities to enjoy the amenities of the area are being affected. Logically, if the public's view is that their enjoyment is not being affected, then prohibiting traffic to afford them better opportunities would not achieve that aim. That is, if the public tell us that their enjoyment of the amenities is not being particularly affected, then it would be difficult for us to build a case that states that it is necessary for us to prohibit vehicles to give them better opportunities for such enjoyment.
- 14.11.4 Over 300,000 people have signed a petition recommending that we ban motor vehicles on these two roads. And from that petition came 5,850 comments and over 45 updates with thousands more comments. However, it is evident that the vast majority of those commenting on the petition website did not personally know the roads, or hadn't been on them, and in some cases, had never been to the area. It is also clear that many were influenced by the headline information provided by the campaign, and their comments do imply quite strongly that they were under, or ill, informed.
- 14.11.5 However, what the petition does show is that there is a broad perception from a large number of people that motor vehicular use of unsealed roads in a National Park is inappropriate, even if unrelated to direct personal experiences.
- 14.11.6 But to use this information alone to impose a prohibition would be inappropriate. The broad view has to be tested against the specific situation with regard to these two roads to see if there is a particular problem that can only be resolved through prohibition. That is, we need to test the actual evidence to see if it supports the broader view.

- 14.11.7 Our online survey links were advertised to the 300,000+ petition signatories via a SLD Campaign update. We also sent the links to a large number of user bodies, councils and interested parties. It was also publicised on our website and through social media, reaching over 30,000 people. Despite this widespread publicity, the online surveys only received 568 completed replies for Tilberthwaite, and 180 completed replies for High Oxen Fell. 46 and 14 respondents respectively had not used the roads or the surrounding countryside.
- 14.11.8 The information received was much more specific than that through the SLD Campaign petition, and mainly related to these two roads – although even then there remain doubts as to some of the evidence provided. Notwithstanding this, out of the 508 responses from those using the Tilberthwaite Road, 55% considered that meeting others on the road had an impact on their personal enjoyment, (at High Oxen Fell it was 44% of 162). The percentages for those considering that their enjoyment of the surrounding countryside had been affected were 51% and 37% respectively. Some stated that this impact was positive.
- 14.11.9 45% considered that there was a negative impact on the special qualities from 4WD usage of the Tilberthwaite, and 33% considered the same to be the case at High Oxen Fell.
- 14.11.10 Only just over 40% of those responding wished to comment on future options for management. Only 56% of those wished to see a TRO imposed at Tilberthwaite, meaning that only 33% of respondents at Tilberthwaite specifically stated that they wished to see a TRO in place – and only 24% at High Oxen Fell.
- 14.11.11 When taking into account those respondents who had not stated a specific view on the future management, at Tilberthwaite 53% of all respondents appeared to prefer a non-TRO based management option. At High Oxen Fell it was 69%.
- 14.11.12 To test the evidence even further, we carried out face-to-face surveys on both roads, but mainly at Tilberthwaite, meeting over 1,200 members of the public who were actually experiencing and enjoying the amenities offered by using the roads. This captured actual (and all) users views – not just the views of those who were keen to complete the on-line survey to express their views and opinions one way or the other. The results of these surveys were revealing in that those actually using the roads on foot or bicycle overwhelmingly said that they had not experienced issues with other users (less than 6% reported any issues). Indeed, even 90% of those users who had actually met MPVs whilst on the Tilberthwaite Road said that they had not experienced any issues with other users.
- 14.11.13 A higher percentage said that their enjoyment would be impacted if they met a vehicle (24% on both roads), but it remains the case that as the likelihood of meeting a vehicle is relatively low (around 30-40 4WD and 20 motorbikes a week at Tilberthwaite) then the likelihood is that their enjoyment won't actually be affected, and so prohibiting vehicles would not necessarily afford them better opportunities to enjoy the amenities of the area.
- 14.11.14 In essence, there is evidence that some members of the public (walkers and runners in the main), along with some bodies and organisations, consider that motor vehicular use of unsealed roads is inappropriate – with the main issues being noise, pollution, and surface damage. It is very difficult to quantify this precisely, but we do basically have to measure the level of inappropriateness against something.

