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# Application Decision

by **Richard Holland**

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

Decision date: 26 February 2019

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**Application Ref: COM/3216450**

**Powick Hams, Worcestershire**

Register Unit No: CL 77

Commons Registration Authority: Worcestershire County Council

- The application, dated 12 November 2018, is made under Section 38 of the Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
  - The application is made by Worcestershire County Council.
  - The works comprise:
    - (i) ground investigation in Powick Hams Common parallel to the existing A449 embankment for soils material sampling, including 3 no. trial excavations approximately 2m<sup>2</sup>, and 3 no. boreholes approximately 1m<sup>2</sup>. All ground investigation works temporarily fenced during investigation and backfilled on completion;
    - (ii) six temporary trenches of 50m length x 2m width for archaeological investigation in Powick Hams Common to the south of the existing A4440 Temeside Way embankment, temporarily fenced during investigation and backfilled on completion;
    - (iii) permanent ramps for new combined cycle and footbridge at Hams Way in Powick Hams Common to the west of Powick Roundabout, including maintenance access (area of 0.33 Hectares);
    - (iv) temporary site compound and working areas to undertake the works described above and access for environmental mitigation works (area of 1.9 Hectares); and
    - (v) installation of new water feed across the common to new water trough in adjacent field.
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## Decision

1. Consent is granted for the works in accordance with the application dated 12 November 2018 and accompanying plan subject to the following conditions:
  - i. the works shall begin no later than three years from the date of this decision;
  - ii. all temporary works shall be removed by no later than December 2021;
  - iii. the common shall be restored within one month of the completion of the works.
2. For the purposes of identification only the location of the works is hatched in red on the attached plan.

## Preliminary Matters

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. The works are included in planning permission granted by Worcester County Council (the Council) on 5 April 2018 (Application 17/000036/REG3).

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

5. There were two anomalies in the application as originally made. Firstly, the answer to Question 12 in the application form gives the area to be enclosed for works (i) to (iv) as 8.71 hectares (as do the application plans), whilst the answer to Question 9 gives it as 19,000m<sup>2</sup> (1.9 Hectares). This is a significant difference. The applicant has since confirmed that the correct figure is 1.9 Hectares. Also, the original application plan did not show the extent of the footprint of the proposed shared cycle and footbridge ramps (the ramps). An amended version of the plan dated 15 January 2019 submitted by the applicant includes the footprint. I am satisfied that no person wishing to comment on the application has been prejudiced by my consideration of the amendments in determining the application.
6. This application has been determined solely on the basis of written evidence.
7. I have taken account of the representations made by Natural England (NE) and Historic England (HE), neither of which object to the application.
8. I am required by section 39 of the Commons Act 2006 to have regard to the following in determining this application:-
  - 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***

9. The land is owned by Sarah Hawkins and Henry Murch, who were formally consulted by the applicant but have not commented on the application. There are a number of active commoners, including Sarah Hawkins, who exercise their rights on the common. The common is not subject to rights all year round; rights are allocated by the commons association on a yearly basis. The commons association and the commoners have been consulted about the application and have not objected to the proposed works.
10. There is no indication that the work will have any adverse impact on the interests of those occupying or having rights over the land.

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

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. The works are in connection with the A4440 Worcester Southern Link Road scheme. Although I note that public rights of way (PROW) and diversions affected by the works will be kept clear and gates will be installed in fencing crossing PROW to maintain access, the protection of PROW is controlled by separate legislation.
12. An area of 1.9 Hectares will be enclosed by fencing to facilitate works (i) to (iv) until December 2021. This includes an area of 0.33 hectares for the ramps, of which 0.09 Hectares will be permanently hard surfaced. The application plan shows the foot/cycle

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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.

route running through the common, linking with a crossing over the A449 to the south and with a crossing over the A4440 to the north. I consider that the ramps for the foot/cycle route will benefit users of the common inasmuch as they will link the areas of common straddling the road and facilitate passage between them. The fencing will be removed upon completion of works (i) to (iv), which can be secured by way of a condition attached to the consent, leaving no permanent impediment to access.

13. I note that to mitigate the loss of public access during the period of works the applicant proposes to open to public access an area abutting the common. I also note that there is a separate on-going application to deregister land forming part of the application site, which, if successful, will remove the land occupied by the shared cycle/footbridge ramps from common land status and provide alternative land to be registered as common land in its place. However, I can give neither proposal any weight in determining this application, which must be considered on the basis of the impact of the proposed works on the area of common land subject of the application.
14. I conclude that although works (i) to (iv) will prevent public access to an area of 1.9 Hectares for more than two years whilst they are being carried out they will not have a permanent detrimental impact on local use of the land and public access over it. Indeed, the ramps will facilitate access across the common.
15. Works (v) are to install approximately 515 metres of new water feed pipe across the common to a new water trough. The pipe will be installed using the plough moleing technique, which uses a tractor and specialised trailer to cut a small slot in the ground, lay the pipe and reinstate. It requires a small hole to be excavated every 50 metres to connect one roll of pipe to another. The works are expected to take four weeks and fencing would only be required in small sections if a hole were to be left unattended. I conclude that Works (v) will have only a negligible impact on local use of the land and public access over it.

