


## **Annex 1**

**Plan 1: Claimed Public Footpath, Ings Bridge to Storwood,  
Wheldrake**

Wildlife & Countryside Act 1981  
Application for Definitive Map Modification Order

Claimed Bridleway: 

Grid Ref: SE 700 443

STORWOOD

WHELDRAKE INGS

INGS BRIDGE



Claimed Bridleway - Ings Bridge to Storwood, Wheldrake  
(Wheldrake Ings)

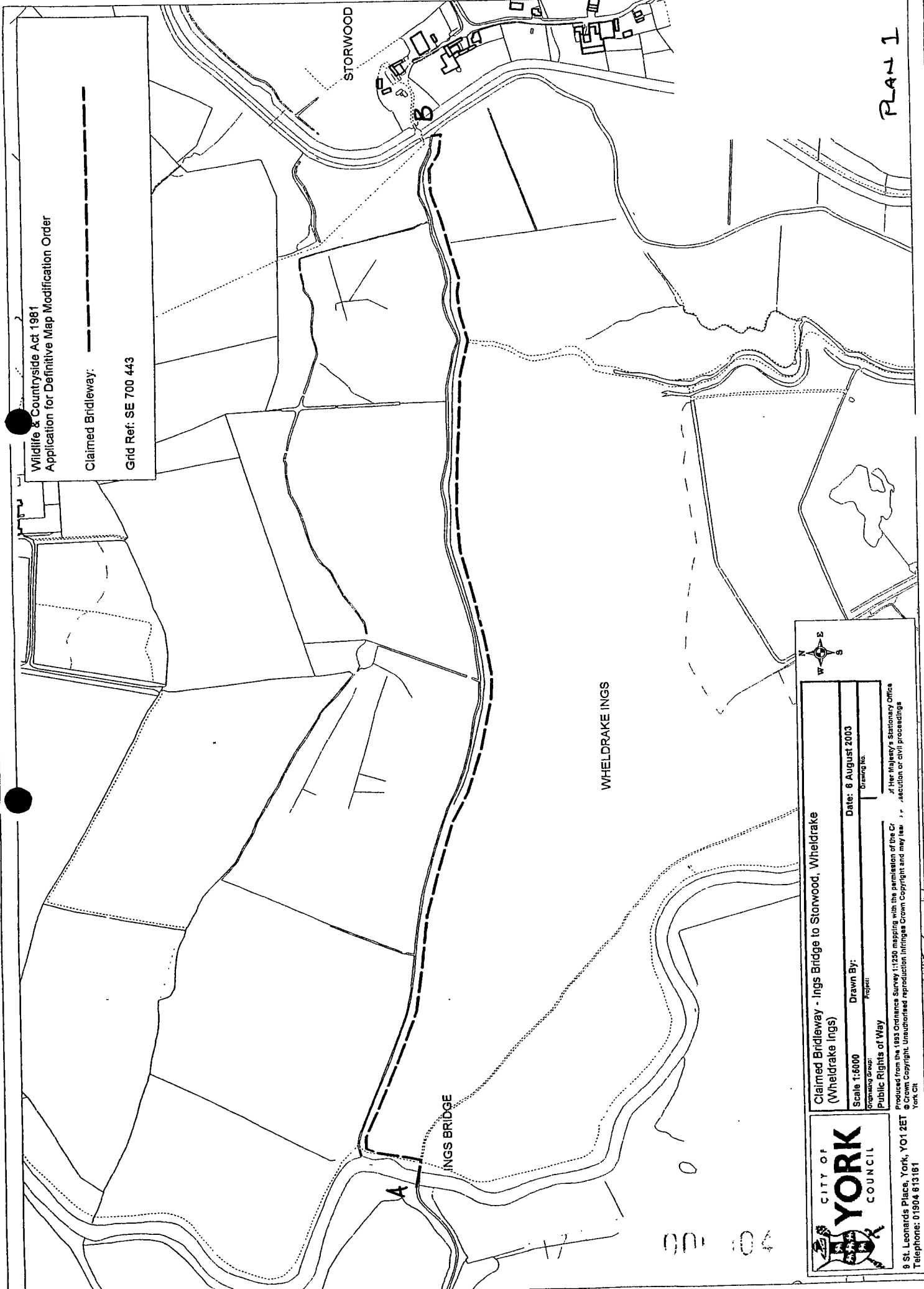
Scale 1:5000  
Date: 6 August 2003

Drawn By:  
Project:

Her Majesty's Stationery Office  
in connection with the application for a Definitive Map Modification Order



CITY OF  
**YORK**  
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## **Annex 2**

