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# Application Decision

by **Richard Holland**

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 14 December 2018

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## Application Ref: COM 3205128

### Cow Paddle Common, Lincoln

Register Unit No: CL 1

Commons Registration Authority: Lincolnshire County Council.

- The application, dated 14 June 2018, is made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
  - The application is made by Western Power Distribution (East Midlands) Plc.
  - The works of 12 to 18 months duration comprise:
    - i. laying of four new 33kV (33,000 volt) underground electricity cable circuits within a 560m long x 1.2 m wide x 1.2m deep trench; and
    - ii. temporary 2m high Heras type fencing enclosing up to 20,155m<sup>2</sup> during the period of works.
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## Application Ref: COM 3205444

### South Common, Lincoln

Register Unit No: CL 3

Commons Registration Authority: Lincolnshire County Council.

- The application, dated 14 June 2018, is made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
  - The application is made by Western Power Distribution (East Midlands) Plc.
  - The works of 12 to 18 months duration comprise:
    - i. laying of four new 33kV (33,000 volt) underground electricity cable circuits within a 1.2 m wide x 1.2m deep trench in two sections (Queen's Park section 210m long, Malandry Close section 300m long) ; and
    - ii. temporary 2m high Heras type fencing enclosing up to 9,463m<sup>2</sup> during the period of works.
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## Decisions

### Application Ref: COM 3205128 - Cow Paddle Common, Lincoln

1. Consent is granted for the works in accordance with the application dated 14 June 2018 and accompanying plans, subject to the following conditions:-
  - i. the works shall begin no later than three years from the date of this decision;
  - ii. all fencing shall be removed within one month from the completion of the works; and
  - iii. the common shall be fully restored within six months from the completion of the works.

## **Application Ref: COM 3205444 - South Common, Lincoln**

2. Consent is granted for the works in accordance with the application dated 14 June 2018 and accompanying plans, subject to the following conditions:-
  - i. the works shall begin no later than three years from the date of this decision;
  - ii. all fencing shall be removed within one month from the completion of the works; and
  - iii. the common shall be fully restored within six months from the completion of the works.
3. For the purposes of identification only the location of the works is shown as a red line on the attached plans WPD/AJP/283 (Cow Paddle), WPD/AJP/284 (Queen's Park) and WPD//AJP/285 (Malandry Close).

### **Preliminary Matters**

4. I have had regard to Defra's Common Land Consents Policy<sup>1</sup> in determining these applications under section 38, which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its merits and a determination will depart from the policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy. These applications have been determined solely on the basis of written evidence. I have taken account of the representations made by the Open Spaces Society (OSS), which does not object to the applications, Natural England (NE) and Lincolnshire Wildlife Trust (LWT).
5. I am required by section 39 of the 2006 Act to have regard to the following in determining these applications:-
  - a. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
  - b. the interests of the neighbourhood;
  - c. the public interest;<sup>2</sup> and
  - d. any other matter considered to be relevant.

### **Reasons**

#### ***The interests of those occupying or having rights over the land***

6. The City of Lincoln Council (the Council) is the owner and custodian of both commons and manages them on behalf of the citizens of the city of Lincoln in accordance with the terms of the Lincoln City Council Act 1985 (the 1985 Act). The Council has confirmed its support for the works. The common land registers record no rights of common over the lands. The applicant has confirmed that there are no other leaseholders, occupiers or any persons holding relevant charges over the lands. Other utility companies have rights of access over the lands and were consulted by the applicant about the works. None have commented. I conclude that the works will not harm the interests of persons having rights in relation to, or occupying, the lands.

#### ***The interests of the neighbourhood and the protection of public rights of access***

7. The open trench works are proposed to improve the capacity and reliability of electricity supplies across the city of Lincoln in order to meet growing demand. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the land is used by local people and is closely linked with public rights of access.

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<sup>1</sup> Common Land Consents Policy (Defra November 2015)

<sup>2</sup>Section 39(2) of the 2006 Act provides that the public interest includes the public interest in; nature conservation; the conservation of the landscape; the protection of public rights of access to any area of land; and the protection of archaeological remains and features of historic interest.

