

NOTICE OF MEETING

Meeting	Regulatory Committee
Date and Time	Wednesday, 17th April, 2019 at 10.00 am
Place	Ashburton Hall, The Castle, Winchester, SO23 8UJ
Enquiries to	members.services@hants.gov.uk

John Coughlan CBE
Chief Executive
The Castle, Winchester SO23 8UJ

FILMING AND BROADCAST NOTIFICATION

This meeting may be recorded and broadcast live on the County Council's website. The meeting may also be recorded and broadcast by the press and members of the public – please see the Filming Protocol available on the County Council's website.

AGENDA

1. APOLOGIES FOR ABSENCE

To receive any apologies for absence received.

2. DECLARATIONS OF INTEREST

All Members who believe they have a Disclosable Pecuniary Interest in any matter to be considered at the meeting must declare that interest and, having regard to the circumstances described in Part 3 Paragraph 1.5 of the County Council's Members' Code of Conduct, leave the meeting while the matter is discussed, save for exercising any right to speak in accordance with Paragraph 1.6 of the Code. Furthermore all Members with a Non-Pecuniary interest in a matter being considered at the meeting should consider whether such interest should be declared, and having regard to Part 5, Paragraph 2 of the Code, consider whether it is appropriate to leave the meeting while the matter is discussed, save for exercising any right to speak in accordance with the Code.

3. MINUTES OF PREVIOUS MEETING (Pages 5 - 10)

To confirm the minutes of the previous meeting.

4. DEPUTATIONS

To receive any deputations notified under Standing Order 12.

5. CHAIRMAN'S ANNOUNCEMENTS

To receive any announcements the Chairman may wish to make.

6. ROWNER ROAD BRIDGE, GOSPORT (Pages 11 - 32)

To consider a report of the Director of Economy, Transport and Environment regarding Revision to previously approved scheme for Eclipse BRT Busway including retention of Rowner Road Bridge and provision of shared use pedestrian/cyclist route at former railway land north and at Rowner Road Bridge, Gosport (Application No. 19/00034/HCC3 Site Ref: GPH002)

7. BLUE HAZE LANDFILL SITE, VERWOOD ROAD, SOMERLEY (Pages 33 - 94)

To consider a report of the Director of Economy, Transport and Environment regarding Variations to conditions of planning permissions to extend the time to complete the importation of waste to the landfill and landfill restoration, extend the time for the use of the Waste Transfer Station and extend the time for the use of the landfill gas utilisation plant at Blue Haze Landfill Site, Verwood Road, Somerley.

8. VEOLIA WASTE TRANSFER STATION, PORTSMOUTH ROAD, NETLEY (Pages 95 - 108)

To consider a report of the Director of Economy, Transport and Environment regarding variation of condition 3 of planning permission S/11/68998 to amend the operating hours for the site until 23:00 on weekdays at Veolia WTS, Portsmouth Road, Netley (Application No. CS/19/85002, Site Ref: EA027)

9. APPLICATION FOR REGISTRATION OF LAND KNOWN AS 'MONKS BROOK', EASTLEIGH (Pages 109 - 146)

To consider a report from the Director of Culture, Communities and Business Services, regarding an application for the registration of land known as 'Monks Brook', in Eastleigh, as town or village green.

10. APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD BYWAYS OPEN TO ALL TRAFFIC 19 & 47 AS BRIDLEWAYS. PARISH OF BURITON (Pages 147 - 180)

To consider a report from the Director of Culture, Communities and Business Services, regarding an application to record two byways open to all traffic as bridleways, both of which fall within the Parish of Buriton.

11. SPORTS GROUND SAFETY (TO FOLLOW)

ABOUT THIS AGENDA:

On request, this agenda can be provided in alternative versions (such as large print, Braille or audio) and in alternative languages.

ABOUT THIS MEETING:

The press and public are welcome to attend the public sessions of the meeting. If you have any particular requirements, for example if you require wheelchair access, please contact members.services@hants.gov.uk for assistance.

County Councillors attending as appointed members of this Committee or by virtue of Standing Order 18.5; or with the concurrence of the Chairman in connection with their duties as members of the Council or as a local County Councillor qualify for travelling expenses.

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Agenda Item 3

AT A MEETING of the Regulatory Committee of HAMPSHIRE COUNTY
COUNCIL held at the castle, Winchester on Wednesday, 20th March, 2019

Chairman:

* Councillor Peter Latham

- | | |
|---------------------------------|----------------------------------|
| * Councillor Judith Grajewski | * Councillor Alexis McEvoy |
| * Councillor Christopher Carter | * Councillor Russell Oppenheimer |
| * Councillor Mark Cooper | * Councillor Stephen Philpott |
| * Councillor Rod Cooper | * Councillor Roger Price |
| * Councillor Roland Dibbs | * Councillor Lance Quantrill |
| Councillor Jane Frankum | Councillor David Simpson |
| Councillor Marge Harvey | * Councillor David Harrison |
| * Councillor Keith House | |
| * Councillor Gary Hughes | * Present |

101. APOLOGIES FOR ABSENCE

Apologies had been received from Councillor's Jane Frankum, Marge Harvey and David Simpson. Councillor Harrison attended as a deputy for Councillor Simpson.

102. DECLARATIONS OF INTEREST

Members were mindful that where they believed they had a Disclosable Pecuniary Interest in any matter considered at the meeting they must declare that interest at the time of the relevant debate and, having regard to the circumstances described in Part 3, Paragraph 1.5 of the County Council's Members' Code of Conduct, leave the meeting while the matter was discussed, save for exercising any right to speak in accordance with Paragraph 1.6 of the Code. Furthermore Members were mindful that where they believed they had a Non-Pecuniary interest in a matter being considered at the meeting they considered whether such interest should be declared, and having regard to Part 5, Paragraph 2 of the Code, considered whether it was appropriate to leave the meeting whilst the matter was discussed, save for exercising any right to speak in accordance with the Code.

103. MINUTES OF PREVIOUS MEETING

It was noted that despite not being required for the meeting, deputy Members had remained on the attendance list as absent, which would be corrected for future meetings. The minutes of the last meeting were then agreed.

104. DEPUTATIONS

It was noted that there were six deputations and two County Councillors speaking as deputations. All deputations had a maximum of ten minutes each.

105. CHAIRMAN'S ANNOUNCEMENTS

Members were reminded that there was training due to take place after the meeting, which all Members were welcome to attend as a refresher should they wish to.

106. FOREST LODGE HOME FARM HYTHE

Councillor McEvoy was a deputation for this item and did not sit as a voting Member on the Committee

The Committee considered a report from the Head of Strategic Planning (item 6 in the minute book) regarding an application to vary conditions at Forest Lodge Farm in Hythe.

The Chairman introduced the item and confirmed that a site visit had taken place and that some members had attended previous visits to the site. The application was summarised, and it was confirmed that amendments to Conditions had been sought so a material screener could be used on site. Location and phasing plans of the proposed restoration were shown, along with photos of the site and temporary screeners in operation.

The Committee received two deputations on this item. Councillor Peter Armstrong from New Forest District Council and County Councillor Alexis McEvoy both spoke against the application. Cllr Armstrong told committee the great extent of local opposition to the application and several comments from local residents were read out to Committee. There were particular concerns regarding health and wellbeing in relation to noise and dust and it was felt that the owners were unneighbourly and inconsiderate of residents. Councillor McEvoy echoed some of the sentiments of Councillor Armstrong and shared concerns over whether the damping process to minimise dust had been tested. Councillor McEvoy chaired the liaison group and felt that it helped address some issues, but agreed that communication from the applicant could be better. Whilst the site appeared to be remote and in countryside, Councillor McEvoy reminded Committee that it was in fact near a densely populated residential area.

During questions of the deputations, the following points were clarified:

- The Environmental Health Officer at New Forest District Council had not objected as had no direct involvement with the application.
- Objections had been made regarding noise at the liaison meetings, but none had been investigated further.
- There had been no evidence of direct damage to the health of residents, but some residents did have conditions that could be exacerbated by noise and/or dust.
- Damping down was an enforcement issue, and one that could be investigated as the summer approached.

During questions of the officers, the following points were clarified:

- Screening was currently done off site, and the movements incorporated as part of the allowance within the conditions.

- It was not known what type of screener would be installed should the application be approved.
- There had been no approval or permission given for the screener currently on site.
- There would be a lower volume of material going to and from the site should a screener be permitted.
- Noise assessments had found that the noise levels would not breach the existing permitted limits
- Hampshire County Council were currently behind the target established in the Minerals & Waste plan for soft sand
- Whilst some complaints had been received, these had all been since the application had been made, rather than being historical enforcement issues.

During debate, Members commented that at the Site Visit, the noise of the main road drowned out those of any operations on site. Whilst it was acknowledged that there were concerns regarding dust, some Members of the Committee were not convinced that having a screener on site would add to the dust levels.

In response to debate The Head of Strategic Planning suggested that the recommendation to committee could be updated to include additional Conditions that would be added to the recommended decision of the Committee were the Committee minded to grant, specifically;

- 1) That a written noise management plan is submitted and put in place.
- 2) That permitted development rights are excluded under Condition 19.

During debate it was discussed by members that a further Condition be added to the recommended decision;

- 1) That the size and type of screener to be used on site be specified and approved by Environmental Health before any screening operations could take place on the site.

This proposal was tabled as an amendment to the recommendation by Councillor Philpott and seconded by Councillor Grajewski and therefore went to the vote:

Favour: 8
Against: 4
Abstentions: 1

The amendment was therefore incorporated into the recommendation for the committee's vote

RESOLVED:

- A) The Head of Law and Governance was authorised to draw up Deed of Variation to the Section 106 Agreement (ref: 107848, signed 14 March 2017) to secure the dedication of a public right of way from west to east

across the site connecting with Footpath no. 3a (Solent Way) following completion of restoration of the site.

- B) Authority was delegated to the Director of Economy, Transport and Environment to GRANT permission subject to the conditions listed in Integral Appendix B, the additional conditions recommended by Officers in respect of noise management and exclusion of permitted development and the amendment passed by members for approval of the specifics of the screener to be used on site before screening operations could begin provided that by no later than 20 June 2019 all parties enter into the Deed of Variation to the Section 106 Agreement (ref: 107848, signed 14 March 2017) with the County Council.
- C) In event that the Section 106 Agreement is not completed by 20 June 2019, the Director of Economy, Transport and Environment was authorised to refuse planning permission for that reason.

Voting:

Favour: 9

Against: 3

Abstention: 1

107. BASINGSTOKE AD FACILITY DUMMER

The Committee considered a report from the Head of Strategic Planning (item 7 in the minute book) regarding an application to amend conditions at the Basingstoke anaerobic digestion facility in Dummer.

The Chairman summarised the report and gave Committee a brief history of the original application. The officer presented Committee with a location plan and it was confirmed that the site generated electricity for approximately 2500 homes. The new conditions would enable the applicant to have more flexibility over vehicle movements but it was noted that the HGV movements were the source of a majority of complaints from local residents. It was explained that the HGV's from the site constituted only 0.3% of the vehicles on the local roads and most of the breaches in 2018 were relating to vehicles arriving slightly too early or leaving site too late.

The Committee received six deputations on this item. Bill Holt and Stafford Napier both spoke as local residents against the application. They had concerns that smaller vehicles would not be used more as speculated and large HGV's would continue but in greater numbers. As the application was for permanent permission, it was agreed that it should be considered seriously before approved. Mr Holt also felt that the chart provided to Members showing the vehicle movements was flawed. Councillor Julian Jones from Dummer Parish Council spoke against the application and told Committee that the liaison meetings had been well attended by residents with concerns over the HGV's as well as odour. The main road was used by school children travelling to and from school and it was felt that they were in danger. Whilst there were cameras installed to monitor the HGV movements, there were frequent failures with the operations of these.

Councillor Terri Reid, Basingstoke & Deane Borough Council also spoke against the application on the grounds of the safety of pedestrians and, in particular, children, along Woodbury Road. The road was very long with HGV's travelling close to or on the speed limit and Cllr Reid told Committee how there had been an incident involving a child and a car a few days before the meeting. Simon Musther spoke on behalf of the applicant and told Committee how the management and policing of vehicles had greatly improved and how the hours of operation had been changed to avoid school pick-up and drop-off times, mitigating the risk to school children. The new average of 32 HGV movements proposed allowed the applicant to have flexibility whilst the industry was still in its infancy. There were no plans to have more movements of HGV's as this was not economical.

The local Hampshire County Councillor, Stephen Reid, thanked the applicant for their communication with local residents, which had been a significant improvement on the previous operator. Cllr Reid enforced the concerns of HGV's using a road heavily used by children and didn't feel the extra risk was justified in the application. As the numbers that made up the application could not be changed, Cllr Reid recommended that the application be refused.

During questions of the deputations, the following points were clarified:

- Whilst the hours of operation avoiding school drop-off and pick-up times, there were risks to children using the road at other times.
- There had been four accidents recently, all involving cars
- The operator confirmed smaller vehicles would be used locally to give the applicant flexibility and was also more economical.
- Biogen drivers were banned and fined if caught driving outside of the stated hours.

RESOLVED:

Planning permission was GRANTED subject to the conditions listed in integral appendix B.

Voting:

Favour: 14 (unanimous)

108. **APPLICATION FOR DEREGISTRATION OF COMMON LAND AT BLACKBUSHE AIRPORT, IN THE PARISH OF YATELEY - UPDATE REPORT**

The Committee received an information item regarding common land at Blackbushe airport (item 8 in the minute book).

The officer summarised the history of the land and application, which was due to go to a hearing in April, where the Hampshire County Council were remaining in a neutral position regarding the outcome. As there was no precedence for the case, there was significance at a national level. The County Council planned on attending the hearing to ensure that key legal points upon which the application hinges received comprehensive consideration at the inquiry, particularly given

the implications for other applications which the County Council (as the Commons Registration Authority) is likely to receive in the future.

Members were happy with the report and update.

Chairman,

HAMPSHIRE COUNTY COUNCIL Decision Report

Decision Maker:	Regulatory Committee
Date:	17 April 2019
Title:	Revision to previously approved scheme for Eclipse BRT Busway including retention of Rowner Road Bridge and provision of shared use pedestrian/cyclist route at Former railway land north and at Rowner Road Bridge, Gosport (No. 19/00034/HCC3) (Site Ref: GPH002)
Report From:	Head of Strategic Planning

Contact name: Judith Smallman

Tel: 01962 847870

Email: judith.smallman@hants.gov.uk

1. Recommendation

- 1.1. That planning permission be GRANTED subject to conditions listed in integral appendix B.

2. Executive Summary

- 2.1 The planning application is for a revision to a previously approved scheme for the Eclipse BRT Busway, including the retention of Rowner Road Bridge and provision of a shared use pedestrian/cycle route at Rowner Road, Gosport to enable the construction of a new at grade junction.
- 2.2 The Eclipse Busway forms part of the wider Bus Rapid Transit (BRT) network linking Fareham and Gosport with proposed strategic economic and housing sites. The first phase (1A) of the Eclipse BRT busway opened in 2012, however the remaining part of the route was put on hold until funding was available. In October 2013 planning permission was granted for a new junction between the busway and Rowner Road as part of phase 1B which included the demolition of Rowner Road Bridge. Advanced works for this stage of the scheme commenced in October 2018 and it is now proposed to retain the Rowner Road Bridge and pedestrian/cycle underpass. This application is therefore an amendment to the design approved in 2013.
- 2.3 This application is being considered by the Regulatory Committee as it is a major Hampshire County Council development.

Key issues raised are;

- amenity for residents who live adjacent to the junction;
- landscape and nature conservation impacts; and

- pedestrian, cyclist and highway impacts.

- 2.4 The proposed development is not an Environmental Impact Assessment development under the [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#).
- 2.5 It is considered that the proposal would be in accordance with the relevant policies of the adopted [Gosport Borough Local Plan \(2011-2029\)](#). The principle of the overall development has been established through the granting of planning permissions P/09/0278/CC / K17678 and 13/00323/HCC3 (new junction with Rowner Road and removal of existing bridge) and the proposal is in accordance with Policy LP2 (Infrastructure) of the Gosport Borough Local Plan. There would be appropriate mitigation measures in place to protect the amenity of residents adjacent to the junction, the visual impact would be acceptable as appropriate landscaping is proposed (Policy LP41 – Green infrastructure). Furthermore, there would be no adverse nature conservation impact for protected species with suitable mitigation measures being proposed (Policy LP44 – Protecting species and other features of nature conservation importance) and the development would not impact upon Portsmouth Harbour SPA, RAMSAR and SSSI (Policy LP42 – Internationally and nationally important sites). The development would make improvements to a public transport interchange with bus priority measures which will thereby encourage the use of public transport in the local area (Policy LP21 - Improving transport infrastructure) and the proposal is acceptable in terms of pedestrian and highway safety and design (Policy LP10 - Design). The recommendation is that planning permission be granted subject to conditions.
- 2.6 That planning permission be granted subject to the conditions listed in integral Appendix B.

3. Site and Planning History

- 3.1 The Eclipse dedicated busway forms part of a high specification, high profile, sub regionally significant public transport network, designed to provide a viable alternative to the car and remove the transport barriers to economic growth and development of key sites. It provides new and improved public transport links to existing urban employment areas in Gosport and Fareham as well as proposed strategic economic and housing sites including: the strategic development site at Welbourne; the Solent Enterprise Zone; Gosport Waterfront and town centre, Rowner Regeneration area and Royal Haslar. In May 2012, the wider BRT network was agreed by the Transport for South Hampshire (TfSH) Joint Committee.
- 3.2 The first phase of the Eclipse BRT dedicated busway 'Henry Cort Way' is 3.4km long and runs between Redlands Lane in Fareham and Tichborne Way in Gosport. The scheme opened in April 2012. First Hampshire and Dorset bus services, E1 and E2 use the new busway for part of their journey.

The busway enables these Eclipse buses to bypass the worst of the congestion on the A32 and offers fast, reliable journey times between Gosport and Fareham. At both ends of the route, Eclipse services E1 and E2 re-join the on-road network to complete their journeys. The first phase of the scheme has been successful and exceeded expectations. When interviewed approximately 20% of passengers said that they used to travel by car but have now switched to using the Eclipse service. The Eclipse service is also popular with students travelling to Fareham College.

- 3.3 At the time that Phase 1A was constructed the funding award was insufficient to pay for the delivery of the whole route to Military Road. The remaining part of the route (Phase 1B) south from Tichborne Way to Military Road was put on hold until such a time as funding became available.
- 3.4 In October 2013 planning permission was granted for a new at-grade junction with Rowner Road (which amended the original Phase 1B design). It was proposed that the new traffic signal junction would cater for buses travelling on and off the Eclipse Busway, enabling them to access the local highway network. To achieve this Rowner Road Bridge would be demolished, Rowner Road lowered and at the same time the busway and cycleway would be raised.
- 3.5 The extant Planning Consents relating to this scheme, granted by the County Council are:
 - P/09/0278/CC, K1768 (BRT Phase 1); and
 - 13/00323/HCC3 (New junction with Rowner Road and removal of existing bridge).
- 3.6 [Advanced works for Phase 1B](#) (the extension of the dedicated Eclipse busway south, from Tichborne Way to Rowner Road) commenced in October 2018.
- 3.7 Currently Rowner Road passes above the former railway corridor which has been converted into a segregated cycleway/ footway that forms part of the National Cycle Network (NCN), Route 224. This provides a route for cyclists between Fareham and Gosport and links to NCN Route 2, further south. The cycleway/ footway also provides access to Brune Park School, south of Rowner Road and is well used by students. At Rowner Road, ramped footway / cycleway links enable pedestrians and cyclists to connect with Rowner Road. Both Rowner Road and the cycleway/ footway are lit in this location.
- 3.8 The site is in a mixed-use area comprising residential properties on Turner Avenue to the west, an elderly person's care home (Woodcot Lodge) located immediately to the east of the proposed busway, and several industrial and commercial premises to the east and south.

Reason for the required change

- 3.9 The previous application for Phase 1B of the Eclipse busway included the removal of the existing bridge at Rowner Road resulting in the loss of the existing cycleway/ footpath under Rowner Road and would have required pedestrians and cyclists to cross Rowner Road at a new traffic signal controlled new junction.
- 3.10 As part of the design refresh of the 2013 scheme a potential alternative option for the southern junction was developed which would retain the bridge and the existing grade separated shared-use route for pedestrians and cyclists. The shared-use route is well used and retaining the bridge would maintain this amenity for users.

4. The Proposal

- 4.1 The proposal is for a 3-way signal-controlled junction between the southern section of the Eclipse Busway extension (Phase 1B) and Rowner Road which will give buses priority onto the existing highway at Rowner Road, Gosport. This option would allow the retention of the existing, segregated cycleway/ footway that passes under Rowner Road Bridge. The new busway will cross the shared-use cycleway/ footway at-grade, north of Rowner Road and then continue along a new ramped embankment (250m) to meet Rowner Road immediately to the east of the bridge.
- 4.2 Cycling will be permitted on the busway and the existing, well used, segregated cycleway (NCN 224) within the corridor will be maintained.
- 4.3 The land where the busway will be constructed, from back of verge to back of verge on either side will be adopted as public highway. The remainder of the corridor, where suitable will form a wildlife corridor. The busway will be maintained as public highway. The wildlife corridor will continue to be maintained by Hampshire Highways.
- 4.4 Lighting of the busway and cycle/footpath is to be provided and where possible existing columns will be retained. There are no proposed bus stops or shelters on this section of the busway.
- 4.5 It is proposed that a new set of steps will be provided up the side of the existing embankment for pedestrians. The existing northern footway over the bridge will be widened to 3m and converted to shared-use and pedestrian and cyclists will cross over the new busway access via a new uncontrolled crossing with tactile paving.
- 4.6 The Transport Statement (TS), which accompanies the planning application, identifies the re-routing of the Eclipse buses onto the busway and away from Tichborne Way will reduce the number of southbound bus movements on Tichborne Way and Rowner Road to the west of the bridge. It is recognised that there will be a subsequent increase in the number of buses (when

compared to the existing operation) on Rowner Road east of the bridge when the buses exit the busway and head towards the A32.

- 4.7 It is also noted that northbound Eclipse buses will increase on the section of Rowner Road to the east of the bridge but there will again be a corresponding decrease in the number of buses travelling north on the A32.
- 4.8 The number of buses using the two A32 roundabouts will not change, although there will be a change in the direction from which they approach the roundabouts.
- 4.9 The new traffic signalled junction between the busway and Rowner Road will provide priority to the buses through bus detection loops and on-bus equipment. All existing bus stop arrangements on Rowner Road will be retained.
- 4.10 Junction modelling has been undertaken for the proposed signalised junction on Rowner Road for all users and it is concluded that the junction will reduce the journey time for the Eclipse buses by 3 minutes (for the end to end journey between Fareham and Gosport). It is noted that vehicles on Rowner Road will experience a slight delay of between 1-4 seconds and peak time queuing of up to 10 Passenger Car Units (PCUs) when the signals at the new junction are used by the buses, however it is not anticipated this will not impact the A32 Rowner Road and A32 Brockhurst roundabouts even after traffic growth to 2023 have been factored in.
- 4.11 A Road Safety Audit (Stage F) (October 2018) reviewed in particular three identified problems: -
 - i) Problem location: Henry Cort Way - the risk of collisions between cyclists and vehicles on Rowner Road.
Recommendation: Allow cyclists to use the ramp and provide appropriate detection to allow cyclists to trigger the traffic signals.
 - ii) Problem location: The footway along the north side of Rowner Road close to the junction - the risk of pedestrians or cyclists falling off the wing wall or down the steep bank.
Recommendation: Provide pedestrian guard railings to prevent pedestrians and cyclists from falling.
 - iii) Problem location: The shared use footway on the northwest corner of the junction – a narrowing of the shared use footway at the eastern end of the bridge, where the visibility may be restricted by the bridge parapet. This may result in collisions between pedestrians
Recommendation: Widen the shared use footway on the corner of the junction.

These recommendations have been included within the proposed scheme.

4.12 Personal Injury Accidents (PIA) Data is included for a five-year period up to 31 October 2018. This shows there were no accidents in the location of the proposed new junction on Rowner Road although there were three accidents classified as 'slight' at the toucan crossing on Rowner Road 80m east of the bridge, one involving a pedal cycle and two involving motorcycles.

5. Development Plan and Guidance

5.1 The following plans and associated policies are relevant to the proposal:

National Planning Policy Framework (2018) (NPPF (2018))

5.2 The following paragraphs are relevant to this proposal:

- Paragraph 11: Presumption in favour of sustainable development;
- Paragraph 80: Support of sustainable economic growth;
- Paragraph 170: Contributions and enhancement of natural and local environment; and
- Paragraph 102-103: Sustainable transport;

Gosport Borough Local Plan (2015) (GBLP (2015))

5.3 Relevant policies are: -

- LP1 (Sustainable development);
- LP2 (Infrastructure);
- LP10 (Design);
- LP21 (Improving transport infrastructure);
- LP23 (Layout of sites and parking);
- LP41 (Green infrastructure);
- LP42 (Internationally and nationally important sites);
- LP43 (Locally designated nature conservation sites);
- LP44 (Protecting species and other features of Nature Conservation Importance); and
- LP46 (Pollution control).

6. Consultations

6.1 **Lead Local Flood Authority:** Has no objection.

6.2 **County Landscape Architect:** Has no objection subject to conditions relating to protection of trees, additional planting to mitigate for the loss of significant trees and details of the proposed species rich grassland mix and tree pit construction.

- 6.3 **County Ecologist:** Has no objection subject to conditions securing the mitigation for reptiles and Great Crested Newt, and the submission of a detailed lighting scheme and a Construction Environmental Mitigation Plan.
- 6.4 **Highway Authority:** Has no objection subject to a condition for the submission of a Construction Traffic Management Plan.
- 6.5 **Environmental Health, Gosport BC:** Has no objection subject to a condition restricting hours of construction hours and use of low vibration generating piling where reasonably practicable.
- 6.6 **Gosport Borough Council:** Has no objection and welcomes and supports the proposals. Comments that the Road Safety Audit does not cover the issue of a vehicle restraint system (safety fence) on the east boundary of the proposed ramp which requires clarification.
- 6.7 **Councillor Carter:** Has no objection.
- 6.8 **Councillor Edgar:** Was informed.
- 6.9 **Councillor Philpott:** Was informed.
- 6.10 **Rights of Way Manager:** Was informed.
- 6.11 **Street Lighting:** Has no objection.

7. Representations

- 7.1 Hampshire County Council's [Statement of Community Involvement \(2017\)](#) (SCI) sets out the adopted consultation and publicity procedures associated with determining planning applications.
- 7.2 In complying with the requirements of the SCI, Hampshire County Council:
- Published a notice of the application in the [Hampshire Independent](#);
 - Placed notices of the application at the application site and local area;
 - Consulted all statutory and non-statutory consultees in accordance with [The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#); and
 - Notified by letter all residential properties within 50 metres of the boundary of the site.
- 7.3 As of 1 April 2019, two representations to the proposal have been received: -
[Gosport Access Group](#)
- 7.4 Raises no objection to the revised scheme layout but still has some detailed design issues relating to four specific areas. In summary these relate to: -

- poor visibility issues, where there is a bend and a gradient with vegetation;
- inadequate width of shared path where there are more complex movements in multiple directions, including pedestrians with reduced mobility and sensory impairments;
- congestion with pedestrians and cyclists waiting to turn, cross and waiting to cross the busway;
- unnecessarily excessive amount of “blister” tactile paving which can exacerbate several lower limb related conditions affecting the feet; and
- potential pinch point at the corner of the bridge parapet, which may cause conflict between pedestrians and cyclists approaching along the Rowner Road footway, turning and waiting at the crossing.

Cycle Gosport

- Supports an alternative design solution to the demolition of Rowner Bridge but has objections and concerns over the reduction to pedestrian and cyclist safety and route usability with loss of east access cycleway, conversion of segregated footway/cycleway sections to shared use, busway speeds and crossing places.
- Considers Hampshire County Council should postpone the BRT extension to seek the additional funding required to improve the scheme for i) pedestrians and cyclists with retention of eastern cycleway/footway access; ii) busway crossing improvements to make it effective for all users; iii) funding sought for wider Rowner/BRT corridor improvements for walking and cycling, including resurfacing.

The above issues will be discussed and addressed within the following commentary.

8. Habitats Regulation Assessment [HRA]

- 8.1 The [Conservation of Species and Habitats Regulations 2017](#) (otherwise known as the ‘Habitats Regulations’) transpose European Directives into UK law.
- 8.2 In accordance with the Habitats Regulations, Hampshire County Council (as a ‘competent authority’) must undertake a formal assessment of the implications of any new projects we may be granting planning permission for e.g. proposals that may be capable of affecting the qualifying interest features of the following European designated sites:
- Special Protection Areas [SPAs];
 - Special Areas of Conservation [SACs]; and
 - RAMSARs.
- 8.3 Collectively this assessment is described as ‘Habitats Regulations Assessment’ [HRA]. The HRA will need to be carried out unless the project

is wholly connected with or necessary to the conservation management of such sites' qualifying features.

- 8.4 It is acknowledged that the proposed development includes environmental mitigation essential for the delivery of the proposed development regardless of any effect they may have on impacts on European designated sites. The HRA screening hereby carried out by the LPA considers the proposed development to have **no likely significant effect** on the identified European designated sites due to:
- It is not located at a distance to be considered to have proximity to directly impact on the European designated sites; and
 - The site is not considered to have any functional impact pathways connecting the proposed works with any European designated sites.

9. Commentary

Principle of the development

- 9.1 The Eclipse dedicated busway forms part of a high profile significant public transport network designed to provide a viable alternative to the car and remove the transport barriers to economic growth and development of key sites. Planning permission already exists for the overall development. The retention of the bridge will not result in any significant impact on the highway or environment and no objections have been received to the principle of the development. The principle of the changes to the scheme, with the retention of Rowner Bridge, remains in accordance with Policies LP1 (Sustainable development) and LP21 (Improving transport infrastructure) of the Gosport Borough Local Plan (2015).

Impact on amenity and health

- 9.2 Revised assessments relating to noise, air quality and dust have concluded that the scheme revisions are not expected to have any significant impacts. The risk of annoyance from dust will be reduced as the proposed scheme design no longer includes a requirement for the demolition of Rowner Road Bridge. The potential for increased emissions from traffic congestion during construction will also be reduced, as there will be no need for a three-month closure of Rowner Bridge. The Environmental Health Officer is not raising any objection on grounds of air quality or noise. A planning condition is proposed restricting the hours of construction during the construction phase. If works are to occur outside the reasonable hours, the applicant will be required to submit a Construction Noise Management Plan for approval by the local planning authority which describes how noise will be controlled. The proposal is therefore considered to be in accordance with Policy 46 (Pollution control) of the Gosport Borough Local Plan (2015).

Nature conservation, landscape and visual impact

- 9.3 The proposal provides an alternative to an already consented scheme. No impacts to designated nature conservation sites are anticipated because of the proposals, including with regards to the wider air quality impacts. No objection is therefore being raised on nature conservation grounds subject to conditions being imposed on the grant of planning permission.
- 9.4 The submitted landscape and visual impact assessment concludes the largest landscape impacts would be on residents of Woodcot Lodge on views from the property and for residents of Turner Avenue, backing onto the site where visual impact will be adverse during and immediately on completion of the works but with a maturing vegetation will be beneficial in the longer term.
- 9.5 No objections have been received on landscape or visual impact issues and conditions will be proposed requiring protection of existing trees, appropriate mitigation and minimum lighting distances. The proposal is therefore in accordance with Policies LP41 (Green Infrastructure) and LP44 (Protecting species and other features of Nature Conservation Importance) of the Gosport Borough Local Plan (2015).

Highway Safety

- 9.6 Concerns raised about the safety of cyclists and pedestrians from the Gosport Access Group and Cycle Gosport are noted. The Road Safety Audit Stage F (October 2018) identified similar concerns to those raised by Cycle Gosport and Gosport Access Group and these issues have been addressed and amendments made accordingly. Gosport Borough Council has raised no objections although has commented that safety fencing still needs to be reviewed and incorporated into the scheme. There has been some debate about the provision of a Vehicle Restraint System (VRS). VRS has not been proposed for the following reasons:
- The current design has never proposed that a Vehicle Restraint System (VRS) along either side of busway ramps be provided. The Design Team consider that the combination of the low design speed of the busway (<50mph), straight alignment, low embankment height/ slope (Eastern embankment Max height 2.5m, 1:1 slope, western embankment Max height 4.5m, 1:3 slope) do not require the provision of VRS;
 - Tools such as the Road Restraint Risk Appraisal Process were not developed for, nor applicable to low speed roads less than 50mph.
- 9.7 The Design Team within the Stage F Road Safety Audit Brief has however, requested specific consideration be given to the level of Vehicle Restraint System that should be provided at the new junction with Rowner Road, near the proposed retaining walls to be constructed, on each corner of the junction. The Road Safety Audit Report (Problem 4.2) subsequently included a recommendation that a pedestrian restraint barrier be provided, along the tops of both these retaining walls. These are now included within the detailed design.
- 9.8 The Road Safety Audit (RSA) did not include any further recommendations that VRS be included elsewhere. It is understood that had the RSA required

provision of a VRS system, a review of the design layout, would have been undertaken to calculate the risk of no VRS provision.

- 9.9 The Highway Authority also raises no objection, subject to a condition requiring the submission of a Construction Traffic Management Plan before the commencement of development, and is satisfied with the junction analysis, safety audit and accident data provided. The proposal is therefore in accordance with Policies 10 (Design), 21 (Improving Local Infrastructure), 23 (Layout of sites and parking) of the Gosport Borough Local Plan (2015).

Conclusions

- 9.10 The development would make improvements to a public transport interchange with bus priority measures which will thereby encourage the use of public transport in the local area and the proposal is acceptable in terms of pedestrian and highway safety and design. There would be appropriate mitigation measures in place to protect the amenity of residents adjacent to the junction, the visual impact would be acceptable as appropriate landscaping is proposed and there would be no adverse nature conservation impact. It is considered that the proposal would be in accordance with the relevant policies of the Gosport Borough Local Plan (2015) which supports the principle of improvement to the highway infrastructure and sustainable development as well as the relevant policies of the NPPF (2018).

Appendices:

Integral Appendix A - Corporate or Legal Information

Integral Appendix B - Conditions

Appendix C - Location Plan

Appendix D - General Arrangement Plan

Appendix E - Landscaping Layout Plan

Other documents relating to this application:

<https://planning.hants.gov.uk/ApplicationDetails.aspx?RecNo=19987>

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	No
People in Hampshire live safe, healthy and independent lives:	No
People in Hampshire enjoy a rich and diverse environment:	No
People in Hampshire enjoy being part of strong, inclusive communities:	No

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

DocumentLocation

[19/00034/HCC3](#)

Hampshire County Council

GPH002

Former railway land north and at Rowner Road Bridge, Gosport

(Revision to previously approved scheme for Eclipse BRT Busway including retention of Rowner Road Bridge and provision of shared use pedestrian/cyclist route)

CONDITIONS

Time Limits

1. The development hereby permitted shall be begun before the expiration of three years from the date on which this planning permission was granted.