### ***Nature conservation***

16. The western end of the new pipe will be close to the River Teme Site of Special Scientific Interest (SSSI) but the application plan shows that the pipe works will not encroach onto it. NE commented only that it understood any damage caused to the common by the works would be made good. There is no evidence before me to suggest that the works will harm nature conservation interests.

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

17. The affected land sits beside a busy major road junction in an area that has no specific landscape designation. Fencing is required to secure the site during the period of works and ensure the safety of the public and livestock. The use of post and wire fencing for livestock and block mesh fencing, where possible, will help mitigate the visual impact. Plastic barriers and solid hoarding (for use around the site compound) will be used to help minimise any disturbance to the common. The area needed for the works has been kept to a minimum and the common will be fully restored to its original condition upon completion of the works; this too can be secured by way of a condition.
18. I am satisfied that any visual impact will be mostly temporary in duration. Whilst the ramps will create a new permanent visible feature in the landscape, I conclude that they will not be out of place in their surroundings.

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

19. HE has confirmed that it has no objection to the application and, along with the Local Planning Authority's archaeological advisors, it provided advice on the Worcester Southern Link Road scheme during the planning application process. Works (ii) is exploratory archaeological investigation work to further understand the 1651 Battle of Worcester, the registered battlefield for which lies off the common to the north of the A4440.
20. I note that the planning permission for the scheme includes conditions designed to protect any archaeological remains. On the basis of HE's advice and the evidence before me, I am satisfied that the works will not harm any archaeological remains and features of historic interest and may contribute to the better understanding of a historic local battle.

## **Other matters**

21. I consider that Works (iii) (the ramps) will benefit users of the common by linking it with the common land on the other side of the busy A449 road but it has not been shown that works (i), (ii), (iv) and (v) will be of any benefit to the common or its users. However, Defra's consents policy 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."*
22. I am satisfied that works (i), (ii), (iv) and (v) ensure the full restoration of the land affected and in the main will confer a public benefit by facilitating improvements to the Worcester Southern Link Road and research into a historical event of public interest. They are therefore consistent with the policy objective.