### *Cow Paddle Common*

8. The commons register map shows Cow Paddle Common in three sections, which were once separated by a railway line (now dismantled). The northern section will be unaffected by the works. Two thirds of the southern section has in the past been used for playing football. Formally laid out football pitches and a changing room remain but they have been disused for a number of years as the pitches have been made unplayable by damage caused by birds and burrowing animals. As this traditional use has ended I consider that the works can have no detrimental effect on the neighbourhood's interest in such use. The remaining third of the southern section is the Cow Paddle Local Wildlife Site, which appears to be open to general public access. It is a rectangular area bisected by a raised (dismantled) railway embankment, which does not form part of the common.
9. The application plan shows a fenced working corridor around the cable trench route extending across the whole southern section. It also shows a works compound and two further fenced corridors for site traffic crossing the football pitch areas. The fencing will split the southern section into separate compartments and prevent public access between them during the period of works. On the basis of the application plan, public access will be significantly restricted to most of the southern section for up to 18 months.

### *South Common*

10. The commons register map shows South Common in three sections. The southern section, which includes a golf course, is by far the largest and will be unaffected by the works. The remaining two sections, known as Malandry Closes and Queen's Park, are separated by a number of buildings and will both be affected by the works.
11. Malandry Closes is used twice a year as a site for a fair and a circus. The applicant understands that this is normally in April and October and it will ensure that none of the works take place during those times. The site will be vacated and all equipment and materials will be removed to facilitate the fair and circus taking place as usual. Queen's Park includes a children's playground. The applicant has confirmed that none of the play equipment will be affected and that its use (and public access to it) will be unaffected by the works. I am satisfied that these legitimate traditional uses of Malandry Closes and Queen's Park will not be prevented by the works.
12. The application plans show a fenced working corridor around the cable trench route extending from one side of Malandry Closes to the other and two further fenced corridors for site vehicles and machinery. The fencing will split Malandry Closes into separate compartments and prevent public access between them during the period of works. On the basis of the application plan, public access over Malandry Closes will be significantly restricted for up to 18 months. The works at Queen's Park will not split it into separate areas but will prevent public access to a strip along its boundary with South Park road. It appears from the application plans that the main point of access onto Queen's Park will be restricted by the works.

### *Public access considerations*

13. I consider that there will be significant disruption to public access to and over Cow Paddle and South Commons for up to 18 months. NE has expressed concerns about the extent of the fencing proposed. However, the applicant has stressed that the plans show a worst case scenario and that the works will, where possible, be carried out in smaller phases. The applicant considers it highly unlikely that the whole of the areas shown on the plans will be fenced off for the full duration of the works, including during post-works periods of ground restoration. The applicant has also confirmed that whilst the fencing will prevent access across the full extent of the commons, each of the compartments created will remain accessible from outside the common boundary. I am satisfied that the proposed fencing strikes a reasonable balance between the need to temporarily separate the public from the works areas in the interests of site safety and security and the need to minimise restrictions on public access.
14. The permanent works are underground, with no new above surface features proposed. The common land affected will be reinstated and all temporary fencing will be removed upon completion of the works. Whilst the period of disruption to public access is significant, it is still a temporary period and

I conclude that the works will not have a lasting impact on the interests of the neighbourhood or public rights of access over Cow Paddle and South Commons.

### **Nature conservation**

15. Neither common is subject to any national nature conservation designation and NE has raised no objections to the works on nature conservation grounds other than to suggest that underground cables could prevent any future tree planting above them. NE supports LWT's suggestion that the proposals should include improvements beyond re-instatement of the lands through an agreed management plan, especially in relation to the Cow Paddle Common Local Wildlife Site. I consider re-instatement of the land under the *Conservation of the landscape* heading below.
16. LWT is concerned that the proposed cable route through the Cow Paddle Common Local Wildlife Site would affect grassland of notable biodiversity value. The concerns include potential impact on the raised embankment, which LWT describes as a green habitat corridor. However as the embankment does not form part of the common land I cannot consider any affect the proposed works may have on it. The applicant has agreed to make a financial contribution of £5,000 towards habitat management on the two commons in order to ensure a net biodiversity gain following the works. However, the need for such enhancement does not arise from the effect of the works and so I give the matter little weight in determining the applications. The applicant will agree with LWT a works method statement. I am satisfied that measures are in place to address any detrimental biodiversity impacts that the works may have and to ensure that nature conservation interests over both commons are safeguarded in the long term.