Reason: To comply with Section 91 (as amended) of the Town and Country Planning Act 1990.

Hours of Working

2. No work relating to the construction of the development hereby permitted, (including works of preparation prior to operations, the delivery of construction materials, skips or machinery, nor the removal of waste materials) shall take place before 0800 or after 1800 Monday to Friday inclusive, before 0800 or after 1500 on Saturday and not at all on Sunday or recognised Public Holidays.

Reason: To protect the amenities of occupiers of nearby properties.

3. In the event it is necessary for any works to occur outside the approved hours, a Construction Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority, describing how the noise will be controlled.

Reason: To protect the amenities of occupiers of nearby properties.

Highways

4. No development hereby permitted shall commence until a Construction Traffic Management Plan (to include details on the daily and total number and size of lorries accessing the site, the turning of delivery vehicles and lorry routing as well as provisions from removing mud from vehicles) and a programme of works has been submitted to and approved in writing by the Local Authority. The approved details shall be implemented before the development hereby permitted is commenced and retained throughout the duration of construction.

Reason: In the interests of highway safety and in accordance with Policy LP23 (Layout of sites and parking) of the Gosport Local Plan (2015). This is a pre-commencement condition as the details are an integral part of the scheme design and thus go to the heart of the planning permission.

Ecology

5. Works shall be carried out in accordance with measures in Section 5 of the Reptile Mitigation Strategy (HCCET, May 2018), Section 4 of the Great Crested Newt Survey and Mitigation Strategy (HCCET, May 2018) and Section 5 of the Phase I report (HCCET, January 2019) including future monitoring.

Reason: To secure enough ecological mitigation and enhancement in accordance with Policy LP44 (Protecting species and other features of Nature Conservation Importance) of the Gosport District Local Plan (2015).

6. A detailed lighting scheme shall be submitted to and approved in writing by the Local Planning Authority and thereafter implemented as approved. It shall be in line with the measures set out in Section 5.5 of the Phase 1 report (HCCET, January 2019).

Reason: To minimise impacts to wildlife and in accordance with Policy LP44 (Protecting species and other features of Nature Conservation Importance) of the Gosport District Local Plan 2015.

7. A Construction Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority and thereafter implemented as approved. It shall be in line with the measures as set out within the Ecological report 'Eclipse Busway Phase 1 Retention of Rowner Bridge. January 2019 Revision V1.

Reason: To accord with the measures set out within the Ecological Report and in accordance with Policy LP44 (Protecting species and other features of Nature Conservation Importance) of the Gosport Local Plan (2015).

Landscape

8. Prior to the commencement of development, the recommendations of the Arboricultural Impact Assessment dated 09/01/2019, shall be implemented and retained for the duration of the development.

Reason: To ensure the protection of trees and retain the amenity of the local area and in accordance with Policy LP41 (Green Infrastructure) of the Gosport Local Plan (2015). This is a pre-commencement condition as the details are an integral part of the scheme design and thus go to the heart of the planning permission.

9. Prior to the commencement of development details of the proposed species rich grassland mix and tree pit construction shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the amenity of the site and in accordance with Policy LP41 (Green Infrastructure) of the Gosport Local Plan (2015). This is

a pre-commencement condition as the landscape details are an integral part of the scheme design and thus go to the heart of the planning permission.

10. Prior to commencement of development, details of additional planting proposed to mitigate for the loss of mature category A and B trees (on land used by utility companies) shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the protection of trees and retain the amenity of the local area and in accordance with Policy LP41 (Green Infrastructure) of the Gosport Local Plan (2015). This is a pre-commencement condition as the landscape details are an integral part of the scheme design and thus go to the heart of the planning permission.

Plans

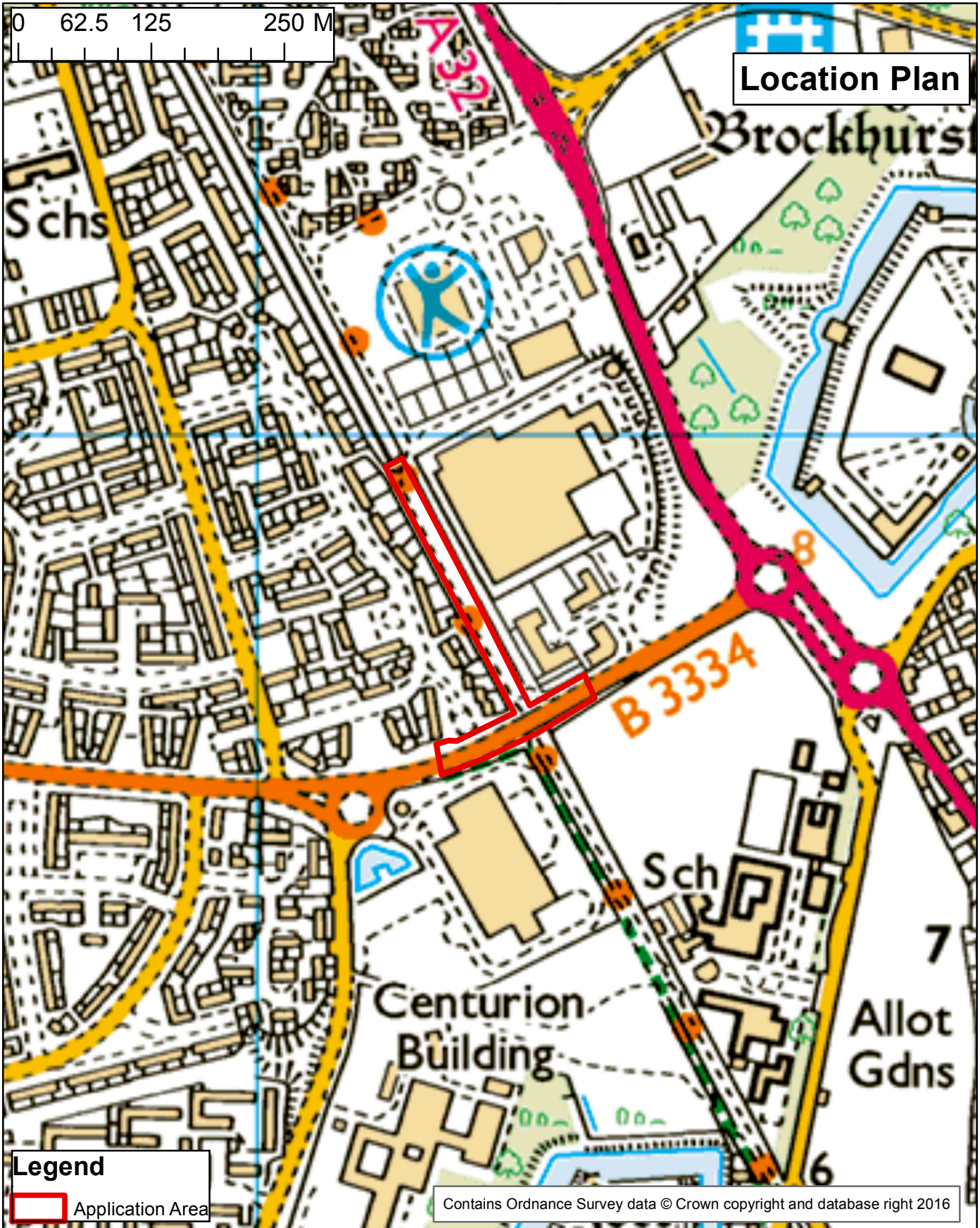
11. The development hereby permitted shall be carried out in accordance with the following approved plans: **CJ008883-ECH-HGN-15624315-DR-HE-400**, **CJ008883-ECH-HGN 15624315-DR-HE-4002SUITS0RevP0.1**, **CJ008883-ECH-HGN-15624315-DR-HE-4001SUITS0RevP0.1**, **CJ008883-ECH-HSE-15624315-DE-HE-4003SUITS0RevP0.1**, **CJ008883-ECH-HLG-15624315-DR-HE-4005SUITS0RevP0.1**, **CJ008883-ECH-HLG-15624315-DR-HE-4006SUITS2RevP01**, **CJ008883-ECH-ELS-15624315-DR-HE-4007SUITS0RevP0.1**, **EC/CJ005764/P/01RevE**, **CJ008883-ECH-HDG-15624315-DR-HE-4009SUITS2RevP0.1**.

Reason: For the avoidance of doubt and in the interests of proper planning.

Note to Applicants

1. In determining this planning application, the Local Planning Authority has worked with the applicant in a positive and proactive manner in accordance with the requirement in the National Planning Policy Framework (2018), as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.
2. Where reasonably practicable, alternative low vibration generating piling such as vibratory piling or Giken piling shall be used.
3. This decision does not purport or convey any approval or consent which may be required under the Building Regulations or any other Acts, including Byelaws, orders or Regulations made under such acts

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Revision to previously approved scheme for Eclipse BRT Busway including retention of Rowner Road Bridge and provision of shared use pedestrian/cyclist route at Former railway land north and at Rowner Road Bridge, Gosport

REGULATORY COMMITTEE

DATE: 17 April 2019 1:5,000

APPLICATION NUMBER: 19/00034/HCC3 Page 27

SITE REFERENCE: GPH002

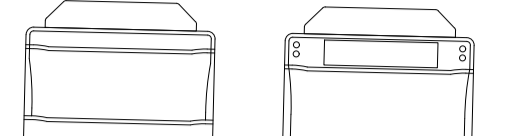
Hampshire County Council

Economy, Transport and Environment

Drawn by: Strategic Planning

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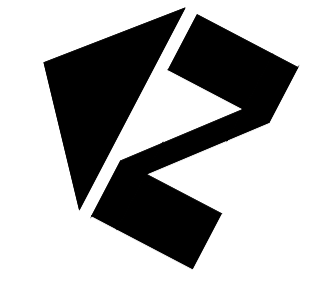
VERGE 1.0m BUSWAY 6.2m VERGE 1.0m



EXISTING SEGREGATED FOOTWAY/CYCLEWAY



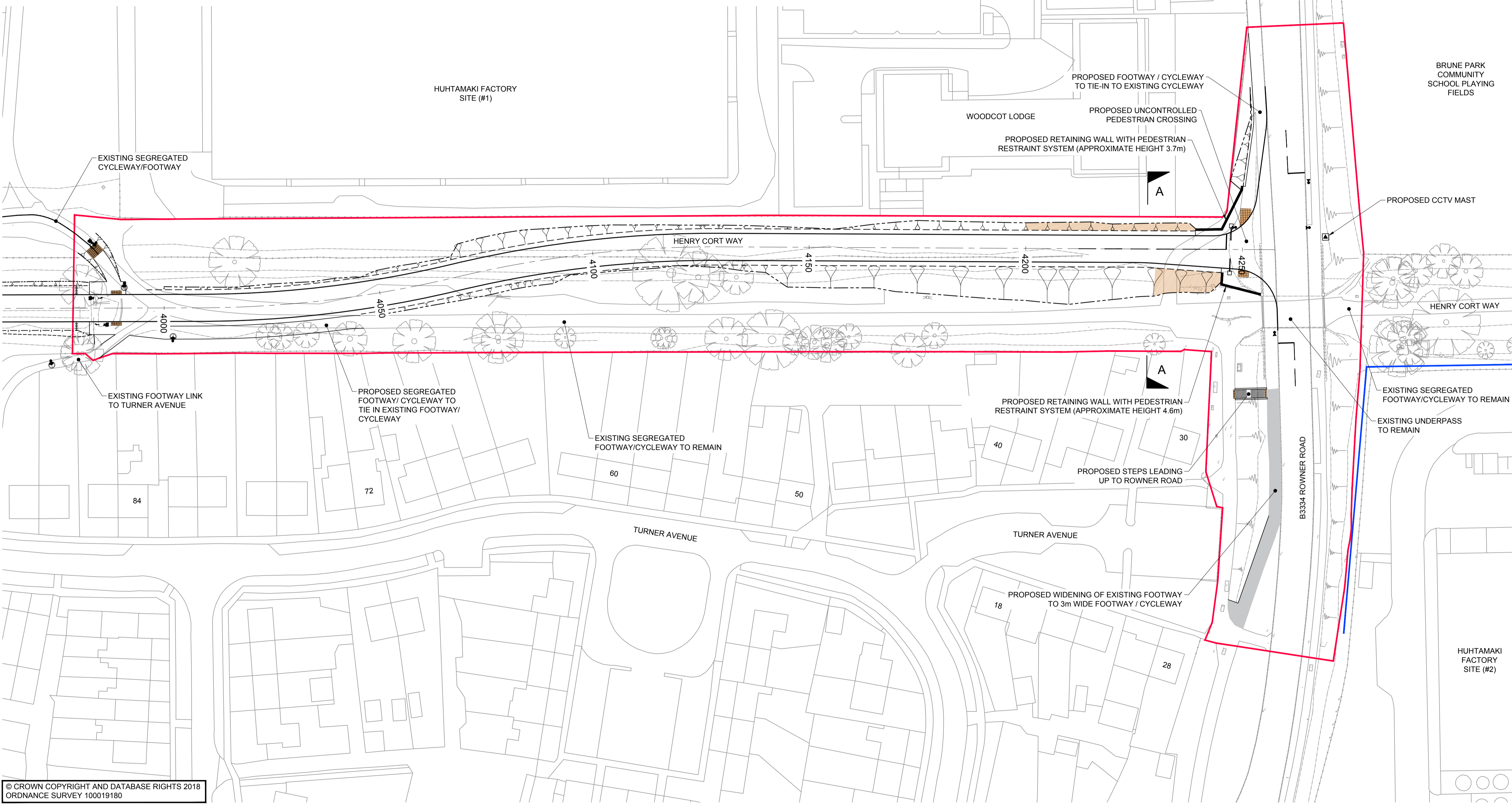
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- NOTES**
- DO NOT SCALE FROM THIS DRAWING
 - ALL DIMENSIONS IN METRES UNLESS OTHERWISE STATED

- KEY**
- PROPOSED LIGHTING COLUMN
 - EXISTING LIGHTING COLUMN
 - PROPOSED BLISTER AND LADDER TACTILE PAVING
 - PROPOSED SOIL SLOPE
 - PROPOSED REINFORCED SOIL SLOPE
 - PROPOSED TIMBER CLOSE BOARDED FENCING
 - PROPOSED ACOUSTIC FENCE (SUBJECT TO FURTHER NOISE ASSESSMENT INPUT)
 - PROPOSED WHITE COLOURED ROAD MARKING
 - PROPOSED TRAFFIC SIGNAL POLE
 - PLANNING BOUNDARY
 - PUBLIC RIGHT OF WAY (FOOTPATH)

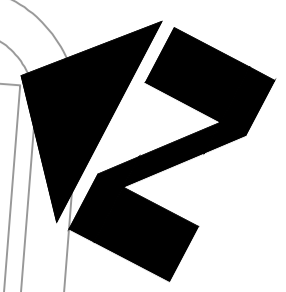
Page 29



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<p>CLIENT</p> <p>HAMPSHIRE COUNTY COUNCIL ECONOMY, TRANSPORT AND ENVIRONMENT DEPARTMENT STRATEGIC TRANSPORT</p>				<p>CONSULTANT</p> <p>Hampshire County Council Engineering CONSULTANCY</p> <p>STUART JARVIS BSc DipTP FCIHT MRTPI: DIRECTOR OF ECONOMY, TRANSPORT & ENVIRONMENT</p>				<p>DESIGNER DS</p> <p>CAD CLT</p> <p>CHECKED AS</p> <p>APPROVED CM</p>		<p>SCALE @ A1 1:500</p> <p>DATE 17.12.2018</p> <p>SHEET NUMBER 1 OF 1</p> <p>DRAWING NUMBER CJ008883-ECH- HGN-15624315-DR-HE-4001</p>		<p>SCHEME</p> <p>ECLIPSE BUSWAY - COMPLETION OF PHASE 1</p> <p>JOB No. C.J008883.01</p>		<p>DRAWING TITLE</p> <p>PLANNING APPLICATION GENERAL ARRANGEMENT</p> <p>HCC CAD PLOT: 27/12/2018 15:27:10</p>	
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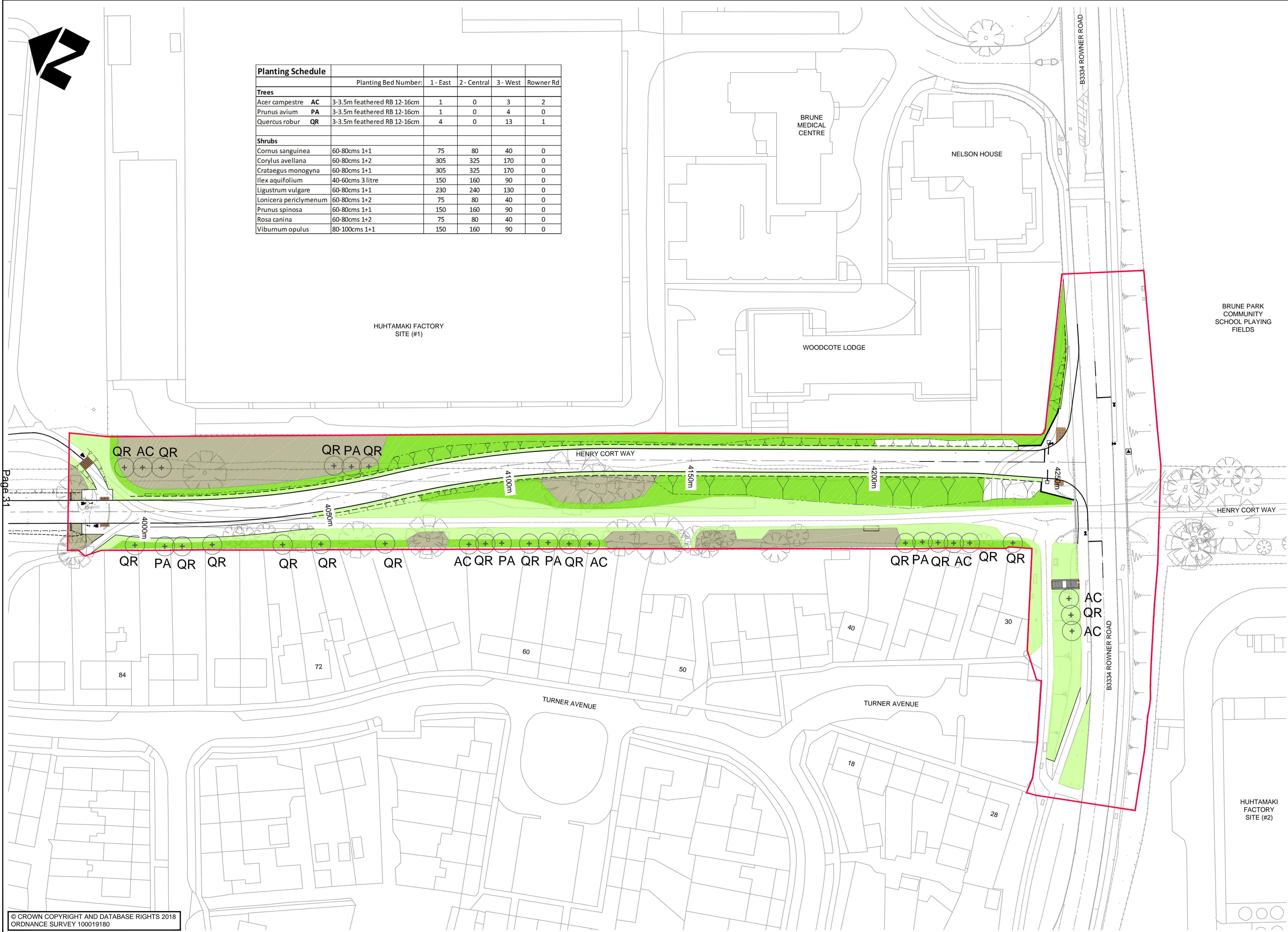


Planting Schedule		Planting Bed Number:	1 - East	2 - Central	3 - West	Rowner Rd
Trees						
Acer campestre	AC	3-3.5m feathered RB 12-16cm	1	0	3	2
Prunus avium	PA	3-3.5m feathered RB 12-16cm	1	0	4	0
Quercus robur	QR	3-3.5m feathered RB 12-16cm	4	0	13	1
Shrubs						
Cornus sanguinea		60-80cms 1+1	75	80	40	0
Corylus avellana		60-80cms 1+2	305	325	170	0
Crataegus monogyna		60-80cms 1+1	305	325	170	0
Ilex aquifolium		40-60cms 3 litre	150	160	90	0
Ligustrum vulgare		60-80cms 1+1	230	240	130	0
Lonicera periclymenum		60-80cms 1+2	75	80	40	0
Prunus spinosa		60-80cms 1+1	150	160	90	0
Rosa canina		60-80cms 1+2	75	80	40	0
Viburnum opulus		80-100cms 1+1	150	160	90	0


NOTES
 1. DO NOT SCALE FROM THIS DRAWING
 2. ALL DIMENSIONS IN METRES UNLESS OTHERWISE STATED

- LANDSCAPE KEY**
-  EXISTING TREES TO BE RETAINED AND PROTECTED
 -  EXISTING VEGETATION TO BE RETAINED AND PROTECTED
 -  PROPOSED TREE PLANTING
 -  PROPOSED NATIVE SHRUB MIX
 -  PROPOSED GRASS SEEDING
 -  PLANNING APPLICATION BOUNDARY

EXISTING TREES AND OTHER VEGETATION TO BE PROTECTED IS TO BE MANAGED ACCORDING TO THE CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN



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<p>CLIENT</p> <p style="text-align: center;">HAMPSHIRE COUNTY COUNCIL ECONOMY, TRANSPORT AND ENVIRONMENT DEPARTMENT STRATEGIC TRANSPORT</p>	<p>CONSULTANT</p> <p style="text-align: center;"> Hampshire County Council Engineering CONSULTANCY</p> <p style="text-align: center; font-size: small;">STUART JARVIS BSc DipTP FCIHT MRTPI: DIRECTOR OF ECONOMY, TRANSPORT & ENVIRONMENT</p>	<p>DESIGNER DM</p> <p>CAD DM</p> <p>CHECKED CW / CW</p> <p>APPROVED CM / MC</p>	<p>SCALE @ A1 1:500</p> <p>DATE 08.01.2019</p> <p>SHEET NUMBER 1 OF 1</p> <p>DRAWING NUMBER CJ008883-ECH-ELS-15624315-DR-HE-4007</p>	<p>SCHEME ECLIPSE BUSWAY - COMPLETION OF PHASE 1</p> <p>JOB No. CJ008883.01</p>	<p>DRAWING TITLE PLANNING APPLICATION LANDSCAPE LAYOUT</p> <p style="font-size: x-small;">HCC CAD PLOT: 15/1/2019 9:58:44</p>														
<p style="font-size: x-small;">HCC CAD FILE: K:\Engl\Roads\Schemes\CJ008883.01 Eclipse Busway Phase II\Eclipse Busway Option 4\AutoCAD\General\Planning\CJ008883-ECH-ELS-15624315-DR-HE-4007 LANDSCAPE LAYOUT PLANNING APPLICATION.dwg</p>		<p style="font-size: x-small;">SUIT REV</p> <p style="font-size: x-small;">AMENDMENTS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>SUIT</th> <th>REV</th> <th>AMENDMENTS</th> <th>DATE</th> <th>CAD</th> <th>CHKD</th> <th>APPD</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		SUIT	REV	AMENDMENTS	DATE	CAD	CHKD	APPD								<p style="font-size: x-small;">SUIT REV</p> <p style="font-size: x-small;">SO P0.1</p>	
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HAMPSHIRE COUNTY COUNCIL Decision Report

Decision Maker:	Regulatory Committee
Date:	17 April 2019
Title:	1) Variation of conditions 1, 3 and 4 of planning permission 07/90183 to extend the time to complete the importation of waste to the landfill until 2029, revise the landfill phasing and phasing of restoration, and the completion of landfill restoration by 2031 (No. 19/10066) 2) Variation of condition 2 of planning permission 11/97613 to extend the time for the use of the Waste Transfer Station until 2030 (No. 19/10064) 3) Variation of condition 2 of planning permission 08/92516 to extend the time for the use of the landfill gas utilisation plant until March 2040 (No. 19/10063) at Blue Haze Landfill Site, Verwood Road Somerley BH24 3QE (Site Ref: NF105)
Report From:	Head of Strategic Planning

Contact name: Philip Millard

Tel: 01962 846496

Email: Philip.millard@hants.gov.uk

1. Recommendations

- 1.1. It is recommended that planning permission be granted for planning application 19/10066, subject to a deed of variation to transfer the Section 106 [S106] legal obligations to 19/10066 from planning permission 07/90183, and the conditions listed in integral Appendix B.
- 1.2. It is recommended that planning permission be granted for planning application 19/10064 subject to the conditions listed in integral Appendix C.
- 1.3. It is recommended that planning permission be granted for planning application 19/10063, subject to the conditions listed in integral Appendix D.

2. Executive Summary

- 2.1 Planning application 19/10066 seeks to vary Conditions 1 (Phasing), 3 (Completion date) and 4 (Working programme) of planning permission 07/90183 at Blue Haze Landfill Site, Verwood Road, Somerley to extend the time to complete the importation of waste to the landfill by 10 years until 2029,

revise the landfill phasing and phasing of restoration, and the completion of landfill restoration by 2031.

2.2 The applicant also submitted 3 further planning applications, 19/10065, 19/10064 and 19/10063; seeking to regularise ancillary developments on the Blue Haze Landfill Site by extending their temporary planning permissions in line with that sought for the overall landfill site. Application 19/10065 was withdrawn by request of the applicant on 7 March 2109. As the determination of the 2 remaining ancillary applications are dependant on the determination of the overarching planning application 19/10066, then all 3 have been simultaneously brought to the Regulatory Committee for determination. **Therefore, this Committee Report considers all 3 applications listed below:**

- **19/10066- Blue Haze Landfill Site**
Variation of conditions 1, 3 and 4 of planning permission 07/90183 to extend the time to complete the importation of waste to the landfill until 2029, revise the landfill phasing and phasing of restoration, and the completion of landfill restoration by 2031;
- **19/10064- Waste Transfer Station [WTS]**
Variation of condition 2 of planning permission 11/97613 to extend the time for the use of the Waste Transfer Station until 2030; and
- **19/10063- Landfill Gas Utilisation Plant [LGUP]**
Variation of condition 2 of planning permission 08/92516 to extend the time for the use of the landfill gas utilisation plant until March 2040.

2.3 These applications are being considered by the Regulatory Committee as the overarching planning application 19/10066 is an Environmental Impact Assessment [EIA] development under the [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#).

2.4 The Blue Haze Landfill Site lies within Ringwood Forest about four kilometres north-west of Ringwood and 1km south-east of Verwood. The site has an extensive planning history operating first as a sand extraction site and more recently as a landfill with restoration. Blue Haze is an active safeguarded site under Policy 26 (Safeguarding - Waste Infrastructure) of the Hampshire Minerals and Waste Plan (HMWP) (2013). It is the only remaining active non-hazardous landfill site in Hampshire. Current planning permission, originally granted in 1999, allows the landfilling of non-hazardous wastes and the sites restoration by 22 March 2020.

2.5 Key issues raised are:

- Ecological compensation for delay in biodiversity gains and public benefit;
- The length of the extension of the lifespan;
- Public health and amenity impacts; and
- Landfill capacity in Hampshire.

- 2.6 A committee site visit by Members took place on 8 April 2019 in advance of the proposal being considered by the Regulatory Committee.

It is considered that the proposals would be in accordance with the relevant policies of the adopted [Hampshire Minerals and Waste Plan \(2013\)](#) as it provides sustainable landfill capacity for Hampshire in accordance with Policies 25 (Sustainable waste management) and 26 (Safeguarding – waste infrastructure) and has identified, through its EIA, that the proposal would have no significant adverse impact to public health, amenity or the environment when considered with the proposed condition changes.

- 2.7 It is recommended that each of the planning permissions are granted, subject to the conditions listed in the relevant, integral Appendices, and a deed of variation to transfer the S106 legal obligations to 19/10066 from existing planning permission 07/90183.
- 2.8 The following existing S106 obligations are attached to permission 07/90183:
- (i) Lorry routing agreement restricting the use of Harbridge Drove and the B3081 northwards, except for local deliveries;
 - (ii) Management Agreement for Nature Conservation and the provision of footpaths/access for public recreation; and
 - (iii) Section 106 Agreement relating to off-site heathland within Plumley Wood.

3. The Site

- 3.1 The Blue Haze Landfill Site covers an area of approximately 31 hectares on the Somerley Estate, situated in a rural setting adjacent to Ringwood Forest in the New Forest District, bounded on all sides by commercial conifer plantations. It is about 4 km [kilometres] north-west of Ringwood and 1 km south-east of Verwood. The site has an extensive planning history operating firstly as a sand extraction site and more recently as landfill. The Landfill was granted consent in 1999.
- 3.2 Blue Haze is an active safeguarded site under Policy 26 (Safeguarding - Waste Infrastructure) of the Hampshire Minerals and Waste Plan (HMWP) (2013). It is the only remaining active non-hazardous landfill site in Hampshire. Current planning permission allows the landfilling of non-hazardous wastes and restoration by 22 March 2020.
- 3.3 The site comprises of 10 cells (phased areas). Refer to the Landfill and Restoration Phasing Plans, 2018 to 2021 (drawing 1215/2062/26) and 2021 to 2030 (drawing 1215/2062/27). Generally, the perimeter of the site has been landfilled and restored. The cells to the centre of the site are currently being landfilled and the cells to the north of the centre of the site are used to locate the landfill site's operations. The site's reception area includes car parking, offices, the Waste Transfer Station [WTS], the Landfill Gas Utilisation Plant [LGUP] and other site building and structures (refer to Reception Area Layout Plan, drawing LAY-01).

- 3.4 The site is accessed from the B3081 (Verwood Road), approximately 3.5 km northwest of the junction with the A31, via a metalled access road to the landfill site's reception area.
- 3.5 There are the following residential properties in proximity to the site:
- Blue Haze, 28m east;
 - Belt Cottage, 56m east;
 - Ebblake House, 215m north-west;
 - Nursery Cottages, 630m west;
 - Reservoir Cottages, 660m north;
 - White Hoe Cottages, 700m north-east;
 - Burnt Hill House, 830m north-east;
 - New Barn Cottages, 870m north-east;
 - Old Laundry Cottages, 870m east;
 - Park Cottage, 1,000m east; and
 - Verwood Village, 400m north-west.
- 3.6 Duncombe Lodge (560m south-east) and Nea Lodge (725m north-east) are two listed buildings in proximity to the site.
- 3.7 There are the following Ancient Monuments and Archaeological sites in proximity to the site:
- Potential Bronze Age Barrow (Alert yellow), 370m south-west;
 - Two bowl barrows (Alert Red & Ancient Monument), 590m south-west; and
 - Bowl Barrow, 420m north-west.
- 3.8 There are the following Conservation Areas in proximity to the site:
- Ringwood (adjacent to A31), 3km south-east;
 - Western Escarpment, 4km east;
 - Harbridge, 3.4km east; and
 - Ibsley, 2.1km north-east.
- 3.9 The Somerley Household Waste Recycling Centre [HWRC] is located 100m south of the landfill site.
- 3.10 There are no Public Rights of Way [PROW] crossing the application site. PROW 78, a bridleway that runs west to east is 100m north of the site; links Verwood and Somerley. The intervening land is principally wooded / afforested in character, the site being generally well screened by commercial forestry blocks. This surrounding land is managed for commercial forestry and is a Site of Interest for Nature Conservation (SINC).
- 3.11 There are a number of ecologically designated sites within the vicinity of the application site:
- Sites of Importance for Nature Conservation [SINCs]: Ringwood Forest and Homewood (the Site is within this SINC), Somerley Closed Landfill (abuts southern boundary of site) Home Wood (Ancient Replanted) (1,270m east) and Ancient Woodland (775m west);

- Sites of Special Scientific Interest [SSSIs]:
Ebblake Bog (500m west), Moors River System (1,200m south-west), Avon Valley (1,500m east), The New Forest (4km east) and various (>1500m north); and
 - Special Protection Areas [SPAs], Special Areas of Conservation [SACs] and RAMSARs:
Dorset Heathlands (Ramsar, SAC and SPA) (500m west), Avon Valley and River Avon (Ramsar and SAC) (1.5km east) and various (>1500m north).
- 3.12 This site is located 4km west of the New Forest National Park. The A31 is the main highway route for Hampshire waste being delivered to the site. The A31 runs through the National Park.
- 3.13 The site has conditioned operating times of 0700 to 1800 Monday to Friday (except on recognised public holidays, apart from 25 and 26 December, when the hours are restricted to between 0800 and 1630 for the receipt of domestic and household waste recycling centre waste), 0700 and 1630 on Saturday and 0800 to 1630 on Sunday (for the receipt of domestic and household waste recycling centre waste).
- 3.14 The existing permission is conditioned to control amenity impacts such as noise, vermin, dust and odour. The site has an existing approved restoration scheme.
- 3.15 In 2017, the site imported 122,987 tonnes of household, commercial and industrial waste to landfill. 14,437 tonnes of soil were imported for restoration. In addition to this, the WTS has an annual throughput of 25,000 tonnes of waste. Planning permission 15/10979 for the importation and processing of a Road Sweeping and Gully Waste site within the Blue Haze Landfill Site was never implemented but is discussed in these planning applications for the potential importation of up to 50,000 tonnes of road sweepings and gulley waste per year. This results in a current total of 32,940 HGV movements (to and from the site) per annum, which accounts to 126 daily HGV movements.

The Waste Transfer Station [WTS]

- 3.16 The WTS has a site area of 0.75 hectares as shown on the Application Boundary Plan, drawing WTS-APP-01 rev 0. The site is located within the Landfill site's reception area, adjacent to the site offices and the Landfill Gas Utilisation Plant compound. It is not visible from outside the landfill site.
- 3.17 The WTS comprises a three-bay shed measuring 30m x 20m x 11m and a forecourt area. The shed is of steel frame construction with concrete block walls. The flooring within the shed comprises concrete and is used as a tipping area. The forecourt area is also concreted. Two weighbridges are located to the south of the WTS on the internal access road. In 2017, the WTS contributed 10,814 HGV movements to the total travelling to and from

the Blue Haze Landfill site (approximately one third), resulting in an annual throughput of approximately 25,000 tonnes of waste. The WTS existing planning permission, 11/97613, has no limit to the amount of waste imported, nor to number of HGV movements.