- 14.11.15 In effect, we are asking ‘how many people have to be affected for a prohibition to be necessary’? This is difficult to answer, as everyone has different tolerances. It could be argued that if anyone’s enjoyment of the landscape is ruined by the presence of a motor vehicle, then the motor vehicle should be prohibited. But, that logic may then have to be extended to things like mountain bikes, which affect over 10% of walkers’ enjoyment as well. There has to be a balance somewhere.
- 14.11.16 But it is clear from the onsite surveys, and to a degree, the online surveys – that the enjoyment of the amenities and the natural beauty of the area for the majority of people on and around these two roads is not being overly negatively affected by the presence of motor vehicles. And it must also be borne in mind that not only do these roads make up a tiny proportion of the linear public access available, but that many of the negative impacts relate to vehicular noise – of which far more is generated on the surrounding tarmac road network.
- 14.11.17 It would seem that the closer you get to the actual sites (in terms of people’s actual experiences), the less of an issue there actually is – which would imply that the main concerns raised are either:
- a) Perceived rather than actually existing;
  - b) Existing, but not as bad as made out by the SLD Campaign;
  - c) Manageable or generally acceptable.
- 14.11.18 This was most clearly expressed by one local couple who met our surveyor on site on August Bank Holiday weekend 2018 (Saturday), and expressed their views about the vehicular usage, how it ruined their enjoyment, should be banned, and other similar comments. Our surveyor asked them that if they felt that strongly, and had their enjoyment ruined in this way, why they had still chosen to walk on this road on one of the busiest days of the year when they were virtually guaranteed to meet vehicles – especially given their local knowledge of the other non-vehicular routes that they could be walking on. Their response was ‘*Well, it’s not that bad*’.
- 14.11.18 Some other comments from the onsite survey were along the lines of ‘*they have to go somewhere*’, and ‘*alright on the right places*’ – with an apparent general acceptance that these, being stone based roads, were the right places for vehicles to go.
- 14.11.19 It is also noticeable from the online survey, that many respondents who stated that their enjoyment was negatively affected by MPVs on most or all occasions – still appear to return to use these same roads, even if they lived some distance away, even hundreds of miles<sup>3</sup>. This, despite having the choice of all the other non-vehicular linear access routes to walk along.

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<sup>3</sup> For instance:

- 119 walkers in the online survey said their enjoyment was affected by MPVs on the Tilberthwaite Road on every or most occasions and that they had used the road longer than the last five years.
- Of these, 45 continue to use the route more frequently than 3 times a year (some more often than monthly), with a further 45 still using it once or twice a year.
- 62 of these 90 people live more than 25 miles away (London, Peterborough, Oxford, Cambridge, York, Newcastle are examples), so made some effort to reach the road, that is – it’s not the only route available to them.

## **15 Options and Recommendation** (repeated as section 6 of the Summary Report)

15.1 Our evidence gathering has shown that there are only a few realistic options:

- a) Do nothing
- b) Maintain the surface, but do nothing else
- c) Prohibit all motor vehicles (except agricultural / emergency / service)
- d) Prohibit some motor vehicles, or for some activities (such as commercial operators), or in certain circumstances (such as during winter, or one way)
- e) Develop a Partnership Management Group (consensus working)

### **15.2 Option a – Do Nothing**

15.2.1 This would involve no further action by the National Park Authority. The current condition of both routes is acceptable, and current usage levels could continue. However, we would not know whether future usage would increase or decrease, and would not be alert to any changes. The maintenance of the route would fall to Cumbria County Council, and so it is likely to be low-key, if any. Given the levels of public concern, and the recent investment of over £50,000 on the Tilberthwaite Road, this option alone would probably not be appropriate.

### **15.3 Option b – Maintain the surface, but do nothing else**

15.3.1 This would require some sort of agreement between Cumbria County Council and the National Trust and ourselves to ensure that the works carried out on the Tilberthwaite Road were protected by routine maintenance, and that minor works were carried out on the High Oxen Fell Road as and when required.

15.3.2 However, we would learn nothing about future use and how such use impacted the surface over a longer period of time. Because of this, option b alone is probably not the most appropriate for Tilberthwaite given the obvious public concern – but could be appropriate at High Oxen Fell, given the lower level of concern expressed.

### **15.4 Option c – Prohibit all motor vehicles (except agricultural / essential).**

15.4.1 This option would meet the requests of the Save the Lake District Campaign. However, as discussed within the body of the Assessment Report, the grounds for such a prohibition may not be sufficiently met to support the case. Any prohibition is likely to be challenged through the courts, and so we would have to be sure that this was the right thing to do, based on evidence, before choosing this option.

15.4.2 Defra advice is that other avenues should be explored before prohibitions are imposed. The Sandford Principle refers to 'irreconcilable conflict', and the World Heritage nomination document refers to visitor management as being important. The last active management of these roads ceased in around 2006, and it is therefore probably inappropriate to prohibit traffic at this point, without fully exploring whether re-instating some form of management or partnership working would help reduce (reconcile) the issues and problems – perceived or otherwise.