### **List of documents consulted**

*Annex 2*

**Documents Consulted**

Enclosure Award, Map and Act  
Tithe Plan and Apportionment  
1910 Finance Act records  
Ordnance Survey Maps  
Rights of Way Act 1932 Depositions  
NPACA 1949 Maps and Documents  
Local Authority Files  
Quarter Sessions records  
Parish Council Records  
Other Highway Authority records  
Local Historical Maps  
Deposited Plans  
Estate Records  
Deeds  
Aerial Photographs

## **Annex 3**

### **Summary of Documentary Evidence**

**Summary of Documentary Evidence**

Tab	Doc	Description	Document Content	Comments
5	5	Ordnance Survey Maps	<p>The Ordnance Survey maps for the area show the existence of an embankment along the side of the old course of the River Derwent, which appears to also coincide with the application route. Some maps also show paths or tracks leading onto the embankment</p> <p>The 1911 edition shows Ings Bridge, and also the swing bridge at Stonwood</p>	<p>Ordnance Survey maps carry a disclaimer to the effect that the showing of any path track or way is not evidence of the existence of public highway rights. The surveyors were however required to make reasonable enquiries with regard to the status of things they showed on their maps. These documents therefore provide very good evidence of the physical existence of the topographical features they show.</p> <p>In this particular instance the claimed path co-exists with an embankment. The embankment is shown on the mapping, and in some instances is shown with paths running into it, suggesting that a path may also exist along the bank top.</p>
7	6-9	Derwent Navigation Plan and Notes 1767	<p>Plan and notes relating to works proposed in respect of making the River Derwent navigable. Wheldrake ("Ings) Bridge is shown at the end of Ings Lane. The swing bridge at Stonwood is not mentioned</p>	<p>These documents provide little information about the Application Route as they are principally concerned with the new alignment of the navigation. Notwithstanding this, they do suggest that there was no requirement for a bridge at Stonwood when the proposals were drawn up. It is however clear, from the OS maps that the bridge was in place by 1911.</p>
9	19	Letter dated 8 <sup>th</sup> December 1977 from British Waterways Board to Humberston County Council.	<p>Letter relates to the swing bridge at Stonwood being left open so that walkers approaching from Wheldrake encounter problems, and that maintenance of the bridge was paid for by HCC. The letter also refers to a permit system along the towpath.</p>	<p>This letter suggests public use of the application route during the 1970's, and is headed "Public Rights of Way. It is also significant that the County Council funded the cost of the bridge, which in itself is indicative of public status. The permit system mentioned relates to the tow path and not the application route</p>

## **Annex 4**

### **Summary of User Evidence**

Summary of User Evidence

Tab	Page	Name	User Evidence Form	Witness Interview	Other Correspondence	Period of Use	No of Years Use	Member of Public	User As of Right	User without Interruption	Other Information
10	1	Walter Alden	✓			1965-1994	29	✓	✓	✓	Form completed 1974 States that he used the path for work.
10	2	Mr and Mrs Barker	✓			1939-1970	31	✓	✓	✓	Route was used by the hunt and also by the Prisoners of War
10	3	James Beal	✓			1920-1975	52	✓	✓	✓	Form completed 1975
10	4	Albert Beevers	✓			1954-1974	20	✓	✓	✓	Form completed 1974
10	5	Joseph Alan Beilby	✓	✓		1950-1980	30	✓	?	✓	Form completed 1988. Used the path when fishing
10	6	Mabel Bielby	✓			1940-1942	2	✓	✓	✓	Form completed 1973. Route often flooded in winter
10	7	Mary Beibly	✓			1920-1988	68	✓	✓	✓	Form completed 1988
10	8	N.L Brown-Bolton	✓			1925-1947	22	✓	✓	✓	Form completed 1987
10	9	Ann Carr	✓	✓		1948-1988	40	✓	✓	✓	Form completed 1988
10	10	Don Carr	✓	✓		1943-1988	45	✓	✓	✓	Form completed 1988
10	11	Peter Dicker	✓			1934-1974	40	✓	✓	✓	Form completed 1974



