

### Annex 3 – Review of the Statement of Priorities

- A. City of York Council, as surveying authority for the DM&S, has a statutory duty to keep it under continuous review and make modifications as required. One of the elements of this work is to process duly made DMMO applications. The purpose of DMMOs is not to create new PRoW, rather it is the way errors on the DM&S are corrected. Errors can include PRoW that are not recorded on the DM&S or PRoW that are wrongly recorded. This is a very complex process and frequently contentious and the Council is duty bound to investigate applications in accordance with the law, following the relevant legal tests.
- B. The task of bringing the DM&S up to date was recognised by the Secretary of State for DEFRA (SoS) as being a considerable one and so recommends that surveying authorities periodically publish a SoP for bringing and keeping the definitive map up to date. This includes dealing with DMMO applications (DEFRA Circular 1/09, para 4.7).
- C. When the authority came into being after Local Government Reorganisation in 1996 it inherited a large backlog of definitive map work from North Yorkshire County Council. Some records were 40 years out of date and undetermined DMMO applications dated back to 1971. Additionally there was no DM&S for the former County Borough of York (FCB), even though it had been a statutory requirement to produce one since the implementation of the Wildlife and Countryside Act 1981.
- D. In order to provide a structured work plan to deal with this backlog the Council's SoP was approved by the Planning & Transport Committee on 27 August 1998. Following a review on 14 October 1999 (see annex 5) approval was given to take SoP para 5 (*the investigation, and reclassification if required, of R.U.P.s reclassified under the Countryside Act 1968*) and SoP para 8 (*the updating, and production of individual Definitive Statements for every path, including modifications to take into account the authorised addition/removal of stiles, gates and other physical features*) out of turn. At the same time approval was given to defer all work on DMMO applications, other than those already in progress.
- E. At the time and until 2009 the council did not have a definitive map officer (DMO) in post and work on updating the DM&S was only carried out on an ad hoc basis when resources allowed. That notwithstanding,

additional funding allowed for the employment of a consultant to complete work on SoP para 5 (reclassification of RUPPs) along with work on other smaller projects.

- F. Following the Countryside and Rights of Way Act 2000 (CROW Act) the SoP was looked at again but not formally reviewed as the priorities essentially remained the same and resources were such that any additional work could not be accommodated. The post of DMO was eventually created in 2009 and the main priority continued to be the compilation of the DM&S for the FCB (SoP para 2), whilst still working towards the completion of SoP para 1. This has been a large amount of work involving the investigation of over 200 paths and the making of 16 orders that sought to record 114 paths on the DM&S. To enable the project to be completed an intern is due to be employed in June to identify any paths that have been missed so that the DM&S for the FCB can finally be published.
- G. As resources have been concentrated on SoP paras 1 and 2 and those areas of work previously taken out of turn, other work detailed on the SoP has necessarily not been undertaken, especially with regard to the deferred DMMO applications work (SoP para 4). These applications have built up as new applications are received. That notwithstanding, the near completion of SoP paras 1 & 2 have allowed work that falls under SoP para 4 to be started with 3 applications now under investigation and 3 opposed DMMOs having already been submitted to the secretary of state.
- H. The current SoP stipulates that DMMO applications are dealt with in order of receipt, with a limited discretion to give certain applications priority (SoP para 4b). The highest priority is currently given to those applications that were received prior to 1996 (SoP para 4a).
- I. Under the Wildlife and Countryside Act 1981 an applicant may lodge an appeal with the secretary of state for any application that has not been determined by the council within 12 months of it being duly made. If the appeal is upheld the secretary of state will issue a direction for the authority to determine the application within a specified time (usually between 6 and 12 months). To determine an application means to decide whether or not to make an order to modify the DM&S. It does not include the actual making and advertising of the order.
- J. To date 2 applications submitted to the council have been subject to such an appeal, with at least another 2 appeals known to be imminent.