15.4.3 Before any Traffic Regulation Order was made, we would be required to carry out a formal consultation on the actual regulation proposed. The results of such a consultation would then be brought back to this committee for a final decision.

15.4.4 We have not exhausted other management options to see if the conflict is reconcilable, so it is inappropriate at this time to impose a full TRO.

- 15.5 Option d – Prohibit some motor vehicles, or for some activities, or in certain circumstances.**
- 15.5.1 A significant number of people have concerns about commercial 4WD usage. It is difficult from the evidence we have to conclude that such groups do in fact contribute a greater impact upon the surface, landscape, or tranquillity than the same number of single users.
- 15.5.2 Many of the comments are about those making money through using the roads not then contributing to the repairs and maintenance. But this argument overlooks the fact that all of our footpaths, bridleways and other leisure routes are also funded by the Government. That is – walkers do not directly pay us to maintain footpaths, it all comes out of general budgets and taxation – in the same way that maintenance of unsealed and sealed roads is funded through general taxation.
- 15.5.3 Many of the other comments relating to the commercial companies refer to the behaviour of the drivers. It would not be appropriate to prohibit companies from using these roads because of perceived behavioural issues or prejudice.
- 15.5.4 In addition to this, there is a question over whether solely prohibiting commercial operators could be construed as discriminatory and inequitable. If we did impose such a prohibition, we would need to consider whether to have a lead-in period in order for the relevant companies to develop different business plans. And if these business plans involved additional usage of different unsealed roads (displacement), then we may have to consider the potential impact on those roads as well.
- 15.5.5 Very few people have actually suggested prohibitions for size, direction, weather conditions, and so on – and there is little evidence to show that any of these factors directly contribute to the issues to a greater degree than general usage for these roads.
- 15.5.6 Finally, we could consider prohibiting motorbikes because of the noise impact, as it is clear from the evidence gathered that people consider 4WD to damage the surface and the immediate tranquillity, whereas motorbikes damage the tranquillity over a greater area.
- 15.5.7 The Yorkshire Dales National Park Authority commissioned report shows that motorbike noise travels further, and has a different pitch than that of 4WD vehicles. However, prohibiting them from these two roads alone may not resolve anything. Anecdotally, motorbikes use the whole network of unsealed roads, such as through Hallgarth, Hodge Close, and so on. And therefore to be effective in the local area, all these roads would require some sort of prohibition.
- 15.5.8 It is also difficult to prevent motorbikes from physically accessing these roads, and so any prohibition would be difficult to police. Field gates would have to be locked, and even pedestrian gates may require some form of restriction to limit their size. The problem with this is that as soon as you limit the size or accessibility (such as using kissing gates) then other users are also restricted (mountain bikes, horses, pushchairs, wheelchairs). It is noticeable that motorbike usage continued throughout the time the Tilberthwaite Road was legally closed to traffic for the ‘settling-in’ period in November and December 2018.
- 15.5.9 The difficulties involved in a partial prohibition make this option inadvisable.

## 15.6 Option e – Develop a Partnership Management Group

- 15.6.1 There is a difference between the Tilberthwaite Road and the High Oxen Fell Road in the levels of feedback, survey data and surface conditions. The levels of concern at High Oxen Fell are significantly lower than at Tilberthwaite, and so the following discussion should be read with this in mind. Given the low concerns, it is probably not necessary to establish a partnership management group for High Oxen Fell. But given the greater concerns at Tilberthwaite, this option is worth considering.
- 15.6.2 Defra Guidance on National Park Authority powers to make Traffic Regulation Orders suggests that other actions should be taken before considering prohibiting traffic – such actions could include establishing a working group to develop a local strategy.
- 15.6.3 The World Heritage Nomination Documentation (p299 – Lake District’s Integrity and Authenticity) specifically refers to opportunities for quiet enjoyment and spiritual refreshment as being potentially vulnerable to tourism and other development pressures, and considers that this attribute is best protected through implementing visitor management strategies.
- 15.6.4 A consensus relationship or partnership management group would be the logical first step in implementing such a strategy for the Tilberthwaite Road. This would bring together the various interested parties such as those using it for all the legal purposes, those maintaining the road, those managing the surrounding land, those wishing to see MPV usage reduced or prohibited, and so on. A partnership of this nature could continue monitoring use, attitudes, surface condition and other factors in the future – and could make appropriate recommendations as to future management. It should be a management group, rather than open ended.
- 15.6.5 The Sandford Principle, in the words of UK National Parks, says that *“If there is a conflict between protecting the environment and people enjoying the environment, that can't be resolved by management, then protecting the environment is more important.”* Active management regime of the routes and the usage of them ceased in around 2006, and therefore, before imposing any TRO to remove any conflict, it is incumbent upon us to explore whether or not the conflict can be resolved by management – that is, is the conflict irreconcilable? A partnership management group would explore this.