Landfill Gas Utilisation Plant [LGUP]

- 3.18 The LGUP has a site area of 0.2 hectares as shown on the Application Boundary Plan, drawing GUP-APP-01 rev 0. The site is located to the south of the Landfill site's reception area, where the site offices and waste transfer area are located, as shown on the Reception Area Layout Plan, drawing LAY-01 rev 0. It is not visible from outside the landfill site.
- 3.19 The development comprises of a series of high density polyethylene collection pipes that collect and transport landfill gas from the wider Blue Haze landfill site to the LGUP compound. Within the compound there are four engines generating a total of approximately 5.6 MW of electricity. The plant therefore generates at maximum output enough energy to power approximately 4,000 homes.
- 3.20 A secondary gas flare is also located within the compound which is 9m high and provides sufficient capacity to ensure that if all the landfill gas engines fail, no gas will escape to the atmosphere.
- 3.21 To ensure maximum efficiency of the engines, the landfill gas is subjected to scrubbing before entering the engines. Landfill gas scrubbing is designed to clean the gas by removing inhibiting substances to ensure maximum energy output can be obtained. The equipment consists of active carbon and active graphite filters which remove water, siloxanes and hydrogen sulphide. The development includes installed lighting, with dawn-dusk sensors, for health and safety and security requirements, as shown on the Layout Plan, drawing LAY-01 Rev 0. The activity is regulated by the Environment Agency using Environmental Permit reference EPR/BU5208IJ.

4. Planning History

- 4.1 The planning history of the site is as follows:

Application No	Location	Proposal	Decision	Decision Date
SCO/2018/0763	Blue Haze Landfill Site	EIA Scoping for the Extension of time for landfilling and ancillary waste management operations	Advice	22.10.18
15/10979	Road Sweeping and Gully Waste site, within the	Construction and operation of a plant for the processing of road sweepings and gully	Granted	09.12.15

	Blue Haze Landfill Site	waste to recover material suitable for use in landfill restoration		
12/99128	Incinerator Bottom Ash (IBA) processing facility area, cell 4, within the Blue Haze Landfill Site	Variation of condition 2 of planning permission 07/90181 to extend the life of an Incinerator Bottom Ash (IBA) processing facility	Granted	16.10.12
12/98419	Site reception area within Blue Haze Landfill Site	The Installation of a Leachate Treatment Facility with Associated Plant and Machinery	Granted	26.04.12
11/97613	Site reception area within Blue Haze Landfill Site	Variation of condition 3 of Planning Permission 07/90182 to allow extended hours of operation of the Waste Transfer Station on Saturdays (0700-1630)	Granted	17.10.11
08/92516	Adjacent to the site reception area within Blue Haze Landfill Site	The Installation of Four Landfill Gas Engines, Replacement Landfill Gas Flare, Gas Scrubbing Equipment, Control Cabin, Leachate Treatment Facility and Associated Plant within a Secure Compound.	Granted	13.08.08
07/90183	Blue Haze Landfill Site	Non-compliance with condition 3 of planning permission No. 06/88024 for a revised phasing and restoration programme	Granted	27.07.07

4.2 Blue Haze Landfill Site is identified in the adopted Hampshire Minerals and Waste Plan (2013) as a safeguarded landfill site.

4.3 Somerley HWRC, south of the application site, is identified in the adopted Hampshire Minerals and Waste Plan (2013) as a safeguarded HWRC site.

5. The Proposals

19/10066 - Blue Haze Landfill Site

5.1 This proposal seeks variation of Conditions 1 (Phasing), 3 (Completion date) and 4 (Working programme) of planning permission 07/90183 to extend the time to complete the importation of waste to the landfill until 2029, revise the

landfill phasing and phasing of restoration, and the completion of landfill restoration by 2031.

- 5.2 The objective is to continue operating the landfill site for the remainder of the Project Integra contract with Hampshire, Portsmouth and Southampton Councils with no increase in adverse impacts from its existing operation other than its continuation for an additional 10 years. The Planning Statement identifies the need for the timescale extension is the decrease in rate of waste to landfill. The original proposal anticipated a rate of approximately 200,000 tonnes per annum over a twenty-year period, resulting in the land void being full by 2020. However, the improvements in managing municipal waste in raising it up the waste hierarchy means the annual landfill rate has consistently fallen over the past 5 years to 137,000 tonnes in 2017 and is projected to continue to fall to 100,000 tonnes in 2018 and beyond. The remaining void at the Blue Haze site was estimated at 1,000,000 tonnes at the end of 2017. Therefore, for the predicted, decreasing annual rates of waste being imported to the site for landfill, the applicant proposes an extension of time to landfill until 2029 to allow for the remaining landfill void to be fully utilised.
- 5.3 The planning statement identifies that the site currently has approximately 120 daily HGV movements and this is anticipated to continue to decrease as volumes of waste requiring landfilling continues to decrease.
- 5.4 The site has an existing approved restoration scheme. This application proposes to retain the approved scheme; but seeks revision to the phasing of landfill and restoration to enable restoration based on the current site layout.
- 5.5 Condition 1 (Phasing) of planning permission 07/90183 currently states:
- The working and phasing of the site shall be implemented in accordance with phasing plans C4-3a to C4-3n (as revised) subject to the requirements of Condition 2.*
- 5.6 The proposal is to amend the wording of Condition 1 (Phasing), to the following:
- The working and phasing of the site shall be implemented in accordance with the Landfill and Restoration Phasing Plan 2018-2021 (drawing 1215/2062/26 rev 0) and the Landfill and Restoration Phasing Plan 2021-2030 (drawing 1215/2062/27 rev 0) subject to the requirements of Condition 2 (Notification of commencement).

Reason: To ensure restoration of the site within the approved timescale and in the interest of local amenity in accordance with Policies 9 (Restoration of quarries and waste developments) and 10 (Protecting

public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

5.7 Condition 3 (Completion date) of planning permission 07/90183 currently states:

3. *This permission shall be time limited as approved under Permission No. 0006040M (subsequently amended by 06/88024) to no later than 22 March 2020, by which time extraction and tipping operations shall have ceased and the site restored in accordance with the scheme approved under Condition (33) below and shall be subject to aftercare for a period of five years unless otherwise stated by the Waste Planning Authority in writing.*

Reason: To provide for the completion and progressive restoration of the site within the approved timescale and in the interest of local amenity.

5.8 The proposal is to amend the wording of 3 (Completion date), to the following:

3. The permission hereby granted shall be time limited. The extraction and tipping operations shall cease by 31 March 2029. The site shall be restored by 31 March 2031 in accordance with the approved scheme under Condition 8 (Restoration) and shall be subject to aftercare for a period of five years.

Reason: To ensure restoration of the site within the approved timescale and in the interest of local amenity in accordance with Policies 9 (Restoration of quarries and waste developments) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

5.9 Condition 4 (Working programme) of planning permission 07/90183 currently states:

4. *Operations at the site shall be carried out in accordance with the Working Scheme shown on approved plans C4-3a to C4-3n (as revised) and as defined in the approved Supporting Statement (May 2007) including the Table 1 Sequence of Working Summary.*

Reason: To control the development and minimise impacts on the amenities of the local area.

5.10 The proposal is to amend the wording of Condition 4 (Working programme), to the following:

4. Operations at the site shall be carried out in accordance with the Working Scheme as shown on approved plans Reception Area Layout (drawing Lay/01), the Landfill and Restoration Phasing Plan 2018-2021 (drawing 1215/2062/26 rev 0), the Landfill and Restoration Phasing Plan 2021-2030 (drawing 1215/2062/27 rev 0) and the Surface Water Management Plan (drawing No. 2), and as defined in the approved Planning Statement (November 2018) and Supporting Statement (May 2007) including the Table 1 Sequence of Working Summary.

Reason: To ensure restoration of the site within the approved timescale and in the interest of local amenity in accordance with Policies 9 (Restoration of quarries and waste developments) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

19/10064 - Waste Transfer Station [WTS]

5.11 This proposal seeks variation of condition 2 of planning permission 11/97613 to extend the time for the use of the ancillary Waste Transfer Station on the Blue Haze landfill site until 2030. This is to allow it to continue supporting the Blue Haze landfill operation in the proposal to extend the time to complete the importation of waste to the site until 2029 and the completion of landfill restoration by 2031 put forward by the parallel application 19/10066.

Condition 2 (Timescale) of approval 07/90183 currently states:

2. *The use of the waste transfer station shall cease by 22 March 2020 or the cessation of tipping at the Blue Haze Landfill Site whichever is the sooner. Within six months of cessation of use, all waste, plant and equipment, the building, foundations, hardstandings, weighbridge and structures, shall be removed and the site restored in accordance with planning permission no. 06/88024.*

Reason: In the interest of local amenities

5.12 The proposal is to amend the wording of Condition 2 (Timescale), to the following:

2. The use of the waste transfer station hereby permitted shall cease by 31 March 2030, or within 1 year of the cessation of tipping at the Blue Haze Landfill Site, whichever is the sooner. Within 6 months of cessation of use, all waste, plant and equipment, the building, foundations, hardstandings, weighbridge and structures, shall be removed and the

site restored in accordance with planning permission 19/10066, or any subsequent primary planning permission that supersedes 19/10066 on the site.

Reason: To ensure restoration of a temporary development site within the approved timescale and in the interest of local amenity in accordance with Policies 9 (Restoration of quarries and waste developments) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

19/10063 - Landfill Gas Utilisation Plant [LGUP]

5.13 This proposal seeks variation of Condition 2 of planning permission 08/92516 to extend the time for the use of the landfill gas utilisation plant and its compound until March 2040, consistent with the leachate treatment facility, permitted on the same site until March 2040 under Planning Permission 12/94819. Due to the proposal, put forward by the parallel application 19/10066, to extend the time to complete the importation of waste to the Blue Haze landfill site until 2029 and the completion of its restoration by 2031, there is a need to continue to provide the ability to capture and manage landfill gas and leachate in a sustainable and environmentally appropriate manner until such time as the Environment Agency is satisfied their collection is no longer necessary.

5.14 Condition 2 (Timescale) of approval 08/92516 currently states:

2. *The use of the site for the development subject of this certificate including gas engines and leachate tanks shall cease by 22 March 2020 or such longer period as the Waste Planning Authority may agree beforehand in writing. Within six months of cessation of the use all plant, engines, equipment, leachate tanks, foundations, hardstandings, and structures shall be removed and the land restored in accordance with planning permission no. 06/88024.*

Reason: In the interest of local amenities

5.15 Planning application 19/10063 proposes to amend the wording of Condition 2 (Timescale) to the following:

2. The use of the site for the development hereby approved, including gas engines and leachate tanks, shall cease by 22 March 2040. Within 6 months of cessation of the use all plant, engines, equipment, leachate tanks, foundations, hardstandings, and structures shall be removed and the land restored in accordance with planning permission 19/10066, or any subsequent primary planning permission that supersedes 19/10066 on the site.

Reason: In the interest of high-quality restoration and environmental protection in accordance with Policies 9 (Restoration of minerals and waste developments) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

EIA screening and scoping

5.16 The development proposed for each of the applications have been assessed under the [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#).

5.17 The proposed development for application 19/10096, to extend the timescale of the overarching planning permission for the Blue Haze Landfill Site, has been classified as a Schedule 2 development as it falls within Category 11, (b) Installations for the disposal of waste (unless included in Schedule 1), and exceeds the size threshold. A scoping request and EIA scoping report was submitted to the Waste Planning Authority [WPA] by the applicant. The WPA issued a scoping report, reference [SCO/2018/0763](#). An Environmental Statement [ES] has been supplied by the applicant and has been considered alongside the application documents.

5.18 The proposed development for applications 19/10064 and 19/10063, to extend the timescale for the ancillary developments on the Blue Haze Landfill Site, are been classified as Schedule 2 development alterations that fall within Category 11, (b) Installations for the disposal of waste (unless included in Schedule 1). However, whilst being identified under the Regulations, in each case the developments are considered to be under the size threshold and to not have the potential to cause sufficient impact to require an Environmental Statement. In any case, each of these proposed, ancillary developments have been included, in general terms, in the ES for the overarching site application 19/10096.

6. Development Plan and Guidance

6.1 The following plans and associated policies are considered to be relevant to the proposal:

National Planning Policy Framework (2019) (NPPF)

6.2 The following paragraphs are relevant to this proposal:

- Paragraphs 7-8: Sustainable development;
- Paragraph 11: Presumption in favour of sustainable development; proposals should be determined in accordance with the development plan unless material considerations indicate otherwise;
- Paragraphs 47-50: Determining applications;
- Paragraphs 54-57: Planning conditions;
- Paragraph 80: Support of sustainable economic growth;

- Paragraph 102-103: Sustainable transport;
- Paragraph 108-111: Transport – Considering development proposals;
- Paragraphs 127-131: Achieving well-designed places;
- Paragraphs 148-153: Meeting the challenge of climate change;
- Paragraph 170: Contributions and enhancement of natural and local environment;
- Paragraph 172: Great Weight to conserving and enhancing National Parks;
- Paragraphs 175-177: Habitats and biodiversity; and
- Paragraphs 178-183: Ground conditions and pollution.

National Planning Practice Guidance (NPPG)

6.3 The following paragraphs are relevant to the proposal:

- Paragraph 014, Section 21a: When can conditions be used to grant planning permission for a use for a temporary period only?
Taken from the NPPG on the [Use of Planning Conditions](#), Reference ID: 21a-014-20140306, revision date: 06 March 2014.

National Planning Policy for Waste (2014) (NPPW)

6.4 The following paragraphs are relevant to the proposal:

- Paragraph 5: Criteria by which Waste Planning Authorities should assess the suitability of sites for new or enhanced waste management facilities; and
- Paragraph 7: Determining planning applications.

6.5 The NPPW demonstrates an ambition for the “*delivery of sustainable development and resource efficiency, including provision of modern infrastructure, local employment opportunities and wider climate change benefits, by driving waste management up the waste hierarchy*”. It also states that “*waste planning authorities should consider the likely impact on the local environment and on amenity which in particular includes the suitability of the road network and the extent to which access would require reliance on local roads*”.

National Waste Planning Practice Guidance (NWPPG) (last updated 15/04/2015)

6.5 The following paragraphs are relevant to the proposal:

- Paragraph 001: Who is the planning authority for waste developments?;
- Paragraph 002: What matters come within the scope of ‘waste development’?;
- Paragraph 006: What is the obligation on waste planning authorities towards implementing the proximity principle?;
- Paragraph 007: Do the self-sufficiency and proximity principles require each waste planning authority to manage all of its own waste?;
- Paragraph 009: How is the Waste Hierarchy delivered through Local Plans and in planning decisions?;

- Paragraph 047: Should existing waste facilities be expanded/extended?;
- Paragraph 048: Are time extensions for landfill sites allowed?; and
- Paragraph 050: What is the relationship between planning and other regulatory regimes?.

Hampshire Minerals & Waste Plan (2013) (HMWP)

6.6 The following policies are relevant to the proposal:

- Policy 1: Sustainable minerals and waste development;
- Policy 2: Climate change - mitigation and adaptation;
- Policy 3: Protection of habitats and species;
- Policy 4: Protection of the designated landscape;
- Policy 5: Protection of the countryside;
- Policy 9: Restoration of minerals and waste developments;
- Policy 10: Protecting public health, safety and amenity;
- Policy 12: Managing traffic;
- Policy 13: High-quality design of minerals and waste development;
- Policy 25: Sustainable waste management;
- Policy 26: Safeguarding - waste infrastructure;
- Policy 27: Capacity for waste management development;
- Policy 29: Locations and sites for waste management; and
- Policy 32: Non-hazardous waste landfill.

6.7 The Blue Haze site is safeguarded for the following uses through Policy 26 (Safeguarding waste infrastructure) of the HMWP 2013:

- Blue Haze Waste Transfer Station [WTS], until 22.03.2020, for municipal waste; and
- Blue Haze Landfill for non-hazardous landfill until 22.03.2020 with subsidiary operations: HWRC, WTS and IBA recycling.

6.8 Adjacent to the Blue Haze site is the Somerley Household Waste Recycling Centre (HWRC), safeguarded until 31.12.2019 in the HMWP 2013.

New Forest District Council

6.9 The relevant policies are as follows:

Local Plan Part 1: Core strategy [NFDCLP1] (2009)

- Policy CS1: Sustainable development principles;
- Policy CS4: Energy and resource use;
- Policy CS24: Transport considerations; and
- Policy CS25: Developers' contributions.

6.10 Local Plan Part 2: Sites and Development Management [NFDCLP2] (2014)

- Policy DM22: Employment development in the countryside; and
- Policy DM26: Development generating significant freight movements.

7. Consultations

7.1 Consultation responses have generally been received as a combined view of all the applications being considered by this report.

7.2 **County Councillor Thierry:** Was notified.

7.3 **Dorset County Council:** Has no objection subject to providing additional measures to compensate for the delay to restoration either by offsite habitat enhancements provided now or improvements to the proposed restoration scheme. The application should also take into account the recent changes in the NPPF requiring biodiversity net gain.

7.4 **New Forest District Council:** Has no objection subject to conditions controlling operating times, noise, odour and dust.

7.5 **New Forest District Council Environmental Health Officer (EHO):** Has no objection subject to conditions to update dust, odour and noise management and the site's operational times.

7.6 **Ellingham Harbridge & Ibsley Parish Council:** Has no objection, but raise a request to consider the option to close the site in 2026 rather than 2031 and concern about robust monitoring of conditions and culminative highways impact on the rural road network bearing in mind the proposed housing development in Alderholt.

7.7 **Natural England [NE]:** Raises the need for ecological compensation for the delay to restoration.

7.8 **Environment Agency:** Has no objection.

New Forest National Park Authority: Was notified.

7.9 **Local Highways Authority:** Has no objection subject to the retention of all highways conditions.

7.10 **County Ecology:** Support NE's response and recommend any permission is subject to all existing conditions and an additional condition for dust control for the soil screening works should this not already be covered by existing conditions.

7.11 **County Landscape Architect:** Has no objection.

7.12 **County Waste and Resource Management:** Has no objection.

7.13 **Lead Local Flood Authority (LLFA):** Has no objection.

7.14 **Planning Policy (HCC):** Provided information on relevant policy.

8. Representations

- 8.1 Hampshire County Council's [Statement of Community Involvement \(2017\)](#) (SCI) sets out the adopted consultation and publicity procedures associated with determining planning applications.
- 8.2 In complying with the requirements of the SCI, HCC:
- Published a notice of the application in the [Hampshire Independent](#);
 - Placed notices of the application at the application site and local area;
 - Consulted all statutory and non-statutory consultees in accordance with [The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#); and
 - Notified by letter all residential properties within 100 metres of the boundary of the site.
- 8.3 As of 2 April 2019, a total of 7 representations to the proposals have been received. There are 4 objections and 3 representations raising concern for the proposed developments put forward by the 3 applications. These representations include those from Verwood Town Council and the East Dorset Environment Partnership. The main areas of concern raised in the objections related to the following areas:
- Operator non-compliance with conditions;
 - Concern about the length of the proposal extension and the information that demonstrates that that timescale is accurate;
 - Odour issues that have never been resolved;
 - Food waste to landfill;
 - Gaseous air pollution;
 - Noise, including out of hours;
 - Extension of duration for noise and odour impacts;
 - On site fires causing pollution, health risk and potential of environmental damage;
 - Litter on the B3081 from the site;
 - A wish for the alternative Option 3, as set out in the EIA. This is for a 5 year, not 10 year, extension to Blue Haze, achieved by diverting landfill material from Springfield farm Landfill in Buckinghamshire;
 - Concern of a future application to extend the timescale further;
 - A wish for an effective acoustic bund to the north of the site;
 - A request for a community fund for the Verwood community who would be affected by the extension;
 - Disappointment in the lack of engagement with neighbouring residents;
 - Increase in vermin including seagulls and rats;
 - Increase in flies and insects in the summer months;
 - Blown litter travelling from the site;
 - The need to update the site lighting design;
 - The lack of the projected figure for full site HGV movements;

- A wish for the proposal to provide a solution to sustainable transport along the B3081, making it less dangerous for cyclists and pedestrians; and
- Assurance that operating hours will not extend in the future.

8.4 The above issues will be discussed and addressed within the following commentary.

9. Habitats Regulation Assessment [HRA]

9.1 The [Conservation of Species and Habitats Regulations 2017](#) (otherwise known as the ‘Habitats Regulations’) transpose European Directives into UK law.

9.2 In accordance with the Habitats Regulations, Hampshire County Council (as a ‘competent authority’) must undertake a formal assessment of the implications of any new projects we may be granting planning permission for e.g. proposals that may be capable of affecting the qualifying interest features of the following European designated sites:

- Special Protection Areas [SPAs];
- Special Areas of Conservation [SACs]; and
- RAMSARs.

9.3 Collectively this assessment is described as ‘Habitats Regulations Assessment’ [HRA]. The HRA will need to be carried out unless the project is wholly connected with or necessary to the conservation management of such sites’ qualifying features.

9.4 The applicant has submitted a shadow HRA with the application, [Report to Inform Habitats Regulations Assessment – Stage 1 Screening](#), dated December 2018. The HRA screening report concludes that the proposals will have no likely significant effect on any European designated site. In view of the resolution of ecological issues raised in Natural England’s consultation response (see commentary below), the HRA (with any necessary additional reference to the compensatory measures/enhancements) is adopted by the Waste Planning Authority as the competent authority. The findings of the HRA are documented below:

- *Based on the assessments and considerations set out in Step 3, it can be concluded that the Project will have no LSE [Likely Significant Effect] on any Natura 2000 sites designated under the requirements of the Habitats Directive. Therefore, a plan level Appropriate Assessment (Stage 2 of the Habitats Regulations Assessment) is not considered necessary;*
- *It is also considered that the update to The Conservation of Habitats and Species Regulations 2017 (HMSO, 2017), and consideration of recent case law regarding the assessment of the application of*

mitigation at Stage 2 of an HRA only (Freeths, 2018), do not materially affect the conclusions of this report to inform HRA; and

- *Based on the information provided within this report, Hampshire County Council as the Competent Authority in consultation with Natural England will now decide whether it is satisfied with the conclusion that there will be no significant adverse effects on the integrity of European sites as a result of the proposed planning application to extend the operational life of Blue Haze.*

Extract from chapter 5.0 Conclusions of the WYG Report to Inform Habitats Regulations Assessment – Stage 1 Screening: Blue Haze Landfill Site, Verwood, Hampshire. Submitted as part of the EIA submission.

- 9.5 The County Ecologist's consultation response states that once NE's concerns regarding compensation for delayed restoration and enhancement have been addressed, the HRA (with any necessary additional reference to the compensatory measures/enhancements) can be adopted by the WPA as competent authority. Therefore, the HRA screening hereby carried out by the WPA considers the proposed development does not have a **likely significant effect** on the identified European designated sites due to:
- It not being located at a distance to be considered to have proximity to directly impact on the European designated sites;
 - The site is not considered to have potential impact pathways connecting the proposed works with any European designated sites; and
 - The environmental issues raised by Natural England through the consultation process have been addressed by conditions should permission be granted.
- 9.6 It is acknowledged that the proposed development includes environmental mitigation essential for the delivery of the proposed development regardless of any effect they may have on impacts on European designated sites.

10. Commentary

- 10.1 An Environmental Statement [ES] has been submitted as part of the overarching application 19/10066 to extend the lifespan of the landfill site. This addresses the key environmental issues of the proposal and includes a non-technical summary as well as Chapter 4 which considers alternatives to the proposed development.
- 10.2 This commentary focuses on the issues of the development to extend the lifespan of the Blue Haze landfill site as proposed by application 19/10066. The proposals to extend the lifespan of the Waste Transfer Station [WTS] and the Landfill Gas Utilisation Plant [LGUP] are to support the extension of the wider site, with no significant additional effect, and so these ancillary proposals are acceptable in principle subject to the approval of the

extension to the lifespan of the landfill site. Therefore, the proposals are considered as a whole within this report.

Principle of the development

- 10.3 The NPPF (2019) includes an overarching ‘presumption in favour of sustainable development’ which means ‘approving development proposals that accord with the development plan without delay’. It is therefore important that the development proposed is demonstrated to be considered sustainable at its core. The presumption in the NPPF (2019) allows for only refusing permission where adverse impacts clearly outweigh the benefits, or NPPF (2019) policies indicate developments should be restricted. This is translated into the adopted Hampshire Minerals and Waste Plan [HMWP] (2013) through Policy 1 (Sustainable minerals and waste development), which states that the Hampshire Authorities will take a positive approach to minerals and waste development that reflects the presumption in favour of sustainable development contained in the NPPF (2019).
- 10.4 Policy 26 (Safeguarding – waste infrastructure) of the HMWP (2013) states that waste management infrastructure, including landfill void, that provides strategic capacity, is safeguarded against redevelopment and inappropriate encroachment. In the case of temporary sites, this is for the duration of its planning permission. The Policy lists exceptions to this safeguarding, including if the waste management capacity is no longer needed.
- 10.5 The Blue Haze site is safeguarded against redevelopment and inappropriate encroachment by Policy 26 (Safeguarding – waste infrastructure), with entries on the list of safeguarded minerals and waste sites in Appendix B of the HMWP 2013 for the Landfill and the Waste Transfer Station [WTS] and thereafter in subsequent monitoring of the plan. This safeguarding is until 22 March 2020 in line with the timescale for the completion of the site as set out in Condition 3 (Completion date) of the planning permission PP 07/90183.
- 10.6 Paragraph 6.156 of the HMWP (2013) states that new waste developments will be automatically safeguarded if they provide individual capacity of at least 50,000 tonnes per annum [tpa] or are of a regional waste management significance. Therefore, should permission be granted for an extension of time of the site, then it would automatically be safeguarded for its future lifespan under HMWP 2013.
- 10.7 Hampshire needs to continue its waste processing in order keep up with the demand generated by Hampshire’s increasing population. The latest Annual Monitoring Report (2016) showed the amount of non-hazardous waste landfilled in Hampshire in 2016 was 288,000 tonnes – a reduction from 388,000 tonnes in 2015. The reduction in the amount of waste going to landfill corresponds to a reduction in the waste landfill capacity in Hampshire, indicative of a general trend that less waste is going to landfill and therefore less capacity is needed.

- 10.8 However, the Hampshire Minerals and Waste Plan Review (2018) showed that the lifespan of landfill capacity void has dropped below 4 years, and it is identified as not meeting the forecasted need of 'net self-sufficiency' as set out in Paragraph 6.145 of the HMWP (2013). The early closure of Squabb Wood Landfill (and other sites in south-east England) and a lack of replacement sites for non-hazardous landfill is recognised as a regional issue by the South East Waste Planning Advisory Group [SEWPAG]. Paragraph 6.244 of the HMWP (2013) sets out the expectation of cross boundary movement of waste and this is played out in the supporting information of the applications.
- 10.9 This proposal partly represents a successful diversion of waste from landfill. Nonetheless, there will always be a small amount of waste material that cannot be easily recovered or recycled and therefore non-hazardous landfill is still required for the foreseeable future. As such, Policies 32 (Non-hazardous landfill) and 25 (Sustainable waste management) support the proposal to extend the period for landfilling at this existing site, considering the above and the fact that Blue Haze is the only remaining active non-hazardous landfill site in Hampshire. Currently, it seems unlikely that that the proposed time extension to Blue Haze would overlap with other landfill void provision in Hampshire, as set out in Policy 32. Purple Haze is the single remaining allocated site for non-hazardous landfill (following minerals extraction) in the HMWP (2013). No applications have yet come forward at Purple Haze. Therefore, the extension of time would ensure the remaining landfill void is fully utilised as the overall number of operational sites continues to fall, whilst also ensuring diversion from landfill continues.
- 10.10 Furthermore, while the HMWP (2013) aims for Hampshire to be 'net self-sufficient', the proposal to divert Veolia managed waste to the recently reopened Springfield Farm Landfill site in Buckinghamshire rather than to Blue Haze, may make most sense in overall environmental terms. For example, Policy 25 supports waste management activities where waste will be managed as close to its source as possible and reduce long-distance transport (the distance between Basingstoke and Springfield Farm landfill is approximately the same as between Winchester and Blue Haze landfill). The diversion of waste to Springfield Farm will remove associated HGV movements through the New Forest National Park on the A31 and thus reduce emissions. Lastly, it is also recognised by SEWPAG that there is likely to be a move towards regionally strategic landfill sites in the future therefore the idea of net self-sufficiency is becoming less relevant for landfill.
- 10.11 Paragraph 48 of the National [Planning Practice Guidance for Waste \(Live\)](#) [NPPGW] states that:

'Waste planning authorities should be aware that the continued provision and availability of waste disposal sites, such as landfill, remain an important part of the network of facilities needed to manage England's waste.'

The continued movement of waste up the Waste Hierarchy may mean that landfill sites take longer to reach their full capacity, meaning an extension of time limits to exercise the planning permission may be needed in some circumstances, provided this is in accordance with the Local Plan and having taken into account all material considerations.'

- 10.12 Therefore, the principle of these proposals hereby considered are supported by the HMWP (2013).

Duration of the proposal extension of lifespan

- 10.13 Ellingham Harbridge & Ibsley Parish Council's consultation response raised a request to consider the option to close the site in 2026 rather than 2031, one of the alternative options to the proposed development considered in Chapter 4 of the [Environmental Statement](#). This alternative was also supported by the representations from a member of the public and the East Dorset Environmental Partnership.

- 10.14 Based upon the discussion in the above section in this commentary on the principle of the development, the proposed development to extend the timespan of landfilling at Blue Haze until 2031 is the preferred option in order to address the policies and objectives of the HMWP (2013). This is because it provides a Hampshire landfill void capacity for a longer time period, in accordance with Policy 32 (Non-hazardous waste landfill), and provides a preferable market environment for sustainable landfill provision supporting waste management activities where waste will be managed as close to its source as possible, in accordance with Policy 25 (Sustainable waste management).

Ecology and Restoration

- 10.15 Policy 3 (Protection of habitats and species) sets out a requirement for minerals and waste development to not have a significant adverse effect on, and where possible, should enhance, restore or create designated or important habitats and species. The policy sets out a list of sites, habitats and species which will be protected in accordance with the level of their relative importance. The policy states that development which is likely to have a significant adverse impact upon the identified sites, habitats and species will only be permitted where it is judged that the merits of the development outweigh any likely environmental damage. The policy also sets out a requirement for appropriate mitigation and compensation measures where development would cause harm to biodiversity interests.
- 10.16 The consultation response from Natural England raises no objection, subject to providing additional measures to compensate for the delay to restoration, either by offsite habitat enhancements provided now or improvements to the proposed restoration scheme. The application should also take into account the recent changes in the NPPF requiring biodiversity net gain. This is supported in the consultation responses from

County Ecology and Dorset County Council and in the representation from the East Dorset Environmental Partnership.

- 10.17 The proposal to amend the phasing scheme for the site and extend the final restoration date to 2031, is supported by Policy 9 (Restoration of minerals and waste developments), as it will be in line with the extension of landfilling operations and ensure the site is appropriately restored to a standard matching that permitted by the existing permission.
- 10.18 To date, the applicant has not submitted additional information to address this issue. Therefore, it is proposed to add a condition to any permission granted to require the applicant to submit to and have approved by the WPA a scheme for environmental compensation to address NE's comments and the NPPF (2019) requirements for net biodiversity gain. This would be supported by the deed of variation for the transfer from the existing planning permission of the S106 legal agreement for the Management Agreement for Nature Conservation being amended to suit the scheme submitted. With the provision of environmental compensation for the delay to the restoration of the site, the proposals are considered in accordance with Policies 3 (Protection of habitats and species) and 4 (Protection of the designated landscape) of the HMWP (2013).

Visual impact and landscape

- 10.19 Policy 13 (High-quality design of minerals and waste development) of the HMWP (2013) requires that waste development should not cause an unacceptable adverse visual impact and should maintain and enhance the distinctive character of the landscape and Policy 10 (Protecting public health, safety and amenity) protects residents from significant adverse visual impact.
- 10.20 The County Landscape consultation response is for no objection, based upon the position that the visual impact of the development is not changing, and the final restoration and mitigation remains the same. Therefore, the proposals are considered in accordance with Policies 13 (High-quality design of minerals and waste development) and 10 (Protecting public health, safety and amenity) with respect to visual impact and landscape.

Light pollution

- 10.21 The representation from the East Dorset Environment Partnership raises a recommendation that artificial lighting for both the WTS and the LGUP should be updated to comply in all respects with the most recent guidance from the Institution of Lighting Professionals and The Bat Conservation Trust via the submission to and approval by the WPA of a lighting strategy document.
- 10.22 It is identified that the overarching existing Planning Permission 07/90183 for the landfill site does not include any restrictions on artificial lighting.

Existing Planning Permission 11/97613 for the WTS includes Condition 13 (Lighting) that states that the development will be developed in accordance to an approved lighting scheme. Existing Planning Permission 08/92516 for the LGUP includes Condition 10 (Lighting) that states that no lighting shall be erected on the site relating to that development. It would seem reasonable, based upon the site's location and proximity to environmentally designated sites, that lighting should be controlled to mitigate against adverse impacts to amenity and ecology, as well as to minimise light pollution. Therefore, a condition is proposed to require the applicant to submit and have approved by the WPA a lighting strategy document to allow the proposals to be considered in accordance with Policies 3 (Protection of habitats and species), 5 (Protection of the countryside) and 10 (Protecting public health, safety and amenity) of the HMWP (2013).

Highways impact

- 10.23 Policy 12 (Managing traffic) requires minerals and waste development to have a safe and suitable access to the highway network and where possible minimise the impact of its generated traffic through the use of alternative methods of transportation. It also requires highway improvements to mitigate any significant adverse effects on highway safety, pedestrian safety, highway capacity and environment and amenity.
- 10.24 The Highways Authority consultation response is for no objection subject to the retention of all highways conditions from the existing planning permissions. Ellingham Harbridge & Ibsley Parish Council has no objection, but raise concern for the culminative highways impact on the rural road network bearing in mind the proposed housing development in Alderholt. Public representations also raise objections on the grounds of highway safety, including that of cyclists and pedestrians on the B3081.
- 10.25 On the basis of the Highways Authority being satisfied that the proposals will not have a significant impact on the highways, the proposals are considered in accordance with Policy 12 (Managing traffic) of the HMWP (2013) and Policy DM26 (Development generating significant freight movements) of the NFDCLP2 (2014).

Impact on amenity and health

- 10.26 Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013) requires that any development should not cause adverse public health and safety impacts, and unacceptable adverse amenity impacts. Also, any proposal should not cause an unacceptable cumulative impact arising from the interactions between waste developments and other forms of development.
- 10.27 New Forest District Council and the Environmental Health Officer [EHO] both responded to consultation with no objection subject to conditions controlling operating times, noise, dust and odour. The EHO response also

asks to update the management schemes for the control of dust, odour and noise for the site.

10.28 All public objections received for the proposals cite amenity and public health impacts as material issues. They raise concern about the amenity impact on local residents of another 10 years, having had the expectation that the site would be open for 20 years and would be ceasing importation of waste this year. The key amenity issues (and their potential impacts) are raised by representation have been listed and commented upon below:

- **Noise.**
Existing conditions control the operating times of the site and ensure the perimeter bunds are retained. Condition 29 (Noise levels) of PP 07/90183 limits noise levels to a value of 55 dB(A) LAeq, 1 hour (freefield) at the nearest sensitive receptor (dwelling) with noise monitoring in accordance with Condition 22 (Noise monitoring) stating development in accordance with the approved noise management scheme. This scheme also sets out the acoustic protection for the Blue Haze Kennels, a neighbour of the site.

