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To: trafficteam.west@cumberland.gov.uk

Reference: **KTRO/23/PNG CUMBERLAND COUNCIL (VARIOUS ROADS, KESWICK AND SURROUNDING AREA) (CONSOLIDATION AND PROVISION OF TRAFFIC REGULATIONS) ORDER 20><**

FORMAL OBJECTION on behalf of Cycling UK

Dear Sirs

Cycling UK is a national cycling charity with over 70,000 members. We write in response to a notice of proposal for the above-named traffic regulation order ("TRO").

We wish to formally object to the following sections of the above proposed order in accordance with Section 8 of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996

Paragraph 44A & Schedule 33A - Prohibition of all Traffic, U7003 Thirlmere Western Road.

This objection is being submitted by and on behalf of Cycling UK's national office; however, separate responses setting out objections to this TRO have already been submitted by a number of individual Cycling UK members and affiliated groups. In addition to those submissions, Cycling UK makes the following additional points and objections, focussing mainly on Cumberland Councils failure to have regard to the relevant legislation, national guidance, or conduct a fair and lawful consultation.

Road Traffic Regulation Act 1984 (RTRA)

Cumberland council, as highway authority, can make an order under section 1 of the RTRA where it considers it "expedient" having regard to a number of factors (the statutory purposes). Those statutory purposes are:

- (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, or*
- (b) *for preventing damage to the road or to any building on or near the road, or*
- (c) *for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or*
- (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, or*
- (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, or*
- (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).*

Where a highway authority issues a notice proposing to make a TRO, that notice must include a statement of reasons outlining the reasons for the order, which must have regard to and identify the statutory purposes for which it is satisfied that it is expedient to make the TRO. The statement of reasons (SoR) within the notice issued with regard to this TRO states:

Introduce a “Prohibition of All Traffic” restriction on the U7003 at Thirlmere; (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 SoR confines itself to reciting a sole statutory purpose for making a TRO in respect of the U7003 road. Neither the notice of proposals, draft order or statement of reasons provide any information as to the factors identified by Cumbria County Council as being dangerous/likely to be dangerous to persons using the road - nor is any risk analysis of the potential danger to road users included.

In the absence of such information or analysis quantifying any identified risk, we fail to see the justification for the extreme measure of a permanent TRO. The Statement of Reasons is thus inadequate.

Further, When considering whether to make a TRO, Cumberland Council also has a statutory duty to consider the matters outlined at section 122 RTRA, “to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians)”. The proposed TRO would remove a key safe route without delivering any form of practical, safe alternative route for vulnerable road users - from the SoR and published information it appears clear that Cumberland Council has failed to adequately consider or address the impact of the proposed order on the expeditious, convenient and safe movement of cyclists, pedestrians and horse riders.

In particular, no attempt has been made to balance the impact of the proposed restriction on use of U7003 by vulnerable road users against the risks which they may be exposed to by being forced to use alternative (open) routes, in particular the nearby A591. We believe that the failure to analyse any such risk ‘in the round’ amounts to fault.

We further note the existence of a previous statement by Cumbria County council (prior to local government reorganisation) on 31st January 2022 (Reference: FOI-11499-2022) that:

“The diversion route only stipulates suitability for vehicular traffic; therefore no diversion route is provided for pedestrians and cyclists at this time. This is under re-assessment as the extent of the work required is established with United Utilities.”

We note that in fact cyclists are, in law, classified as vehicles, and we question the authorities compliance with their section 122 duties given the continuing failure to successfully identify or create any safe alternative route for vulnerable road users in the intervening eighteen months period.

The decision to issue a Permanent Traffic Regulation Order rather than seek extension of the existing Temporary TRO

The authority has failed to demonstrate that permanent closure is the only realistic option available.

We believe that the authority has failed to fully explore alternative solutions in order to secure the safe and expeditious use of the closed route by vulnerable road users - in particular, the authority has failed to demonstrate any attempt to mitigate risk through the use of netting or fencing (measures already in use on the A591 on the opposite side of the lake) in order to protect highway users from potential risk from falling rocks .

Further, no justification has been presented for the decision to seek a permanent TRO rather than request extension of the existing Temporary TRO from the Secretary of State for Transport.

Section 15 RTRA sets out specifically that the duration of such orders may be extended by the Secretary of State, who can direct that any temporary order shall continue in force for periods of up to six months at a time.

Guidance issued by the National Casework team identifies that, in order to secure such extension, the authority will need to apply to the Secretary of State for Transport to extend the period of the order beyond the period it was originally made for, and that as part of that process they will need to provide their reasons for the proposed period of extension and give plans for restoring the highway or any plans for permanently changing the use of the highway.

We believe that, in this case, extension would be more appropriate than a permanent TRO.

We note in particular the existence of a press release, issued by the council on 4th September 2023 (<https://www.cumberland.gov.uk/news/2023/update-thirlmere-road-closure>) stating that:

Cumberland Council is carrying out its own independent review of the latest survey report provided by United Utilities. Once this has been concluded it will inform the content of the Statutory Notice (under Section 151 Highways Act 1980) which the Council will then serve upon United Utilities to carry out works to make safe and secure the remaining length of the U7003 (the Rough Crag area) so that the road can be re-opened to all users.