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Tab	Page	Name	User Evidence Form	Witness Interview	Other Correspondence	Period of Use	No of Years Use	Member of Public	User As of Right	User without Interruption	Other Information
10	12	John George Alfred Dunn	✓			1916-1987	71	✓	✓	✓	Form completed 1987
10	13	John Dunnington-Jefferson	✓			1900-1976	76				Former Landowner who believes the route to be a public right of way Form completed 1976
10	14	Gillian Elmthirst	✓			1940-1960	20	✓	✓	✓	Form completed 1987
10	15	Charles Edward Exton	✓			1930-1933	3	✓	✓	✓	Form completed 1975
10	16	Frank Fairburn	✓			1920-1973	53	✓	✓	✓	Form completed 1973
10	17	Frank Floyd	✓			1972-1974	2	✓	✓	✓	Form completed 1974
10	18	George Sydney Gosley	✓			1937-1987	50	✓	✓	✓	Form completed 1987
10	19	Amy Gowthorpe	✓					✓	✓	✓	Form completed 1973
10	20	Gilbert Harrass	✓			1899-1939	40	?	?	✓	Form completed 1987 Some references to driving cattle and working for landowners
10	21	Dorothy Harriman	✓			1948-1988	40	✓	✓	✓	Form completed 1988
10	22	Edith Harrison	✓			1910-1975	65	✓	✓	✓	Form completed 1975
10	23	Maud Harriman	✓			1908-1988	80	✓	✓	✓	Form completed 1988

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Tab	Page	Name	User Evidence Form	Witness Interview	Other Corresponden	Period of Use	No of Years Use	Member of Public	User As of Right	User without Interruption	Other Information
10	24	William Hudson Hairsine	✓			1929-1975	46	?	?	✓	Form completed 1975 References to connections with land
10	25	Arthur Henry Harvey	✓			1927-1955	28	✓	✓	✓	Form completed 1976
10	26	Frances E Holdsworth	✓			1923-1948	25	?	?	✓	Form completed 1987 References to driving cattle
10	27	L Houseman	✓			1911-1964	63	✓	✓	✓	Form completed 1974
10	28	Frederick Houseman	✓			1926-1975	49	✓	✓	✓	Form completed 1975
10	29	Lance Moore	✓			1925-1976	51	✓	✓	✓	Form completed 1974
10	31	Ian William Myers	✓			1948-1988	40	✓	✓	✓	Form completed 1988
10	32	A P Popplewell	✓			1932-1975	43				Understood to be a former tenant or related to one, but believes the way to be public Form completed 1974
10	35	D Popplewell	✓			1930-1975	45				Understood to be a former tenant or related to one, but believes the way to be public Form completed 1975
10	38	E Popplewell	✓			1940-1970	30				Understood to be a former tenant or related to one, but believes the way to be public Form completed 1987

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Tab	Page	Name	User Evidence Form	Witness Interview	Other Correspondence	Period of Use	No of Years Use	Member of Public	User As of Right	User without interruption	Other Information
10	39	Norman Rogers	✓			1941-1981	40	✓	✓	✓	Form completed 1981
10	40	L A Room	✓			1940-1960	20	✓	✓	✓	Form completed 1987
10	41	Edward W Room	✓			1939-1974	35	✓	✓	✓	Form completed 1974
10	42	Robert Norman Room	✓			1934-1974	40	✓	✓	✓	Form completed 1974
10	44	John Herbert Room	✓			1954-1974	20	✓	✓	✓	Form completed 1974
10	45	Alfred Peutt	✓			1938-1975	37	✓	✓	✓	Form completed 1975
10	46	George Simpson	✓			1925-1975	50	✓	✓	✓	Form completed 1975 & 1987
10	48	Ernest Smith	✓			1936-1976	40	✓	✓	✓	Form completed 1976
10	49	Stephen Swales	✓			1945-1965	20	✓	✓	✓	Form completed 1976 ?
10	50	W Todd	✓					✓	✓	✓	
10	51	Jack Young	✓			1940-1967	27	✓	✓	✓	Form completed 1988
10	52	Jack Floyd	✓			1975-1935	45	✓	✓	✓	Form completed 1975