NFDC EHO also advises in their consultation response the addition of a condition to control the operating times of screening equipment on the site. This has been added;

- **Dust.**
The existing permission PP 07/90183 includes Condition 17 (dust management) that states operations are to be in accordance with the dust management scheme approved in 2000 under the previous PP 00060405M;
- **Odour.**
The existing permission PP 07/90183 includes Conditions 49 (No Composting) and 50 (Odour suppression). Condition 49 states that no composting facility may be development on the site unless approved by the WPA. Condition 50 requires operations shall be carried out under the odour suppression scheme approved in 2006 under the previous PP 06/88024. It is also identified that the practice of landfilling green or food waste is no longer carried out at the site. Green and food waste is now diverted for recovery or recycling at other site and this results in reducing odour impact potential from the site;
- **Litter.**
Representations identify that blown litter, both on the B3081 and on neighbouring land to the site is an issue from both visual amenity, human and ecological health. This is unacceptable pollution from the landfill operation. The applicant has stated that they are not permitted to clean litter on the B3081, as the Local Authority cannot condone the activity due to highway safety.

10.29 It is considered that any permission for these proposals should seek an improvement to this issue. Therefore, it is proposed to require the applicant to produce a Litter Management Scheme and the addition of a site wide

requirement for goods vehicle to be sheeted when entering and leaving the site to help mitigate littering;

- **Vermin and insects.**

The existing permission PP 07/90183 includes Condition 32 (Vermin and insects) requiring the operator to regularly make recorded inspections for vermin and insect problems and to take action to resolve them if found;

- **Bird nuisance.**

The existing permission PP 07/90183 Condition 26 (Bird control) requiring operations to be carried out in accordance with the approved bird management scheme approved in 2000 under the previous PP 00060405M. Its key objective is to minimise bird hazards for aircraft; and

- **Gas emissions and site fires.**

These issues are covered by the Environment agency, HSE and Environmental Health rather than coming under the regulatory scope of planning.

10.30 The EHO was asked to comment on the above issues, and their reply email is included in the public information for this case, [Environmental Health New Forest Further](#). The EHO states that they have received no complaints regarding any of these issues and that, in each case, where required, it is considered that an up-to-date management plan would be suitable to address that issue. Therefore, with the inclusion of conditions requiring the submission to and approval by the WPA of revised Site Management Schemes, including schemes for lighting and litter, it is considered, on balance, that the proposals are considered in accordance with Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013).

Potential pollution associated with the development

10.31 National Planning Practice Guidance states that Planning Authorities should assume that other regulatory regimes will operate effectively rather than seek to control any processes, health and safety issues or emissions themselves where these are subject to approval under other regimes ([Paragraph 050 Reference ID: 28-050-20141016](#)).

10.32 Planning and permitting decisions are separate but closely linked. Planning permission determines if a development is an acceptable use of the land. Permitting determines if an operation can be managed on an ongoing basis to prevent or minimise pollution.

Flooding

10.33 Policy 11 (Flood risk and prevention) relates to minerals and waste development in flood risk areas and sets criteria which developments should be consistent with relating to flood risk offsite, flood protection, flood

resilience and resistance measures, design of drainage, net surface water run-off and Sustainable Drainage Systems.

- 10.34 The Lead Local Flood Authority's consultation response raises no objection, and so the proposals are considered to have no adverse impact on flooding or surface water and so are in accordance with Policy 11 (Flood risk and prevention) of the HMWP (2013).

Community benefits

- 10.35 Verwood Town Council suggests there should be a community fund accessed solely for the Verwood community who would be affected by the extension.

- 10.36 Policy 14 (Community benefits) of the HMWP (2013) encourages negotiated arrangements of this nature between the relevant waste developers/operators and a community as a source of funding for local benefits. However, paragraph 5.55 goes on to state that the Waste Planning Authority cannot be party to such agreements because planning decisions must be impartial and on planning grounds alone. Therefore, the WPA encourages communication between the developer/operator and suitable community organisations, but a community fund is outside the scope of determination for these planning proposals.

Climate change and energy and resource use

- 10.37 The applications include no information to demonstrate that the developments hereby considered address Policy 2 (Climate change – mitigation and adaptation) of the HMWP (2013) or Policy CS4 (Energy and resource use) of the NFDCLP1 (2009).

Conclusion

- 10.38 It is considered that the proposals would be in accordance with the policies of the Hampshire Minerals and Waste Plan (2013) and of the NPPF (2019) subject to the following additional requirements:
- a. An additional condition stating all goods vehicles travelling to and from the site shall be sheeted, to mitigate against wind blown waste on the highway;
 - b. Revised conditions requiring the submission to and the approval by the WPA of revised Site Management Schemes for noise, dust (including soil screening works) and odour;
 - c. An additional condition requiring the submission to and the approval by the WPA of a Site Management Scheme and design for artificial lighting;
 - d. An additional condition requiring the submission to and the approval by the WPA of a Litter Management Scheme;

- e. An additional condition limiting the timing of the use of screening equipment on the site to 0900-1800 Monday to Friday and 0900-1300 on Saturdays; and
- f. An additional condition requiring the submission to and the approval by the WPA of a scheme for environmental compensation to address NE's comments and the NPPF (2019) requirements for net biodiversity gain to compensate for the proposed 10 year delay in the delivery of ecological restoration elements of the site.

Recommendations

- 1) **Application 19/10066** – That the Head of Law and Governance be authorised to draw up a S106/Deed of Variation to transfer the Section 106 [S106] legal obligations relating to planning permission 07/90183, to secure:
 - (i) Lorry routing agreement restricting the use of Harbridge Drove and the B3081 northwards, except for local deliveries;
 - (ii) Management Agreement for Nature Conservation and the provision of footpaths/access for public recreation (including amendments to enhance the scheme of environmental compensation);
 - (iii) Off-site heathland works within Plumley Wood.

Provided that by no later than 30 September 2019 all parties enter into the S106/Deed of Variation with the County Council, then the Director of Economy, Transport and Environment be authorised to GRANT permission subject to the conditions listed in Integral Appendix B.

In event that the S106/Deed of Variation is not completed by 30 September 2019, the Director of Economy, Transport and Environment be authorised to refuse planning permission for that reason.

- 2) **Application 19/10064** - That planning permission be GRANTED subject to the conditions listed in integral Appendix C.
- 3) **Application 19/10063** – That planning permission be GRANTED subject to the conditions listed integral Appendix D.

Appendices:

Integral Appendix A – Corporate or Legal Information
 Integral Appendix B – Conditions for 19/10066
 Integral Appendix C – Conditions for 19/10064
 Integral Appendix D – Conditions for 19/10063
 Appendix E - Application Boundary Plan (LFAPP/01)
 Appendix F - Site Overview Plan (PLA-01)
 Appendix G - Reception Area Layout as of October 2018 (Lay-01)
 Appendix H - Phasing Plan 2018-2021 (1215/2062/26)

Appendix I - Phasing Plan 2021-2030 (1215/2062/27)

Other documents relating to this application:

The Planning Applications for the site can be found at the below link:

<https://planning.hants.gov.uk/SearchResults.aspx?Criteria=nf105>

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	No
People in Hampshire live safe, healthy and independent lives:	No
People in Hampshire enjoy a rich and diverse environment:	No
People in Hampshire enjoy being part of strong, inclusive communities:	No
OR	
This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because:	
The proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the proposal is an application for planning permission and requires determination by the County Council in its statutory role as the minerals and waste planning authority.	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

HCC/2019/0022
NF105

Hampshire County Council

Blue Haze Landfill Site, Verwood Road
Somerley BH24 3QE
(Variation of conditions 1, 3 and 4 of
planning permission 07/90183 to extend
the time to complete the importation of
waste to the landfill until 2029, revise the
landfill phasing and phasing of restoration,
and the completion of landfill restoration by
2031

Integral Appendix B – Conditions for 19/10066

CONDITIONS

Timescale

1. The working and phasing of the site shall be implemented in accordance with the Landfill and Restoration Phasing Plan 2018-2021 (drawing 1215/2062/26 rev 0) and the Landfill and Restoration Phasing Plan 2021-2030 (drawing 1215/2062/27 rev 0) subject to the requirements of Condition 2 (Notification of commencement).

Reason: To ensure restoration of the site within the approved timescale and in the interest of local amenity in accordance with Policies 9 (Restoration of quarries and waste developments) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

2. The developer shall notify the Waste Planning Authority in writing within one month of the dates of commencement/completion of the following:
 - (i) entering new phase of tipping;
 - (ii) completion of each tipping phase;
 - (iii) completion of restoration of each tipping phase;
 - (iv) completion of the landscaping/planting scheme; and
 - (v) completion of final restoration.

Reason: To enable the Waste Planning Authority to control the development and to monitor the site to ensure compliance with the planning permission in accordance with the Hampshire Minerals and Waste Plan (2013).

3. The permission hereby granted shall be time limited. The extraction and tipping operations shall cease by 31 March 2029. The site shall be restored by 31 March 2031 in accordance with the approved scheme under Condition 44 (Restoration scheme) and shall be subject to aftercare as set out in Condition 50 (Aftercare).

Reason: To ensure restoration of the site within the approved timescale and in the interest of local amenity in accordance with Policies 9 (Restoration of quarries and waste developments) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Working Programme

4. Operations at the site shall be carried out in accordance with the Working Scheme as shown on approved plans Reception Area Layout (drawing

Lay/01), the Landfill and Restoration Phasing Plan 2018-2021 (drawing 1215/2062/26 rev 0), the Landfill and Restoration Phasing Plan 2021-2030 (drawing 1215/2062/27 rev 0) and the Surface Water Management Plan (drawing No. 2), and as defined in the approved Planning Statement (November 2018) and Supporting Statement (May 2007) including the Table 1 Sequence of Working Summary.

Reason: To ensure restoration of the site within the approved timescale and in the interest of local amenity in accordance with Policies 9 (Restoration of quarries and waste developments) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

5. From the commencement of the development to the cessation of the development hereby permitted, a copy of the terms of this planning permission including all documents hereby permitted and any documents subsequently approved in accordance with this permission (or amendments approved pursuant to this permission) shall be displayed at the office on the site and shall be made known to any person(s) given responsibility for the management or control of operations on site.

Reason: To enable an easy reference and to encourage compliance with the requirements of this permission (so as to ensure the orderly operation and restoration of the site) in accordance with the Hampshire Minerals and Waste Plan (2013).

Restriction of Permitted Development Rights

6. Notwithstanding the provisions of Parts 4, 21, 24 and 25 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order):
 - (i) fixed plant or machinery, buildings, structures and erections or private ways shall not be erected, extended, installed or replaced at the site without the prior agreement of the Waste Planning Authority in writing;
 - (ii) no additional lights or fences shall be installed or erected at the quarry/landfill unless details of them have first been submitted to and approved in writing by the Waste Planning Authority.

Reason: To secure control over additional plant and machinery in the interests of the amenity of the area, in view of its location close to Blue Haze Kennels and residential properties and the final level difference between existing and proposed levels, and bearing in mind the degree of discretion otherwise allowed by the General Permitted Development Order.

Hours of Working

5. No heavy goods vehicle shall enter or leave the site and no plant and machinery shall be operated except between the hours listed below:
- 0700 - 1800 Monday to Friday (except on recognised Public Holidays);
 - 0700 – 1630 Saturdays; and
 - For the receipt of domestic and household waste recycling centre waste only, 0800 – 1630 Sundays and Public Holidays including 25 and 26 December.

Reason: In the interest of local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

6. Notwithstanding Condition 7 (Operating times), The use of screening equipment of the site shall only occur between the following hours:
- 0800 - 1800 Monday to Friday;
 - 0900 – 1300 Saturdays; and
 - With no screening activities permitted on Sundays or Public Holidays.

Reason: In the interest of local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Tipping Limits and Finished Levels

9. The perimeter boundary of the tipping area and the boundary of the inert tipping phases with Category C waste phases shall be clearly defined on site and no waste shall be deposited outside those areas approved for that purpose. A survey of levels shall be carried out (and submitted to the Waste Planning Authority for its approval) at intervals of not less than every 12 months, starting with the date on which tipping operations commence.

Reason: To ensure the proper restoration of the site in accordance with the submitted plans and with Policy 9 (Restoration of quarries and waste developments) of the Hampshire Minerals and Waste Plan (2013).

7. As the operation approaches final fill levels and in any case before the final grading of cover and before the spreading of subsoil, the surface levels shall be checked by competent land surveyors. Thereupon markers shall be erected to indicate the approved final fill levels, approved restored surface level and any appropriate approved intermediate levels.

Reason: To ensure proper restoration of the site in accordance with Policy 9 (Restoration of quarries and waste developments) of the Hampshire Minerals and Waste Plan (2013).

Landfill Gas and Leachate Control

- 8 The location and details of the landfill gas and leachate control facilities shall be in accordance with the details approved 16 November 2005 and Drawings 331/GAS/0500, BGM-4999 and BGH-5055.

Reason: In the interest of local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Type of Waste

- 9 No waste shall be deposited at or imported into the site except those materials defined in the application, i.e. inert construction spoil, builders, demolition, commercial, industrial and household waste.

Reason: Waste materials outside these categories raise environmental and amenity issues which would require fresh consideration in accordance with Policies 3 (Protection of habitats and species), 10 (Protecting public health, safety and amenity) and 25 (Sustainable waste management) of the Hampshire Minerals and Waste Plan (2013).

- 10 No composting facility may be developed on the site until details on its siting, design, operation, including pollution control, management plan and ancillary development have been submitted to the Waste Planning Authority and subsequently approved.

Reason: No details have been submitted for composting and in the interests of local amenity and pollution control in accordance with Policies 3 (Protection of habitats and species), 10 (Protecting public health, safety and amenity) and 25 (Sustainable waste management) of the Hampshire Minerals and Waste Plan (2013).

Highways

14. The access road, all internal haul roads, parking, manoeuvring provision for vehicles, the site entrance and its access visibility splays, as shown on drawings Proposed Improvements to Site Access (54/5204, dated October 1996), Application Boundary Plan (LF-APP-01, dated November 2018) and Reception Area Layout (LAY-01, dated November 2018) shall be maintained in a condition free from potholes and obstructions throughout the implementation of the development hereby approved. Prior to completion of the restoration of the site as stated in Condition 3 (Completion date), or when no longer required during the operation of the site as hereby permitted, whichever is the sooner, they shall be removed and restored in accordance with the approved working scheme and restoration plan stated in Condition

44 (Restoration scheme), except where identified in the restoration scheme for retention as required for the restoration land use, access and maintenance.

Sections of haul road formed to a level higher than 1 metre below the final restoration level shall be removed before final soils are re-spread. All sections of haul road shall be ripped before being covered with soils during restoration.

Reason: In the interest of highway safety and to ensure that the site is satisfactorily restored in accordance with Policies 9 (Restoration of quarries and waste developments) and 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2013).

14. All access to and egress from the site shall be via the approved access off the B3081, Verwood Road, only. No other access shall be used. The approved road signs and markings shall be maintained for the duration of the development hereby permitted.

Reason: In the interest of highway safety in accordance with Policy 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2013).

15. The approved sign at the site exit advising drivers of the agreed vehicle routes shall be maintained for the duration of the development hereby permitted.

Reason: In the interest of highway safety and local amenity in accordance with Policies 10 (Protecting public health, safety and amenity) and 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2013).

16. Best practical means/steps shall be taken to ensure that all Heavy Goods Vehicles (HGVs) and plant vehicles associated with the development leaving the site are in such a condition as not to emit dust or deposit mud, slurry or other debris on the highway. In particular efficient means shall be installed and maintained for cleaning the wheels of all HGVs leaving the site for the duration of the development hereby permitted.

Reason: In the interest of highway safety and to prevent mud and dust on the public highway in accordance with Policy 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2013).

17. All goods vehicles entering and leaving the site shall be sheeted.

Reason: In the interest of preventing littering and so reducing pollution and local amenity impact in accordance with Policies 10 (Protecting public health,

safety and amenity) and 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2013).

18. There shall be no obstruction created to Bridleway No. 39 at any time and it should be ensured that the surface is not adversely affected by run-off from the landfill site or adjacent bunds.

Reason: In the interest of local amenity in accordance with Policy 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2013).

Nature Conservation

19. No tree felling shall take place during the bird nesting season 1 March to 1 September annually.

Reason: To protect nesting birds in accordance with Policy 3 (Protection of habitats and species) of the Hampshire Minerals and Waste Plan (2013).

20. No site clearance or soil stripping will be undertaken until it has been confirmed that all protected species as required by Natural England have been translocated with, if necessary, elements of their support habitat.

Reason: To protect rare species in accordance with Policy 3 (Protection of habitats and species) of the Hampshire Minerals and Waste Plan (2013).

21. The management for the reptile and amphibian receptor site for translocated species shall be implemented in accordance with the scheme approved in writing by the Waste Planning Authority on 29 December 2006 (06/88024). The monitoring of this scheme shall be undertaken by the developers to the satisfaction of the Waste Planning Authority.

Reason: To conserve protected species in accordance with Policy 3 (Protection of habitats and species) of the Hampshire Minerals and Waste Plan (2013).

22. The scheme for the protection of Sand Martins, approved 15 June 2000, shall be implemented for the duration of the permission hereby granted.

Reason: To ensure facilities for nesting of Sand Martins are suitably retained within the quarry area throughout the implementation of the development in accordance with Policy 3 (Protection of habitats and species) of the Hampshire Minerals and Waste Plan (2013).

Environmental enhancements

23. Within 3 months of the date of issue of this permission, an Environmental Compensation Scheme shall be submitted to and approved in writing by the Waste Planning Authority. This shall address Natural England's comments within their consultation response (reference 270944, dated March 2019) and the NPPF (2019) requirements for net biodiversity gain to compensate for the proposed 10 year delay in the delivery of ecological restoration. The proposals of the scheme shall be implemented within the set timescale.

Reason: In the interest of the protection and enhancement of the environment in accordance with Policies 3 (Protection of habitats and species) and 9 (Restoration of quarries and waste developments) of the Hampshire Minerals & Waste Plan (2013) and the NPPF (2019).

Dust, waste and odour

24. Within 3 months of the date of issue of this permission, a revised Site Management Scheme for Dust shall be submitted to and approved in writing by the Waste Planning Authority. The scheme shall be implemented for the duration of the permission hereby granted.

Reason: To protect public health and residential amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

25. Within 3 months of the date of issue of this permission, a revised Site Management Scheme for Odour shall be submitted to and approved in writing by the Waste Planning Authority. The scheme shall be implemented for the duration of the permission hereby granted.

Reason: To protect public health and residential amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

26. Within 3 months of the date of issue of this permission, a Site Management Scheme for Litter shall be submitted to and approved in writing by the Waste Planning Authority. This scheme shall consider the issues of litter derived from the site's activities, including wind-blown litter, on the public highway (particularly the B3081), on the landfill site and on other sites neighbouring the landfill. The scheme shall be implemented for the duration of the permission hereby granted.

Reason: To protect the environment and public health and residential amenity in accordance with Policies 3 (Protection of habitats and species)

and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Animal Control

27. The bird management scheme, approved 15 June 2000 under Planning Permission No. 00060405M, shall be implemented for the duration of the development hereby permitted and updated as required.

Reason: To protect public health and residential amenity and to help prevent bird hazard within the aircraft approach to Bournemouth Airport in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

28. Inspection on a regular basis or as otherwise required by the Waste Planning Authority shall be undertaken by the site operator to determine if the site is being used for the harbouring or breeding of vermin or insects. Action shall be taken to eradicate vermin or insects if they are found on the site. A written record of inspections shall be kept.

Reason: In the interest of local amenity in accordance with Policies 3 (Protection of habitats and species) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Lighting

29. Within 3 months of the date of issue of this permission, a Site Management Scheme for Lighting shall be submitted to and approved in writing by the Waste Planning Authority. The scheme shall cover all external lighting and its use on the landfill site and be implemented for the duration of the permission hereby granted.

Reason: To protect public health and residential amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Noise

30. Within 3 months of the date of issue of this permission, a revised Site Management Scheme for Noise shall be submitted to and approved in writing by the Waste Planning Authority. The scheme shall include revised noise monitoring procedures and a revised scheme for the acoustic protection of Blue Haze Kennels. The scheme shall be implemented for the duration of the permission hereby granted.

Reason: To protect public health and residential amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

31. All screen bunds shall be such that the outward facing slopes shall not exceed a gradient of 1 in 3 and the tops of the mound shall be undulating. Mounds shall be seeded to grass or a grass/shrub mixture and thereafter maintained throughout the operational life of this permission.

Reason: To reduce the impact of the development on the locality and avoid an engineered appearance of the bunds that would be out of keeping with the rural locality in accordance with Policies 5 (Protection of the countryside), 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals and Waste Plan (2013).

32. Noise from operations on the site, including both fixed plant and mobile machinery, shall not exceed 55dB(A) LAeq, 1 hour (freefield) as measured at the façade of the nearest houses. The operator shall take such measures, including insulation of plant and machinery, and the provision of suitable acoustic screening, as may be necessary to ensure that this noise level is not exceeded.

Reason: To safeguard the amenity of the area in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Protection of the Water Environment

33. Drainage and surface water run-off of the site, including that of adjacent areas dependent on the area for their own drainage, shall be carried out in accordance with the scheme approved in writing by the Waste Planning Authority on 29 December 2006 (under planning permission 06/88024) and shall be implemented as approved for the duration of the permission hereby granted.

Reason: To ensure adequate drainage of the site, the protection of the hydrology of the watercourse and prevent landscape damage arising from consequential engineering works in accordance with Policies 10 (Protecting public health, safety and amenity) and 11 (Flood risk and prevention) of the Hampshire Minerals and Waste Plan (2013).

Landscape

34. All storage bunds above ground level intended to remain in situ for more than 6 months shall be grassed over/vegetated, and subsequently maintained, including weed control for their duration.

Reason: To reduce the impact of the development on the locality in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals and Waste Plan (2013).

35. Landscaping of the site shall be implemented in accordance with the scheme approved in writing by the Waste Planning Authority on 29 December 2006 (under planning permission 06/88024).

Reason: The provision and maintenance of a satisfactory degree of landscaping is considered essential in the interest of visual amenity in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals and Waste Plan (2013).

36. The approved scheme of landscaping and restoration of areas, other than commercial pine plantation afforested on non-inert waste, shall be carried out in the planting season coinciding with or immediately following preparation of each phase for planting, in accordance with the programme of implementation approved in Condition 4 (Working Programme), and shall be so maintained thereafter. Within 5 years of planting, any trees, shrubs or other plants that die, become diseased, are removed or damaged, shall be replaced in the first available planting season with others of a similar size and species in accordance with the details of the approved scheme. Commercial pine trees on the areas tipped with non-inert waste shall be planted in or by the second planting season following restoration to allow for settlement of land and gas plant/pipeline installation. Early screen planting of commercial pine on inert waste shall be covered by Condition 37 (Screen planting scheme).

Reason: The provision and maintenance of a satisfactory degree of landscaping is considered essential in the interest of visual amenity in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals and Waste Plan (2013).

37. Screen planting scheme shall be implemented and maintained for the duration set out in the approved screen planting scheme.

Reason: In the interest of local amenity in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of

minerals and waste development) of the Hampshire Minerals and Waste Plan (2013).

38. Fencing erected to protect existing trees and features of interest on the site, such as the edges of parts of the wildlife corridor, shall be carried out and maintained for the duration of the permission hereby granted in accordance with the details approved 15 June 2000 (under planning permission 00060405M).

Reason: In the interest of local amenity in accordance with Policy 13 (High-quality design of minerals and waste development) of the Hampshire Minerals and Waste Plan (2013).

39. The existing trees, bushes and hedges to be retained within the site shall be protected for the duration of the development hereby permitted and shall not be damaged, destroyed, uprooted, felled, lopped or topped. Any such trees removed without permission or dying or being seriously damaged or diseased during that period shall be replaced in the following planting season with trees of such size and species as may be approved with the Waste Planning Authority.

Reason: In order to safeguard the visual amenity of the area in accordance with Policy 13 (High-quality design of minerals and waste development) of the Hampshire Minerals and Waste Plan (2013).

40. Any skips stored on the land shall be incidental to the landfilling of the site and shall be confined to an area and stored to a height which shall have previously been approved in writing by the Waste Planning Authority.

Reason: In the interest of visual amenity in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals and Waste Plan (2013).

Soil Stripping and Storage

41. All topsoil, subsoil and overburdens stripped prior to tipping shall be stored separately and retained on site for use in site restoration. No indigenous topsoil or subsoil shall be used for daily cover during tipping operations.

Reason: All soils are required on site to ensure a satisfactory restoration of the site in accordance with Policy 8 (Protection of soils) of the Hampshire Minerals and Waste Plan (2013).

42. All work of soil stripping, stockpiling and reinstatement should only be carried out when the material is in a dry and friable condition, and then only along clearly defined routes, both when being moved to storage locations and to final surface position. Topsoil and subsoil shall be transported, and not bladed from a stockpile to position of placement or vice versa.

Reason: To minimise structural damage and compaction of the soil and to aid the final restoration of the site in accordance with Policy 8 (Protection of soils) of the Hampshire Minerals and Waste Plan (2013).

43. Bunds for the storage of soils and soil-like material (ie sands) to be used for restoration to forestry shall confirm to the following criteria:
- (i) Topsoils, subsoils and subsoil substitutes shall be stored separately in the areas shown on the working plan approved under Condition 4 (Working Programme);
 - (ii) Where continuous bunds are used, dissimilar soils shall be separated by a third material, previously approved in writing by the Waste Planning Authority;
 - (iii) Topsoil bunds shall not exceed three metres in height and subsoil (or subsoil substitutes) shall not exceed five metres in height and overburden shall not exceed five metres in height (except where stored below the quarry base, the height of which is to be agreed in writing by the Waste Planning Authority before storage takes place); and
 - (iv) Materials shall be stored like upon like, so that topsoil shall be stripped from beneath subsoil bunds and subsoil from beneath overburden bunds.

Reason: To ensure the retention of the existing soils on the site for restoration purposes and minimise the impact of the development on the locality in accordance with Policy 8 (Protection of soils) of the Hampshire Minerals and Waste Plan (2013).

Restoration

44. The restoration of the site to commercial forestry, heathland edges and a wildlife corridor shall be implemented in accordance with the final landform and scheme of pre and post settlement levels shown on the Landscape Scheme (Pre Settlement Landform) (Drawing No. 1, dated June 2006). The scheme includes a 100 metre minimum stand-off tipping zone from Blue Haze kennels and adjacent cottages.

Reason: To ensure proper restoration of the site in accordance with Policy 9 (Restoration of quarries and waste developments) of the Hampshire Minerals and Waste Plan (2013).

45. The site shall be progressively restored to forestry, nature conservation and amenity (public access) uses in accordance with the approved scheme dated 29 December 2006 (06/88024) and the revised working and restoration phasing plans and timetable stated in Conditions 1 (timescale) and (Working Programme). This includes the outer slopes of the cells formally identified as Phases A-C being temporarily soiled and seeded to reduce the visual impact of the unvegetated slopes prior to final restoration of tree planting taking place.

Reason: To ensure that the site is restored in an orderly manner to a condition capable of beneficial after use and in the interests of amenity of local residents in accordance with Policy 9 (Restoration of quarries and waste developments) of the Hampshire Minerals and Waste Plan (2013).

46. The progressive restoration scheme shall be implemented upon cessation of waste disposal operations in each phase of the development and each area (cell) shall be restored to the after-use specified. Likewise, all areas of hardstanding, not marked on the scheme of working to be retained post-completion of restoration, including site compounds, access and haul roads shall also be removed and restored to the specified after use.

Reason: To ensure that the site is restored in an orderly manner to a condition capable of beneficial after use and in the interests of the amenity of local residents in accordance with Policy 9 (Restoration of quarries and waste developments) of the Hampshire Minerals and Waste Plan (2013).

47. Unless otherwise agreed in writing by the Waste Planning Authority by way of Condition 44 (Phased restoration), on those parts of the site where inert waste only has been tipped, the uppermost two metres of tipped waste materials shall be free from any large solid objects and shall both be graded in accordance with the final tipping levels hereby approved, and shall be ripped using appropriate machinery to a minimum depth of 600 millimetres; and on those parts of the site where non-inert waste has been tipped, the tipped waste shall be capped in accordance with the Waste Management Licence prior to the area being restored to approved plans and details.

Reason: To ensure that the site is satisfactorily restored in accordance with Policy 9 (Restoration of quarries and waste developments) of the Hampshire Minerals and Waste Plan (2013).

48. In the event the Waste Planning Authority advises the operator that non-inert tipping is unacceptable in any cell, an alternative scheme for restoring it (remedial measures) shall be submitted within 3 months to the Waste Planning Authority and implemented within 12 months as approved.

Reason: To enable the Waste Planning Authority to adequately control the development and ensure that the land is restored to a condition capable of beneficial use in accordance with Policy 9 (Restoration of quarries and waste developments) of the Hampshire Minerals and Waste Plan (2013).

49. In the event of a cessation of delivery of waste to the site, prior to the completion of the approved restoration scheme, which the Waste Planning Authority considers permanent cessation, a restoration scheme, to include details of aftercare, shall be submitted in writing for approval to the Waste Planning Authority within 6 months of the cessation of importations. The approved scheme shall be implemented within 3 months of the written approval.

Reason: To enable the Waste Planning Authority to adequately control the development and ensure that the land is restored to a condition capable of beneficial use in accordance with Policy 9 (Restoration of quarries and waste developments) of the Hampshire Minerals and Waste Plan (2013).

Aftercare

50. Aftercare of each restored area (cell) of land shall take place for a period of 5 years commencing when the area (cell) is sign off as restored by the Waste Planning Authority. Aftercare shall be carried out in accordance with the approved Aftercare Scheme to bring each phase of the land restored under Condition 44 (Restoration) to the required standard for use for forestry, nature conservation and amenity.

The future felling regime and provision for annual site meetings during the aftercare period to discuss the detailed steps necessary on the restored land shall be carried out in accordance with the approved Aftercare Scheme.

Reason: To ensure the restored land is correctly husbanded in accordance with Policy 9 (Restoration of quarries and waste developments) of the Hampshire Minerals and Waste Plan (2013).

Plans

51. The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing No. 1, Drawing No. 2, Lay-01, 1215/2062/26 rev 0, 1215/2062/27 rev 0, 331/GAS/0500, BGM-4999, BGH-5055, 54/5204, LF-APP-01.

Reason: For the avoidance of doubt and in the interests of proper planning.

Notes to applicant

- 11 In determining this planning application, the Waste Planning Authority has worked with the applicant in a positive and proactive manner in accordance with the requirement in the National Planning Policy Framework (2019), as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.
- 12 For the purposes of matters relating to this decision Heavy Goods Vehicles (HGVs) are defined as vehicles over 3.5 tonne un-laden.
- 13 The following legal agreements are attached to this permission:
 - (i) Lorry routing agreement restricting the use of Harbridge drove and the B3081 northwards, except for local deliveries.
 - (ii) Management Agreement for Nature Conservation and the provision of footpaths/access for public recreation.
 - (iii) Section 106 Agreement relating to off-site heathland within Plumley Wood.
- 14 A Waste Management Licence and Pollution Prevention and Control Licence is required from the Environment Agency before any development is commenced on site. The issuing of any such Licence is dependent upon a satisfactory Risk Assessment which in this case will need to address the impacts of the development on issues such as groundwater and the adjacent SSSI.
- 15 The operator should be aware they are responsible for littering caused by waste from this site, resulting in any manner such as being wind-blown or falling from Goods vehicles travelling to and from the site. It is acknowledged that the opportunities to clean up of litter on public highways is limited, but the operator should take all reasonable and necessary measures to prevent litter and to collect and dispose of any that does occur, on or off their site.
- 16 This decision does not purport or convey any approval or consent which may be required under the Building Regulations or any other Acts, including Byelaws, orders or Regulations made under such acts.

Integral Appendix C – Conditions for planning permission 19/10064

CONDITIONS

Ancillary Development

1. The development hereby approved shall only be used for purposes ancillary to Planning Permission 19/10066, or any subsequent primary planning permission that supersedes 19/10066 on the site, and shall be implemented, operated and restored in accordance with all the conditions applying to such permission for the duration of the development.

Reason: To ensure that the development is consistent with the use of the land as approved by the permission above.

Timescale

2. The use of the Waste Transfer Station hereby permitted shall cease by 31 March 2030, or within 1 year of the cessation of tipping at the Blue Haze Landfill Site, whichever is the sooner. Within 6 months of cessation of use, all waste, plant and equipment, the building, foundations, hardstandings, weighbridge and structures shall be removed and the site restored in accordance with Planning Permission 19/10066, or any subsequent primary planning permission that supersedes 19/10066 on the site.

Reason: To ensure restoration of a temporary development site within the approved timescale and in the interest of local amenity in accordance with Policies 9 (Restoration of quarries and waste developments) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Restriction of Working

3. The use of the Waste Transfer Station on Sundays and Public holidays shall be restricted to domestic and household waste recycling centre waste only, and lorry movements on these days shall be restricted to 80 per day (ie 40 in and 40 out).

Reason: In the interest of local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Nature Conservation

4. The reptile-proof fencing installed prior to commencement in accordance with the approved scheme shall be maintained for the duration of the development hereby approved.

Reason: In order to ensure no harm to protected species in accordance with Policy 3 (Protection of habitats and species) of the Hampshire Minerals and Waste Plan (2013).

Waste Tipping

5. All tipping of waste and loading of waste shall take place within the waste transfer station and netted area, and waste shall only be stored within the transfer bays, as shown on Drawing No.2.

Reason: In the interest of local amenity and good practice in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals and Waste Plan (2013).

Groundwater Protection

6. The drainage scheme and concrete pad approved by the Waste Planning Authority shall be maintained for the duration of the development hereby approved.

Reason: To mitigate impact on the underlying Branksome sand formation, a secondary aquifer, as defined by the Environment Agency's 'Groundwater Protection: Policy and Practice' (GP3) in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Materials

7. The building approved by way of the Plan and Elevations drawing (Drawing No. 3, dated April 2007) shall be implemented in accordance with this approved drawing and in accordance with the details approved by the Waste Planning Authority with regards to colour and texture of external construction materials and shall be maintained for the duration of the development hereby approved.

Reason: To minimise any visual impact created by the building in this rural area in accordance with Policy 13 (High-quality design of minerals and waste development) of the Hampshire Minerals and Waste Plan (2013).

Lighting

8. The approved lighting scheme shall be implemented and maintained for the duration of the development hereby permitted. No additional lighting shall be added without prior approval from the Waste Planning Authority.

Reason: In the interest of local amenities, light pollution and nature conservation with respect to the Ringwood Forest Site of Importance for Nature Conservation in accordance with Policies 3 (Protection of habitats and species) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Plans

9. The development hereby permitted shall be carried out in accordance with the following approved plans:

WTS-APP-01 rev 0, Drawing No. 2, Drawing No. 3, Drawing No. 4.

Reason: For the avoidance of doubt and in the interests of proper planning.

Notes to Applicant

1. In determining this planning application, the Waste Planning Authority has worked with the applicant in a positive and proactive manner in accordance with the requirement in the National Planning Policy Framework (2019), as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.
- 17 For the purposes of matters relating to this decision Heavy Goods Vehicles (HGVs) are defined as vehicles over 3.5 tonne un-laden.
- 18 This decision does not purport or convey any approval or consent which may be required under the Building Regulations or any other Acts, including Byelaws, orders or Regulations made under such acts.

