

Annex 2: Review of Definitive Map processes

- A. The council's current definitive map process for an unopposed DMMO is set out in the table below.

Active Weeks	Activity
1-4	Initial consultation, research, site visit, write exec member report
5-14 (may be up to 3 weeks less depending on how we fall within the exec session timetable)	Present report to exec member, Draft order
15-16	Seal order, arrange advertising (this factors in delay caused by newspaper lead times, this will get worse if the Press becomes a weekly paper)
17-23	Formal consultation period
24-25	Confirm order, arrange advertising (this factors in delay caused by newspaper lead times, this will get worse if the Press becomes a weekly paper)
26-32	High court notice period
33	Close file and archive
Key	
	Controlled by the SoS or statutory period
	Period under CYC control

- B. The council's current definitive map process for an opposed DMMO that goes to a public inquiry is set out in the table below.

Active Weeks	Activity
1-4	Initial consultation, research, site visit, write exec member report
5-14 (may be up to 3 weeks less depending on how we fall within the exec session timetable)	Present report to exec member, Draft order
15-16	Seal order, arrange advertising (this factors in delay caused by newspaper lead times, this will get worse if the Press becomes a weekly paper)
17-23	Formal consultation period, begin writing the statement of case (assuming objection doesn't come in on the last day of the period)
24-25	Finalise statement of case, submit to PINS
?	Wait for PINS to issue a start date for the case
26-34	Submission of our statement of case in the timetable (we will have already done this but PINS don't seem to change

	the timetable accordingly)
35-39	Submission of everyone else's statement of case, we received the other statements of case
?	There is always a period of time between the submission of all statements of case and the beginning of the pre inquiry period during which we prepare our proof of evidence,
40-44	All parties submit proof of evidence, 4 weeks notice of the inquiry is issued
45	Inquiry
?	Wait for the inspector's decision
46-47	Assuming no further consultations needed, arrange advertising of outcome
48-54	High Court notice period
55	Close file and archive
Key	
	Controlled by the SoS or statutory period
	Period under CYC control

- C. As can be seen from the two tables above, resolving a DMMO application takes a considerable amount of time. As the tables make clear, most of the time taken is not under the control of the council. It is either mandated by statute or, in the case of opposed orders, is in the hands of the SoS.
- D. The longest period controlled by the council is the period between the end of the initial consultation and the report being presented at the Executive Member Decision Session. This adds between 7 and 10 weeks to the process depending on how the report falls within the decision session timetable.
- E. As the decision session process has the largest impact on how long it takes to resolve a DMMO that is under the council's control there is merit in considering exactly what the Executive Member is required to do.
- F. The Wildlife and Countryside Act 1981 section 53(2) places the duty on the council to:
"As regards every definitive map and statement, the surveying authority shall—
(a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and
(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such

modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.”

- G. DMMOs are the mechanism by which the council is required to “make such modifications ... as appear ... to be requisite.”
- H. Section 53(3) sets out the circumstances under which the council are required to make a DMMO and the evidential test that needs to be applied by the Executive Member.
- “The events referred to in subsection (2) are as follows—*
- (a) the coming into operation of any enactment or instrument, or any other event, whereby—*
 - (i) a highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;*
 - (ii) a highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description; or*
 - (iii) a new right of way has been created over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path or a restricted byway;*
 - (b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway;*
 - (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—*
 - (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;*
 - (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or*
 - (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.”*
- I. As almost all DMMOs relate to ways that are alleged to carry public rights but are not recorded on the definitive map the most relevant subsection is 3(c)(i), as noted above. This sets out that the council is

required to make a DMMO if there is at least a “reasonable allegation” that a PRoW exists over the route shown in the application.

- J. Coming to terms with what any evidential test is can be difficult outside a specific case. Therefore it is reasonable to examine how the SoS applies the above test by looking at past appeals made by applicants when an authority has refused to make an order.
- K. It appears that the SoS will always direct an authority to make a DMMO if there is any suggestion that the public might have a right of way over the route in question and there is no legally certain evidence that public rights cannot exist, for example extinguishment of public rights by legal order.
- L. Consequently almost all DMMO applications will result in a DMMO being made. The evidential test that the legislation asks councils to apply means the system has, to use an analogy, the engine of a Ferrari and the brakes of a pedal cycle. This means that making a DMMO is the default position the council should realistically adopt in almost all cases.
- M. Furthermore, the legislation only allows the council and the SoS to consider evidence relating to whether or not the route shown in the application is a PRoW. Matters concerned with convenience, desirability, security or anything else relating to the way cannot be considered. All of which means that when the Executive Member is asked to make a decision on a DMMO application they are acting in a quasi-judicial capacity and the legal scope they act within is extremely constrained.
- N. Once the Executive Member has made a decision on a DMMO application, i.e. determined the application, the process is largely controlled by either the legislation or the SoS.
- O. It is open to the Executive to decide whether or not to retain the current system and require each DMMO application to be presented to the relevant Executive Member.
- P. How other council’s have reduced their DMMO backlog: Contacting other councils around the country shows that almost every council we have contacted has a backlog of undetermined DMMO applications.

