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# Application Decision

by **Richard Holland**

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

Decision date: 18 December 2019

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**Application Ref: COM 3234072**  
**Mawbray Banks, Silloth, Cumbria**

Register Unit No: CL 460

Commons Registration Authority: Cumbria County Council.

- The application, dated 9 July 2019, 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 Allerdale Borough Council.
  - The works of up to 6 months duration comprise i) a 2.5m wide, 1907m long tarmac multi-user path in two sections covering an area of 4768m<sup>2</sup> and ii) Heras fencing around working areas for up to 5 days as necessary during the works period.
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## Decision

1. Consent is granted for the works in accordance with the application dated 9 July 2019 and accompanying plans, subject to the following conditions:-
  - i. the works shall begin no later than three years from the date of this decision; and
  - ii. the common shall be restored within one month from the completion of the works.
2. For the purposes of identification only the location of the works is shown as a red line on the attached plans.

## Preliminary Matter

3. I have had regard to Defra's Common Land Consents Policy<sup>1</sup> in determining this application 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.
4. Planning permission for a cycleway between Allonby and Silloth was granted by Allerdale Borough Council (the Council) on 14 June 2019 (Application FUL/2019/0038). I am satisfied that despite the differing terms used, the permitted development includes the two sections of proposed multi-user path (MUP) that are the subject of this application.
5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations from Natural England (NE) and the Open Spaces Society/Friends of the Lake District (OSS/FLD).
7. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-

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

- 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***

8. The Council is both applicant and land owner and therefore has an interest in the application being granted. The common land register records four rights to graze animals and one right to dig gravel on land affected by the proposed works. All the rights holders were consulted by the Council, but none have commented on the application. The Council says its investigations have found no evidence that any of the grazing rights are exercised and I am satisfied that this is likely to be the case. The Council has not commented on the right to dig gravel but the fact that the right holder has not commented on the application suggests that this right is also not exercised. I am satisfied that the proposed works will not therefore adversely affect rights holders.
9. The common land register also records that one person "*has a right of access with a car over the land to reach a beach hut on Mowbray Banks*" and that another person "*claims a way over this land to reach a beach hut on Mowbray Banks.*" The entries in the register date from 21 May 1970 and give no beach hut locations. The Council says it has found no evidence that the beach huts still exist and that as their locations are in any case unknown it is not possible to say whether direct access to them by car is possible. However, the Council confirms that vehicle access to all existing car parks between the MUP and the shore will be maintained, and I am satisfied that known vehicular access rights will be maintained.

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

10. Mawbray Banks is a coastal strip of common land in two sections between Mawbray to the south and Silloth to the north. It runs on the seaward (west) side of the B5300 coast road. The application plan shows existing paths on both sections of common, some of which form the England Coast Path (ECP), which runs mainly parallel, albeit at varied distances, to the MUP on the seaward side. The MUP will run through most of the length of both sections of common; mainly alongside the B5300 but with a diversion around the property known as Solway Crest, which will take it further into the common at this point and overlap with the ECP for around 127m. The common land sections of MUP form part of a wider project to provide a continuous multi-user route between Maryport and Allonby, which will in turn form part of the National Cycle Network Route 72 (Hadrian's Trail).
11. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land is used by local people and is closely linked with public rights of access on foot. NE describes the common as almost exclusively sand dune with the exception of a small area of heath and notes that some people may find traversing sand dunes difficult.
12. The MUP will cater for cyclists and also, for example, walkers, pushchair/buggy and wheelchair users. I consider the land is currently likely to be used mainly by walkers and also for general recreation. I further consider that a MUP is consistent with the established use of the land and will offer an alternative, and easier, walking route through the common.
13. NE and OSS/FLD feel that the safety of pedestrian users will be at risk when sharing a path with speeding cyclists and I recognise that the planning permission granted is for a cycleway rather than for a MUP. However, the common land sections of the path are not intended to be primarily for

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<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.

cyclists who I consider will take the necessary precautions to avoid collisions with pedestrians. Furthermore, I consider that the MUP will improve access to the common for other users of all ages and abilities.