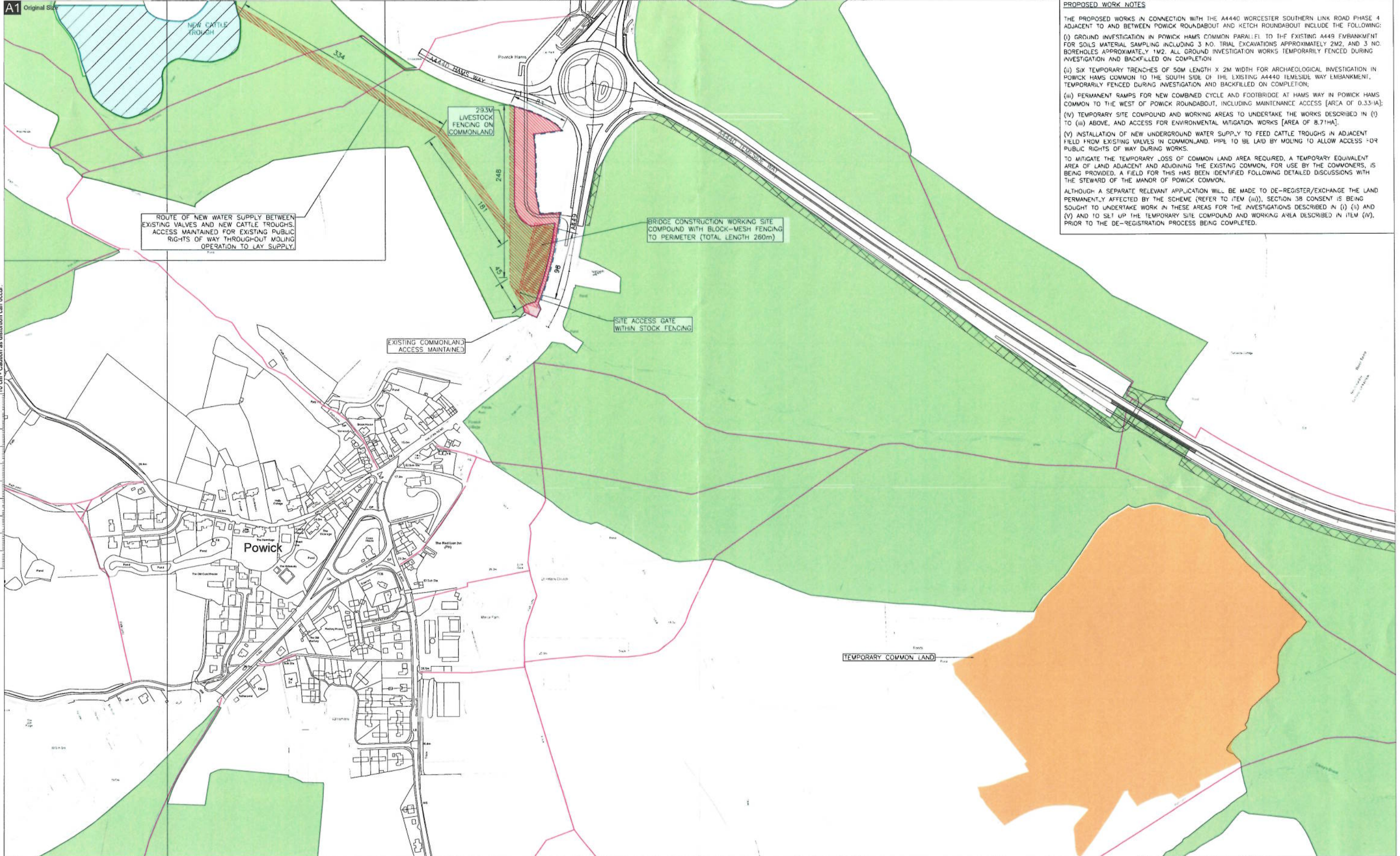
## **Conclusion**

23. I conclude that the works will not adversely impact on the interests set out in paragraph 8, will in part benefit users of the common and archaeological research and are otherwise consistent with Defra's policy guidance. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**



10cm - Caution as distortion can occur.



**PROPOSED WORK NOTES**

THE PROPOSED WORKS IN CONNECTION WITH THE A4440 WORCESTER SOUTHERN LINK ROAD PHASE 4 ADJACENT TO AND BETWEEN POWICK ROUNDABOUT AND KETCH ROUNDABOUT INCLUDE THE FOLLOWING:

- GROUND INVESTIGATION IN POWICK HAMS COMMON PARALLEL TO THE EXISTING A449 EMBANKMENT FOR SOILS MATERIAL SAMPLING INCLUDING 3 NO. TRIAL EXCAVATIONS APPROXIMATELY 2M<sup>2</sup>, AND 3 NO. BOREHOLES APPROXIMATELY 1M<sup>2</sup>. ALL GROUND INVESTIGATION WORKS TEMPORARILY FENCED DURING INVESTIGATION AND BACKFILLED ON COMPLETION.
- SIX TEMPORARY TRENCHES OF 50M LENGTH X 2M WIDTH FOR ARCHAEOLOGICAL INVESTIGATION IN POWICK HAMS COMMON TO THE SOUTH SIDE OF THE EXISTING A4440 EMBANKMENT. TEMPORARILY FENCED DURING INVESTIGATION AND BACKFILLED ON COMPLETION.
- PERMANENT RAMPS FOR NEW COMBINED CYCLE AND FOOTBRIDGE AT HAMS WAY IN POWICK HAMS COMMON TO THE WEST OF POWICK ROUNDABOUT, INCLUDING MAINTENANCE ACCESS [AREA OF 0.33HA];
- TEMPORARY SITE COMPOUND AND WORKING AREAS TO UNDERTAKE THE WORKS DESCRIBED IN (i) TO (iii) ABOVE, AND ACCESS FOR ENVIRONMENTAL MITIGATION WORKS [AREA OF 8.71HA].
- INSTALLATION OF NEW UNDERGROUND WATER SUPPLY TO FEED CATTLE TROUGH IN ADJACENT FIELD FROM EXISTING VALVES IN COMMONLAND. PIPE TO BE LAID BY MOLING TO ALLOW ACCESS FOR PUBLIC RIGHTS OF WAY DURING WORKS.

TO MITIGATE THE TEMPORARY LOSS OF COMMON LAND AREA REQUIRED, A TEMPORARY EQUIVALENT AREA OF LAND ADJACENT AND ADJOINING THE EXISTING COMMON, FOR USE BY THE COMMONERS, IS BEING PROVIDED. A FIELD FOR THIS HAS BEEN IDENTIFIED FOLLOWING DETAILED DISCUSSIONS WITH THE STEWARD OF THE MANOR OF POWICK COMMON.