## **Annex 5**

**Graph showing Periods of Claimed User**



## **Annex 6**

### **Summary of Objector's/Landowners Evidence/Comments**

*Annex 6*

**Summary of Objector's / Landowners Evidence/Comments**

Tab	Page	Name	Objection	Comments
16	81-82	Yorkshire Naturalists' Trust Ltd Submission 15 <sup>th</sup> December 1975	Submission of map and statements denying dedication of public rights (presumably Section 34(6) Highways Act 1959 which the forerunner to the modern Highways Act 1980 Section 31(6) provision)	Unfortunately the plans attached to this statement are missing and it is not therefore possible to confirm whether this submission relates to the area of land in question. Notwithstanding this, the submission does relate to the Wheldrake Ings Nature Reserve and it would therefore be reasonable to conclude that it does cover the land in question.  There is no evidence that this submission was subsequently supplanted by the required Statutory Declaration, and therefore there is some doubt over whether it actually has any effect.  Whilst this issue has not been tested by the courts, it is commonly thought that, due to the construction of Section 31(6) and its predecessors, unless the initial submission is followed up by a Statutory Declaration the deposit does not serve to demonstrate a lack of intention to dedicate.
16	80	The Yorkshire Wildlife Trust Ltd Letter dated 6 <sup>th</sup> November 1986	Letter enclosing a copy of the 1975 submission (above) stating that the Trust wishes to re-emphasise its position.	This document is neither a Statutory Declaration (which would have been out of time), nor does it constitute the resubmission of a Section 31(6) deposit. It is therefore considered to have only minimal evidential value.
16	78	The Yorkshire Wildlife Trust Letter dated 22 <sup>nd</sup> August 1988	Acknowledges receipt of the Notice of Application served by the Wheldrake Parish Council and requests a plan showing the alleged route.  Also states a number of issues:  The former East Riding County Council confirmed in 1971 that there were no public rights of way over Wheldrake Ings	No evidence has been discovered to support this contention, or indeed how the County Council were able to make such a categorical statement. Indeed at most they would have been able to confirm that nothing was recorded on the Definitive Map, which is significantly different.
			The previously submitted statements have been submitted confirming the Trust's lack of intention to dedicate.	See comments above – they do not appear to have been submitted properly and possibly have no effect.
			There has been a notice on the bridge for many years informing the public that access to the nature reserve is confined to members of the Trust from 1 <sup>st</sup> April to 30 <sup>th</sup> June every year.	Signs of this nature can be ambiguous, especially when they relate to land other than the right of way itself. They can be open to interpretation.

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16	78	The Yorkshire Wildlife Trust Letter dated 22 <sup>nd</sup> August 1988 continued	<p>The land over which the claimed route runs is a SSSI of international importance and a statutory sanctuary. Arrangements are underway to have it designated a National Nature Reserve</p> <p>Public access to the reserve is permissive and controlled. Despite this trespass and damage occurs. The existence of a PROW would increase these problems</p>	<p>These are not matters that can lawfully be taken into account during the decision making process.</p> <p>No information is provided as to how the alleged permissive access provisions are transmitted to the public or indeed how such access is controlled, or indeed whether such measures are cited along the alleged path.</p> <p>This statement would need to be substantiated by evidence. Such consideration being locked in the mind of the landowners is insufficient.</p>
16	85-87	Nature Conservancy Council Letter dated 24 <sup>th</sup> August 1988	The NCC would be opposed to the creation of a new public right of way as it passes through a SSI	There are no proposals to create any new public rights of way. The application seeks to record a right of way that already exists albeit not recorded on the Definitive Map. Issues surrounding current land use and status (i.e. SSSI) are not matters that can be taken into consideration in the decision making process.
16	71-77	Yorkshire Wildlife Trust (YWT) Letter dated 21 <sup>st</sup> May 1992	<p>Confirms that a deposit was made pursuant to predecessor legislation to Section 31(6) of the Highways Act 1980 in 1975, and encloses copies.</p> <p>The former East Riding County Council confirmed that there were no public rights over the Ings in 1971</p> <p>The claimed path is through a SSSI</p> <p>There has been a notice on Ings bridge for a considerable time and any use has been permissive.</p>	<p>Whilst there is no doubt that the initial deposits were made in 1975, there is no evidence to suggest that they were followed by the required Statutory Declarations, and as such they are deemed to be of insufficient evidential value to overturn any prima facie case in support of dedication.</p> <p>There no information to confirm upon what basis or investigation such a statement would have been made. If it was a simple check of the Definitive Map it would not be possible to draw such a conclusion.</p> <p>Issues surrounding current land use and status (i.e. SSSI) are not matters that can be taken into consideration in the decision making process.</p> <p>The evidence does suggest the existence of a sign from circa 1966, in which case this would be the date at which the existence of the path was called into question. There is significant evidence of user prior to this date.</p>