14. The safety/security fencing will cause some short-term impediment to public access during the works. However, the works will be carried out in sections as the tarmac is laid and the Council expects each section to be fenced off for between three and five days. As all the temporary fencing will have been removed by the time the works are complete, I conclude that it will not have an unacceptable or lasting impact on access rights over the common.

### ***Nature conservation***

15. Most of the southern section of the common, and a small area of the northern section, lie within the Silloth Dunes and Mawbray Banks Site of Special Scientific Interest (SSSI). The MUP will cross these areas. On its seaward side the whole common abuts the Upper Solway Flats and Marshes SSSI, RAMSAR and Special Protection Area (SPA) sites and the Solway Firth Special Area of Conservation (SAC), which encroach slightly into the southern section of the common.
16. OSS/FLD object to the proposals and raise concerns about the potential impact of the works on these designated areas. However, whilst NE considers that there are no benefits from the proposals to nature conservation, it finds no reason to believe that the works would damage the biodiversity value of the common. NE's statutory purpose is to ensure that the natural environment is appropriately conserved, enhanced and managed and I give significant weight to its comments.
17. In the interests of safeguarding wildlife and biodiversity it is a condition of the planning permission that an Ecological Mitigation Plan shall be approved in writing before development commences and that the development is undertaken in complete accordance with the approved plan. I am satisfied that the measures will protect wildlife and biodiversity accordingly and that nature conservation interests are unlikely to be harmed by the proposed works.

### ***Conservation of the landscape***

18. Once the works have been completed the only new visible feature will be a tarmac path. All fencing will be removed and the land will be re-instated, which can be ensured by attaching a suitable condition to the consent. Most of the MUP route through the common is alongside the B5300, making the tarmac surface more visible from the road than it would be if it was further into the common. However, a verge of natural vegetation will be retained between the road and the MUP to minimise its visual impact. Photographs submitted by the Council show a section of path beside the B5300 near Maryport that is well-screened by such a verge. I am satisfied that the common land sections of MUP will be similarly well-screened by the proposed verge and that the visual impact of the tarmac surface will not be harmful to the landscape.
19. The common lies within the Solway Coast Area of Outstanding Natural Beauty (AONB), as does much of the rest of the permitted cycleway. Subject to the careful implementation of the planning permission, the AONB Partnership, in a letter sent to the Council as part of the planning process, supports the application as it fits with a number of actions within the AONB Management Plan, including the promotion of walking and cycling through the AONB. I give this support significant weight and am satisfied that through compliance with the Management Plan the proposed works on the common will help to conserve the natural beauty of the AONB.

### ***Archaeological remains and features of historic interest***

19. The common also lies within the Frontiers of the Roman Empire World Heritage Site – Hadrian's Wall. In the interests of safeguarding known archaeological remains and protecting archaeological interests in the area, conditions attached to the planning permission require that the development is carried out in full accordance with the findings and recommendations of approved archaeological reports. I am satisfied that this will ensure that archaeological and historic interests will not be harmed by the proposed works.

## **Other matters**

20. The Council says the purpose of the proposals is in part to provide a safer alternative to current 'on-road' routes for cyclists. OSS/FLD support the principle of a cycleway from Allonby to Silloth and sympathise with cyclists who try to use the B5300 safely. However, they suggest that minor roads in-land could be used as an alternative to the proposal. In response the Council points out that the project is fundamentally to provide a coastal route and taking it in-land is contrary to the overall objective. For this reason, I give the suggestion little weight and have, in any case, decided the application on its merits and as made.
21. NE suggests that any consent given should be for a fixed period of 20 or 25 years to allow a review of the route and to prevent a situation arising where a permanently consented MUP has become redundant due to coastal erosion. Time-limited consent may be appropriate where the objective of proposed works can be achieved within a predictable time-frame and there is no need to leave them in place once the objectives have been achieved. The objective of the application before me is to provide a permanent MUP and I am satisfied that it is not necessary to review its continued need. In any case, future applications may be made to vary the route should the Council deem it necessary for any reason.