Integral Appendix D – Conditions for Planning Permission 19/10063

CONDITIONS

Ancillary Development

1. The development hereby approved shall only be used for purposes ancillary to Planning Permission 19/10066, or any subsequent primary planning permission that supersedes 19/10066 on the site, and shall be implemented, operated and restored in accordance with all the conditions applying to such permission for the duration of the development.

Reason: To ensure that the development is consistent with the use of the land as approved by the permission above.

Timescale

2. The development hereby permitted including gas engines and leachate tanks shall cease by 31 March 2040. Within 6 months of cessation of the use, all components of the development; plant, engines, equipment, leachate tanks, foundations, hardstandings, and structures shall be removed and the site restored in accordance with Planning Permission 19/10066, or any subsequent primary planning permission that supersedes 19/10066 on the site.

Reason: To ensure restoration of a temporary development site within the approved timescale and in the interest of local amenity in accordance with Policies 9 (Restoration of quarries and waste developments) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Noise

3. The development hereby permitted shall be operated and maintained in accordance with the approved scheme set out in the approved Blue Haze Gas Utilisation Plant Noise Assessment (SLR report 401.0156.00060.v2, dated June 2009). In accordance with the approved scheme, the rating level of the noise emitted from the development shall be at least 10dB lower than the existing background level at the boundary of the nearest noise sensitive properties.

Reason : To protect nearby residential properties from adverse noise impacts in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

4. The noise levels specified in the approved scheme outlined in Condition 3 (Noise), shall be monitored after one month of the gas engines being commissioned and thereafter annually, and the results forwarded to the Waste Planning Authority for analysis.

Reason: To ensure compliance with Condition 3 (Noise emissions) in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

5. The specification, colouring, and location of acoustic fencing and colour and non- reflective finish of the gas plant and vents shall be implemented, maintained and retained for the duration of the development hereby approved in accordance with the approved Additional Data (N Truman Veolia, dated January 2010) and the Site Layout Plan (drawing LAY-01).

Reason: In the interests of visual and noise amenity in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals and Waste Plan (2013).

Layout

6. The site shall be set out and maintained in accordance with the Proposed Compound Layout Plan (Drawing 3 rev 0, dated December 2006).

Reason: To ensure the efficient operation of the site and the existing waste transfer station and in the interest of local amenities in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals and Waste Plan (2013).

7. The gas engines shall be constructed on site in accordance with the approved General Arrangement (drawing 1200-GA-1047 Rev A) and the Carbon Filter Section Drawings (drawing 3217-BLUE/GAS/010 rev 0).

Reason: In the interest of local amenities in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Protection of Water Environment

8. The site subject of this permission shall be underlain by impervious hard-standing with dedicated drainage to foul sewer or sealed tank. This shall be maintained for the duration of the development hereby approved.

Reason: To prevent pollution of the water environment in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

9. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The bund capacity shall give 110% of the total volume for single and hydraulically linked tanks. If there is multiple tankage, the bund capacity shall be 110% of the largest tank or 25% of the total capacity of all tanks, whichever is the greatest. All filling points, vents, gauges and sight glasses and overflow pipes shall be located within the bund. There shall be no outlet connecting the bund to any drain, sewer or watercourse or discharging onto the ground. Associated pipework shall be located above ground where possible and protected from accidental damage.

Reason: To prevent pollution of the water environment in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Lighting

10. No lighting shall be erected on the site relating to this permission.

Reason: In the interest of local amenities, light pollution and nature conservation with respect to the Ringwood Forest Site of Importance for Nature Conservation in accordance with Policies 3 (Protection of habitats and species) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Landscape

11. No work shall be carried out within the crown spread of any existing trees on the western site boundaries which comprise part of Ringwood Forest Site of Importance for Nature Conservation (SINC), nor shall any damage occur to the herpetological fencing that exists along part of the western site boundary. No materials shall be stored nor shall any plant or equipment associated with this permission be located within the spread of trees within the SINC.

Reason: To protect the health and stability and the nature conservation value of the Ringwood Forest SINC and the herpetological protection area in accordance with Policy 3 (Protection of habitats and species) of the Hampshire Minerals and Waste Plan (2013).

Plans

12. The development hereby permitted shall be carried out in accordance with the following approved plans:

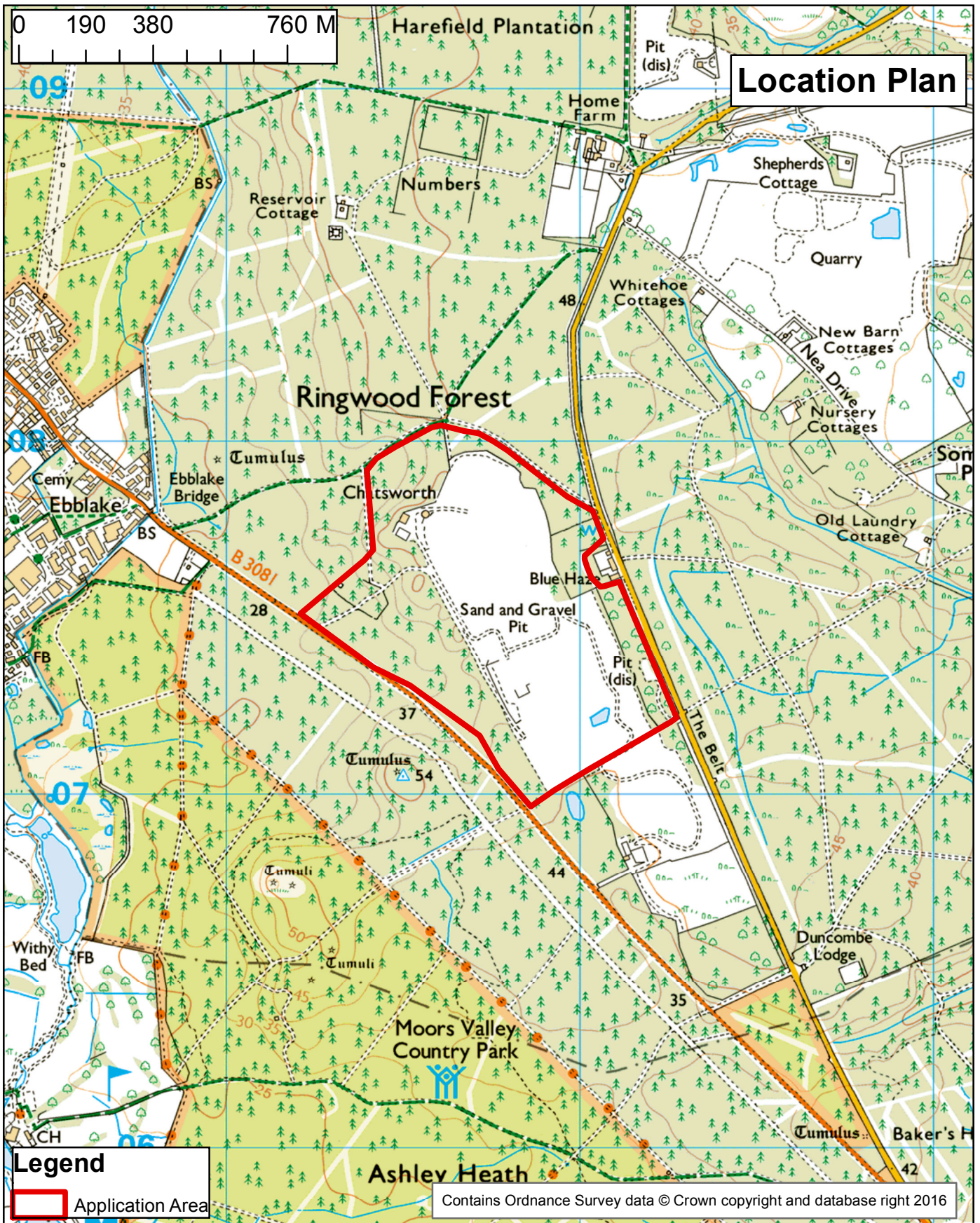
GUP-APP-01 rev 0, 3217-BLUE/GAS/010 rev 0, 1200-GA-1047 rev A, Drawing No.3 rev 0, LAY-01.

Reason: For the avoidance of doubt and in the interests of proper planning.

Notes to Applicant

1. In determining this planning application, the Waste Planning Authority has worked with the applicant in a positive and proactive manner in accordance with the requirement in the National Planning Policy Framework (2019), as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.
- 19 For the purposes of matters relating to this decision Heavy Goods Vehicles (HGVs) are defined as vehicles over 3.5 tonne un-laden.
- 20 This decision does not purport or convey any approval or consent which may be required under the Building Regulations or any other Acts, including Byelaws, orders or Regulations made under such acts.

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REGULATORY COMMITTEE

Blue Haze Landfill Site, Verwood, Road Somerley BH24 3QE

DATE: 17 April 2019

APPLICATION NUMBERS: 19/10066, 19/10064, 19/10063

1:15,000



SITE REFERENCE: NF105

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Drawn by: Strategic Planning

Economy, Transport and Environment

Hampshire County Council

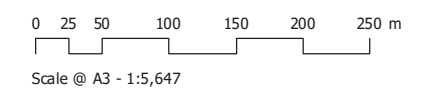



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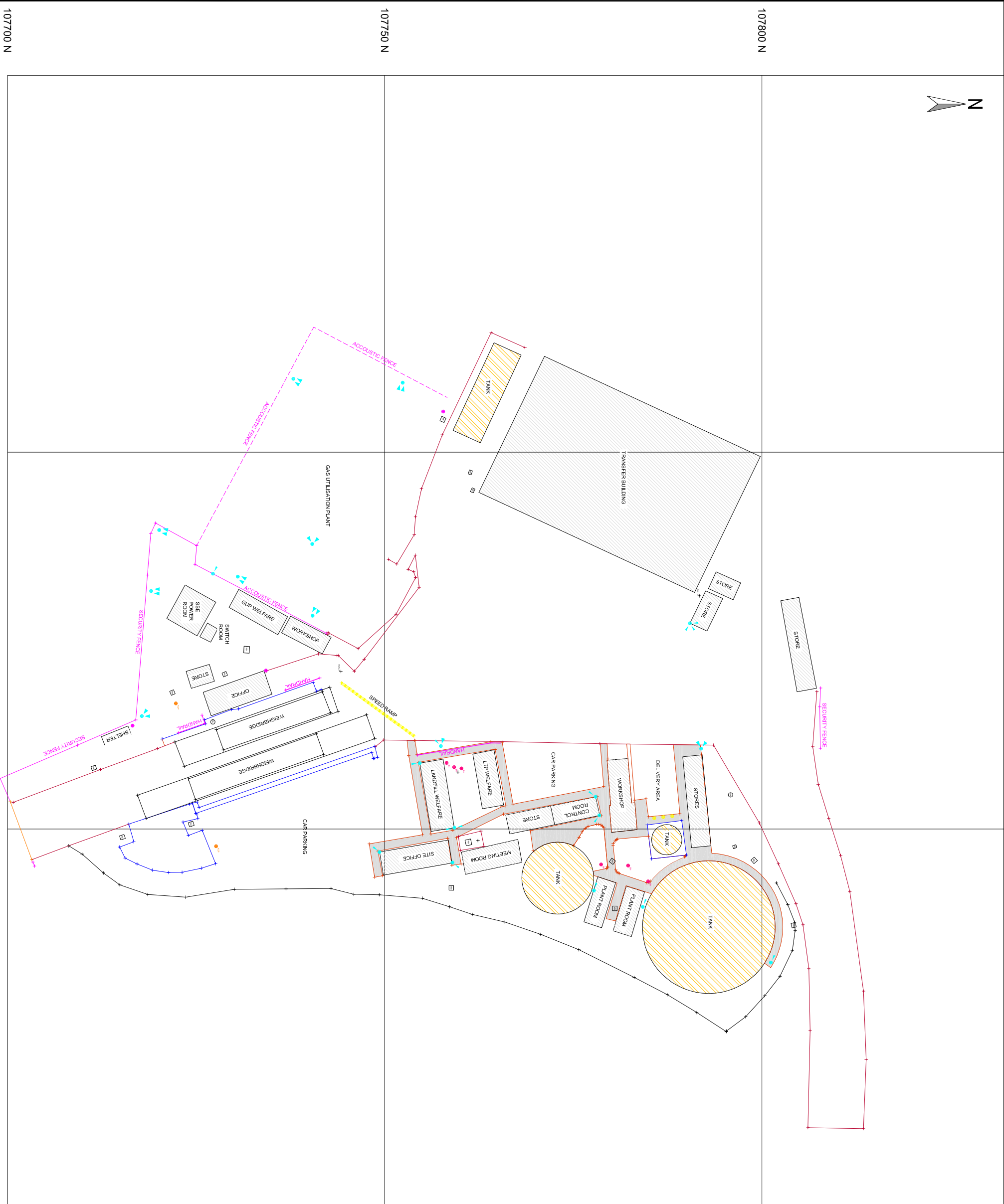


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- Key**
-  Planning permission No. 15/10979
 -  Planning permission No. 12/98419
 -  Planning permission No. 11/97613
 -  Planning permission No. 08/92516
 -  Planning permission No. 07/90183



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KEY:
 LIGHTING COLUMN WITH LAMP DIRECTION

- NOTE:**
1. SITE SURVEYED USING TRIMBLER10 GNSS EQUIPMENT
 2. SITE ORIENTATED TO OS GRID AND DATUM USING ACTIVE STATION RINEX DATA
 3. ADDITIONAL SURVEY INFORMATION AVAILABLE WITHIN ELECTRONIC DRAWING STRUCTURE



REV	DESCRIPTION	BY	CHK	APP	DATE
THE PAVILION, 1ST FLOOR BOTTLEIGH GRANGE OFFICE CAMPUS HEDGE END, SOUTHAMPTON HAMPSHIRE SO30 2AF TEL: +44 (0)23 8202 2800 FAX: +44 (0)23 8202 2889 e-mail: waste.enquiries@wvvg.com					

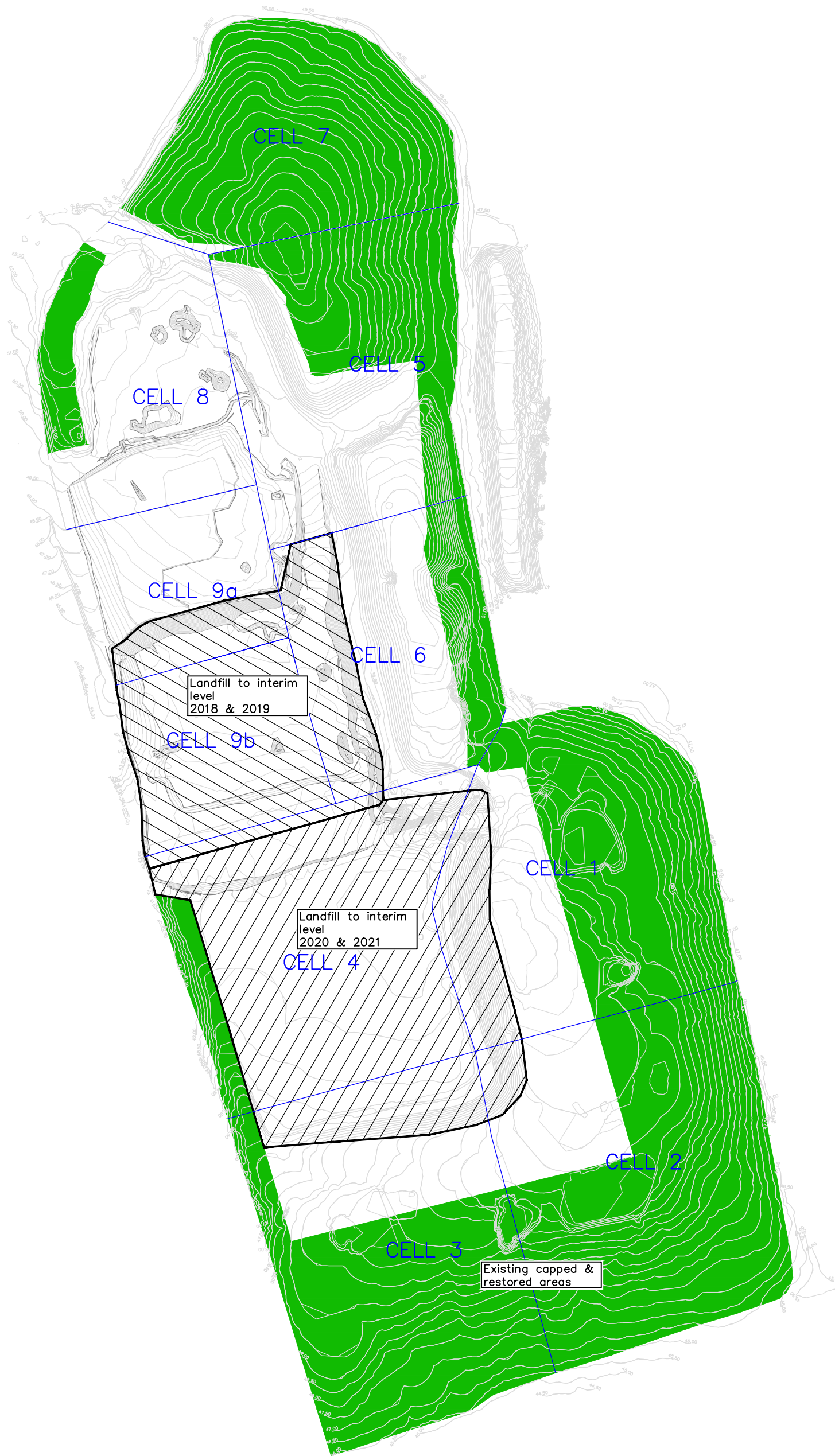
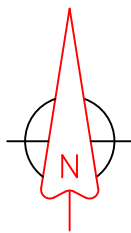



Client: **VEOLIA ES (LANDFILL) LTD**
 Project: **BLUE HAZE**

Drawing Title: **RECEPTION AREA LAYOUT**
 AS AT OCTOBER 2018

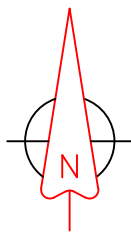
Office	Project No.	Drawing No.	Issue	Revision	Scale @
8146	LAY-01	FINAL			1:500
Drawn	Date:	Approved	Date:		
DIE	17-10-18	SA	16-11-18		

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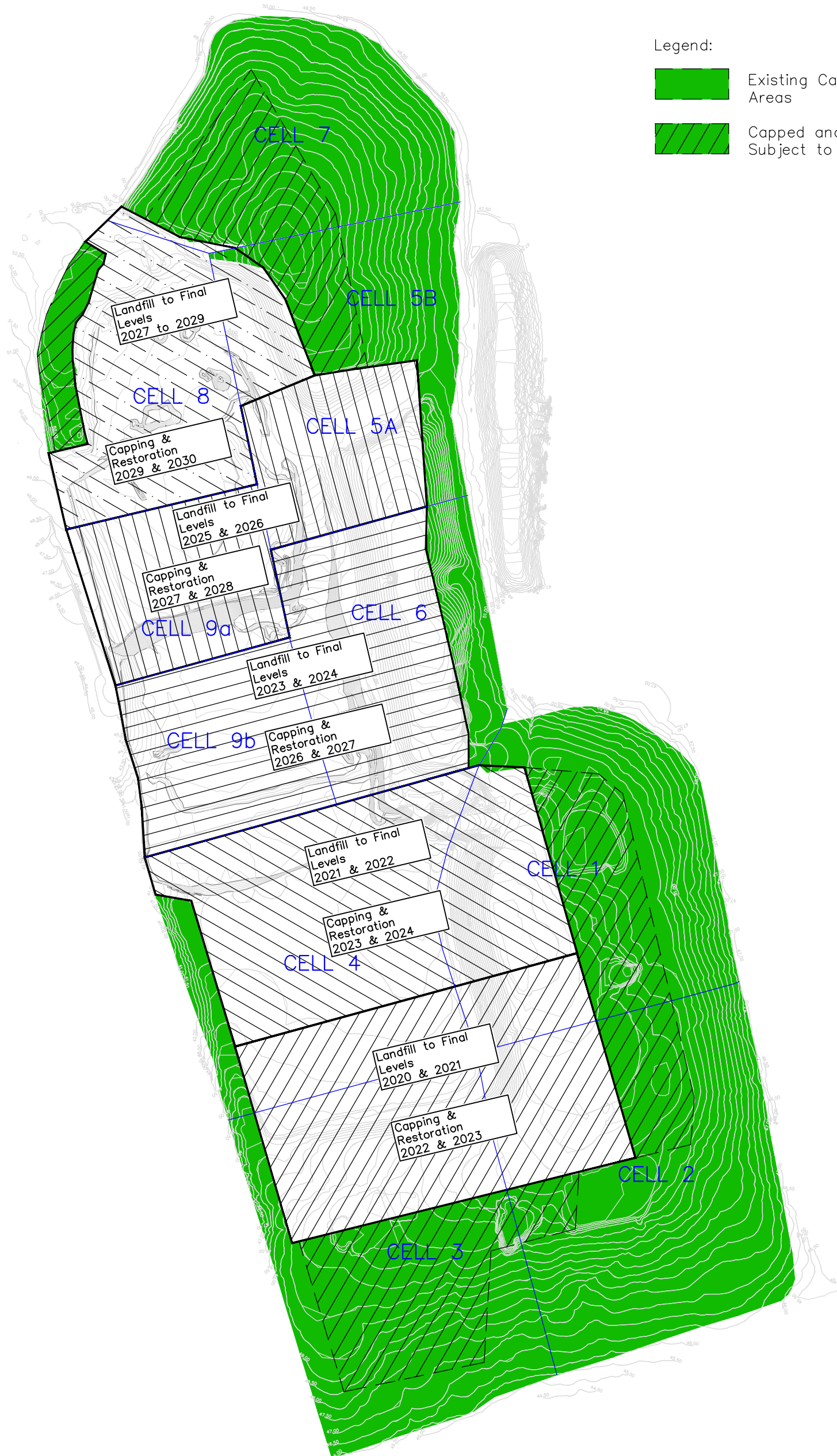
 your surveying solution Rainsborough Barns Charlton Banbury, Oxon OX17 3DT	client	Veolia		
	project	Blue Haze Landfill Landfill and Restoration Phasing Plan 2018 to 2021		
	drawing no.	Drawn	Date	Scale
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Legend:

- Existing Capped and Restored Areas
- Capped and Restored Areas Subject to Remediation



 your surveying solution Rainsborough Barns Charlton Banbury, Oxon OX17 3DT	client Veolia			
	project Blue Haze Landfill Landfill and Restoration Phasing Plan 2021 to 2030			
	drawing no. 1215/2062/27	Drawn JG	Date Mar 2018	Scale 1:3000@A3

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HAMPSHIRE COUNTY COUNCIL Decision Report

Decision Maker:	Regulatory Committee
Date:	17 April 2019
Title:	Variation of condition 3 of planning permission S/11/68998 to amend the operating hours for the site until 23:00 on weekdays at Veolia WTS, Portsmouth Road, Netley Southampton SO31 8GD (No. CS/19/85002) (Site Ref: EA027)
Report From:	Head of Strategic Planning

Contact name: Amy Dales

Tel: 01962 845461

Email: Amy.Dales@Hants.gov.uk

1. Recommendation

- 1.1. That planning permission be GRANTED subject to the conditions listed in integral appendix B.

2. Executive Summary

- 2.1. The planning application is for the variation of condition 3 of planning permission S/11/68998 at Netley Waste Transfer Station.
- 2.2. This application is being considered by the Regulatory Committee at the request of the Local Member, Councillor House.
- 2.3. The key issues raised are the potential noise impacts from later opening hours and impact of HGV movements in the extended period on highway safety and capacity.
- 2.4. A committee site visit by Members took place on 8 April 2019 in advance of the proposal being considered by the Regulatory Committee.
- 2.5. The proposed development is not an Environmental Impact Assessment development under the Town & Country Planning (Environmental Impact Assessment) Regulations 2017.
- 2.6. Having regard to the submitted information and the consultee responses, it is considered that the proposal would not have an unacceptable impact on local amenity or highway safety and capacity and as such would be in accordance with the relevant policies of the Hampshire Minerals and Waste Plan (2013).
- 2.7. It is therefore recommended that planning permission be granted subject to the conditions listed in integral Appendix B.

3. The Site

- 3.1. Netley Waste Transfer Station occupies 0.6 hectares of land approximately 800 metres to the north of the village of Netley and to the west of Bursledon, on the former Netley landfill which is a Site of Importance for Nature Conservation (SINC).
- 3.2. The nearest residential properties are over 400 metres to the north east on Portsmouth Road, and 260 metres to the west on The Grove. There is established vegetation and trees to the south east and north west boundaries of the site providing screening.
- 3.3. It is bound by the A3025 (Portsmouth Road) to the north, which is also the main access in and out of the site. It is also located approximately 2km away from the M27, which is part of the [Strategic Road Network](#).

4. Planning History

- 4.1. The planning history of the site is as follows:

Application No	Location	Proposal	Date Issued
S/11/68998	Netley WTS, Portsmouth Road, Netley, Hampshire, SO31 8GD.	To allow the retention and continued operation of Netley Waste Transfer Station (and associated development) for a further period of time	21/06/2011
S/06/57252	Netley WTS, Portsmouth Road, Netley, Hampshire, SO31 8GD.	To allow the retention and continued operation of Netley Waste Transfer Station (and associated development) for a further period of time	31/07/2006

- 4.2. The waste transfer station lies within a former landfill site which has been completed and restored to woodland and grassland.
- 4.3. The site is identified as a safeguarded site for waste transfer in the adopted Hampshire Minerals and Waste Plan (2013).

5. The Proposal

- 5.1. The proposal is for the variation of condition 3 of planning permission S/11/68998 to extend the operating hours of the site to 2300 during weekdays. The current permission allows for operations up to 6:00pm.
- 5.2. The proposal would allow a maximum of 10 loads of residual waste and dry recyclables to be bulked and loaded onto waste vehicles to be transported off site during the extended time period.

- 5.3. This will mean approximately 20 vehicle movements per day accessing and egressing the site between the hours of 1800 and 2300 Monday to Fridays. It will enable vehicle movements to be spread throughout the day, outside peak hours of travel in order to save travel time and reduce congestion.
- 5.4. The applicant proposes that the throughput of the site will remain the same and as such there will be no increase in the total amount of vehicle movements currently going to and from the site.
- 5.5. Existing lighting is proposed to be used to maintain safe operation of the site for the extended hours.
- 5.6. The proposed development has been assessed under the [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#). Screening under the EIA Regulations has been carried out on the proposed development as submitted. The development is classified as a Schedule 2 development as it falls within Category 11, (b) and exceeds the size threshold. However, whilst being identified under the Regulations, the nature of the proposal, the site and its surroundings are such that it is not deemed an EIA development requiring an Environmental Statement.

6. Development Plan and Guidance

- 6.1 The following plans and associated policies are considered to be relevant to the proposal:

National Planning Policy Framework (2018) (NPPF)

- 6.2 The following paragraphs are relevant to this proposal:
 - Paragraph 11: Presumption in favour of sustainable development;
 - Paragraph 80: Support of sustainable economic growth;
 - Paragraph 102-103: Sustainable transport;

National Planning Policy for Waste (2014) (NPPW)

- 6.3 The following paragraphs are relevant to the proposal:
 - Paragraph 1: Delivery of sustainable development and resource efficiency; and
 - Paragraph 7: Determining planning applications.

National Waste Planning Practice Guidance (NWPPG)

- 6.4 The following paragraphs are relevant to the proposal:
 - Paragraph 0050: (Planning and regulation).

[Hampshire Minerals & Waste Plan \(2013\)](#) (HMWP)

- 6.5 The following policies are relevant to the proposal:
- Policy 1 (Sustainable minerals and waste development);
 - Policy 3 (Protection of habitats and species);
 - Policy 10 (Protecting public health, safety and amenity);
 - Policy 12 (Managing traffic);
 - Policy 25 (Sustainable waste management);

7. Consultations

- 7.1 **County Councillor House:** Has objection due to potential noise impacts.
- 7.2 **Eastleigh Borough Council:** Was notified.
- 7.3 **Eastleigh Borough Council Environmental Health Officer (EHO):** Has no objection.
- 7.4 **Hound Parish Council:** Has objection due to noise generated by traffic movements.
- 7.5 **Natural England:** Has no objection.
- 7.6 **Local Highway Authority:** Has no objection.
- 7.7 **Hamble-Le Rice Parish Council:** Has objection due to noise generated by traffic movements.
- 7.8 **County Ecologist:** Has no objection.

8. Representations

- 8.1 Hampshire County Council's [Statement of Community Involvement \(2017\)](#) (SCI) sets out the adopted consultation and publicity procedures associated with determining planning applications.
- 8.2 In complying with the requirements of the SCI, Hampshire County Council:
- Published a notice of the application in the [Hampshire Independent](#);
 - Placed notices of the application at the application site and local area, extending the period of neighbour consultation;
 - Consulted all statutory and non-statutory consultees in accordance with [The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#); and
 - Notified by letter nearby residential properties.
- 8.3 As of 1 April 2019, one representation objecting to the proposal has been received. The main areas of concern raised in the objections related to the following areas:

- Noise impacts; and
- Highway safety.

8.4 The above issues will be discussed and addressed primarily within the following commentary, except where identified as not being relevant to the decision or included as a factual record for clarification.

9. Commentary

Principle of the development

9.1 The principle of the use as a Waste Transfer Station is established by permission S/11/68998 which permits the use up to June 2023. The change to working hours would support continued contribution to the recycling of waste at the highest achievable level within the waste hierarchy and a reduction in the volume of waste sent to landfill. The development is therefore in accordance with Policy 25 (Sustainable Waste Management) of the HMWP 2013.

Impact on amenity and health/noise

9.2 Policy 10 (Protecting public health, safety and amenity) of the HMWP requires that any development should not cause adverse public health and safety impacts, and unacceptable adverse amenity impacts. Also, any proposal should not cause an unacceptable cumulative impact arising from the interactions between waste developments and other forms of development.

9.3 The objections to the proposal are on the basis of noise impacts from the operation of the site and, in particular, the introduction of evening HGV movements. The evening Noise Assessment that has been submitted with the application has been conducted in accordance with the British Standard 4142:2014 and concludes that the proposed extension of hours at the site would have a low impact at the nearest noise sensitive receptors. It states that noise should therefore not be considered as a material constraint.

9.4 The Eastleigh Borough Council Environmental Health Officer has no objections to the proposal as long as no activities other than those contained within this proposal are carried out after 1800. Subject to this condition, the proposal will be in compliance with Policy 10 (Protecting public health, safety and amenity) of the HMWP 2013.

Highways impact

9.5 Policy 12 (Managing traffic) requires minerals and waste development to have a safe and suitable access to the highway network and where possible minimise the impact of its generated traffic through the use of alternative methods of transportation. It also requires highway improvements to mitigate

any significant adverse effects on highway safety, pedestrian safety, highway capacity and environment and amenity.

- 9.6 The proposed change in hours will improve traffic congestion for local residents and reduce the amount of HGV's on the roads at peak hours. There will be no increase to the throughput of the site and therefore there will not be an increase in the total amount of vehicle movements. The Highway Authority raise no objection and the proposal is therefore considered to be in compliance with Policy 10 (Protecting public health, safety and amenity) and Policy 12 (Managing Traffic) of the HMWP 2013.

Conclusions

- 9.7 The change to working hours will have no significant adverse environmental or amenity impacts. It is therefore considered that the proposal would be in accordance with the Hampshire Minerals and Waste Plan (2013) as it seeks to reduce congestion and would not materially harm the character of the area or amenity of local residents and would be acceptable in terms of highway safety and convenience.

Appendices:

Integral Appendix A – Corporate or Legal Information

Integral Appendix B – Conditions

Appendix C - Location Plan

Other documents relating to this application:

<https://planning.hants.gov.uk/ApplicationDetails.aspx?RecNo=20019>

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	No
People in Hampshire live safe, healthy and independent lives:	No
People in Hampshire enjoy a rich and diverse environment:	No
People in Hampshire enjoy being part of strong, inclusive communities:	No
OR	
This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because:	
The proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the proposal is an application for planning permission and requires determination by the County Council in its statutory role as the minerals and waste planning authority.	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

DocumentLocation

CS/19/85002

Hampshire County Council

EA027

Veolia WTS, Portsmouth Road, Netley

Southampton SO31 8GD

(Variation of condition 3 of planning permission S/11/68998 to amend the operating hours for the site until 23:00 on weekdays)

CONDITIONS

Time Limits

1. The development hereby permitted shall be begun before the expiration of three years from the date on which this planning permission was granted.

Reason: To comply with Section 91 (as amended) of the Town and Country Planning Act 1990.

2. The permission hereby permitted shall be for a temporary period expiring on 30 June 2023, or when the transfer station is no longer required whichever is the sooner. Within 6 months of cessation of use for waste transfer all waste, buildings, structures, plant, machinery and hardstandings shall be removed and the land reinstated to grassland.

Reason: In the interests of local amenity.

Hours of Working

3. No heavy goods vehicles shall enter or leave the site and no plant and machinery shall be operated except between the hours of 0730 to 2300 Monday to Friday (except on bank and public holidays when the hours are restricted to between 0800 and 1600) and between 0730 and 1700 on Saturday, unless otherwise agreed in writing by the Waste Planning Authority.

Reason: In the interests of local amenity and to ensure the development is in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

4. There shall be no operations other than the bulking and loading of up to 10 waste vehicles between the hours of 1800 and 2300 Monday to Friday.

Reason: In the interests of local amenity and to ensure the development is in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Highways

5. The access road shall be maintained and kept clean, and facilities provided to prevent mud being carried onto the public highway by lorries leaving the site.

Reason: In the interest of highway safety in accordance with Policy 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2012).

Protection of the Water Environment

6. No sewage or trade effluent (including vehicle wash or vehicle steam cleaning effluent) shall be discharged to any surface water drainage system.

Reason: To prevent pollution of the water environment.

7. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The bund capacity shall give 110% of the total volume for single and hydraulically linked tanks. If there is multiple tankage, the bund capacity shall be 110% of the largest tank or 25% of the total capacity of all tanks, whichever is the greatest. All filling points, vents, gauges and sight glasses and overflow pipes shall be located within the bund. There shall be no outlet connecting the bund to any drain, sewer or watercourse or discharging onto the ground. Associated pipework shall be located above ground where possible and protected from accidental damage.

Reason: To prevent pollution of the water environment.

8. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through an oil separator designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the separator. Soakaways shall not be located on areas identified as contaminated land. All surface water from roofs shall be piped to an approved surface water system using sealed downpipes. Open gullies shall not be used.

Reason: To prevent pollution of the water environment.

9. Drainage from the areas of waste storage shall be in accordance with the details approved 28/1/04 and drawing P100C. Drainage from waste storage areas shall not be discharged to any watercourse, surface water sewer or soakaway.