- Q. One of the few councils that appears to have no backlog of undetermined DMMOs is Northumberland County Council. This has been achieved by focussing on DMMO work and using prioritisation tools. The proposed revised Statement of Priorities would function in a similar way to these prioritisation tools.
- R. In addition, many of the DMMOs Northumberland County Council made related to resolving the status of unsurfaced, unclassified roads recorded on the list of streets. This work is somewhat similar to the work on determining the R.U.P.P.s the City of York Council did over a decade ago.
- S. The ultimate aim is to balance the need to speed up the processing of DMMO applications (to avoid a finding of maladministration from the LGO), against the oversight of democratically elected Members.
- T. As set out above, the delay in processing DMMO applications caused by the need to present each application to the Executive Member for a decision is the longest one that the council has any control over. By making the determining of DMMO applications a power that is fully delegated to a specified senior officer with responsibility for the Rights of Way team, the process will be shortened by 7 to 10 weeks.
- U. The primary advantage of making this change is that it maximises the time rights of way officers have to deal with the DMMO backlog and will result in the council being compliant with the legislation in the shortest possible time.
- V. Elected members not involved in the decision making process will be also be free to express the views of the public they represent. It should be noted however that this will become a reactive role after a decision has been made, but the legislation puts in place a period of statutory consultation where anyone may make representations or raise objections if they so wish.
- W. In order to comply with the findings of the LGO, every six months a report detailing the situation for all the DMMO applications would be prepared for the Executive Member (a copy of which is required to be sent on to the LGO). This would allow them to monitor the progress of the Rights of Way team in eliminating the DMMO backlog and act if there were any delays or other problems slowing down the rate at which DMMO applications were resolved. This report would also include budget updates thereby keeping Members abreast of the amount spent

by the council on resolving DMMO applications. It should be noted however, that as resolving DMMOs is a statutory duty this is a matter of ensuring best value for the council. There is no scope to avoid incurring the costs relating to DMMO applications. The senior officer may be better placed to ensure the council obtains best value in this respect.

- X. It is recommended that the Executive Member still determine any DMMO applications that seek to remove recorded public rights either by deleting a way or downgrading its status. This is because the legal test for such DMMO applications is a stronger 'on balance of probabilities' rather than 'reasonably alleged' and so needs greater scrutiny.
- Y. The main disadvantage of this change is that it will not speed up DMMO applications such as these. However, DMMO applications that seek to reduce or remove public rights are uncommon. There are none currently waiting to be determined and since 1996 there has been only one application to downgrade the status of a bridleway and only one application to delete a footpath from the DM&S. Bearing in mind the above it is thought that the capacity for such applications to delay progress on clearing the backlog of DMMO applications to add paths to the DM&S is limited.
- Z. As the majority of DMMO applications seek to record previously unrecorded PRow, the advantage of this option is that the council is seen to be speeding up those DMMO applications that increase public access whilst retaining democratic oversight of those applications that seek to reduce or remove public access.
- AA. Decisions made by the senior officer would be subject to the usual scheme of councillor oversight whereby they can be called in. It could be argued that the DMMO for a DMMO application that the senior officer determines should not be made until after the councillor call in period has expired. However, as the goal of this review is to speed up the processing of DMMO applications, it would be counterproductive to introduce delay before making a DMMO just in case Members want to call in the senior officer's decision. Following an order being made there is a period statutory consultation during which objections or representations may be received, so councillors rights are protected in this way.
- BB. If the current process for determining definitive map applications is not made faster it will take years to clear the existing backlog of DMMO

applications. Applications will continue to be received and the backlog will not be dealt with.

CC. The LGO considers that the current timescale to clear the backlog is not acceptable and requires the council to take action to ensure that DMMO applications are dealt with in a more timely manner. Failure to demonstrate this may result in a full finding of maladministration against the council.

DD. In the light of the foregoing the options before the Executive are:

- i. DM Option 1: Support the findings of the review and consider authorising a change to the current scheme of delegation so that DMMO applications that make changes to the Definitive Map and Statement (DM&S) may be determined by a senior officer with responsibility for the Rights of Way team in consultation with the Executive Member and affected ward councillors and;
- ii. DM Option 2: A report considering the progress on reducing the backlog of DMMO applications to be presented to the Executive Member every 6 months - copy to be sent to the LGO.
- iii. DM Option 3: Take note of the review of the council's definitive map processes and retain the current system i.e. all DMMO applications continue to be determined by the Executive Member for Transport and Planning at decision

EE. DM Option 1 and Option 2 are the recommended options.