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16	84	Natural England Letter dated 7 <sup>th</sup> October 2003	Has no knowledge of the application route Acknowledges that conservation interests etc cannot be taken into consideration as part of the decision making process, but that appropriate management measure may need to be implemented if an Order is made	No evidence either for or against the application
16	38-50 & 52-66	Yorkshire Wildlife Trust (YWT) Submission dated 18 <sup>th</sup> December 2008	There is no eastern link, beyond the Ings to Storwood.  The route goes across Ings bridge, which has only existed since 1967. The bridge is there by license from the Crown estate and its successors who do not have capacity to dedicate	The possible existence of a link to Storwood is a matter for East Riding of Yorkshire Council as it lies within their area, and not that of the City of York Council. As such a link is not under investigation by City of York, it has not been included in any plans. This is the only reason for its exclusion.  Mapping evidence suggests the existence of a bridge at the end of Ings lane since the early 1900's. The YWT have been asked to clarify this matter, but they have not done so as of the date of this report. Whilst land in the ownership of the Crown, which includes Government Departments etc, may be exempt from the provisions of the Highways Act 1980, the principles of Common Law dedication still apply therefore there is no bar to the establishment of public rights.
			Consultation with the owner of Storwood Manor has revealed that there is no public right of way across his property	Whilst it is true that there is nothing recorded on the Definitive Map, this does not preclude the possible existence of such rights, and this is a matter that has yet to be investigated by East Riding of Yorkshire Council, if a DMMO is confirmed that that part of the route within the City of Yorks Council area it is highly probable that a similar order, adding the said link would succeed in the East Riding of Yorkshire Council, indeed it would probably rely upon the same evidence.
			The letter from British Waterways in 1977 confirms the Swing Bridge is used by permission only	This would be a matter of interpretation. Nowhere within the letter does it refer to use of the bridge as being permissive. Quite to the contrary it is headed "Public Rights of Way" and confirms that the bridge was installed/repaired at public expense. This would be supportive of any case in favour of the route being public. There is no bar to dedication over the bridge
			The 1777 Enclosure award is inconsistent with there being a public right of way over the route.	It is agreed that the route is not in the enclosure award, and indeed no evidence has been discovered to suggest the existence of rights at such an early date. This does not however prevent the establishment of rights at a later date. The case in favour of the establishment of public rights in this instance is based upon 20 <sup>th</sup> Century public user.

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16	83	Natural England Letter dated	See comments above	See comments above
16	5-18	Yorkshire Wildlife Trust (YWT) Submission dated 15 <sup>th</sup> May 2009	<p>The Yorkshire Wildlife Trust asserts that there is no public right of way across its land for the following reasons:</p> <p>The YWT bridge over the River Derwent did not exist before 1966 and there was no bridge there previously.</p> <p>A sign stating "Private Bridge – No Unauthorised Use" was in place on the bridge over the River Derwent from 1966 to at least the late 1970's.</p>	<p>Maps from the early to mid part of the Twentieth Century, pre-dating 1966 show the existence of, and name, a bridge over the River Derwent at the end of Ings Lane. This statement would therefore appear to be incorrect.</p> <p>This apparent error has been raised with the YWT and they have been offered the opportunity to comment and/or clarify their original statement further. The YWT has responded and chosen not to comment at this time. A decision over the accuracy of the YWT's submission on this point must therefore be made based upon the available evidence, the options being a) that a bridge did previously exist, but not immediately prior to 1966; or b) that the YWT statement is simply in error. The user evidence would suggest the latter, the evidence of the Trust, the former.</p> <p>This assertion is supported by a copy of correspondence relating to the order of the sign in 1966 and a photograph alleged taken in 1978 showing the existence of the signs on the bridge.</p> <p>Whilst no evidence has been produced to substantiate the date of the photograph, these documents do provide good evidence of the existence of the sign.</p> <p>The wording of the sign is however far from ideal for the purposes of demonstrating a lack of intention to dedicate public rights, and may be considered somewhat ambiguous. For instance, if users believed the way to be public, they may equally have believed that their use was "Authorised" by virtue of exercising a public right. It is for the decision maker to consider all of the relevant factors and decide whether such a sign has the necessary effect. If it does, then the erection of the sign in 1966 would constitute a calling into question for the purposes of Section 31 of the Highways Act 1980, requiring a period of user 1946 – 1966.</p>

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16	YWT		<p>The YWT formally challenged the existence of a public right of way in 1975</p> <p>In 1975 the YWT submitted a plan and statement using the predecessor provisions of Section 31(6) of the Highways Act 1980 denying the existence of any public rights of way across the Ings.</p> <p>The Trust's position was re-asserted by way of a letter to the then Highway Authority ion 1986</p> <p>In 1992 the YWT again submitted a plan and statement under the provisions of Section 31 (6) of the Highways Act 1980.</p>	<p>No details of what this alleged challenge comprised of is provided by the YWT, unless it refers to the depositions made under the predecessor provisions of Section 31(6) of the Highways Act 1980, which is considered below.</p> <p>There is no doubt that this deposition was made, however there is doubt over whether it has any effect. There is a substantial body of opinion, including that of Counsel (from other unrelated cases), and that of many other Local Authorities, that, due to the wording of the legislation, unless such depositions are followed up with the required Statutory Declaration, the initial deposit does not take effect, and does not therefore demonstrate lack of intention to dedicate, nor does it provide the protection claimed.</p> <p>This issue has been raised with the YWT and they have been asked on numerous occasions whether the required Statutory Declarations were made. Whilst the Trust did finally respond on this matter they have chosen not to comment.</p> <p>In the absence of any evidence to show that the deposition was followed by a Statutory Declaration, and the lack of any co-operative response from the YWT when directly questioned on this matter, the only reasonable conclusion that can be drawn is that no such Statutory Declarations were made. If this is the case the 1975 deposit would appear to have no effect, and does not constitute qualifying evidence of lack of intention to dedicate.</p> <p>There is no doubt that this letter was sent by the YWT and subsequently received by the Authority. Such a letter does not, however qualify as evidence of lack of intention to dedicate public rights. It certainly does not fall within the requirements of Section 31 (6) of the Highways Act 1980, and any other qualifying act would have to be sufficiently overt, and directed at users of the alleged path. The Courts of rules (Godmanchester in House of Lords) that acts such as writing a letter to the Authority are insufficient to demonstrate a lack of intention to dedicate.</p> <p>Once again, this deposition does not appear to have been supported by a subsequent Statutory Declaration, and would therefore not appear to have the desired effect. (See comments above)</p> <p>Whilst the YWT suggest that these depositions and letters were accepted without question, which may well have been the case, if the criteria of the legislation has not been met, they will still have no effect.</p>