Reason: To prevent pollution of the water environment.

Noise, Dust and Odour

10. The Environmental Management Scheme for the control of noise and odour, approved 10/6/05, shall be implemented as approved for the duration of the sites operation.

Reason: In the interests of local amenity.

Landscape

11. The areas of hardstanding shall be in accordance with details approved 28/1/04 and shown on Drawing P100C.

Reason: To protect trees to be retained.

12. Those trees within Burrows Copse proposed to be retained shall not be felled, topped, lopped, uprooted or destroyed without the prior written consent of the Waste Planning Authority. Any trees removed without such consent or becoming seriously diseased shall be replaced by the end of the first planting season following their removal with trees of such size and species as may be agreed by the Waste Planning Authority in writing.

Reason: In the interests of local amenity.

Plans

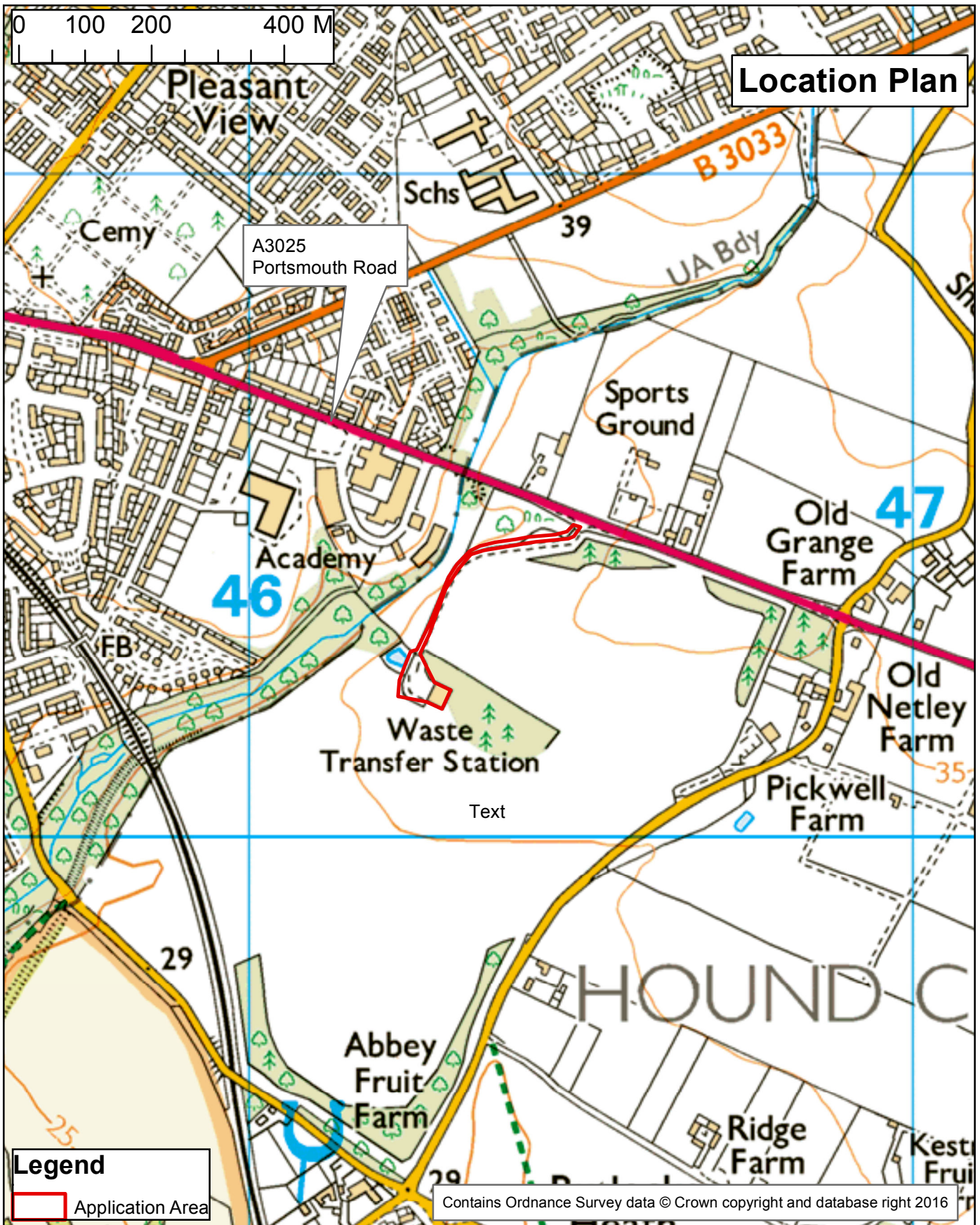
13. The development hereby permitted shall be carried out in accordance with the following approved plans: **VES/P/NET/001, VES/P/NET/002, C788/1**

Reason: For the avoidance of doubt and in the interests of proper planning.

Note to Applicants

1. In determining this planning application, the Waste Planning Authority has worked with the applicant in a positive and proactive manner in accordance with the requirement in the National Planning Policy Framework (2018), as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.
2. This decision does not purport or convey any approval or consent which may be required under the Building Regulations or any other Acts, including Byelaws, orders or Regulations made under such acts

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Variation of condition 3 of planning permission S/11/68998 to amend the operating hours for the site until 23:00 on weekdays at Veolia WTS, Portsmouth Road, Netley Southampton SO31 8GD

REGULATORY COMMITTEE

DATE: 17 April 2019 1:8,000



APPLICATION NUMBER: CS/19/85002

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Hampshire County Council

SITE REFERENCE: EA027

Drawn by: Strategic Planning

Economy, Transport and Environment

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HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	17 April 2019
Title:	Application for registration of land known as 'Monks Brook', Eastleigh, as town or village green (Application No. VG 234)
Report From:	Director of Culture, Communities and Business Services

Contact name: Sylvia Seeliger

Tel: 01962 846349

Email: sylvia.seeliger@hants.gov.uk

Purpose of this Report

- 1 The purpose of this report is to consider an application for the registration of land known as 'Monks Brook', in Eastleigh, as town or village green.

Recommendation

- 2 That the application to register as a town or village green land shown edged blue on the plan attached to this report at Appendix 1, comprising that part of the Land subject to this application lying within Hampshire only, be refused.

Summary of decision area:

- 3 Hampshire County Council is the Commons Registration Authority (CRA) for the purpose of exercising functions under the Commons Act 2006. One such function is the determination of applications made to register land as town or village green. The Regulatory Committee, in its capacity as Commons Registration Authority, is asked to consider an application for the registration of land known as 'Monks Brook', in Eastleigh, as town or village green. The application was advertised and attracted an objection, supported by substantial submissions, from the landowner. The applicant was given the opportunity to rebut the objections through an exchange of material. The available relevant evidence for this application has then been subjected to a non-statutory public inquiry conducted by Morag Ellis QC acting as Inspector on behalf of the County Council, in February 2018, and it is recommended that this application be refused for the reasons set out in Ms Ellis' advice report.

Legal framework for the decision:

4 S.15 COMMONS ACT 2006

Registration of greens:

s.15(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

s.15(2) This subsection applies where-

- (a) a significant number of the inhabitants of the locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
- (b) they continue to do so at the time of the application.

See pages 9-11 of the advice report for the remainder of section 15.

5 THE COMMONS (REGISTRATION OF TOWN OR VILLAGE GREENS) (INTERIM ARRANGEMENTS) (ENGLAND AND WALES) REGULATIONS 2007

Consideration of objections

s.6(1) Where an objection is made under section 15(1) of the 2006 Act to register land as a town or village green, as soon as possible after the date by which statements in objection to an application have been required to be submitted, the registration authority must proceed to the further consideration of the application, and the consideration of statements (if any) in objection to that application, in accordance with the following provisions of this regulation.

(2) The registration authority –

(a) must consider every written statement in objection to an application which it receives before the date on which it proceeds to the further consideration of the application under paragraph (1); and

(b) may consider any such statement which it receives on or after that date and before the authority finally disposes of the application.

6 Applicant: Mrs. Ticehurst,
1 Mardon Close,
Swaythling,
Southampton,
SO18 2HP.

7 Landowner/objector:

Landowner: Hampshire County Council,
The Castle,
Winchester,
SO23 8UJ.

8 North Stoneham Developments Limited, and the Highwood Group Limited, of The Hay Barn, Upper Ashfield Farm, Hoe Lane, Ashfield, Romsey, SO51 9NJ have the benefit of an option to purchase over the application land.

9 The County Council, as landowner, is represented by Mr. George Laurence QC and Ms Ross Crail, of Counsel.

10 Hampshire County Council is the sole objector in this case.

Description of the land (please refer to the maps attached to this report)

11 The land which is the subject of the application VG 234 ('the Land') is shown edged blue on the plan annexed to this report (**Appendix 1**). It consists of approximately 4.6 hectares (11.36 acres) of land and is unregistered. The

administrative boundary between the county of Hampshire and the unitary authority of Southampton City Council runs through the area known as Monks Brook, and therefore the land is in two ownerships. It follows then, that the Land is subject to determination with regard to the registration of village green rights by two separate commons registration authorities ('CRAs'), namely those of Hampshire County Council and Southampton City Council. For the avoidance of doubt, this decision deals only with the Land subject to this application lying within Hampshire.

Background to the application:

- 12 The application for VG 234 was received on 14 September 2007, on the grounds that land known as Monks Brook in Eastleigh had been used by the inhabitants of the locality for lawful sports and pastimes for twenty years prior to 2007. When the application was received, another application was made in respect of the section of land lying within Southampton to Southampton City Council, in its capacity as the Commons Registration Authority ('CRA') for that part of the land.
- 13 A report dated 28 November 2007 (see **Appendix 2**) was taken to the Regulatory Committee seeking the Committee's agreement to authorise Southampton City Council to deal administratively with application VG 234 relating to the land in Hampshire, as well as that lying in Southampton. The intention was for Southampton City Council to revert back to the County Council once a non-statutory public inquiry had been held and an Inspector's decision letter issued with a recommendation as to how the application should be determined. Such a public inquiry was never held.
- 14 Another report was brought to this Committee on 27 April 2011 (see **Appendix 3**), seeking permission to secure information from the City Council with regard to progress in processing the two applications. This was provided and the whole application was returned to Hampshire. Officers attempted to secure agreement from the City Council to process to determination the claims for both pieces of land making up Monks Brook. They were unable to do so, and thus it was decided in 2016 by officers to progress the application, for the Hampshire land only, to determination. This application is now the oldest item on the County Council's waiting list of village green applications.
- 15 The application was formally advertised on Form 45 on 1 July 2016, according to the statutory requirements, and an objection to the registration was received from Hampshire County Council, in its role the landowner. The objection was accompanied by a substantial submission. On 12 April 2017, this Committee approved the holding of a non-statutory public inquiry to look into the matter (see report seeking authority at **Appendix 4**). Paragraph 7 (pages 11 and 12) of this report details the issues, put forward in the County Council's submission as the objecting landowner, that required to be considered. The need for transparency given that the County Council acts as the CRA in relation to this Application, and also owns the Land subject to determination in this report, was also discussed in this section of the 2017 report. This report deals with the issue of the Growth and Infrastructure Act 2013, detailing the reasons why it does not apply to this application (see paragraph 6.5, page 11). The inquiry was held by an Inspector, Ms Morag Ellis QC, over 2 days on 5 to 6 February 2018, in order that the evidence of any witnesses could be tested, and advice given to the Committee as to whether, or not, the application should be acceded to.

- 16 The Decision Report is appended to this document, as **Appendix 5**, and sets out the Inspector's findings and recommendation.

The Issue to be decided:

- 17 Whether or not to register 'Monks Brook', Eastleigh as town or village green, in accordance with section 15(2) of the Commons Act 2006.

Discussion:

- 18 Advice to officers from the County's legal department recommended that, as the landowner of the Application Land is the County Council, and the CRA is also Hampshire County Council, for the sake of transparency a non-statutory public inquiry, resulting in an advice report, should be held, presided over by a suitably qualified lawyer. Once authority for the inquiry had been obtained, Ms Morag Ellis QC ('The Inspector') was instructed to manage the public inquiry, hear evidence both for and against the applications, and prepare a report to Hampshire County Council advising on whether, or not, the land should be registered as a Town or Village Green. This advice report was provided to Hampshire County Council on 9 October 2018 (see **Appendix 5**). References to the Inspector's report are given throughout this discussion, both to the individual paragraph, and the page number(s) in which it is to be found. The report summarised the evidence heard at the Inquiry and, in summary, found that:
- 19 the applicant failed to establish requisite user for the relevant 20-year period as the available evidence demonstrates that the Application Land was not used, or there was not sufficiently significant use, by local inhabitants between September 1987 and 1990; further, there was an interruption to user in either 1995 or 1996 by an incursion onto the Land by travellers, lasting approximately two months (paragraph (i), page 1 of the Inspector's report)
- 20 what evidence was provided to the inquiry is too vague to justify registration of village green rights, reinforced by the clear confusion by supporters of the application as to the actual extent of the Application Land (paragraph (ii), page 2)
- 21 further, the available user evidence cannot justify registration because of the presence of a public footpath and another path, which will have accommodated at least a proportion of the walking and dog walking said to have been carried out on the land; in addition, the Land itself was left in an unattractive state and partially inaccessible after the traveller incursion, leading to the conclusion that significant use of the Land for lawful sports and pastimes ('LSP') has not been satisfactorily established (paragraph (iii), page 2)
- 22 the Applicant has not specified, or established by evidence, a qualifying locality, or neighbourhood(s) within a locality or localities (paragraph (iv), page 2)
- 23 Accordingly, the Inspector recommends that Application VG 234 be rejected (page 1).
- 24 The Inspector sets out the circumstances leading to the public inquiry. The Applicant, Mrs. Janet Ticehurst, submitted the application on 11 September 2007. The Land, known as Monks Brook lies within two administrative areas, the northern part within Hampshire, and the southern part lying wholly within Southampton. Ms Ellis found that it was the *'cross-boundary nature of the Application Land which accounts for the delay in bringing the Application to*

determination. Having explored various options, the position is that HCC must now determine the Application insofar as the land lies within its area. The southern parcel falls to SCC to determine' (paragraph 1.4, page 4). The Inspector also sets out in her introduction how she has dealt with the question of the ownership of the northern two-thirds of the Application Land. She says at paragraph 1.3 on page 4 of the report '*I should make it clear that I have treated HCC's ownership of the land the subject of this Report as wholly irrelevant. The Committee should do likewise. The fact that I am wholly independent of HCC is an important element in ensuring the lawful determination of this Application by the CRA*'.

- 25 The report also sets out details of the procedural preparations, particularly given that '*there are no procedural rules applying to a non-statutory inquiry and, whilst the manner of submission [by the objector] was not as helpful as it might have been, no prejudice was alleged, or demonstrated, as a result of the sequence of events which I have outlined. I considered it important for the CRA to have all potentially relevant material before it when making its determination. My advice is that it is lawful and appropriate for the CRA to have regard to all the material which was produced, presented and discussed at the inquiry, guided by my advice as to relevance and weight*' (paragraph 1.18, pages 8 and 9).
- 26 Reviewing the inquiry in the report, Ms Ellis says '*It is most unfortunate that the Applicant did not attend the inquiry or otherwise advance the case for registration. She made it clear to my Instructing Solicitor that she now has caring responsibilities for her husband...This turn of events makes the delay which has occurred in the determination of the Application particularly regrettable. My Instructing Solicitor, the Senior Map Review Officer of the CRA and I have, however, done all we could to keep the Applicant abreast of procedural development. I am satisfied that she has not suffered any procedural prejudice*' (paragraph 1.18, pages 8 and 9). For the avoidance of doubt, Mrs. Ticehurst had made it clear to the CRA that her attendance at the inquiry could not be expected due to her personal circumstances and the Inspector reports that she '*also stated to my Instructing Solicitor on 2 January that she would not be attending the inquiry and did not expect anyone else to do so in support of the Application. On 11 January she indicated that she had no more written material to submit*' (paragraph 1.10, page 6)

The Inspector's Legal Framework for the determination:

- 27 The Inspector explains the purpose of the report, having set out the wording of section 15 of the Commons Act 2006 ('CA 2006') at her paragraph 2.2 (pages 9-11). She says '*The process of determination involves simply applying the law to the facts; there is no discretion, nor are land use merits material*' (paragraph 2.3, page 11). Ms Ellis also says that the '*CRA should be guided by the general principle of being fair to the parties*' (paragraph 2.4, page 11). The CRA has '*no investigative duty which requires it to find evidence or reformulate the applicant's case. It is entitled to deal with the application and the evidence as presented by the parties*', at paragraph 2.4, pages 11-12, again referring to the difficulty caused to the CRA in having only scanty relevant material from the applicant, and no witnesses willing to subject themselves to cross-examination at the inquiry.
- 28 Ms Ellis makes it clear that the '*burden of proving that land has become a TVG lies on the applicant, on the balance of probabilities*' (paragraph 2.5, page 12). Lord Justice Pill said in *R v Suffolk CC ex parte Steed* (1996) 75 P&CR 102 that '*it is no trivial matter for a landowner to have land, whether in public or private ownership,*

registered as a town green...’ (ibid.) He continues ‘It is accordingly necessary that all ingredients of this definition should be met before the land is registered, and decision-makers must consider carefully whether the land in question has been used by the inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years’ indulgence or more is met’ (ibid.). At her paragraph 2.6 (page 13), Ms Ellis emphasises this – ‘It is necessary, in order to achieve registration under CA 2006, for all the relevant elements to be established’.

- 29 There is a body of further discussion of case law in this section of the report, organised by taking elements of the test in section 15 of the CA 2006, each in turn, and setting out relevant case law with extracts from judgements. This material is covered in paragraphs 2.7 to 2.23, pages 13-25. The question of how any use of the Application Land would have appeared to a reasonable landowner, particularly in relation to what type of right was being asserted by that use, is especially important in this consideration (see paragraph 2.9, page 14). This material covers ‘A significant number of the inhabitants of any locality, or of any neighbourhood within a locality, ‘indulged in lawful sports and pastimes’, ‘for a period of at least 20 years...(b) continue to do so at the time of the application’. It sets out the salient points from judgements on matters as what constitutes a ‘significant number’, ‘locality’, what counts as a ‘lawful sport or pastime’, confirms that qualifying user must be demonstrated throughout the 20-year period, without any interruptions, and distinguishes the concept of ‘as of right’ from that of ‘by right’.
- 30 New case law was awaited at the end of this inquiry, and it was agreed that Ms Ellis would delay her reporting until the judgement was available. This was issued on 12 April 2018 and any further submissions were invited from the parties, but no further submissions were received from the Objectors (paragraph 2.24, page 26). The new case law resulting from the judgement covered the issue of ‘locality’, and this is dealt with in greater detail in the Inspector’s report at paragraphs 6.25-6.29, pages 93-97). The judgement refers to whether an electoral ward could be a locality for the purposes of the 2006 Act, and whether a change in a ward’s boundary could stop time running in the relevant 20-year period (paragraphs 2.26-2.28, pages 27-28). Other case law considered a locality which was not in existence until a 20-year period had started to run (paragraph 29, pages 28-29), and the geographical ‘spread’ of users (paragraphs 2.20 and 2.31, pages 29 and 30).
- 31 It is customary in officers’ reports to Committee on village green applications to consider each element of the legal test in turn, and to include a summary table showing graphically whether each test is met, or not met. This format is inappropriate in this case, since there is a scarcity of relevant evidence on the user itself. It became clear to the Inspector that the major issue was to assess the quantity of user on the Application Land, and whether there was an actual twenty-year relevant period, once the objector’s evidence of adjacent road construction, spoil disposal and an incursion of travellers for several weeks, with the attendant effects on that Land, was set out. Other factors, such as the presence of public footpaths on or adjacent to the Land, and the lack of the identification by the Applicant of a qualifying locality or neighbourhood within a locality, rendered this usual approach in setting out the legal tests inappropriate. The sequence of subjects considered, as used by the Inspector in her report, has therefore been followed in this report. This report sets out Ms Ellis deliberations in some detail, for the sake of transparency, given that the CRA and the Objector are both part of Hampshire County Council.

Inspector's discussion of the available relevant evidence put by the Applicant:

- 32 In relation to this discussion, Ms Ellis sets out details of the actual application, being a '*validly completed...statutory application Form 44*' (paragraph 3.1, page 31). While the Applicant described the Land having been used for '*sports and leisure activities*' until its bisection by the Swaythling Link Road (paragraph 3.2, page 31), most of the supporting documents with the application consist of '*information about the claimed biodiversity of the Land and arguments in support of its registration relating to that value. As I have explained in the Legal Framework section of this Report, such arguments are irrelevant to the question of registration based on user under s. 15 CA 2006*' (paragraph 3.3, page 32). The wildlife photographs supplied date from the summer of 2007, and there is a list of species found on the land, both flora and fauna. Additionally, there are then 31 letters in three separate tranches, plus a petition of 60 names and addresses. In general, petitions are of little use in determining applications for village greens, in that they do not usually provide any actual evidence of user for consideration. Ms Ellis notes in her paragraph 3.42 (page 45) that the petition's '*covering letters are wholly concerned with the qualities of the land as greenspace and an historical and wildlife resource and the respective merits of either developing it or making it into a village green.*' She says that because the petition and the covering letters do not address any of the statutory questions '*arising under s. 15 CRA 2006, I have not considered them any further and advise the Committee that they do not provide relevant evidence, meaning that they should be disregarded*' (paragraph 3.42, pages 45-46).
- 33 Ms Ellis examines the individual letters for evidence that she can consider in lieu of having any actual witnesses available to her at the inquiry, from paragraph 3.10 on page 35 to paragraph 3.42 on page 45. What is common to the letters is that they do not address the required legal tests and do not provide information about dates of use, where precisely the writers walked or indulged in LSP, the frequency of use and other vital information. Descriptions tend towards the general as when Mrs. Jordan of 4 Mardon Close talked of use '*possibly dating from 30 years previously (i.e. the mid '70s) with the recent "mature" condition of the land where she claimed to "wander" with her grandchildren*' (paragraph 3.14, page 36). In the letter provided by the applicant's husband Mr. Brian Ticehurst (paragraph 3.15, pages 36-37), the Inspector notes that '*it is unclear whether he lived locally between the 1950s and 1993 and/or whether he used the land during that time. He claimed in the letter to have used the Monks Brook Playing Fields ['MBPF'] "many many times for recreational purposes since 1993*'. As Ms Ellis has noted in her summary of her decision at paragraph (ii) at page 2 of this report, such evidence is '*too vague*' to establish how any user of Monks Brook at any point in the relevant period would have appeared to the landowner. She deals with each of the letters separately and, in the majority, the Inspector notes that crucial details, such as dates or addresses when any claimed use was taking place, are missing. None of this evidence was able to be tested during the inquiry, further diminishing any weight that could be attributed to it.
- 34 Because there had clearly not been a focus, on the part of the Applicant, on matters that address the legal tests required to register village green rights, when officers took up the processing to determination of this application in 2015 they sought permission from the landowner to provide the Applicant with questionnaires published by the Association of Commons Registration Authorities ('ACRA'), which do focus on the relevant statutory questions. The intention was to deal fairly with an application lacking necessary relevant detail, and to be seen to be transparent in determining this application, as the landowner and the CRA are both parts of the

County Council. The landowner kindly gave permission and a number of these forms were provided to the Applicant to allow some relevant information to be collected to assist in determining whether village green rights could, or should, be registered over the Land known as Monks Brook. Fourteen questionnaires were duly sent to the CRA, all completed in July and August 2015. These are discussed by the Inspector at her paragraphs 3.44 to 3.69, pages 46 to 66 of the report.

35 Each questionnaire had a map attached, and the Inspector found that this OS extract (scale 1:3,500) did not have the Application Land marked by the majority of respondents, despite the form having an instruction on its first page to do so. Ms Ellis notes that *'the boundaries of the claimed land are, therefore, unclear'* (paragraph 3.46, page 47), as far as demonstrating individual understanding of the extent of the Land being claimed as village green, something she cites in her summary decision as illustrating the inadequacy of the offered evidence in demonstrating the required user for registration (paragraph (ii), page 2). None of the maps, which were provided without the administrative boundary, show a neighbourhood or locality. In answer to a question whether the neighbourhood or locality has an identifiable name, eight different names were put forward, at paragraph 3.48 on page 48. The Inspector comments that she concludes that it is *'highly questionable whether the respondents or, possibly, the Applicant understood the meaning of locality/neighbourhood in its legal context or properly addressed their minds to the question'* (paragraph 3.48, page 49).

36 Ms Ellis summarises the evidence of the 14 questionnaires:

- Mr. Allsworth said users were University Students, local walking clubs and Swaythling residents. He considered himself to be a local inhabitant, had not had permission to use the Land, his use was not restricted, there were no notices, but obstacles were put up to stop travellers entering. Regular walks were undertaken by people from *'outer lying areas'* organised by a local historian. There had been a *'permanently locked gate'* at the A335 entrance and the land was enclosed by fencing. His user was daily (paragraph 3.50, pages 49-50).
- Mr. and Mrs. Ashford said users were local inhabitants, and they had seen locals on the land. Their user was walking, they had only used part of the Land and their use was *'occasional'*, entering the land via public footpaths. They marked the location of three access points (paragraph 3.51, page 50).
- Mrs. Batten said users came from Swaythling, Mansbridge, Woodmill and Bitterne Park, and she had seen others walking, looking at wildlife and taking photographs. She had not had permission to use the Land, or been prevented from using it, or seen notices. There had been some community activities, and she had seen picnicking and kite flying. She had used part of the land, using it weekly, and now occasionally. Fencing was put up when the A335 link was built, and she accessed the Land via the gate next to the Fleming Arms, marked on her map (paragraph 3.52, pages 50-51).
- Dr. Diaper walked to the Land from her home in St. Denys, with users coming from the surrounding area. She had never had permission or been prevented from using the Land, but did not claim personal use, but rather gave details of organised nature walks in the previous four years – she had taken part in them in 2012. Her use was seasonal, and always from St. Denys, and she marked the northern entrance by the underpass and the crossing of the railway. She attached her own publication of station walks in South

Hampshire and Salisbury (paragraphs 3.53 and 3.54, pages 51-52).

- Mr. Halliday did not answer directly the question of being a local inhabitant, and said users came from Swaythling and Mansbridge, and Wessex Lane Halls of Residence. He had only used the Land in 1999-2000 and 2012-2015 on a weekly and seasonal basis. He had not had permission nor been stopped from using the Land, did not see notices, but saw other walkers, with and without dogs, on most occasions. He mentioned monthly nature walks since 1999, spoke of gates and accessed the Land by a public right of way. The gates were unlocked (paragraph 3.55, pages 52-53).
- Mrs. Halliday enclosed a leaflet with her form, identifying the locality or neighbourhood as Swaythling and Mansbridge. She described the land as being near her home and said users came from the locality cited. She had not had permission to use the Land, or been stopped, saw signs about nature walks, and saw other walkers, with or without dogs, daily. She took part in the nature walks and had seen seasonal activities when using all of the land (paragraph 3.56, page 53). The leaflet referred to was also submitted in further application paperwork, called '*Monks Brook Greenway*', dated April 1993 and published by Hampshire County Council and Southampton City Council. It includes helpful information, and therefore Ms Ellis includes it in full at her paragraphs 3.57-3.58, pages 53-58. It covers the provision of paths and intensive uses such as playing fields over this area, described as an '*important green corridor*' (page 55).
- Mr. Miller lives in Chandlers Ford, and the Inspector takes his replies '*to be relevant insofar as they might provide useful information, rather than as potentially relevant local user evidence*' (paragraph 3.59, page 58). His response is from 'The Three Rivers Community Rail Partnership'. He said users came from Southampton and beyond, that he had seen no attempts to exclude users, that there were Station nature walks he had participated in 6 times a year. Then he saw dog walkers and people enjoying fresh air and nature. These were locals and from further afield. He had known the Land since 2008 and used the full area shown on the map. The gates to deter travellers were always locked.
- Mr. Nash said users came from Swaythling and the surrounding area, he used the land without permission and was never prevented from doing so. He saw other people walking dogs and taking photographs, daily and weekly, and some of these were locals. School walks had taken place '*for years*', but no dates were provided, and wildlife clubs used the fenced Land. He had known it since 1967, had used all the Land and accessed it from the gated entrance (paragraph 3.60, page 59).
- Mr. Painton considered himself to be a local inhabitant, and said users came from '*everywhere*', citing Southampton and Eastleigh. He had been given permission to use the Land by SCC's Parks Department in 2006 for shrub clearance and dealing with travellers. His use had been prevented by HCC by '*motorway bypass storage*', but he continued to use the Land via the public footpath, for nature walks and art sessions with pupils from Mansbridge Primary School. He saw others (some locals) there daily for dog walking, Friends of Monks Brook Meadows and the Three Rivers Rail Partnership, for regular nature walking, carried out by organised groups. Mr. Painton had used all the Land on a weekly basis from 1980 to 2015, said it was enclosed since the building of the A335 link, with a permanently locked

gate on that road. He also drew pathways on his map (paragraph 3.61, pages 59-60).

- Mr. Ticehurst said that people using the Land came '*from all over town*', had never received permission or been prevented from using it. He saw other people there, on a daily basis, organised walks twice a year for '*several years*', along with scout training 2 or 3 times a year for 25 years. In addition, he had seen kite flying and orienteering. He had used the Land since 1950, using the whole area, though poor health had reduced his usage. His user was monthly in 2015. He mentioned an open gate and showed access points at the railway crossing and an indication of the direction of the Fleming Arms access. He had expressed his disappointment with the time taken to determine the Application in 2015, as people had lost interest since 2007 (paragraphs 3.62 and 3.63, pages 60-61).
- The Applicant, Mrs. Ticehurst considered herself to be a local resident, and had received permission in about 1983 for the City Council Community Environment Project, and referred to a leaflet connected with it (paragraph 3.64, pages 62-63). This encouraged walking and looking after the '*Meadow*'. She referred to the County Council's highway works in 2009 as a restriction to access, but continued to use the Land in any case, because public access was a part of the contract. The Inspector takes this to refer to the M27 junction enlargement rather than the construction of the link road. Mrs. Ticehurst had seen no signs preventing access, and saw others walking and jogging daily, blackberry picking, cub scouts and nature walks. Students from Sparsholt College would visit several times a year for about 10 years, there were guided nature walks and the Land was cleaned up 3 or 4 times annually. Mrs. Ticehurst knew the Land from 1946, using it on most days, and said the Land was enclosed in the 1980s when the A335 was built. She accessed the Land by the urban greenway from the Fleming Arms, and marked the stile at the junction of the A335 and the public footpath. There was a locked '*maintenance gateway*' on the A335. An additional statement was given in July 2015, which is set out at paragraph 3.65, pages 63-64, along with other material submitted in the same year dealing mainly with the natural history of the area (paragraph 3.66, page 64).
- Miss Linda Webb stated she visited the Land 3 or 4 times a week, with other users coming from Swaythling, Mansbridge and nearby areas. She presumed that she had permission for all purposes due to the '*public signs*' on the Land. Miss Webb saw other people daily using the Land for leisure, monthly organised nature and rail walks, over a period of 20 years, some of which she joined in 2015. She had known the Land for 30 years, but only used it between 2012 and 2015, using all of it 3 or 4 times a week. Fencing enclosed the Land and her access was via the underpass. Her map shaded both parts of the Land encompassing both ownerships (paragraph 3.67, page 65).
- Mr. and Mrs. Williams lived close by the Land, and said users came from Swaythling. They mentioned the traveller incursion happening some years before, with fencing and gates being put in place once it was cleared. Neither had permission or were prevented from using the Land. They had seen other people '*occasionally*', who they thought were '*probably*' from the locality, dog walking and berry picking. They had known the Land from 1969 and used it occasionally, describing it as enclosed with accesses at the

underpass, on the north-west corner of the Playing Fields and off Claudeen Close (paragraph 3.68, pages 65-66).

- Mr. Wyatt identified users as coming from Mansbridge, Swaythling and Bassett in Southampton, had never been given permission or been prevented from using the Land. He saw people walking with and without dogs 'daily', and referred to guided Wildlife walks 3 or 4 times a year, for about 4 years. His use of the Land was from 2003, twice a week. He said the Land had been closed '*for decades*' with wooden fences containing gates and stiles, and Mr. Wyatt access it using stiles, a swing gate and the underpass – the gates were never locked. He showed most of the HCC Land on his map as village green, and objected to the proposed sports grounds with associated structures and resulting associated loss of wildlife and countryside, when there was no need, in a written statement (paragraph 3.69, page 66).

Inspector's discussion of the landowner's objection and the Applicant's rebuttal:

37 The County Council's initial objection rested on points relating to the question of a locality and the sufficiency of user. The County Council's Counsel, Mr. George Laurence QC, submitted that the application should not be the subject of a public inquiry, but be rejected. However, the landowner participated fully in the inquiry, and made submissions, also calling members of staff as witnesses (paragraph 4.1, page 67).

38 The objections relating to the locality chosen were put forward, and built on, at the inquiry because of the brevity of the response made by the Applicant in February 2017 (paragraph 4.2, page 67). This response is characterised by Ms Ellis as not dealing with any of the County Council's points of objection, instead focussing on the ecological interest of the Land, which is irrelevant to the legal tests that must all be met for registration to take place. However, the Inspector does perceive that the characteristics of the nature interest of the Land may be relevant in understanding '*the extent to which the land has been enjoyed for lawful pastimes connected with its features of nature conservation interest*'. The Applicant reiterates that the link road cut the Land off from direct access leading to beneficial effects on its ecology, along with increasing user as people with those specific interests started to use it. These include three ramblers' clubs, a camera club, cub scout groups and Sparsholt College students. The applicant concludes with '*her motto for the meadow: "Not trampled by thousands But treasured by hundreds"*' (paragraph 4.3, pages 67-68).

39 The bundle of documents submitted by the County Council in objection, along with four witnesses who spoke in relation to further documents, constituted the main procedural events of the inquiry in February 2017. The Inspector says '*Taking this evidence together, I have been able to gain a reasonably clear picture of the history of the Application Land. Because the Applicant did not participate in the inquiry, the witnesses were not cross-examined, but they were made available for challenge. I was also able to ask questions of clarification. In the event, much of their evidence was corroborated by contemporaneous documents and, to some extent, by certain detailed parts of the Applicant's supporting evidence. I therefore advise that significant weight can be given to their largely documented account of the land during the relevant 20 year period, 1997 – 2007. They were patently honest witnesses who did their best to assist the inquiry*' (paragraph 5.1, page 68).