## **Conclusion**

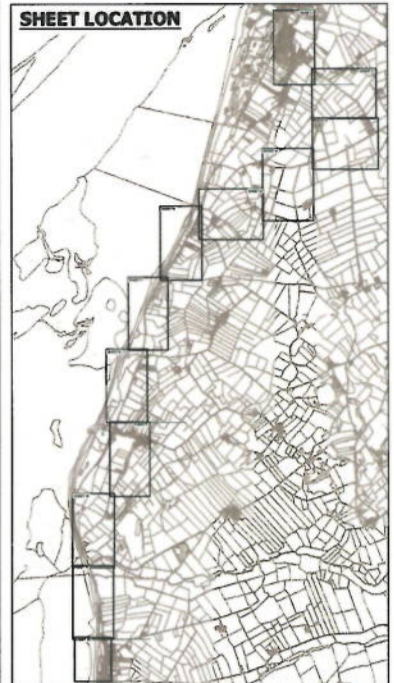
22. I conclude that the proposed works will not unacceptably harm the interests of rights holders or harm any of the other interests set out in paragraph 7 above. Indeed, the MUP will improve public access over the land for walkers, wheelchair and pushchair users, as well as for cyclists and will support the AONB Management Plan. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

*Richard Holland*



DO NOT SCALE. CONTRACTOR TO CHECK ALL DIMENSIONS AND REPORT ANY OMISSIONS OR ERRORS

- KEY**
- EXISTING NON ROUTE - 72 HADRIAN CYCLEWAY
  - PROPOSED ON CARRIAGEWAY CYCLEWAY
  - PROPOSED 2.5m OFF CARRIAGEWAY CYCLEWAY
  - PROPOSED NEW FENCELINE
  - LAND UNDER OWNERSHIP OF ALLERDALE BOROUGH COUNCIL
  - UNREGISTERED LAND
  - SITE OF SPECIAL SCIENTIFIC INTEREST (SSSI)
  - CONCLUSIVE REGISTERED COMMON LAND



REV	DESCRIPTION	BY	CHK	APP	DATE
E	GENERAL AMENDMENTS	IW	GW	AG	28.05.19
D	COMMON LAND FENCE LINE AMENDED	IW	GW	AG	05.03.19
C	AMENDED SOUTH OF BECKFOOT	IW	GW	AG	22.01.19
B	AMENDED AROUND SOLWAY CREST	IW	GW	AG	13.12.18
A	FOLLOWING STAGE 1 RSA	IW	GW	AG	28.11.18