## 15.7 Recommendation

- 15.7.1 The evidence supporting the grounds for prohibition is not conclusive, and as we have not exhausted other management options to see whether any conflict is reconcilable, it is inappropriate at this time to impose a TRO.
- 15.7.2 Given the summary above, a combination of options b and e (maintain the surface, and develop a partnership management group) for the Tilberthwaite Road (U5001) would seem appropriate. This would be to maintain the surface through an agreed management regime (we are already developing a regime to be agreed by the National Trust, ourselves, and Cumbria County Council), whilst also developing a partnership management group to monitor and maintain the route, whilst continuing to build on the evidence collated so far. Such a group should include the three bodies named above, with relevant stakeholder representatives such as user bodies and campaigners.
- 15.7.3 For the High Oxen Fell Road (U5001), Option b (maintain the surface, but do nothing else) would suffice. Far fewer concerns have been raised about this road in all aspects), and the surface appears to be stable. However, it should be monitored to identify and assess any issues that may arise. We would need to agree with Cumbria County Council and the National Trust exactly who would do what, but it is likely that we would propose that we monitor the surface, and report any issues to Cumbria County Council to carry out any required maintenance.
- 15.7.4 These are only recommendations, and the decision is with Members to make. Members may consider that the grounds have been met and propose and agree a different recommendation, such as a prohibition of some or all MPV traffic. If so, then the exact proposal, reasoning for the proposal, and the relevant grounds on which any prohibition would be made, and how these grounds are met, will have to be agreed within the committee meeting, so that staff can make the required order, and defend it against any potential challenge through the courts.

<b>Background Papers:</b>	Defra guidance, website, petitions, LDNPA documents – all referred to, with links, within the report. Appendices.
<b>Author:</b>	Nick Thorne, Countryside Access Adviser
<b>Date Written:</b>	22 August 2019
<b>Version</b>	Final

**Endnotes – addresses of websites with hyperlinks in the report**

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- a <https://www.savethelakedistrict.com/>
- b <http://www3.lancashire.gov.uk/environment/oldmap/Yates/index.asp>
- c <http://www.geog.port.ac.uk/webmap/thelakes/html/maps/m00431.htm>
- d <https://www.cumbria.gov.uk/eLibrary/Content/Internet/544/41479101635.pdf>
- e <https://www.cumbria.gov.uk/eLibrary/Content/Internet/544/41479101635.pdf>
- f <https://www.bing.com/maps>
- g <https://www.change.org/p/to-the-ceo-of-the-lake-district-national-park-authority-protect-the-lake-district-s-world-heritage-status-by-banning-4x4s> (only opens fully in Chrome)
- h <https://www.savethelakedistrict.com/>
- i <https://www.fixthefells.co.uk/what-we-do/video-photo-gallery/>
- j [https://www.lakedistrict.gov.uk/\\_data/assets/pdf\\_file/0009/729756/5.0-Appendices.pdf](https://www.lakedistrict.gov.uk/_data/assets/pdf_file/0009/729756/5.0-Appendices.pdf)
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- l [https://www.lakedistrict.gov.uk/\\_data/assets/pdf\\_file/0007/729682/2.c.3-Coniston.pdf](https://www.lakedistrict.gov.uk/_data/assets/pdf_file/0007/729682/2.c.3-Coniston.pdf)
- m <https://www.change.org/p/to-the-ceo-of-the-lake-district-national-park-authority-protect-the-lake-district-s-world-heritage-status-by-banning-4x4s> (only opens fully in Chrome)
- n <https://www.change.org/p/a-petition-to-the-chief-executive-of-the-lake-district-national-park-to-keep-our-green-lanes-open-in-the-lake-district> (only opens fully in Chrome)
- o <https://en.unesco.org/>
- p <https://www.icomos.org/en/about-icomos/mission-and-vision/icomos-mission>
- q <https://world-heritage-watch.org/content/>
- r <https://publications.parliament.uk/pa/ld200304/ldlwa/40525wa1.pdf>
- s <https://speedtracktales.com/index-of-isdt-events/isdt-1913/>
- t <https://speedtracktales.com/index-of-isdt-events/isdt-1927-england/>
- u [https://www.youtube.com/watch?feature=player\\_embedded&v=2jHyutfRo1g](https://www.youtube.com/watch?feature=player_embedded&v=2jHyutfRo1g)