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	YWT	<p>Since the early 1970's the interests of YWT have been vigorously protected through signs, restrictions on access, fences, gates published materials. These are substantiated in the sworn statements of Messrs Dixon, Ralston and Hargreaves</p> <p>Witnesses state that there were never any signs (some until YWT took ownership), yet all who claim to have used the path appear to have failed to see, ignored or forgotten that such signs were in existence since 1966.</p> <p>There is no evidence of any reaction to the erection of the signs</p>	<p>See comments and summary etc of the sworn statements (below)</p> <p>There is certainly evidence that the signs on the bridge were ordered in 1966, and it may only be reasonable to conclude that, in the absence of any evidence to the contrary, the signs were erected shortly after they were made.</p> <p>With the majority of witnesses in this case being no longer available to clarify their user evidence forms it is impossible to say why they do not recall any signs. It may be because as the signs did not physically prevent their continuing use, they simply did not register in their minds; it may be because, as they considered the way to be public, the signs did not apply to them; or that they simply did not take any notice of them. This is, of course all speculation.</p> <p>Comments regarding the wording of the signs have already been made above.</p> <p>The fact that the alleged route was not previously claimed does not, in any way, preclude the possible existence of public rights. There are many instances where ancient, and very obvious paths were not claimed, often because to the local people they were "so obviously public rights of way" that they didn't consider it necessary to claim them. The Trust's assertion is purely speculative and contrary to the body of user evidence before the Authority, which does, of course include the evidence of previous land owners who say that the way was public.</p> <p>City of York Council is investigating an application for a Definitive Map Modification Order in accordance with its Statutory Duties. Until such a time as it's investigations are complete, the Authority remains impartial, its role being to determine, based upon the evidence before it, whether or not there is a case to promote the requested Order. The route has not therefore been set out, or asserted by the Council.</p>	
		<p>The lack of any prior claim or objection between 1966 and 1975, couple with the way not being claimed under the 1949 Act original Definitive Map procedures questions whether the way has always been considered a public right of way. It is more probable that it was considered to be a private easement.</p>		
		<p>There is no PROW over the Ings as set out by City of York Council.</p>		

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16	19-23	T E Dixon Statutory Declaration dated 8 <sup>th</sup> May 2009	<p>Works for Natural England as a Senior Reserve Manager. Has worked for NE and it's predecessors since 1982. Between 1975 and 2000 visited Wheldrake Ings on many occasions, most weekends and most summer weekday evenings. Until 1978 the owners had a full time warden, and after that a group of voluntary wardens took over. The duties of the wardens included enforcing access restrictions. Access to the reserve was, at that time, restricted to members of the Trust during bird breeding season, and access throughout the year was restricted to a permissive riverside path as far as the northern boundary of North Hills Ings In 1980 Mr Dixon was involved in writing the Trust's management plan for the Ings. This included various provisions relating to land management and access. This includes details of the vehicular gate at the bridge being locked but the adjacent pedestrian gate being left unlocked. The management plan also states that the reserve is to be open all year round except on Christmas Day and during the period 1<sup>st</sup> April to 21<sup>st</sup> June, access is to be restricted to Trust Members only. Between 1984 and 2000 Mr Dixon was the Reserve Warden and during that time access was rigorously controlled by a combination of signs, locked gates, electric fences and wardening. On occasions people were encountered away from the permissive path. Often they were walking along the hay hauling route or along the river bank southwards along North Hills Ings. Hardly ever met anyone walking between Storwood and Wheldrake. Always told people there was no public right of way and asked them to turn back.</p>	<p>The permissive path runs southwards from the bridge, alongside the river. Clearly to access this path, it must have been possible to cross the bridge. It is understood that this was facilitated by a pedestrian gate located next to the locked vehicular gate. The inclusion of provisions, suggesting no intention to dedicate , within an internal management plan would be insufficient to demonstrate a lack of intention to dedicate within the meaning of the legislation. Such acts must be directed at the users of the way in question (Godmanchester Case in the House of Lords) The YWT have been asked how these provisions were enforced in practical terms, and they have responded that the reserve was "closed" but not stated any physical means of closure, simply that wardens would challenge users at any time If it is accepted that the signs erected in 1966 were sufficient to all into question the existence of the alleged path, then all of these actions took place after the relevant reckoning period had ended, and as such their evidential value is limited. Incidents and use away from the application route are not relevant to the investigation. This evidence confirms that some use of the application route was taking place, but that it was challenged when encountered. Such challenges may be sufficient to demonstrate a lack of intention to dedicate public rights, and the turning back of users, if they did indeed turn back may constitute an interruption to user, providing that these events occurred during the relevant time period.</p>