Answering such appeals involves a considerable amount of paperwork being prepared for the secretary of state (approximately the same as preparing an opposed order for submission to the SoS). Answering appeals causes further delays in the investigation of the other DMMOs.

- K. Across SoP para 4a - c there are currently 18 DMMO applications outstanding. This means that those DMMO applications currently at the bottom of the list (SoP para 4c) are likely to take 14 years to be processed.
- L. As well as the current backlog, the CROW Act introduced a cut off date for the recording of PRow based solely on historical evidence. The cut off date is 2026 and it is reasonable to expect an increase in the number of applications being made in the run up to 2026, especially given that the British Horse Society (BHS), the Ramblers and the Open Spaces Society are actively encouraging their members to submit DMMO applications; the BHS having also secured funding to pay members £100 per application.
- M. Furthermore the Deregulation Act 2015, which is expected to be implemented during the next 12 months, has the effect of reducing the time the Council has to determine DMMO applications from 12 months to 3 months and will shift work currently done by the applicant on to council. This is also likely to increase the number of DMMO applications received as DMMO applications become less onerous for the applicant.
- N. The current SoP was adopted by the council in 1999 and informally reviewed in 2004. As part of the conditions set out by the LGO for avoiding a finding of maladministration, the council is required to review the SoP. The existing SoP is attached to this report as Annex 2.
- O. The existing SoP placed the production of legal event modification orders as its first priority. These orders allow the production of revised and updated definitive maps. It is, however, a largely administrative function that has little impact on the public's perception of what is being done to protect their right to use unrecorded PRow across York.
- P. Second on the existing SoP was the production of a definitive map for the excluded area covered by the former City and County Borough of York (FCB). This is where most of the efforts of the team have been focussed.

- Q. As detailed in para F above, a large number of orders have been produced recording 114 previously unrecorded PRow on the definitive map. The team has already redirected resources to complete the survey tasks during the summer of 2019. This will place the council in a position to publish a definitive map for the FCB, drawing this paragraph of the SoP to a close.
- R. The third paragraph of the SoP dealt with the investigation of definitive map anomalies and lost ways. This project has also now been completed and can be removed from the SoP.
- S. Paragraph 5 of the SoP addressed the issue of roads used as public paths (RUPPs) and the legal requirement to classify them. This work has also now been completed meaning this paragraph can be removed from the SoP.
- T. Paragraph 4 of the SoP deals with the resolution of DMMO applications. It is in this area that the LGO is most keen to see changes.
- U. In light of the decision of the LGO and the completion of a great deal of the work set out by the current SoP, a proposed revised Statement of Priorities (RSoP) is attached to this report as annex 6.
- V. The aim of the RSoP is to emphasise the parts of the definitive map function that directly impact the lives of York residents, eliminate the backlog of undetermined DMMOs and to remove the focus on legally necessary administration that has little impact on residents.
- W. To ensure that dealing with DMMO applications in a way that complies with the legislation and delivers results to York residents in as timely manner as possible, a number of specific timescales are enshrined in the RSoP. This will bind current and future DMOs to specific, achievable timescales that will deliver the best possible service to the residents of York. In addition, the measurable timescales set out by the RSoP allow a greater degree of objective management oversight than is possible under the current SoP.
- X. Retaining the current SoP for definitive map work will continue to concentrate efforts on the legally necessary administration of the definitive map function that has little impact on residents. It is likely that this will result in the council being charged with full maladministration as work on the DMMO backlog will not be prioritised and no measurable timescales will be put in place to target workload.

Y. As a consequence of the above the following options are for the Executive's consideration:

- i. SoP Option 1: Support the findings of the review and adopt the revised Statement of Priorities (see annex 6) including the requirement to ensure that any direction from the SoS will be dealt within either 3 months or 12 months according to the type of direction received.
- ii. SoP Option 2: Take note of the review of the Statement of Priorities and retain the existing Statement of Priorities.

Z. SoP Option 1 is the recommended option.