### **Conservation of the landscape and archaeological remains and features of historic interest**

17. The trenches and other working areas to be set aside for storage and machinery will inevitably damage the surface of the commons and cause harm to the landscape unless the land is restored in full. The applicant will agree with the Council the appropriate re-instatement method and time of year in which it is to be carried out. This includes agreeing suitable seed mixes to be sown over green spaces and monitoring in-filled trenches over a period of time to ensure that material has not settled below ground level. I am satisfied that measures are in place to return the two commons to their former state, which can be required by attaching a suitable condition to the consents. All the permanent works will be underground and I consider that the landscape will not be harmed in the long term. There is no evidence before me that leads me to think the works will harm archaeological remains and features of historic interest.

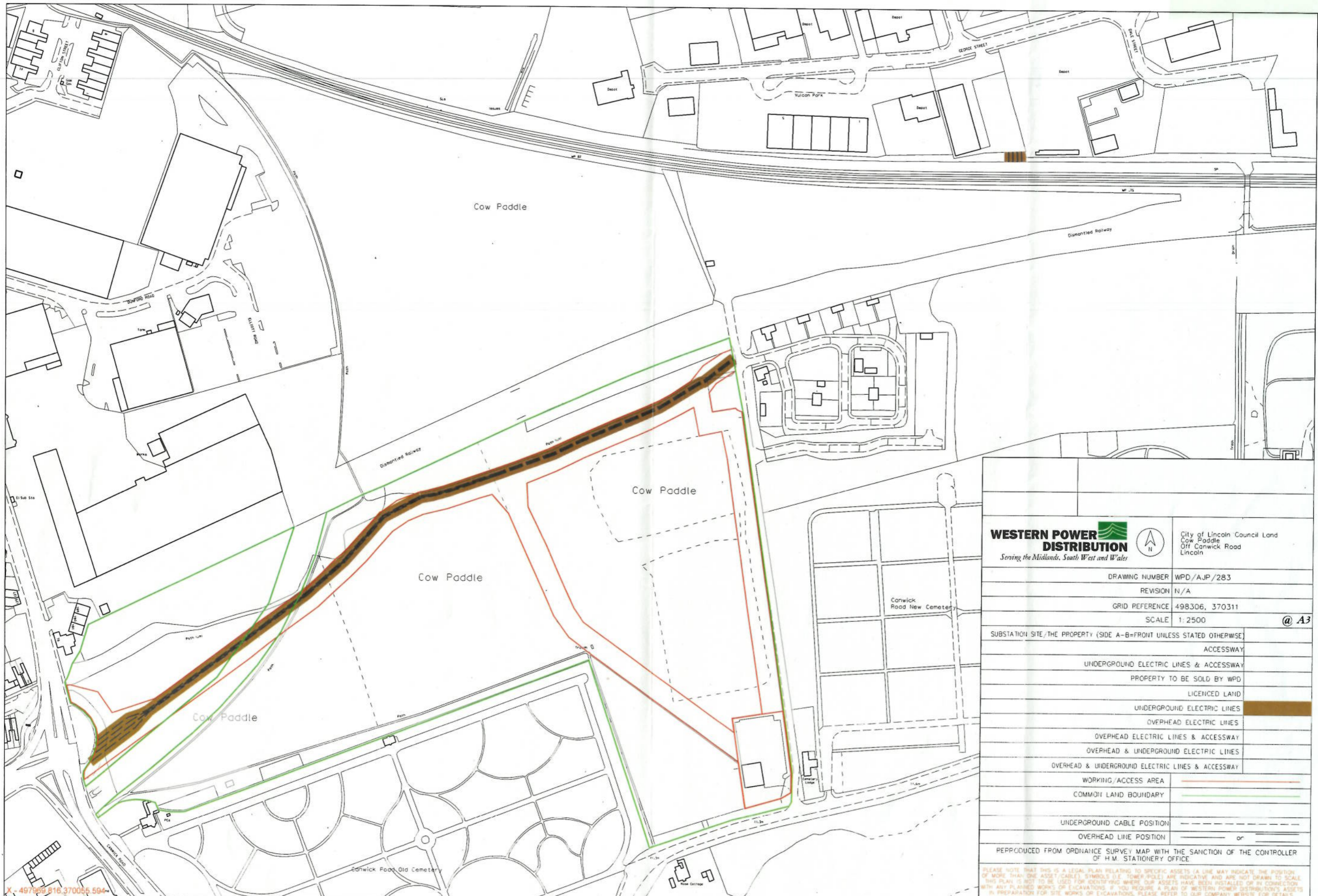
### **Other relevant matters**

18. Defra's policy guidance advises that "*works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community, such as minor works undertaken by a statutory undertaker (e.g. a water utility) to provide or improve the public service to local residents and businesses.....consent under section 38 may be appropriate where the works are of temporary duration (such as a worksite), where the works will be installed underground (such as a pipeline or pumping station), or where their physical presence would be so slight as to cause negligible impact on the land in question (such as a control booth or manhole), and the proposals ensure the full restoration of the land affected and confer a public benefit*". I am satisfied that the proposed works accord with this policy objective.

### **Conclusion**

19. I conclude that although the proposed works will have a substantial effect on some of the interests set out in paragraph 7 above for a long, albeit temporary, period they are unlikely to cause any permanent or long term harm. Furthermore, they will confer a public benefit by addressing the growing demand for increased electrical capacity in the city of Lincoln. Consent is therefore granted for the works at Cow Paddle Common and South Common subject to the conditions set out in paragraphs 1 and 2.