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16	24-26	C S Ralston Statutory Declaration dated 14 <sup>th</sup> May 2009	<p>Mr Ralston has been a visitor to the Ings on an almost daily basis since 1982., first as a visitor and later as a volunteer warden.</p> <p>From 1982 – 1989 access to the Ings was on a permit only basis.</p> <p>Since 1989 the Ings have been open all year round with signs on the riverbank confirming that visitors must stick to the riverside path.</p> <p>Due to the amount of time spent on the site it is unlikely that anyone using the application route would not have been seen and challenged.</p> <p>On only one occasion was anyone seen trying to use the application route</p>	<p>The relevant period of user pre-dates the period to which this witness gives evidence. It certainly provides useful background information about events between 1982 and 1989, but is of limited value in determining this application.</p>
16	27-30	D P Hargreaves Statutory Declaration dated 13 <sup>th</sup> May 2009	<p>Mr Hargreaves is an Ecologist in the employ of the Yorkshire Wildlife Trust as Head of Reserves and has been in that position since 1998. Has worked in nature conservation for 25 years.</p> <p>Between 1998 and 2007 he was directly responsible for the Ings site which involved regular visits both week days and weekends.</p> <p>During the time spent on the Ings he has only ever seen two sets of people walking other than on the permissive path, neither appear to have been on the application route. Anyone found using routes other than the permissive path would be turned back.</p> <p>In 1975 and 1992 the Trust deposited plans with the Highway Authority denying the existence of public rights. In 1986 the Trusts position as stated in 1975 was reinforced by a further letter.</p>	<p>The relevant period of user pre-dates the period to which this witness gives evidence. It certainly provides useful background information about events from 1998 onwards, but is of limited value in determining this application.</p> <p>There is not dispute that these documents were submitted however in the absence of the required Statutory Declarations they do not have the required effect, nor do they, in themselves constitute sufficient evidence of lack of intention to dedicate.</p>

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			<p>The Trusts records show that people were challenged if found anywhere other than the permissive path, but are remarkably silent regarding challenges to users of the application route given the level of use.</p> <p>The Trust has published various articles, leaflets and membership cards which state that access to the Ings in via the permissive path only.</p> <p>In 1994 the Yorkshire Evening Press published an article which stated that there were no public rights of way over the Ings.</p> <p>In 1981 a local resident was challenged when found on the Ings, but not on the permissive path. This is documented as a letter was written to him</p> <p>On two occasions: 1982 (Humberside County Council) and 1999 (East Riding Council) have made approaches about creating paths over the Ings. These requested were refused</p> <p>In 1983 the Trust received a letter advising that their sign stating "Please keep to riverside path" had been removed. In 19889 the Trust ordered new signs relating to access restrictions.</p> <p>Since at least 1998 the gate on the Bailey Bridge has been locked</p>	<p>The lack of challenges to people on the application could be because it was accepted locally as being a public right of way and therefore no such challenges were issued.</p> <p>Alternative it may be because the levels of user had dropped off following acquisition of the site by the YWT. There is a substantial body of user evidence which predates their ownership, and if rights were established during that time, no amount of later challenges would result in the loss of those rights.</p> <p>No examples of such documents have been provided but their effect will be dependant upon their target audience and when they were produced. It would appear that they would have had to be produced in the mid 1960's for them to have any effect on the outcome of this case.</p> <p>There is no information as where the author got this information, however had he/she consulted the Highway Authority at the time no doubt he/she would have been advised that there was a long standing dispute over the existence of public rights. This is not evidence that rights do not exist.</p> <p>It is not disputed that this challenge took place however it appears to post date the relevant time period under consideration.</p> <p>These actions do not preclude the possible existence of public rights over the application route, nor does it suggest that the Authority's concerned considered that no rights did exist. It is a common practice for Authority's to seek dedication agreements as an alternative to the Definitive Map process where agreement can be reached as it is quicker and more cost effective. Both of these approaches also appear to post date the relevant time period under consideration</p> <p>Both of these approaches appear to post date the relevant time period under consideration, and would therefore be of little evidential value if rights had already been established.</p> <p>This appears to post date the the relevant time period under consideration, and would therefore be of little evidential value if rights had already been established.</p>