40 The landowner's case concentrated on rebutting the claim that there had been a relevant period of 20 years, during which there was uninterrupted qualifying user

by a significant number of the inhabitants of the locality or neighbourhood, without prejudice to its own arguments about the legality of the selected locality (paragraph 5.2, page 68). A conveyance of 1959 in which the Land at Monks Brook was conveyed to the County Borough of Southampton showed that the Land was acquired under the Education Acts 1944 to 1948, and showed the land conveyed had formed part of Channels Farm in Swaythling. The plan shows a '*roughly rhomboid*' area of land, with its northern boundary lying to the north of the top of the Application Land. The area of land is an undivided parcel, with the A335 link road being built some years later, but the parcel contains the whole of the Application Land (paragraph 5.3, pages 68-69). A later conveyance of land at Channels Farm and Swaythling Farm to the City in 1961 includes the brook itself, and the land to the east up to the railway line, as well land that forms the SCC Application Land to the south of the administrative boundary. All this land was in SCC's freehold ownership. Endorsements to the 1961 conveyance vest Doncaster Drive in the County Council and, by a conveyance dated 1990, part of the 1961 land was conveyed to the Secretary of State for Transport, authorised under the Highways Act 1980. This land became the A335 Swaythling Link Road, with public rights of way on foot dedicated running from the City boundary northwards along what is now the link, and on the other side of the link, where the underpass comes up, as far as Stoneham Lane (paragraphs 5.3, 5.4, 5.5, pages 68-70).

41 Eastleigh Borough Council granted outline planning permission in 2016 for a major urban extension at North Stoneham Park, but this did not include any part of the Application Land (paragraph 5.6, page 70). However, the accompanying section 106 Agreement covenants the developer to '*prepare, implement and maintain habitat on a Translocation Area within a wider area of Mitigation Land comprising land including the Application Land*' (paragraph 5.6, page 70). The County Council's witness Mr. McCarthy stated that no such works have ever been carried out on the Application Land (*ibid.*). This sequence of events is broadly supported by aerial photographs of the area, covering the period 1971 to 2013, produced by the CRA and the County Council. The major change occurring between the photographs for 1971 and 1984 is the building of the Motorway and its attendant junction, Junction 5. By 1989 '*the shape of the Application Land has been established by the development of the Link Road*' (paragraph 5.7, page 70). The photographs show the Application Land differently, depending on the time of the year and the usage to which it is being put. Ms Ellis notes that '*caution must be exercised in the interpretation of aerial photography, which is an expert discipline*' (paragraphs 5.7 and 5.8, pages 70-71).

42 The landowner had made a comprehensive search of its records, but could not give much direct evidence, though it had made all potentially relevant documents available to the CRA. The Inspector chooses to focus on the principal items, but is '*satisfied that full disclosure of such records as remain has been made*' (paragraph 5.8, page 71). Mr. Lon McCarthy, a Development Surveyor in the County Council's Estates Office, knows the Land and has been employed in his role since August 2008 (paragraph 5.9, page 71). His second witness statement of 15 February 2018 confirmed the status of areas of land in the SCC documents from 1985, making it clear that there was authorisation for parts of the Land to be used for disposal of the spoil and other waste generated by the making of the Link Road, with a document showing the extent of the area for topsoil storage and site office, along with restoration conditions. This was on Area B, with Area D for use as a playing field, comprising approximately two-thirds of the

Hampshire part of the Application Land. Area B is to the south of the boundary with the City. The Inspector accepts Mr. McCarthy's '*deduction that...internal memoranda...of 1988-89 strongly suggest that by 1989, a playing field was established on Area D and that HCC had authorised the Education Department by resolution...to erect a 4.5m high chain-link on angle iron sports fence and the eastern side of the Link Road*' (paragraph 5.10, page 72). It is not possible to see from the 1991 aerial photography whether this permission was implemented. The importance of this, for Mr. McCarthy, is that it showed there was a playing field on the Application Land at this time, even though there is a memo of 30 August 1989 stating that Area D, including all the Application Land, had been seeded and was anticipated to be in use within the next year, that is by 1990 (ibid.).

- 43 Mr. McCarthy referred to the depiction of Eastleigh Footpath 28 on the Definitive Map, running along the southern boundary of the Hampshire Application Land, and along its western boundary to the underpass, marked on the OS base as 'Monks Brook Playing Fields'. Enquiries were made of the Environment Agency of the dates when the Land was used to tip road soil, but no specific answer was available. There is a reference to '*historic landfill*' on the Site D Details Sheet No. 1 and a 1985 permission application describing the previous use of the land as '*Site of old refuse tip, not used since 1975 (latest)*'. The Inspector draws the conclusion that these researches indicate that a small part of the Application Land was used prior to the Link Road construction used in the latter part of the 1980s for spoil disposal, was re-seeded in about 1989, with a chain-link fence on the western boundary put up in the late 1980s. She also refers to Footpath 28 as having been in existence on the southern and western boundaries of the Application Land for most of the relevant period (paragraphs 5.11, 5.12 and 5.13, pages 72-73).
- 44 The County Council called Mr. Trevor Baker, a Grounds Management and Arboricultural Officer since 1993. He was responsible in the 1990s for ensuring contractual compliance on sites, including the Application Land, and known the Land throughout his employment, regularly visiting it. Both parts of the Application Land were usable as a playing field, and was known as the Monks Brook Playing Field, east of Stoneham Way. The Application Land was never used or marked as a playing field, and Ms Ellis recalls this as consistent with the aerial photographs. However, an area towards the north of the HCC Application Land was known as the '*junior training ground*'. It had 16 boxes, occupying an area 42 by 42 metres, in 1993 when he took up his post. However, it was not in use then, or after, so it was no longer marked, but mown once a week in the growing season and fortnightly at other times until the mid-1990s. The cessation of mowing was after the traveller incursion of 1995 or 1996, and the boxes had occupied most of the Application Land. The debris from the incursion was put into large heaps and this debris, and deep ruts, prevented any further mowing of the area. Concrete posts and a barrier were put up at the entry point near the administrative boundary in the south west corner, and Mr. Baker also highlighted the footbridge over Monks Brook as the start of the public footpath on the Application Land. He saw children having lessons on the Land, coming from the local primary school and doing warm-up runs, though could not say how often. He saw people all over the Application Land, walkers and dog walkers initially, then motorcyclists. Because use of the Application Land ceased after the traveller incursion, Mr. Baker's main focus of work shifted to the west side, and his last involvement with the Application Land was in 2003. Though he was

aware of '*motorcycle issues*' on the Land between 2004 and 2007, he could not comment on these, or the distinctive patterns on some later aerial photographs. The Inspector takes from this evidence that there was use of the Application Land for sporting purposes by schools after the restoration from tipping, terminating in 1995 or 1996, after the traveller incursion, when the land surface was left in a bad condition and secured against further unauthorised access by vehicles (paragraphs 5.14, 5.15, 5.16, pages 73-75).

45 Mr. John Pullen, a Principal Trading Standards Officer employed by the County Council started work in 1988, and he spoke about the closure of public rights of way in response to the 2001 Foot-and-Mouth outbreak. In February 2001, legislation enabled the closure of all footpaths by local authorities. The witness had not been able to trace a relevant statutory declaration in the County Council's records but found a memo from the Countryside Service stating that the rights of way network was closed. The Leader of the Council appealed on the County Council's web-site in March 2001 that the public refrain from all avoidable contact with farms and livestock, and the witness produced a Daily Echo article of June 2001 about the re-opening of paths. The witness said that the 7,000 footpaths referred to in the article were about 90 per cent of all the County's rights of way, and he did not know when the footpath on the Application Land was re-opened. An Order for Cumbria was produced, and Counsel invited Ms Ellis to infer that there had been a similar Order for Hampshire. Her view was that '*the Cumbria Order is [not] in any way probative in relation to Hampshire, but I do accept that Mr. Pullen's other evidence does establish, on the balance of probabilities, that such an order was made on or about 28th February 2001 by HCC in respect of all its public footpaths, including the one on and giving access to the Application Land*' (paragraph 5.20, page 78). The Inspector also accepted that '*on the balance of probabilities, that access to the Application Land via the public footpath will have stopped for at least month, and, possibly, 3 months or more*' (ibid.). It is her view that the Order would not have made access via the Link Road unlawful, but few supporters of this application claim to have used it, and she sees it as '*inherently unattractive for access by local residents*' (paragraphs 5.17, 5.18, 5.19 and 5.20, pages 75-78).

46 A further witness, Mrs Charlotte Smith, employed as a Landscape Architect since 1986, explained she has no personal knowledge of the Application or the Link Road, but was at the inquiry to comment on the documentary evidence. She concluded that it would be '*reasonable to draw a number of conclusions in relation to the discharge of the restoration conditions in respect of the permission for disposal of spoil from the road scheme*' (paragraph 5.21, page 79). Her conclusions, endorsed by the Inspector, were that:

- By autumn 1987, the County Surveyor had commenced regular mowing, indicating that the landscape contractor's establishment phase would have been complete;
- A further period of establishment would have been required before use for sports playing fields, and this is corroborated in an October 1987 email referring to funding '*until the turf is established*';
- The 1989 memo mentioned by Mr. McCarthy indicated that the playing fields were not actually available even then;
- That it would be normal to exclude the public during such a period of establishment;

- A memo of 22nd October 1987 stated that the '*designated route of the footpath*' running from the west to the east of the Link Road was not '*at present defined*', requiring '*clearing and fencing*'. This indicates that access to the Land by that route was not obvious or easy at this date, which was before the dedication of the April 1990 conveyance path had been put into effect;
- The exclusion of members of the public from the newly sown turf by the closure of the access points rather than by putting up temporary fencing – though the Inspector noted the '*remnants of some old chestnut pale fencing about 10m south of the motorway slip road on my Site Visits, though it is possible that this was left over from the later works associated with the M27 junction*' (paragraph 5.21, pages 79-80).

Inspector's discussion of the Legal Tests for a section 15 application:

47 Since this application is unusual, because of the lack of representation at the public inquiry by the Applicant, or any substitute defender of the Application, or even any supporters, it is difficult to analyse the evidence advanced in support in the customary way for Members of the Regulatory Committee. Analysing each limb of the relevant test is a convenient method to ascertain whether all have been met satisfactorily, to provide the Committee with its determination regarding the registration of village green rights over the Application Land. However, the Inspector has chosen to deal with the material before her in two sections. These two sections address the nub of the difficulties caused by the lack of representation on behalf of the Application at the inquiry, namely establishing whether there was enough user by local inhabitants, and the locality itself.

'As of right/sufficiency of qualifying user...'

48 Firstly, given the problem that she says is faced with, Ms Ellis' view is that she must '*therefore approach the material in support of the Application with caution, since it was not subjected to cross examination and cannot attract the weight which evidence which has been so tested can carry. There are also many questions which I would have pursued with the Applicant and/or any witnesses whom she might have called*' (paragraph 6.2, pages 80-81). It is immediately clear from summaries of the material put forward in support of the Application that much of the information lacks precision on many of the necessary legal tests that must be met if village green rights are to be registered over this Land.

49 The Inspector says that there was little clear indication what parts of the Land the witnesses had used, and whether there was any variation over the relevant period of the parts of the Land used; recollections relate to periods of time outside the relevant years 1987 to 2007, before the area was bisected by the Link Road, when there was a single area of land called 'Monks Brook Playing Fields' between Stoneham Lane and Monks Brook. Supporters of the Application do not always specify times, or locations, over what is a large site, necessarily needing to be determined by two separate CRAs for administrative reasons. Some of the evidence falls outside the relevant period, including material put forward by the Applicant herself. The existence of an area known as 'Monks Brook Greenway', promoted by local authorities as a public footpath or trail compounds the confusion, though the promotional leaflet (published by the County Council and the City Council) says it does not include the Application Land. The Greenway is based '*around public rights of way which members of the public are, of course,*

entitled to use and which do not count towards user "as of right" for TVG purposes', as the Inspector comments in paragraph 6.3, pages 81-82. Ms Ellis discusses further aspects of the information given in this promotional leaflet in her paragraph 6.4 on page 82 of the report, saying 'The picture is, at best from the Applicant's point of view, confused. In the absence of anyone to explain why I should not, I take both the Definitive Map and the leaflet at face value, as the reasonable landowner would have been entitled to do'.

50 The difficulties described in the previous paragraph of this report of the existence of the Greenway gives rise to further potential confusion for those writing letters or filling in user forms. This has the effect of making it difficult to analyse just how much the Application Land itself was being used recreationally, since the writers often do not spell out what land they are referring to. On her analysis, Ms Ellis identifies that Messrs Sherman, Welch and Meads, and Miss Sait and Mrs Batten were not actually using the Application Land at all, if the promotional leaflet is taken as '*definitive*' (paragraph 6.5, page 83). In her user form, the Applicant answers the question about permission '*in the affirmative, citing the City Council Community Environment Project and the Greenway leaflet, claiming that the leaflet included "the Meadow"*'. The nub of the difficulty is captured further in this paragraph, where the Inspector says '*the contention that the Application Land was included in this leaflet is factually inaccurate. It is clear, however, that at least some other supporters believed the same and, knowing nothing about the collection of evidence, in particular, what supporters were told about the precise extent of the Application Land and/or the requirements of s.15 CA 2006, I have real doubts about the accuracy of much of the evidence in support; it might have been possible to resolve these concerns if I had heard the witnesses live, but, in the absence of that opportunity, my strong reservations about the sufficiency of the evidence remain*' (*ibid.*).

51 Ms Ellis refers to Eastleigh Footpath 28 which has run along the southern and western boundaries of the Application Land since 1990. It is her view that some of the user recorded in the evidential material '*will have been attributable to these routes*', particularly for the most frequent uses of walking, with or without dogs. She says '*such activities are compatible with public footpath use, including an element of dogs straying off paths*', while activities such as blackberrying, general nature watching and photography may also have taken place as incidental to public path use (paragraph 6.6, pages 83-84). Without live participants, the Inspector finds it '*impossible for me to form a clear view as to how much walking was attributable to actual public rights of way or to routes which might, to the reasonable landowner, have carried the appearance of incipient rights of way*' (paragraph 6.7, page 84). Some witnesses indicate that they used land off paths, for training dogs, or games with children, and Ms Ellis is aware that '*at least for some of the relevant period, there appears to have been some user which would reasonably have looked as though it was attributable to a TVG claim*' (*ibid.*), and this is confirmed by Mr. Baker's evidence of general use of the Land by walkers and dog walkers off the paths, for the years between 1993 and 1995 or 1996. However, having viewed the people from a distance, he did not know who they were, so this evidence cannot be attributed definitively to supporters of the Application. This is further complicated, in that some were likely to have been local inhabitants, since witnesses refer to seeing regular users, but there is also evidence that a number of people from outside the area used the land, particularly after the Link Road was constructed. Some supporters lived outside the relevant locality, or what that locality was viewed to be, given that even this

concept has been challenged and was probably not understood by those providing user evidence. The Inspector concludes that *'such wide usage is consistent with the promoted nature of the 'Monks Brook Greenway' which...was an area based on public footpaths and did not include the Application Land itself* (paragraph 6.7, pages 84-85). In any case, Mr. Baker's observations relate only to a limited period before the deterioration of the Land after the traveller incursion (paragraph 6.8, page 85).

- 52 The Inspector also accepts Mrs. Smith's evidence that there would have had to have been access restrictions for the public on the Land during the establishment of the sward, this conclusion being evidenced by a careful examination of the existing documents, constituting an interruption or interruptions to any exercise of LSP on it (paragraph 6.9, pages 85-86). The access restriction for turf growth followed on from a period when the Land was subject to the deposit of soil from roadworks, rendering the Land unattractive for recreation. Evidence was put to the inquiry showing that works were already underway before 1987 and that Site D (most or all of the Application Land) where the soil was deposited was fenced then. Even though the underpass serving the Link Road was in place, Eastleigh Footpath 28 was not dedicated until 1990 (paragraph 6.11, page 86). The aerial photography images of 1989, 1990, 1991 and March 1995 are consistent with the appearance of mown grass, bolstered by Mr. Baker's recollections of the land from 1993, and therefore Ms Ellis gives *'considerable weight to his description of the Land and interpretation of photographs'*, allowing that he is not an expert in the interpretation of such photography (paragraph 6.10, page 86). She says that she concludes, on balance, *'that a reasonable sward was, in fact, established by 1990, which presupposes a period prior to that during which there cannot have been significant recreational user. I therefore have no difficulty in concluding that the Land – or at least the major part of it – would have been inaccessible for one reason or another and not in regular use for LSP during the first three years of the claimed period, that is, 1987 to 1990'* (paragraph 6.11, pages 86-87). In the key issue of sufficiency of user over a 20-year period, this evidence is critical, indicating a sustained interruption to user.
- 53 Significantly, *'none of the evidence in support acknowledges limitations on access at this time. As Miss Crail submitted, this omission renders the written evidence unreliable, at least in regard to this part of the 20 year period'* (paragraph 6.12, page 87). Ms Ellis intends no personal criticism to those who submitted written evidence, but without witnesses open to questioning, it was not possible to *'clarify precisely what they were saying about the chronological and geographical scope of claimed user, but their absence meant that neither HCC's advocates nor I were able to do this'* (ibid.). The Inspector reiterates that *'the burden of proof lies on the Applicant and the Objector produced contemporaneous and expert evidence which casts real doubt on the soundness of the claim in relation to the early period'* (paragraph 6.12, page 87). Ms Ellis confirms in her paragraph 6.13 on page 87 that *'these findings of fact alone are enough to dispose of the Application, since the requisite 20 years' use upon which it is founded is not made out on the evidence'*, adding weight to the material in paragraph 8.6.2.5 above regarding the establishment of the sward. For completeness, she considers the remaining factual and legal issues.
- 54 The traveller incursion on the Land is put by various people as being either in 1995 or 1996, and there is no evidence relating directly to the incident but the Inspector says *'the imprecision as to date does not affect the validity of Mr. Baker's recollections to the effect that a substantial part of the Land was*

occupied by caravans, trailers, vehicles and fly tipping. Several of the Applicant's supporting statements make reference to the traveller incursion, so it was clearly a major incident of which local people were aware (paragraph 6.14, page 88). No evidence has been put forward to contradict it, and she accepts Mr. Baker's view that *'nobody in their right mind would have walked amongst them as there was an intimidating atmosphere with dogs running around'* (paragraph 6.14, page 88). The incursion lasted for at least 8 to 10 weeks, which Ms Ellis accepts as *'entirely plausible'* given the administrative time taken to deal with such incidents, and she accepts Mr. Baker's evidence, concluding that his *'memory of conditions on site during the encampment was clearly vivid'* (ibid.). There is, therefore, another period of about two months in late 1995 or early 1996 when there was an interruption, or diminution, of access to the land for LSP (paragraph 6.16, pages 88-89).

55 Mr. Baker gave evidence of the clear-up after the traveller incursion, detailing how the Land was not able to be returned to its former condition as a field of turf. It was no longer possible to mow the land because of *'rutting and the continuing presence of debris of glass, wood and metal'*. The heaps of debris were large and visible on the Application Land to the Inspector when she made her site visits there, more than twenty years after the clean-up. She says that *'while the post clean-up condition of the Land would not have physically prevented access, it certainly casts doubt on the applicability of descriptions in supporting statements/letters/questionnaires of the Application Land as an area of natural beauty'* (paragraph 6.17, page 89). Ms Ellis is of the view that the descriptions and wildlife photographs on the actual Brook itself (not part of Hampshire County Council-owned Land) included with the Application are very likely to be of areas to the south and east of the Application Land. This impression is strengthened by *'the imprecision of description and identification of relevant land'* and she has *'real doubts as to the extent to which some supporters are actually addressing the Application Land specifically, rather than a wider area including the Monks Brook and its associated Greenway'* (paragraph 6.17, page 89). There is also no indication of whether those who wrote letters and statements saw any map of the area (ibid.).

56 Ms Ellis addresses the question of the closure of Footpath 28, for between one and four months, due to the Foot-and-Mouth outbreak in 2001. She describes it as a *'difficult legal point'*, given the provisions of section 15(6) of the CA 2006¹, a matter on which she *'did not have the benefit of argument'*. The objector raised this matter. Its objection depends on the meaning given to the phrase *'access to the land was prohibited to members of the public'*, in a situation where some of the access to the Application Land was by means of public footpaths, and it can be said that *'access to the Land' was* prohibited by a closure Order. Ms Ellis characterises the statutory wording as *'ambiguous'*: it might mean all *'unauthorised human presence on the land'* (as in during wartime on military land) or more extensive powers within the Foot-and-Mouth Order, or both (paragraph 6.20, pages 90-91). The objector's advocate maintains this issue *'does not matter'* because the Inspector should find that use of the Land would have

¹ In determining the period of 20 years referred to in subsections (2)(a), (3)(a) and (4)(a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment. In determining the period of 20 years referred to in subsections (2)(a), (3)(a) and (4)(a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.

ceased because people would have obeyed the Order, even if it did not prohibit them from going on the Application Land, only the public footpath on its perimeter. However, the Inspector does not find that this argument provides any resolution to the matter of whether she can take this interruption to user into account in her deliberations, because of the wording of section 15(6). This requires, in any consideration of a 20-year period of user, the disregard of any period where the public was excluded by virtue of any enactment, *'not the actual or assumed absence of user'* (paragraph 6.20, pages 90-91). The DEFRA guidance to Pioneer Authorities and the Planning Inspectorate on the Commons Act 2006, actually uses the example of an outbreak of foot-and-mouth disease in its wording on section 15(6) of that Act, in conjunction with the phrase *'an area of land'* being closed. The applicant is required to state the period of exclusion, and there must be evidence of twenty years' use not taking account of the period of statutory closure (i.e. use for 20 years and 6 months, but not counting the 6 months of closure) – paragraph 6.21, pages 91-92.

57 The Inspector turns to a standard textbook on commons, *'Gadsden on Commons and Greens'* (2nd edition), where section 15(6) is characterised as dealing with a specific situation, the denial of access due to an enactment, and states that it is doubtful whether the *'fortuitous incidence of foot-and-mouth disease'* could be relied on by landowners to defeat application, and the Hansard debates make it clear that this section was intended only to apply to statutory closures (paragraph 6.22, page 92). Ms Ellis concludes that the objector's submission is *'right as a matter of statutory interpretation'*, given that the Stoneham Way Link was a legally available entrance to the Application Land and is not a public footpath, but a highway verge, not falling within the scope of the closure Order. In which case, not all access to the Land was prohibited by statute, and even on her *'possible alternative reading'*, the closure would not be able to be disregarded. This leads her to give any presumed reduction of use during the foot-and-mouth outbreak little evidential weight, given that so little is known about what actually happened on the Application Land during that period in 2001 (paragraphs 6.22, 6.23 and 6.24, pages 92-93).

'of the locality, or of any neighbourhood within a locality...'

58 Secondly, on the matter of a chosen locality for this Application, the first submission made for the objector was that it failed because two localities were specified on Form 44, namely Eastleigh and Swaythling (paragraph 6.25, page 93). In this form, the Applicant did not say whether she claimed to rely on a locality or a neighbourhood. Ms Ellis asks why she should be treated as having opted for a locality, when she could have opted for a neighbourhood or neighbourhoods in a locality or localities, both of which have been established as valid by the Courts (paragraph 6.26, page 93). Mr. Laurence QC for the County Council drew attention to the absence of evidence establishing the neighbourhood of either Eastleigh or Swaythling or their combination, there being no map in the Application identifying a neighbourhood, and the existence in 2007 of administrative areas known to the law with those names (paragraph 6.26, pages 93-94). Further, he argued that there is nothing in the Act or Regulations to allow an applicant to rely on localities, and the Inspector agrees that *'it would be wrong to imply a power for the CRA to register on the basis of alternatives, since it would be fundamentally inconsistent with the statutory concept of a recreational area registered as a result of the actions of the residents of that particular place for the benefit of themselves and their successors'* (paragraph 6.27, page 94). She further says that it seems *'impossible to adopt an approach*

of essentially regarding the locality or neighbourhood as unimportant or variable' (ibid.). Ms Ellis does not think that the practice sometimes occurring at inquiries of allowing reconsideration by applicants of localities or neighbourhoods to reformulate their applications '*in the light of technical objections do not apply in this case*' where the Applicant has taken no part (ibid.). There is no requirement for the CRA to reformulate the Application, and neither does the Inspector have the means to do so (paragraph 6.27, page 95). She expressed the strong suspicion that '*many respondents did not understand the question properly, regarding it as related to the Application Land and/or the wider areas which some of them apparently thought formed part of the Application Land*', and there was no other evidence put forward in the Application that could assist (ibid.). The Inspector sums up '*As in all other respects, the burden of establishing the claim in this regard lies on the Applicant and she has failed to discharge it...Even though some information is before me about administrative areas, it is not for me or the CRA to reformulate the Application by unilaterally treating it as amended*' (paragraph 6.27, pages 95-96, and also paragraph 8.3.1 of this report). Similarly, Ms Ellis has no basis for considering any change to the relevant locality or neighbourhood(s), even though there was, at the time of writing the report, an outstanding appeal to the Supreme Court on this matter, and she thought there was no reason to wait for its outcome in this case because the Applicant had not advanced a case to justify this. The Inspector also set out references to other case law to show that it is further not necessary for an applicant to demonstrate community cohesion to establish a locality, and her discussion of this is at paragraphs 2.26-2.29, pages 27-29. It is her conclusion that it is '*neither necessary nor possible to determine them in the context of this application*' (paragraph 6.29, pages 96-96)

Conclusions:

- 59 Having considered all the available relevant material put before the inquiry, Morag Ellis QC concludes that '*I therefore find that there was a material period of time during which the Application Land was, on balance, most unlikely to have been used by local residents for LSP. My findings about the subsequent condition of the Application Land also reinforce the doubts which I have about the imprecision of the Applicant's supporting evidence*' (paragraph 6.18, page 90).
- 60 An important feature of this Application to register village green rights over the Land known as Monks Brook has been the lack of substantial evidence on crucial matters and the failure of the Applicant, and any supporters of the claim, to appear in front of the Inspector at the non-statutory public inquiry held on 5 and 6 February 2018.
- 61 The Inspector, in her advice report, has assessed whether the six legal tests under section 15 of the Commons Registration Act 2006 have been met. Her conclusions are that:
- 62 The Applicant has failed to establish the required user for the relevant 20 year period, from 1987 to 2007. The evidence put before the inquiry by the landowner, Hampshire County Council, shows that, on the balance of probabilities, the Application Land was '*not used at all and/or that there was not significant user by local inhabitants from September 1987 to sometime in 1990; there was an interruption in user in the latter part of either 1995 or 1996 (both of which fall well within the relevant period) for a period of around two months due to a traveller incursion*' (paragraph 7.1(i), page 97).

- 63 Without prejudice to the point made above, *'the evidence of user generally is too vague to found registration, especially since there was manifest confusion in the minds of supporters as to the extent of the Application Land'*, (paragraph 7.1(ii), page 97).
- 64 Again, without prejudice to the two points made above, the supporting evidence is too vague for registration to take place because of *'the presence of a public footpath and another path on the land which will have accommodated at least some of the walking and dog walking claimed to have taken place on the land'*, as well as the deeply disturbed state, and inaccessible condition of parts of the Land, following the occupation of it by travellers, *'it has not been satisfactory established that there was significant user of the Land for LSP off paths, allowing for some deviation from footpaths/retrieval of straying dogs'* (paragraph 7.1.(iii), pages 97-98).
- 65 Without prejudice to the three points above, the Applicant has neither specified, nor established by evidence, any qualifying locality, or a neighbourhood or neighbourhoods within a locality or localities (paragraph 7.1(iv), page 98).
- 66 The Inspector advises that the findings set out in her advice report apply solely to land in the ownership of Hampshire County Council, and the application relating to land lying within Southampton City Council's administrative area falls to be determined by that Council's CRA.

CORPORATE OR LEGAL INFORMATION:**Links to the Strategic Plan**

Hampshire maintains strong and sustainable economic growth and prosperity:	Yes
People in Hampshire live safe, healthy and independent lives:	Yes
People in Hampshire enjoy a rich and diverse environment:	Yes
People in Hampshire enjoy being part of strong, inclusive communities:	Yes

Other Significant Links

Links to previous Member decisions:	
	Date

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

File: VG 234

Location

Countryside Access Team
Room 6.0
Castle Avenue
Winchester
SO23 8UL

IMPACT ASSESSMENTS:

1. Equality Duty

1.1 The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2 Equalities Impact Assessment:

2. Impact on Crime and Disorder:

2.1.

3. Climate Change:

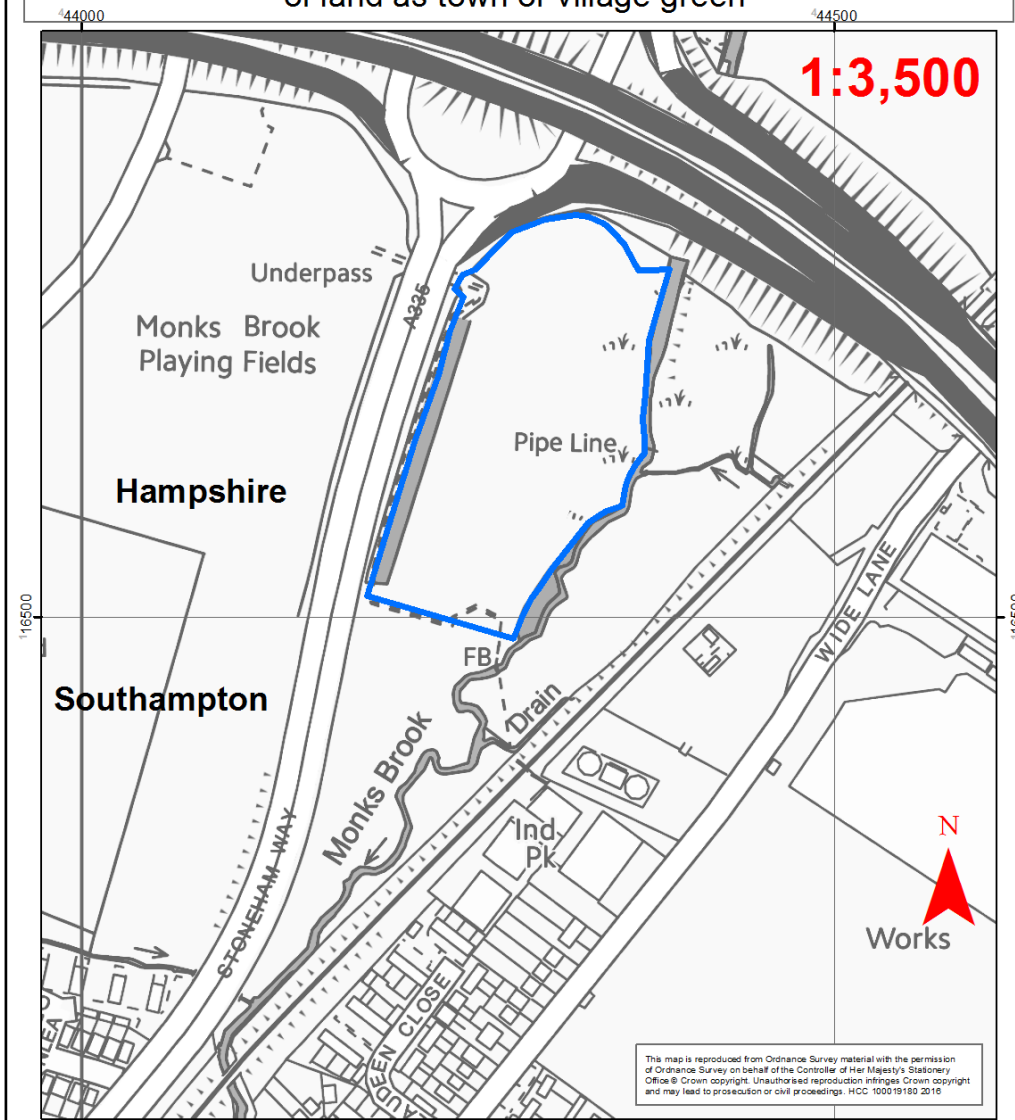
3.1

This report does not require impact assessments but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to amend the register of town and village greens in the circumstances described in this report.


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Commons Act 2006 - Section 15(1)



Notice of an application for the registration
of land as town or village green



44000 44500 16500 16550

 Hampshire
County Council
Commons Registration Team
Culture, Communities and Business
Services
Room 0.01
Castle Avenue
Winchester
SO23 8UL

Monks Brook, Eastleigh (VG 234)

-  Approximate extent of land subject to this application
-  County Boundary

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Hampshire County Council**Regulatory Committee**

Item

28 November 2007**Application to Register land at Monks Brook, Swaythling as
Town or Village Green****Commons Act 2006****The Commons (Registration of Town or Village Greens)
(Interim Arrangement) Regulations 2007****Report of the Chief Executive**Contact: Liz Ellam, (01962) 847371 elizabeth.ellam@hants.gov.uk**1 Summary**

- 1.1 An application has been made by Mrs Janet Ticehurst of 1 Mardon Close, Swaythling, Southampton to register land known as Monks Brook, Playing Fields (Meadow) and Monks Brook Greenway, Swaythling as town or village green as shown coloured green on the attached map. The application relates to land which lies within the administrative district of the County Council and the Council is therefore the Commons Registration Authority.
- 1.2 A similar application has been made by Mrs Ticehurst in respect of the land shown green and hatched black on the map and this lies within the administrative district of Southampton City Council and Southampton City Council is therefore the Commons Registration Authority in respect of that land.
- 1.3 It is proposed that Southampton City Council are authorised by the Regulatory Committee to deal administratively with the application in respect of the Hampshire land and revert back to the County Council after the non-statutory public inquiry has been held, with the Inspector recommending whether the County Council should agree to the application, in whole or part, or reject it.

2 Introduction

- 2.1 The application to Hampshire County Council is considered to be 'duly made' under the Interim Arrangement Regulations and the next stage would be for the application to be advertised.
- 2.2 The owners of the land the subject to the application to Hampshire County Council are Hampshire County Council.
- 2.3 Members will be aware that it is quite usual for non-statutory public inquiries to be held where there are issues of fact and law to be resolved, with an independent Inspector being appointed to preside at the public inquiry and

- prepare a report for the Registration Authority with a recommendation to agree to or reject the application.
- 2.4 It is unusual for an application to be received which straddles administrative boundaries and the legislation is silent as to how such applications should be dealt with.
 - 2.5 The Guidance Notes for completion of an application published by DEFRA say "if the land comes under the jurisdiction of more than one registration authority we suggest that you apply to the registration authority within whose area the majority of the land lies".
 - 2.6 Mrs Ticehurst has, as stated above, made applications to both Hampshire County Council and Southampton City Council.
 - 2.7 It will be more practical for one registration authority to deal with both applications, as they in effect relate to the same land, and it is proposed that the Regulatory Committee authorise Southampton City Council to deal with the application, advertising of the application, dealing with the administrative provisions as to the exchange of objections/representations made and the appointment of an Inspector should a non-statutory public inquiry be necessary.
 - 2.8 As Hampshire County Council own approximately 65% of the land and Southampton City Council 35% it may be for this reason alone that it would be prudent for a public inquiry to be held.
 - 2.9 If Members are agreeable to this proposal, then the costs of the public inquiry would be split 50/50 between the two Councils. The cost of a five day public inquiry has been estimated to be in the region of £20,000.

3 Recommendation

- 3.1 That Southampton City Council be authorised under Section 101 of the Local Government Act 1972 to deal administratively with the application to Hampshire County Council to register land at Monks Brook Swaythling as town or village green including the appointment of an Inspector to preside over a non-statutory public inquiry.
- 3.2 The costs of any public inquiry to be shared between the two Authorities 50/50.
- 3.3 That the Inspector be asked to prepare a report for Hampshire County Council following the public inquiry with a recommendation to agree to the application or reject it.
- 3.4 That the application be returned to the Regulatory Committee for determination in due course.