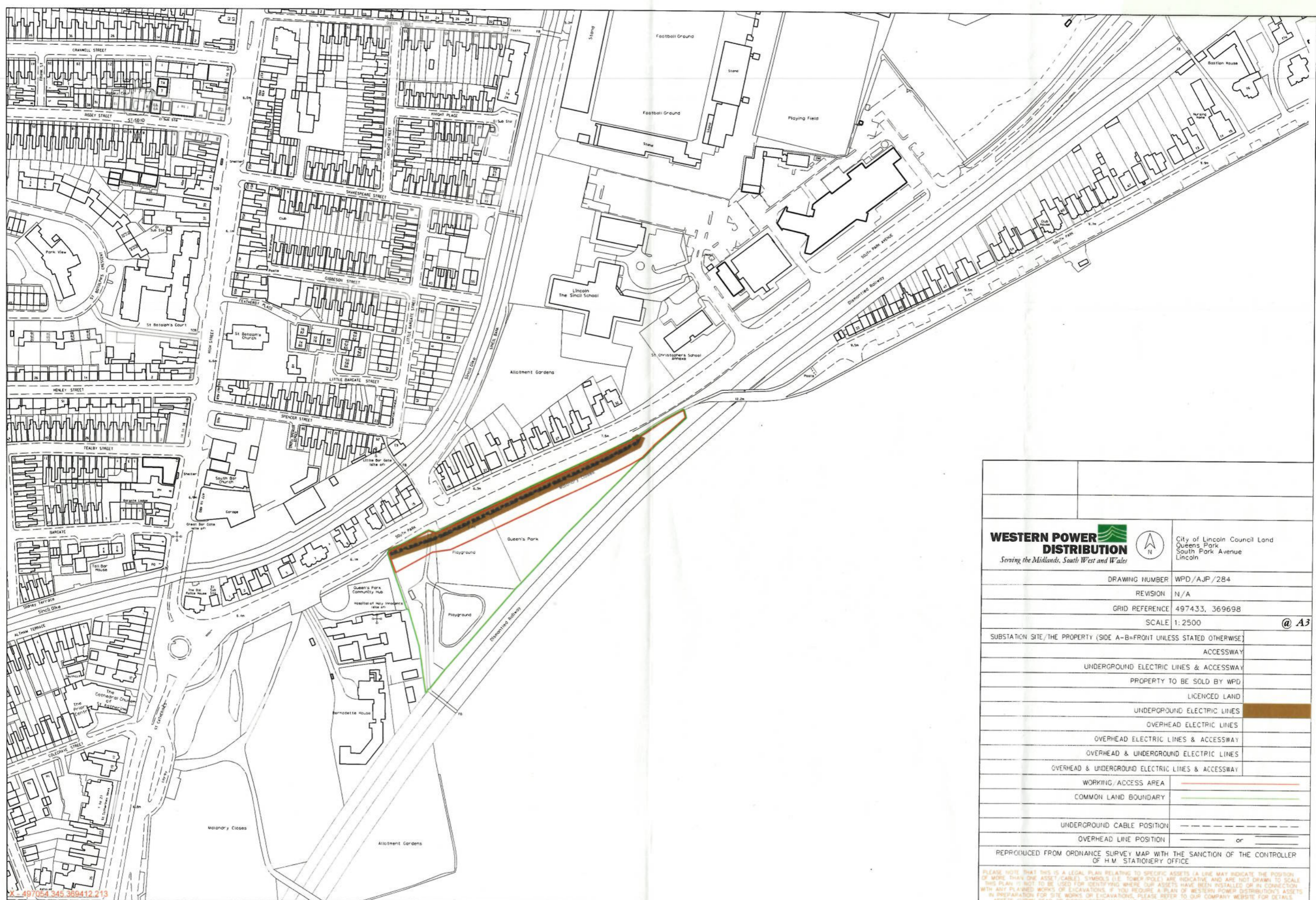
**Richard Holland**





			City of Lincoln Council Land Cow Paddle Off Canwick Road Lincoln
DRAWING NUMBER	WPD/AJP/283		
REVISION	N/A		
GRID REFERENCE	498306, 370311		
SCALE	1:2500		@ A3
SUBSTATION SITE/THE PROPERTY (SIDE A-B=FRONT UNLESS STATED OTHERWISE)			
ACCESSWAY			
UNDERGROUND ELECTRIC LINES & ACCESSWAY			
PROPERTY TO BE SOLD BY WPD			
LICENCED LAND			
UNDERGROUND ELECTRIC LINES			
OVERHEAD ELECTRIC LINES			
OVERHEAD ELECTRIC LINES & ACCESSWAY			
OVERHEAD & UNDERGROUND ELECTRIC LINES			
OVERHEAD & UNDERGROUND ELECTRIC LINES & ACCESSWAY			
WORKING/ACCESS AREA			
COMMON LAND BOUNDARY			
UNDERGROUND CABLE POSITION			
OVERHEAD LINE POSITION			
REPRODUCED FROM ORDNANCE SURVEY MAP WITH THE SANCTION OF THE CONTROLLER OF H.M. STATIONERY OFFICE			
<small>PLEASE NOTE THAT THIS IS A LEGAL PLAN RELATING TO SPECIFIC ASSETS (A LINE MAY INDICATE THE POSITION OF MORE THAN ONE ASSET/CABLE). SYMBOLS (I.E. TOWER/POLE) ARE INDICATIVE AND ARE NOT DRAWN TO SCALE. THIS PLAN IS NOT TO BE USED FOR IDENTIFYING WHERE OUR ASSETS HAVE BEEN INSTALLED OR IN CONNECTION WITH ANY PLANNED WORKS OR EXCAVATIONS. IF YOU REQUIRE A PLAN OF WESTERN POWER DISTRIBUTION'S ASSETS IN PREPARATION FOR SITE WORKS OR EXCAVATIONS, PLEASE REFER TO OUR COMPANY WEBSITE FOR DETAILS. ASSETS SHOWN DEAD OR DISCONNECTED MAY HAVE BEEN RECONNECTED AND SHOULD BE TREATED AS LIVE.</small>			