Wildlife & Countryside Act 1981  
Application for Definitive Map Modification Order  
Wheldrake Ings Wheldrake

Tab	Page	Name	Objection	Comments
16	1-4	<p>YWT letter dated 26<sup>th</sup> May 2009</p> <p>Note: This letter is on response to queries arising from the YWT's previous submissions.</p>	<p>The date of challenge is no later than 1975</p> <p>The absence of any structure on the route prior to 1966 seems to be determinative of the matter.</p> <p>The management plan dated 1980 is of little relevance due to its date of preparation but it provides that the reserve is closed.</p> <p>The majority of the rest of the letter relates to Whooper Swans visiting the site</p>	<p>Whilst this is agreed, by virtue of the signs erected in circa 1966, the 1975 date appears to be based upon the deposits made under the predecessor legislation of the Highways Act 1960 Section 31(6), however, there is some doubt as to whether such a deposit does call into question the existence of the rights, and in the absence of a subsequent Statutory Declaration they are insufficient to overturn any prima facie case in favour of the establishment of rights.</p> <p>The existence of a bridge (Wheldake Bridge or Ings Bridge) has been mapped since at least 1911 therefore it is unclear upon what basis the claim that no bridge existed prior to 1966 has been made. Clarification has been sought from YWT but no answer has been forthcoming.</p> <p>No details of how such a closure is physically implemented has been provided despite a request to that effect. In fact it appears that the closure is principally reliant upon wardens monitoring and controlling access in person.</p> <p>This is not relevant to the decision making process.</p>



## **Annex 7**

### **Legal Tests**

## Legislative Tests

### Test to be Applied

1. When considering an application for a DMMO to add a public right of way to the Definitive Map the burden of proof initially rests with the applicants to prove their case. If a *prima facie* case in favour of the application is established, the onus then falls upon anyone opposing the application to provide evidence in rebuttal. The standard of proof is the civil test of 'on the balance of probability'.
2. If, having taken into account all of the available relevant evidence, the Authority is satisfied that, the alleged rights subsist or are reasonably alleged to subsist the Authority has a duty to make a DMMO. Such an Order can however, only be confirmed if, on the balance of probability, the alleged rights can be shown to actually subsist.

### Evidential Tests

3. Highways Act 1980, Section 31

Section 31 of the Highways Act 1980 states:

*"(1) Where a way over land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."*

*"(2) The period of twenty years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question whether by notice, such as is mentioned in subsection (3) below or otherwise."*

*"(3) Where the owner of the land, which any such way as aforesaid passes has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and has maintained the notice after the first January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway"*

4. Section 31(1) has two 'limbs' the first provides that proof of twenty years continuous user "as of right" endorses a claim that a highway exists; the second (sometimes referred to as 'the proviso') provides that proof of a lack of intention to dedicate the way as a highway defeats the claim.
5. Section 31 is further supplemented by Section 32 of the Highways Act 1980, which states:

*“A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document, which is tendered in evidence, and shall give weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or complied, and the custody in which it has been kept and from which it is produced.”*

6. Common Law

Before public rights can be asserted under the Common Law, a landowner must be shown to have intended to dedicate the right of way over his land. The question of dedication is purely one of fact and public user is no more than evidence, which has to be considered in the light of all available evidence. Public use will not, therefore, raise the inference of dedication where the evidence, in its totality, shows that the public right of way status was not intended.

7. At Common Law, there is no specified period of user, which must have passed before an inference of dedication may be drawn. It is necessary to show, in order that there may be a right of way established, that the route has been used openly, “as of right”, and for so long a time that it must of come to the knowledge of the owners of the fee that the public were so using it as of right.
8. If the landowner has done exactly what would be expected from any owner who intended to dedicate a new highway, the time may be comparatively short. However, as a matter of proof at Common Law, the greater the length of user that can be demonstrated, the stronger the inference of dedication will (usually) be.
9. Factors such as desirability, suitability, financial viability, need or even public safety, whilst genuine concerns cannot lawfully be taken into account, when making a decision. Therefore, whilst there may be some genuine concerns about the anti-social behaviour occurring along part of the alleged public right of way, it cannot lawfully be taken into account when determining the application to modify the Definitive Map.