Section 151 of the Highways act 1980, as identified, sets out that the authority may - by notice to the owner or occupier of any land adjoining a street which is a highway maintainable at the public expense - require him, within 28 days from the date of service of the notice, to execute such works as will prevent soil or refuse from that land from falling, or being washed or carried, on to the street or into any sewer or gully in it in such quantities as to obstruct the street or choke the sewer or gully.

As such, we would question why the authority feels that they need a further extended period of closure - given the fact that they have now stated they intend to issue a notice under section 151, then there is a legal duty on the adjoining landowner to carry out such works within 28 days - therefore what possible justification can exist for a permanent TRO if these works are expected (indeed, must) be carried out in a matter of weeks?

We believe that the authorities own declared intent to issue a Section 151 notice on the adjoining landowners, removes any possible justification for the proposed permanent order.

Unfair consultation process

Attention is drawn to the Gunning Principles on fair and lawful consultation, namely that:

- Consultation must be at a time when proposals are still at a formative stage
- Sufficient reasons must be put forward for any proposal to permit 'intelligent consideration' and response
- Adequate time is given for consideration and response
- The product of consultation is conscientiously taken into account by the decision maker(s)

Put simply, these criteria are a prescription for fairness and mean that a public body must: consult before they have made up their mind; provide people with the right kind of information for them to be able to take part in the consultation; give people enough time to participate and respond; and give consultation responses conscientious consideration.

Firstly, as previously identified, neither the notice of proposals, draft order, or statement of reasons provide any information as to the factors identified by Cumbria County Council as being dangerous/likely to be dangerous to persons using the road. The Statement of Reasons is

inadequate and, we believe, insufficient to discharge the authority's obligation to enable meaningful consultation.

In responding to this consultation, Cycling UK, and indeed others, can only respond to the information provided. To this end, we note that the survey reports and assessments made by United Utilities have not been made public or shared with consultees. It is unreasonable and unfair to require anyone to respond to matters, evidence, or things that were in the minds of council officers when they launched this consultation but failed to set out accurately, or at all, within the SoR or accompanying documents.

If Cumberland Council seek to justify their proposed closure on the basis of data & evidence that has not been shared and which the public could readily understand and respond to, then the public have not been provided with sufficient reasons for the proposals to permit 'intelligent consideration' and response.

Secondly, and crucially, Cumberland Council appears to have already concluded that the issue of a permanent TRO is a foregone conclusion.

We draw attention to the aforementioned press release, issued on 4th September 2023, stating that:

"Extensive assessments have been made by United Utilities and a geotechnical team. The areas requiring assessment included the full face of Rough Crag and areas out of sight of the general public at the top and to the side of the Crag. This also included assessment of damage to trees, hazards of exposed and loose tree root plates and loose or fallen rock on the Rough Crag section

These assessments have concluded that the hazards remain to all road users and therefore the road closure needs to continue. The Temporary Traffic Regulation Order has therefore now been extended and had approval from the Secretary of State to remain closed until 11 January 2024 to allow Cumberland Council to introduce a permanent order (on the basis that it will seek to re-open the road when safe to do so)."

This press release strongly suggests that the authority has already made its mind up - that far from being a proposal presented at any formative stage, the outcome of the consultation has already been pre-determined - To that extent we believe that the consultation process being presented to the public is flawed, unfair, and unlawful.

Failure to consider National Park Purposes

The authority have failed to identify any consideration or regard that has been given to National Park purposes in accordance with Section 62 of the Environment act 1995.

The order and supporting documentation fails to identify in any way the impact on National Park visitors and their enjoyment of the special features of the protected area. The western road along Thirlmere is a scenic and enjoyable route used by many cyclists and other non-motorised users.

Notably, the proposed closure would affect a section of the National Cycle Network, offering one of the only safe cycling links between the two popular tourist hubs of Keswick and Ambleside. The closed route also connects to a variety of public rights of way and access land that cannot, realistically, be accessed in any other manner - the result is to terminate a number of popular circular routes.

Attention is also drawn to the Lake District National Park Access and recreation strategy 2023-2028 ("out there"), which identifies, as part of its action plan (at page 21) the importance of sustainable travel links, and plans to:

“Support highways authorities in the development of links including Dunmail Raise and Thirlmere West”

Clearly, the issue of a permanent traffic regulation order on that route is incompatible with this proposal. The absence of any analysis of impact on National Park purposes is indicative that no proper consideration or due regard has been given to the impact on National Park purposes of the proposals.

Conclusion

Cumberland Council has failed to consider adequately the statutory purposes under S.1 RTRA and the framework for the issue of a permanent Traffic regulation Order, The authority has made proposals for a permanent TRO without adequate consideration of the relevant legal framework, criteria or national guidance, and without having regard for National Park purposes. It has also provided inadequate reasons and explanation for its proposals within the consultation, failing to provide the public with an opportunity for intelligent consideration and response, rendering the consultation process flawed and unlawful.

As a result, the decision to close this route is unacceptable, and fails to fulfil the authority's legal duty to secure the expeditious movement of traffic on the authority's road network. The authority should instead redouble its efforts to secure the reopening of this important route in order to allow vulnerable road users to fully enjoy the National Park.

If Cumberland Council still wishes to make these orders, Cycling UK would require the authority to provide a full response to the points and concerns raised within this submission.

Yours faithfully

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Cycling UK