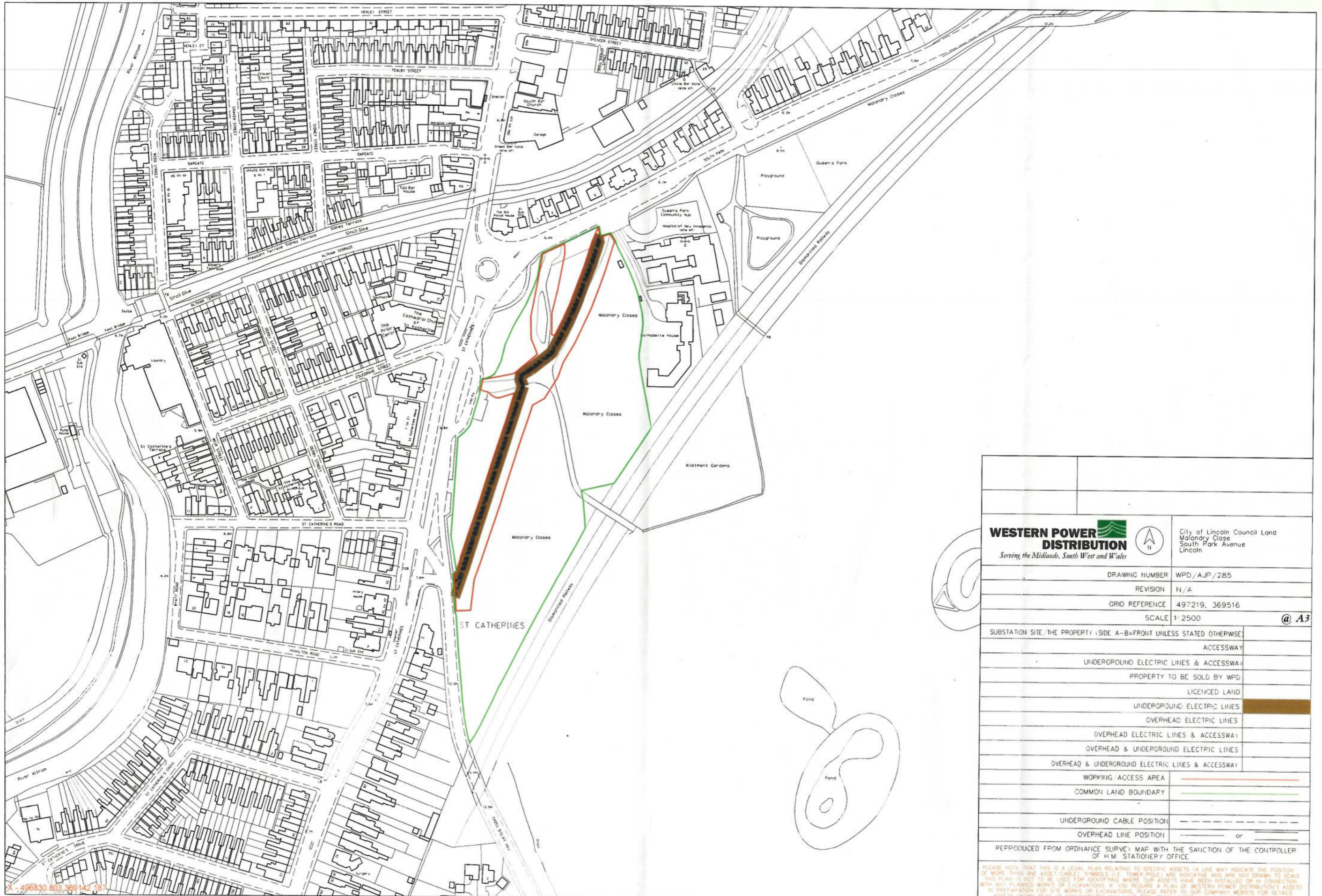
X - 497959 816.370055.594



PLEASE NOTE: This plan DNL shows assets owned by Western Power Distribution. Electricity assets owned by IDNO's (Independent Network Operators) MAI be present in this area.