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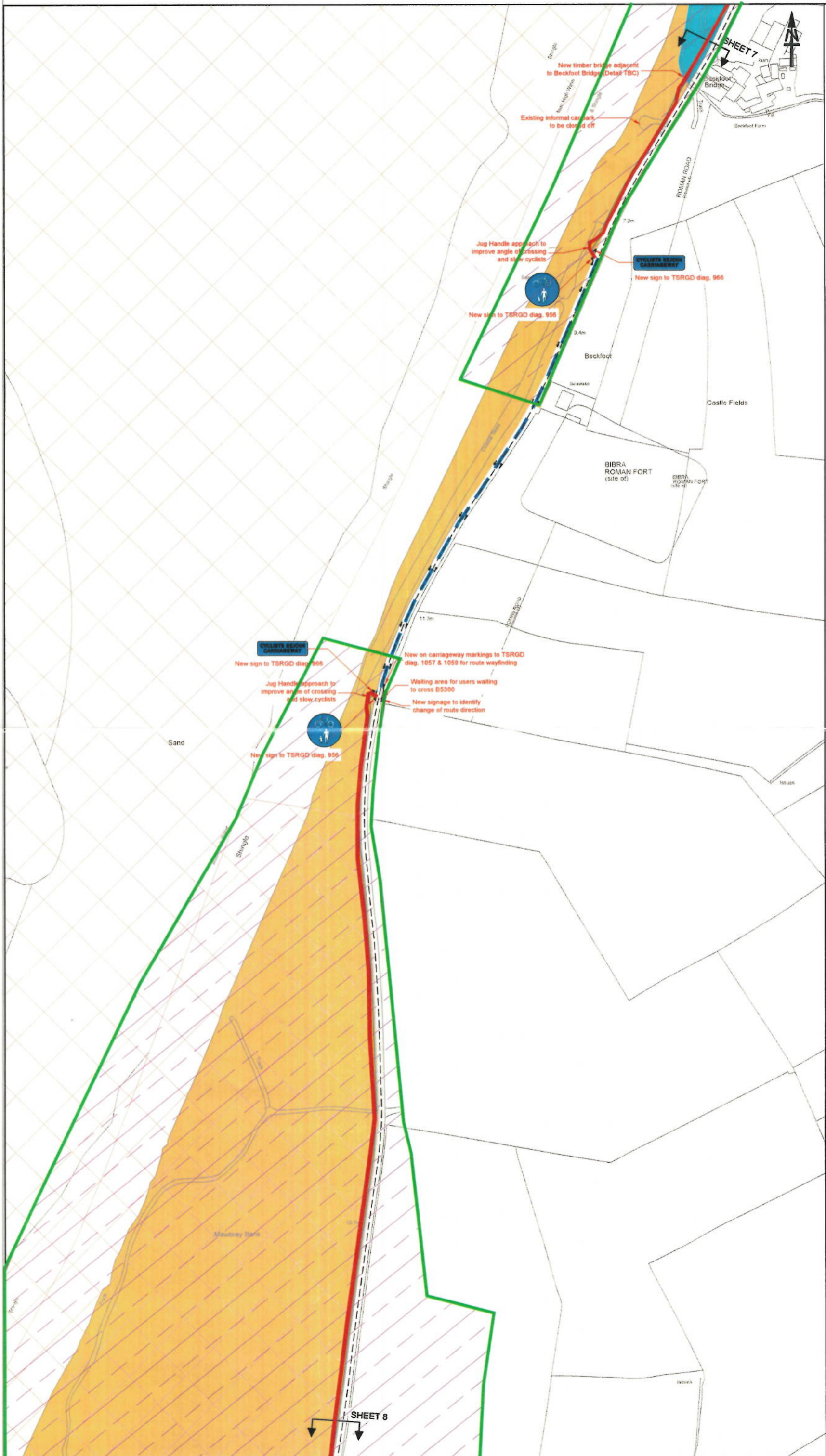
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Project:  
**SILLOTH TO ALLONBY CYCLEPATH**

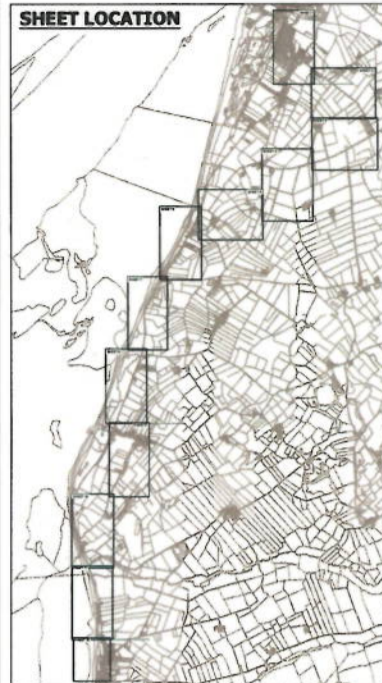
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**SILLOTH TO ALLONBY CYCLEPATH ROUTE ALIGNMENT  
(SHEET 8 OF 12)**

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Project No.	Office	Type	Drawing No.	Revision			
A106827	91	18	C002	E			



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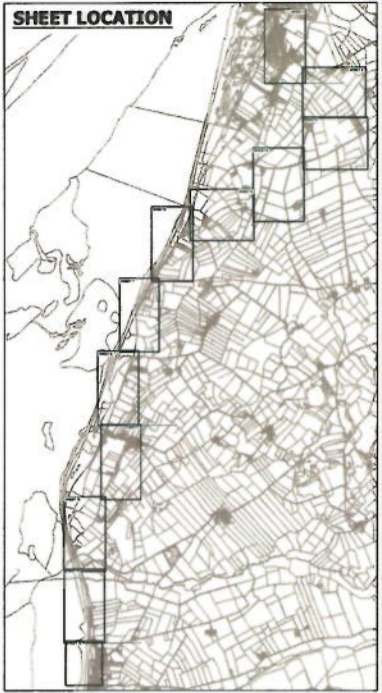
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A106827	91	18	C002	E		



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