ALTHOUGH A SEPARATE RELEVANT APPLICATION WILL BE MADE TO DE-REGISTER/EXCHANGE THE LAND PERMANENTLY AFFECTED BY THE SCHEME (REFER TO ITEM (iii)), SECTION 38 CONSENT IS BEING SOUGHT TO UNDERTAKE WORK IN THESE AREAS FOR THE INVESTIGATIONS DESCRIBED IN (i) (ii) AND (V) AND TO SET UP THE TEMPORARY SITE COMPOUND AND WORKING AREA DESCRIBED IN ITEM (iv), PRIOR TO THE DE-REGISTRATION PROCESS BEING COMPLETED.

ROUTE OF NEW WATER SUPPLY BETWEEN EXISTING VALVES AND NEW CATTLE TROUGH. ACCESS MAINTAINED FOR EXISTING PUBLIC RIGHTS OF WAY THROUGHOUT MOLING OPERATION TO LAY SUPPLY.

BRIDGE CONSTRUCTION WORKING SITE COMPOUND WITH BLOCK-MESH FENCING TO PERIMETER (TOTAL LENGTH 260m)

SITE ACCESS GATE WITHIN STOCK FENCING

EXISTING COMMONLAND ACCESS MAINTAINED

TEMPORARY COMMON LAND

**GENERAL NOTES:**

- THIS DRAWING SHOULD BE READ IN CONJUNCTION WITH ALL OTHER PROJECT DRAWINGS.
- DO NOT SCALE FROM THIS DRAWING USE FIGURED DIMENSIONS ONLY.
- ALL DIMENSIONS ARE IN METRES.
- ALL LEVELS ARE IN METRES.

**LEGEND:**

	REGISTERED COMMON LAND
	EXISTING TIMBER FOUR RAIL FENCE
	TEMP BLOCK-MESH / HOARDING FENCING 2.4 HIGH
	EXISTING PUBLIC RIGHT OF WAY
	SITE COMPOUNDS FOR PIPE LAYING, BRIDGES AND WORKS
	TEMPORARY COMMON LAND REPLACEMENT

	SITE ACCESS GATE
	TEMPORARY TIMBER & WIRE STOCK PROOF FENCE
	TEMPORARY AREA FOR SECTION 38 APPLICATION
	SECTION 16 RELEASE LAND
	COMMONLAND CURRENTLY IN SEPARATE APPLICATION TO BE RELEASED (COM/3215021)
	SEPARATE APPLICATION TO BE REGISTERED AS COMMONLAND (COM/3215021)

REV.	DATE	DESCRIPTION	DES.	CHK.	APP.
2	12/1/18	PROPOSED WORKS & SECTION 16 SHOWN	MG	MS	DP
1	12/1/18	ORIGINAL ISSUE	MG	MS	DP
1	08/1/18	ORIGINAL ISSUE	MG	JB	MG

<p>Designers:</p> <p>COWI TACP</p>	<p>Clients:</p> <p>GRIFFITHS civil engineering and construction</p>	<table border="1"> <tr> <td>Designed:</td> <td>M. GORRY</td> <td>Date:</td> <td>15 JANUARY '19</td> </tr> <tr> <td>Drawn:</td> <td>M. GORRY</td> <td>Date:</td> <td>15 JANUARY '19</td> </tr> <tr> <td>Checked:</td> <td>D. PROBERT</td> <td>Date:</td> <td>15 JANUARY '19</td> </tr> <tr> <td>Approved:</td> <td>W. MORGAN AGCL</td> <td>Date:</td> <td>15 JANUARY '19</td> </tr> <tr> <td>Scale:</td> <td>1:2,500</td> <td>Owner:</td> <td>BUR</td> </tr> <tr> <td></td> <td></td> <td>Ref No.:</td> <td>4158900</td> </tr> </table> <p>Drawing Status:</p> <p><b>INFORMATION</b></p>	Designed:	M. GORRY	Date:	15 JANUARY '19	Drawn:	M. GORRY	Date:	15 JANUARY '19	Checked:	D. PROBERT	Date:	15 JANUARY '19	Approved:	W. MORGAN AGCL	Date:	15 JANUARY '19	Scale:	1:2,500	Owner:	BUR			Ref No.:	4158900	<p>Project:</p> <p><b>WORCESTER SOUTHERN LINK ROAD - PHASE 4</b></p> <p>Drawing Title:</p> <p><b>SERIES 0100 - PRELIMINARY SECTION 38 PLAN - WEST OF A449</b></p> <p>Drawing Number:</p> <p><b>SLR4-BUR-ALL-HWY-DR-CH-101011-3</b></p>
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