			
<b>WESTERN POWER DISTRIBUTION</b> <i>Serving the Midlands, South West and Wales</i>		City of Lincoln Council Land Queen's Park South Park Avenue Lincoln	
DRAWING NUMBER	WPD/AJP/284	REVISION	N/A
GRID REFERENCE	497433, 369698	SCALE	1:2500 @ A3
SUBSTATION SITE/THE PROPERTY (SIDE A-B=FRONT UNLESS STATED OTHERWISE)			
ACCESSWAY			
UNDERGROUND ELECTRIC LINES & ACCESSWAY			
PROPERTY TO BE SOLD BY WPD			
LICENCED LAND			
UNDERGROUND ELECTRIC LINES			
OVERHEAD ELECTRIC LINES			
OVERHEAD ELECTRIC LINES & ACCESSWAY			
OVERHEAD & UNDERGROUND ELECTRIC LINES			
OVERHEAD & UNDERGROUND ELECTRIC LINES & ACCESSWAY			
WORKING/ACCESS AREA			
COMMON LAND BOUNDARY			
UNDERGROUND CABLE POSITION			
OVERHEAD LINE POSITION			
REPRODUCED FROM ORDNANCE SURVEY MAP WITH THE SANCTION OF THE CONTROLLER OF H.M. STATIONERY OFFICE			
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 		City of Lincoln Council Land Malandry Close South Park Avenue Lincoln
DRAWING NUMBER	WPD/AJP/285	
REVISION	N/A	
GRID REFERENCE	497219, 369516	
SCALE	1:2500	@ A3
SUBSTATION SITE / THE PROPERTY (SIDE A-B=FRONT UNLESS STATED OTHERWISE)		
ACCESSWAY		
UNDERGROUND ELECTRIC LINES & ACCESSWAY		
PROPERTY TO BE SOLD BY WPD		
LICENSED LAND		
UNDERGROUND ELECTRIC LINES		
OVERHEAD ELECTRIC LINES		
OVERHEAD ELECTRIC LINES & ACCESSWAY		
OVERHEAD & UNDERGROUND ELECTRIC LINES		
OVERHEAD & UNDERGROUND ELECTRIC LINES & ACCESSWAY		
WORKING / ACCESS AREA	[Red Line]	
COMMON LAND BOUNDARY	[Green Line]	
UNDERGROUND CABLE POSITION	[Dashed Line]	
OVERHEAD LINE POSITION	[Solid Line] or [Dashed Line]	
REPRODUCED FROM ORDNANCE SURVEY MAP WITH THE SANCTION OF THE CONTROLLER OF H.M. STATIONERY OFFICE		
<small>PLEASE NOTE THAT THIS IS A LEGAL PLAN RELATING TO SPECIFIC ASSETS (A LINE MAY INDICATE THE POSITION OF MORE THAN ONE ASSET/CABLE). SYMBOLS (IE TOWER/POLE) ARE INDICATIVE AND ARE NOT DRAWN TO SCALE. THIS PLAN IS NOT TO BE USED FOR IDENTIFYING WHERE OUR ASSETS HAVE BEEN INSTALLED OR IN CONNECTION WITH ANY PLANNED WORKS OR EXCAVATIONS. IF YOU REQUIRE A PLAN OF WESTERN POWER DISTRIBUTION'S ASSETS IN PREPARATION FOR SITE WORKS OR EXCAVATIONS, PLEASE REFER TO OUR COMPANY WEBSITE FOR DETAILS. ASSETS SHOWN DEAD OR DISCONNECTED MAY HAVE BEEN RECONNECTED AND SHOULD BE TREATED AS LIVE.</small>		

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