Section 100D – Local Government Act 1972 – background papers

The following documents disclose facts or matters on which this Report, or an important part of it, is based and has been relied upon to a material extent in the preparation of this Report.

NB: the list excludes:

1. Published works
2. Documents which disclose exempt or confidential information as defined in the Act

Application and supporting documentation held in Chief Executive's Department

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Appendix 3

Hampshire County Council

Decision Report:

Decision Maker:	Regulatory Committee
Date of Decision:	27 April 2011
Title:	Application for the registration of land known as Monks Brook Playing Fields and Monks Brook Greenway, Swaythling as town or village green (Application No. TVG 234)
Reference:	
Report from:	Director of Culture, Communities and Rural Affairs

Contact name: Sylvia Seeliger

Tel: 01962 846349

Email: sylvia.seeliger@hants.gov.uk

1. Executive Summary

1.1 Hampshire County Council is the Commons Registration Authority for the purpose of exercising functions under the Commons Act 2006. One such function is the determination of applications made to register land as town or village green. In 2007, an application was made in respect of land partly within the administrative boundary of Hampshire and partly within the administrative boundary of Southampton City and authority was given by this Committee to Southampton City Council to deal administratively with the application on behalf of Hampshire County Council. Approval is now sought to write to the Leader of Southampton City Council requesting information about the lack of progress of the application relating to the land lying within the County of Hampshire, so that a decision may be made as to how to bring to completion the determination of the application for the Hampshire part of the land.

2. Legal framework for the decision

2.1 S.15 Commons Act 2006

Registration of greens:

(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

(2) This subsection applies where –

Appendix 3

(a) a significant number of the inhabitants of the locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

(b) they continue to do so at the time of the application.

(4) This subsection applies (subject to subsection (5)) where –

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;

(b) they ceased to do so before the commencement of this section; and

(c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).

2.2 The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England and Wales) Regulations 2007

Consideration of objections

6(1) Where an application is made under section 15(1) of the 2006 Act to register land as a town or village green, as soon as possible after the date by which statements in objection to an application have been required to be submitted, the registration authority must proceed to the further consideration of the application, and the consideration of statements (if any) in objection to that application, in accordance with the following provisions of this regulation.

(2) The registration authority –

(a) must consider every written statement in objection to an application which it receives before the date on which it proceeds to the further consideration of the application under paragraph (1); and

(b) may consider any such statement which it receives on or after that date and before the authority finally disposes of the application.

3. **Applicant:** Mrs. Janet Ticehurst of 1 Mardon Close, Swaythling, Southampton

4. **Landowners:** Hampshire County Council.

Appendix 3

5. Description of the land (please refer to the map attached to this report)

- 5.1 The application land lies between Stoneham Lane (A 335) and Monks Brook Greenway, and is divided by the boundary between Southampton City and Hampshire. The map shows the application land edged in blue, and the part lying in Southampton City is hatched black. The whole area is unregistered. Its area is 11.32 acres (4.58 hectares).

6. The application

- 6.1 In September 2007, an application (TVG 234) was made to register land known as Monks Brook Playing Fields (Meadow) at/and Monks Brook Greenway, at Swaythling by Mrs. Janet Ticehurst. Part of the land is within Hampshire and part is within Southampton City with the respective parts being owned by Hampshire County Council, and by Southampton City Council. The application was accompanied by maps, photographs, a petition, and letters from local residents. The applications were effectively identical.

- 6.2 On 28th September 2007, a report was taken to the Regulatory Committee (copy attached), seeking that Southampton City Council should be authorised to deal administratively with the application relating to the land in Hampshire, to revert back to the County Council after the non-statutory public inquiry had been held, and the Inspector's decision letter giving a recommendation as to the determination had been received.

- 6.3 The matter was duly passed to Southampton City Council. Recent attempts at officers level to find out what progress has been made with the matter have not been successful. Undetermined village green applications are holding up the processing of new applications, to the point that there is now a waiting list. In order to be able to process these new applications, the backlog has to be cleared.

- 6.4 For this reason, permission is sought to write, as from the Chairman of the Regulatory Committee, to the Leader of Southampton City Council requesting information on the lack of progress of this application, so that it may be decided whether Hampshire County Council, as the Commons Registration Authority for the land covered by this application, should take this application back into its control and proceed to a determination.

7. Issues to be decided

- 7.1 Whether permission should be given for officers to write to the Leader of Southampton City Council requesting information on behalf of the Regulatory Committee, requesting information on the lack of progress of the application relating to the land lying in Hampshire.

Appendix 3

8. Recommendation

- 8.1 That authority is given for officers to write to the Leader of Southampton City Council, requesting information about the progress of the application relating to the land lying in Hampshire, so that a decision can be made as to how best to proceed to determination of the matter.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	yes/no
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes/no
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes/no
Corporate Improvement plan link number (if appropriate):	
OR	
This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to amend the register of town and village greens in the circumstances described in this report.	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

File: VG 234

Location

Countryside Access Team
Room 200
Mottisfont Court
High Street
Winchester, SO23 8ZF

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

1.1

2. Impact on Crime and Disorder:

2.1

3. Climate Change:

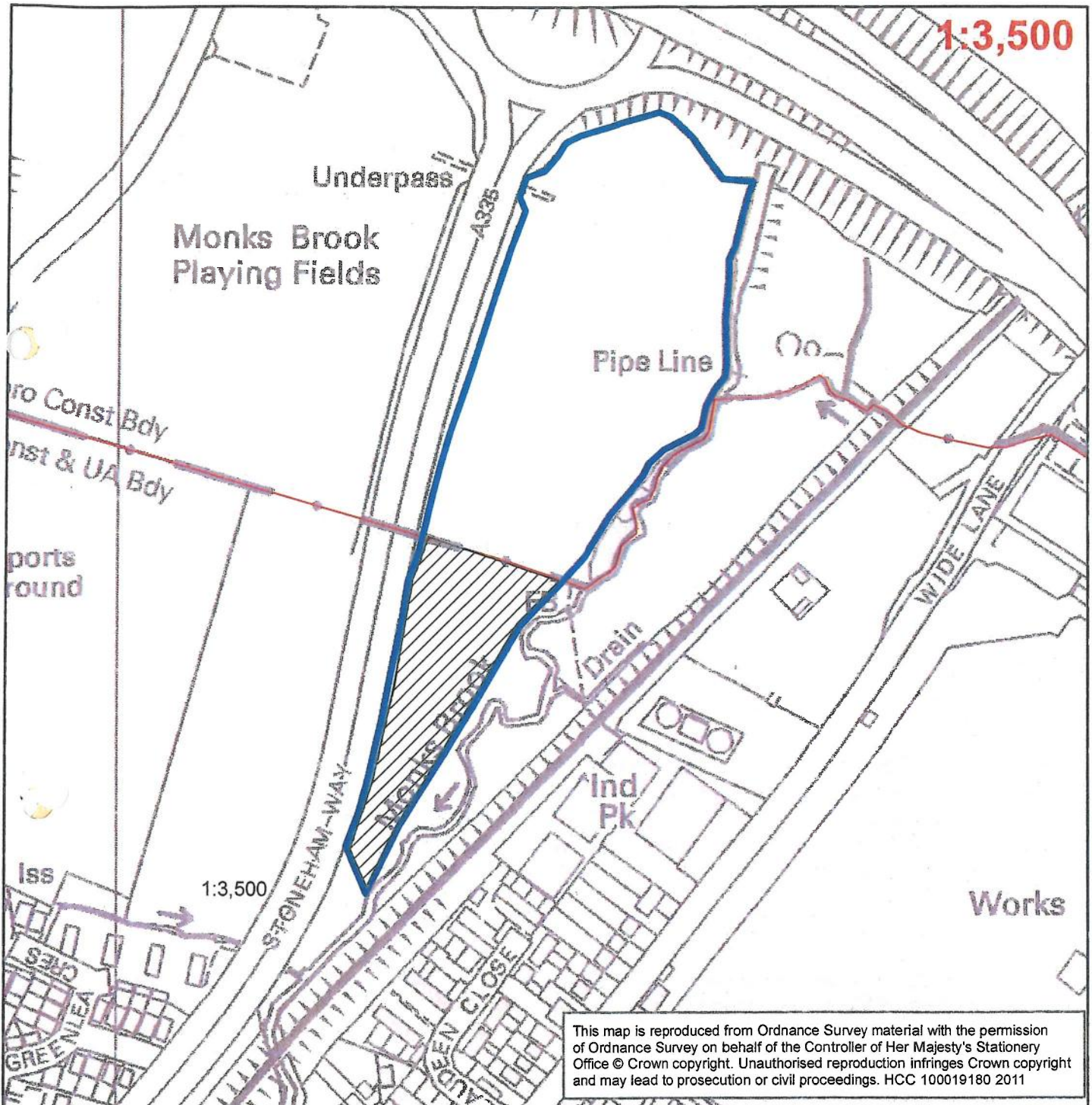
- a) How does what is being proposed impact on our carbon footprint / energy consumption?


- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

This report does not require impact assessments but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to amend the register of town and village greens in the circumstances described in this report.

Commons Act 2006 - Section 15(1)

Notice of an application for the registration
of land as a town or village green



 Hampshire
County Council
Commons Registration Team
Culture Communities and Business
Services
Mottisfont Court
High Street
Winchester
SO23 8ZF

EASTLEIGH AND SOUTHAMPTON



Approximate extent of land
subject to this application



Approximate area owned by
Southampton City Council

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

1.1

2. Impact on Crime and Disorder:

2.1

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

This report does not require impact assessments but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to amend the register of town and village greens in the circumstances described in this report.

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	17 April 2019
Title:	Application for a Definitive Map Modification Order to record Byways Open to All Traffic 19 & 47 as bridleways Parish of Buriton
Reference:	
Report From:	Director of Culture, Communities and Business Services

Contact name: Harry Goodchild

Tel: 01962 846044

Email: harry.goodchild@hants.gov.uk

Purpose of this Report

- 1 The purpose of this report is to assist Members in determining whether to accept an application to record two byways open to all traffic as bridleways, both of which fall within the Parish of Buriton.

Recommendation

- 2 It is recommended that the application be refused.

Executive Summary

- 3 This is an application, made by Buriton Parish Council ('The Applicant') under Section 53 of the Wildlife and Countryside Act 1981, to record two Byways Open to all Traffic ('BOATs') in the parish of Buriton as bridleways. If successful, the application would 'downgrade' both routes by removing vehicular rights (both motorised and non-motorised) that are currently recorded, thus restricting future use to pedestrians, cyclists and horse-riders. The application is supported by historic documentary evidence which the Applicant believes demonstrates that errors were made, both when the routes were recorded on the first definitive map in the 1950s, and during the reclassification of the routes during the early late 1980s.
- 4 Having considered the evidence in tandem with current guidance and relevant case law, it is considered that there are insufficient grounds for the making of an order to record these routes as bridleways.

Legal framework for the decision

WILDLIFE AND COUNTRYSIDE ACT 1981 - Section 53: Duty to keep definitive map and statement under continuous review

(2) As regards every definitive map and statement, the surveying authority shall:

b) keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence.... of any of [the events specified in sub-section (3)] by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.

(3) The events referred to in sub-section (2) are as follows: -

c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows...

ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description...

Description of the Route (please refer to the map attached to this report)

5 Both routes are situated to the east of the village of Buriton, and are shown running between Points A-B (BOAT 19) and C-D (BOAT 47) respectively. Both routes are recorded on Hampshire County Council's List of Streets Maintainable at Public Expense ('List of Streets') as 'adopted unmetalled' highways, and link at each end to other routes which are also recorded on the List of Streets and/or the Definitive Map as public vehicular highways.

6 **BOAT 19** is also known locally and recorded on successive Ordnance Survey maps as 'The Milky Way'. It proceeds south-eastwards from the southern end of BOAT 18 ('Mead Lane') through areas of woodland known as Cockshot Wood and The Miscombe, to meet Sunwood Lane (U216), which is recorded as 'adopted metalled' on the List of Streets. The definitive statement for the Milky Way reads:

"From Mead Lane to Road U.216

From south end of Mead Lane, U.216 (unmetalled) southeastwards along earth track through Cockshot Wood to junction with Dean Barn Road U216."

BOAT 47 forms a link running north-south between Ditcham Lane (also recorded as U216) and Sunwood Farm. It is recorded in the definitive statement as:

"From Road U.216 at Sunwood Farm to Road U.216 at the Old Chalk Pits

From U.216 northwards, along a 10 ft. wide unmetalled publicly repairable highway, to join Road U.216 at the Old Chalk Pits."

Issues to be decided

7 The issue to be decided is whether there is evidence to show, on the balance of probabilities, that the two highways described above should be shown on the definitive map at a different status.

8 Case law has decided that the burden of proof associated with Map Modification Orders is 'on the balance of probabilities', so it is not necessary for evidence to be conclusive or 'beyond reasonable doubt' before a change to the Definitive Map can be made.

- 9 Any changes to the Definitive Map must reflect public rights that already exist. It follows that decisions as to whether to amend the Definitive Map must not be taken for reasons of desirability or suitability. Therefore, before an Order changing the Definitive Map is made, the County Council must be satisfied that the requested modification is supported by the evidence.
- 10 DEFRA's [Rights of Way Circular 1/09](#) sets out the requirements for considering applications seeking to delete a right of way from the definitive map, or record a route at a lower status:

“The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement – and this would equally apply to the downgrading of a way with “higher” rights to a way with “lower” rights, as well as complete deletion – will need to fulfil certain stringent requirements. These are that:

- *the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.*
- *the evidence must be of sufficient substance to displace the presumption that the definitive map is correct;*
- *the evidence must be cogent.”*

- 11 Circular 1/09 reflects the decisions of the courts in during recent years. In *Burrows v Secretary of State for Environment, Food and Rural Affairs* (2004) the court held that an application to modify the status of a way could not simply re-examine the same evidence that had previously been considered when the definitive map was first drafted – there had to be some new evidence, which when considered with the other evidence, justified the modification. In the case of *R v. Secretary of State for the Environment, ex parte Burrows and Simms* (1991), it was recognised that the term ‘discovery’ could apply to scenarios where a mistaken decision has been made and its correction becomes possible because of the discovery of information which may or may not have existed at the time the definitive map was being prepared. In *Trevelyan v Secretary of State for the Environment, Transport and the Regions* (2001), the Court of Appeal held that an Inspector considering an opposed order to delete a right of way from the definitive map had to start with the presumption that the right of way existed, and that evidence of some substance had to be produced to outweigh this initial presumption. In *Trevelyan*, Lord Phillips MR stated that:

“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive

evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”

- 12 Circular 1/09 also states that use of a way subsequent to its first being recorded on a definitive map cannot be seen to be ‘as of right’, as rights that cannot be prevented cannot be acquired. It is not possible for a right of way to be acquired through long use when use of the way is by virtue of it having been shown on the definitive map. Consequently, in this case the decision as to whether to modify the map must turn solely on evidence leading up to (and including) the drafting of the first definitive map - after that time vehicular use of the application routes would have been ‘by right’, as a result of their legal status.
- 13 Both routes were recorded on the first definitive map of 1955 as RUPPs (‘Roads Used as Public Paths’). RUPP was a classification set out in Section 27 of the National Parks and Access to the Countryside Act 1949, ascribed to every ‘highway, other than a public path, used by the public mainly for the purposes for which footpaths and bridleways are so used.’ The classification caused confusion, as it left the question of vehicular rights open-ended. As a result, Section 54 of the Wildlife and Countryside Act 1981 required every surveying authority to review all RUPPS shown on its definitive map and make orders to reclassify them to either BOAT, bridleway or footpath. As discussed in the [Planning Inspectorate’s Rights of Way Advice Note No.12](#), in *Stevens v Secretary of State for the Environment* (1998), Mr Justice Sullivan considered a challenge to a decision to confirm a reclassification order under Section 54. He ruled that the depiction of a RUPP on a definitive map was not in itself evidence of the existence of any public vehicular rights over such a way, and whether the public enjoyed any vehicular rights over a RUPP was deliberately left open by the 1949 Act. He stated that:

“The fact that the track was classified as a RUPP tells one that it was used mainly for one or other of those purposes [i.e. for the purpose for which footpaths or bridleways are so used] ... it does not mean that there were any additional rights over the track. Such rights would have to be proved to exist by dedication or by prescription.”

- 14 In determining this application, it will be necessary for consideration to be given to what evidence was available at the time of the original survey, and whether any ‘new’ evidence which was not previously available at the time has been ‘discovered’ which now warrants a change to the definitive map. It will also be necessary to bear in mind that the depiction on the first definitive map of the routes as RUPPS will not in isolation be conclusive evidence as to their status as vehicular highways, and regard will need to be had to other available evidence when determining the application.

Background to the Application

- 15 The application was submitted in 2016. Due to a backlog of applications the matter was not taken up for investigation at the time, and in January 2018 the Applicant made representations to the Secretary of State asking that they direct the County Council to determine the application (under paragraph 3(2) of Schedule 14 to the Wildlife and Countryside Act 1981). In August 2018, the Secretary of State

directed that the County Council should determine the application by 10 February 2019. It is acknowledged that this deadline has not been met, and officers are grateful to the Applicant for their patience.

- 16 According to the Applicant, the application (and subsequent representations to the Secretary of State) followed multiple attempts to restrict motorised vehicular access along BOAT 19, on account of conflict between users and environmental damage on what is a historic sunken lane with narrow steep-sided banks. This the Applicant sought to do by applying to the County Council for a Traffic Regulation Order, but to date the relevant area officers have not agreed that such a restriction is warranted (it should be noted that, whilst these concerns explain the Applicant's reasons for seeking a change to the definitive map, matters relating to suitability or desirability have no bearing on whether an order should be made to modify the status of the routes).
- 17 As stated at 6.7, both routes were recorded on the first definitive map as RUPPS. They were subsequently reclassified to BOAT status, along with seven other RUPPS in the parish, by a Section 54 reclassification order, which was confirmed in 1991. The details surrounding this process are discussed later in this report.

Documentary Evidence

All the evidence discussed below was submitted by the Applicant in support of its application, unless stated otherwise.

18th and 19th century evidence

Isaac Taylor's Map of Hampshire – 1759 (1 inch to 1 mile)
Taylor's map shows neither of the application routes.

- 19 Thomas Milne's Map of Hampshire – 1791 (1 inch to 1 mile)
No route is shown in the proximity of BOAT 47, but a route corresponding with BOAT 18 is shown running southward from Pitcroft Lane to meet Buriton Hanger, through which an enclosed route runs on an east-west alignment. Where two routes are shown running parallel on subsequent maps (the Milky Way and Coulters Dean Lane), Milne shows only one. The route that is shown runs through the woodland, and so it is possible that the route depicted is the Milky Way. It proceeds eastward from the centre of Buriton to (and beyond) the county boundary, continuing into West Sussex.

- 20 Survey of the Manor of Buriton – 1793

This plan was produced to show the extent of the ownership of Lord Stawell, covering the 'Manor of Weston, West Mapledurham and Durford' as well as showing the boundaries of the 'Manor and Borough of Petersfield'. No route corresponding with BOAT 47 is shown on the map, but Pitcroft Lane and Mead Lane are shown as enclosed routes, with the latter terminating at its current junction with Buriton Hanger, and apparently gated. The Milky Way continues as an uncoloured route running through the hanger, which the schedule accompanying the map describes as being in the ownership of Lord Stawell. At its eastern end it passes through another gate and converges with the route now

known as Sunwood Lane. The Applicant asserts that this plan indicates that the Milky Way was a private estate road in 1793, but given the absence of a legend, or any other contextual information relating to the plan, officers consider that this document is of little assistance in determining the route's status.

21 Ordnance Survey 'Old Series' – 1 inch drawing (1806) and the 1 inch to 1 mile map (c1810)

The 1 inch drawing that preceded the published map shows both BOATs 19 and 47 as routes with solid boundaries. Pitcroft Lane (which appears to be gated) and Mead Lane are also shown in this way, with the latter annotated to show the existence of a '*Direction Post*' just to the north of its junction with BOAT 19. The Milky Way runs through Buriton Hanger and is shown fenced against the eastbound Sunwood Lane, instead forming one open, continuous route running southward and then westward along what is now Coulters Dean Lane. The Applicant contends that a gate is shown on the plan at the junction of Mead Lane and the Milky Way, but due to the poor quality of the document, this cannot be ascertained. The published map of 1810 shows no gates on any part of Pitcroft Lane, Mead Lane or the Milky Way, the latter being shown as an enclosed way. The direction post is again shown near the southern end of Mead Lane, at a point where the now recorded BOAT forms a junction with Footpath 1 (although the footpath is not shown on the 1810 map).

BOAT 47 is shown on both the 1806 drawing and the final version of the map as part of a continuous route between Ditcham Farm and Sunwood Farm, with the southern end forming an open junction with an eastbound route which leads from Sunwood Farm into West Sussex.

As pointed out by the Applicant, this document provides no conclusive evidence as to the status of either route.

22 Christopher Greenwood's Map of Hampshire – 1826 (1 inch to 1 mile)

Greenwood's map shows both routes in similar fashion to the OS map of 1810, enclosed by solid parallel lines which the legend describes as 'cross road' (which in this context is generally taken to mean a point where two roads cross).

23 Buriton Tithe Map and Award – 1841

Tithes apportioned a monetary rent charge in lieu of tithe payments in kind that had previously been payable to the church. The purpose of the process was not to identify public highways, although many tithe documents include useful information relating to them.

The Buriton award includes a list of roads, and records Pitcroft Lane and Mead Lane as '*Lane*' under the State of Cultivation column. Both routes are given their own individual plot numbers in the same way as other land parcels shown on the map, and both are recorded as being in the ownership of John Bonham Carter. The Milky Way is also recorded in this section of the award, but has no individual plot number ascribed to it, and is shown by bracings to form part of Cockshot Wood and Ditcham Hanger (State of Cultivation – '*Wood*'). The route appears to be gated at its junction with Sunwood Lane, which is itself recorded in the award as '*Occupation Road to Sunwood*'.

The Applicant describes the Tithe Award as a 'bench-mark document', and states that at this time, the Milky Way could only connect with privately owned 'occupation roads' and did not connect with a public carriageway. Officers do not consider that this is a safe assumption – Mead Lane (BOAT 18) is recorded in the award as '*Lane*', not '*Occupation Road*', and the fact that it was privately owned does not automatically mean that the way was not public (many of the other roads in the award which are now public are listed in the Award as being in private ownership).

Further to the east, BOAT 47 is shown braced with the surrounding woodland (in similar fashion to the horseshoe-shaped route which is now metalled highway) and is also listed as '*Wood*' under State of Cultivation.

NB – the Applicant has also provided a type-written extract from the Tithe Award, produced in 1933 "...for the purpose of assisting the Parish Council of Buriton in the preparation of a map and schedule of all the rights of way in the Parish...". It is therefore apparent that the Tithe Award was available at the time of the initial survey of rights of way, pursuant to the requirements of the 1949 Act.

24 Buriton Parish Vestry Minutes – 1856-1857

The Applicant has provided an extract from the Buriton Vestry Minutes relating to the route now variously recorded as Dean Barn Lane and Coulters Dean Lane (also recorded as Buriton BOAT 25):

"It was decided that the road commencing from the Cross-roads at Faggs to the Lime Kiln in the Ditcham Estate at Coulters Dean, should be considered a Parish Road."

The Applicant observes that this route was listed in the *Roads* section of the Tithe Award, and infers that the above minute, made approximately 15 years later and declaring the route to be public, demonstrates that it cannot be presumed that all the routes within the *Roads* section of the Tithe Award were vehicular highways. This re-emphasises the point made at 8.1.6 that the tithe evidence does not provide any clear-cut evidence in respect of the public highway network. The Vestry evidence is silent on the status of BOATs 19 and 47, although it does indicate that by 1856 the route at the eastern end of the Milky Way was acknowledged to be a '*parish road*' (this term was generally used at the time to indicate vehicular status).

25 Ordnance Survey County Series Maps – 1869-1932 (25 inches to 1 mile)

Four large-scale maps were produced by the Ordnance Survey covering the area during the late nineteenth/early twentieth century. The Milky Way is labelled on each map and is shown as an unenclosed track running through Cockshot Wood (as are several other tracks). The route is variously shown as being gated and ungated during this period at its junction with Mead Lane (which is also labelled) and at its eastern junction with Sunwood Lane. BOAT 47 is unobstructed at both ends and is shown in the same way as Sunwood Lane and Ditcham Lane – surveyed as part of the surrounding woodland, rather than being a separate parcel.

Officers would agree with the Applicant's view that no status can be inferred from the depiction of any of these routes on this map.

26 Summary of 18th and 19th century evidence

The Tithe Award of 1841 forms a key part of the Applicant's case for downgrading BOATS 19 & 47. However, as the Applicant acknowledges, the purpose of producing this document was not to record the status of highways. In any case, it is apparent from early 20th century parish minutes that this evidence was available during the preparation of the first definitive map, and so could not now be considered 'new evidence'. The other evidence discussed in this section, whether available to the decision-makers or not, provides little support (if any) for the application, as it simply records the routes as features in the landscape or (in the case of the Vestry minutes) provides no direct evidence relating to either route.

20th Century Evidence

27 Buriton Parish Council Minutes - 1896-1908

The Applicant has submitted a number of extracts from the parish minutes of the late 19th century, in which the poor state of repair of the Milky Way was discussed:

15th January 1897 - Milky Walk or Milky Way

The bad state of this Road was a matter for discussion. Councillor Radford stated that it was a High Road from Buriton to Guards Corner and Coulters Dean that the outlets for running off the surface water were higher than the Road and for a long distance the Road was practically impassable, proposed that the Rural District Council be written to asking them to do something towards the improvement of the same. Seconded by Councillor Gibbert and carried unanimously.

20th April 1897 - Milky Way

A discussion took place respecting the repair of the Milky Way. Mrs Cave, the Rural District Councillor for Buriton stated that the case had two or three times been before the Rural District Council but at present nothing had been done beyond two of the Members having been deputed to view the same. Mrs Cave stated that Mr Cave would readily find the material if the Rural District Council would supply the labour, after some discussion it was resolved that Mrs Cave should ask the Rural District Council if they would undertake the repair of the Road on the foregoing terms.

15th May 1897 - Milky Way

The Chairman on behalf of Mrs Cave the Rural District Councillor stated that the Rural District Council had decided to do nothing towards the repair of the Milky Way. He further considered that something should be done to the road as in addition to Ditcham House there were twelve cottages the tenants of which and their families would use the road to a very great extent if it were put into passable condition. Mr Councillor Sharp stated that the road was classified by Mr Durman the late surveyor to the Highway Board as a fourth class road and he now moved that the Rural District Council be written to, to know whether or not they contemplated doing any repairs to the same and subject to their rely that the Clerk be directed to complain to the County Council of the neglect or inaction of Petersfield Rural District Council in relation thereto, further that in the event of so doing that the Petersfield representative on the County Council Bonham Carter be written to asking him to support the application of this Council, this resolution was duly seconded and having been put to the Council it was carried unanimously.

15th June 1897 - Milky Way

The Clerk read a letter from the Rural District Council from which it appeared that they did not propose doing anything further to this road than that body had done in the past. The Council did not consider this a satisfactory reply and the Clerk was now directed to take all necessary steps with a view to laying the matter before the County Council.

14th July 1897 - The Milky Way

The Clerk reported on the further correspondence with the Rural District Council who stated that they did not intend doing more to the Milky Way than had been done. He the Clerk now asked that a small Sub-Committee ought to be appointed to work up evidence to lay before the County Council enquiry if such should be held. He further stated the Parish Map ordered was not yet to hand and that it was necessary to have this prior to making complaint to the County Council. Proposed by Mr Gilbert, seconded by Mr Morris that a Sub-Committee of four be appointed to confer with the Clerk on the subject. Resolved that Councillor Mrs Cave, H S Sharp, G Radford and H R Bone be appointed on Sub-Committee.

15th November 1897 - Milky Way

Mrs Cave again drew the attention of the Council to the state of repair of the Milky Way stating that they had given notice to again bring the matter forward at the next meeting of the Rural District Council. The Sub-Committee appointed having stated that at present they had not met, it was after some discussion arranged to meet on Saturday 20th at Ditcham House at 2pm.

Saturday 20th November - *The object of the meeting was to enquire into the condition of the road known as the Milky Way and to report to the Council any information they may be able to obtain respecting the utility of this road provided it be kept in a proper state of repair. Mrs Cave doubted whether the District Council when they came to their decision respecting the Milky Way were aware that within the last ten years, twelve new cottages had been built at Park Barn, Downley, and Guards Corner, all in Buriton Parish and that the inhabitants of these cottages numbered between fifty or sixty men, women and children who were practically cut off from their Parish Church, schools and shops unless they walked by a road two or three miles longer. Moreover, funerals are sometimes obliged to pass along Milky Way and the nurse at St. Joseph's Cottage, when visiting such people on the hill is both delayed and fatigued in consequence of the state of the road.*

Messrs Bone, Radford and Sharp supported Mrs Cave's views and considering the fresh information now laid before the Sub-Committee they recommended that the Buriton Parish Council should request Mrs Cave to bring the matter a second time before the District Council in the hope that they may reconsider their former decision.

15th December 1897 - Milky Way

Mrs Cave reported that she now entertained some hopes of this road being repaired, the question was to be dealt with by the Rural District Council the following day.

15 January 1898 - Milky Way

Mrs Cave, the Rural District Councillor reported that the Rural District Council had sanctioned the repair of this road and that the work was now in hand. This report was considered highly satisfactory and it was unanimously resolved that a vote of thanks be recorded on the Minutes to Mrs Cave the Rural District Councillor for her efforts in getting the Rural District Council to repair the Milky Way also to the Chairman for generously supplying metal etc free of charge.

The Applicant points out that the concern of the parish in these minutes relates to pedestrian, and not vehicular use. Whilst this may be true, some references in the minutes also suggest that the Milky Way was an all-purpose highway – it is repeatedly referred to as a ‘road’ throughout the extracts, with councillors also referring to the route as *‘the High Road from Buriton to Guards Corner and Coulters Dean’* and as a *‘Fourth Class Road’*. There is no contemporaneous evidence to corroborate any of the assertions made in these extracts, but they provide an insight into the route’s reputation at the time which, in the view of officers, does not necessarily precludes vehicular status.

It is apparent from correspondence involving the Parish Council that these minutes were inspected during the preparation of the schedule of rights of way in the 1930s, and during the preparation of the definitive map in the early 1950s.

28 Bartholomew’s Half Inch Map of England and Wales – 1902

This map is referred to by the Trail Rider’s Fellowship in its response to the consultation on this application (see 9.5). By narrow solid lines, the map shows Mead Lane as an *‘Indifferent Road (Passable)’* but does not show the Milky Way. It does however show BOAT 47 on its current alignment (also as *‘passable’*) providing a direct link between Sunwood and Old Ditcham. The hairpin section of Sunwood Lane is not depicted. Bartholomew’s Maps contained disclaimers relating to rights of way (similar to those of the Ordnance Survey maps dating from the late 19th century), and so based on this evidence alone it cannot be said with certainty what the status of the route was at the time. The TRF suggests that, given the absence of the alternative route from the map, it could be inferred that at the time, BOAT 47 was considered by the mapmaker to be the primary route.

29 Sales Particulars – Ditcham Park Estate – 1921

These particulars were produced when the estate was sold in 1921. The plan shows several lots for sale in the vicinity of Cockshot Wood and The Miscombe.

The Applicant highlights the statement in the particulars that Ditcham House (now Ditcham Park School), which is situated approximately half a mile to the south of Miscombe Wood, *“is approached from Petersfield on the north side by a Private Road rising from the Parish Road”*. They suggest that the ‘parish road’ referred to would have been the present B2146 Petersfield to Harting road, presumably to illustrate that at the time, BOAT 47 formed part of the ‘private road’. Officers have interpreted this evidence differently.

The map shows two sections of the road network at this location as forming part of Lot 1. The track running north-eastwards from Ditcham Lane towards the B2146 is labelled ‘Lot 1 - 63’, and the hairpin route to the east of BOAT 47 as ‘Lot 1 - 64’. Both routes are shaded red. In the particulars Lot 63 is described as *‘Carriage Drive (Old Ditcham Farm)’* and Lot 64 *‘Carriage Drive’ (The Miscombe)’*. This indicates that both routes were considered to be private, as indicated by the following description: *“A right of way for all purposes as at present enjoyed over the private road, Plan No 63 on Lot 1, is reserved to the Owner for the time being of this Lot....”*

In contrast, the north-south route of Ditcham Lane (between the Miscombe and Old Ditcham Farm), BOAT 47 and Sunwood Lane (between Sunwood Farm and Coulter's Dean) are all shaded orange. To the east the B2146 is shaded the same way, as are Coulter's Dean Lane and Milky Way further to the west – none of these routes are given a plot number on the plan. It could therefore be inferred from this evidence that the two application routes, by association to other routes coloured the same way (all of which are now public vehicular highways) were considered to be public roads at the time.

30 Sales Particulars – Ditcham Park Estate – 1924

The area for sale includes Ditcham House and the area of Ditcham Wood to the north. As with the 1921 particulars, the track linking the B2146 and Ditcham Lane, and the hairpin section (which is labelled A-B-C) are coloured red, with Sunwood Lane and the section of Ditcham Lane that links the two 'red routes' shaded orange. BOAT 47 and the northern half of Ditcham Lane are unshaded.

The Applicant states that the private road network shown on the particulars is consistent with the roads 'taken over' by the county in 1939 (this is discussed later in this report). However, the particulars state that "*The property is sold subject to the following Right of Way on payment of a proportionate part of the cost of upkeep:- Over the roadway marked A-B-C on the plan in favour of the owners for the time owing of the Woodlands and the Farms known as Coulter's Dean and Sunwood Farm...*"

The two routes shaded red are labelled with plot numbers, which the schedule in the particulars describes as 'Carriage Drive (Old Ditcham Farm)' and 'Carriage Drive (Miscombe)'. No other sections of the road network at this location have plot numbers (shaded or otherwise). It would therefore appear that the routes shaded red were considered private at the time of sale and, by process of elimination, the orange routes public. It could therefore be inferred that, in lieu of any publicly recorded highway running over the hairpin at this time, BOAT 47 provided a public through route between Ditcham Lane and Sunwood Lane. This would be consistent with the subsequent dedication of highway rights over these routes in 1939 (see 8.2.9).

31 Sales Particulars – Buriton Estate – 1927

Mead Lane and Milky Way are included in the land for sale. Neither are shaded differently to the rest of the land for sale, whilst other routes (including the main routes through Buriton) are shaded brown. The Applicant points out that the lack of brown shading on Mead Lane and the Milky Way indicates that neither was considered to be a public road. This may be so, but applying this rationale would put this evidence at odds with the sale documents of 1921, which shows the Milky Way shaded brown. It may be that the shading on this plan shows strategically significant routes (which arguably Mead Lane and Milky Way would not be), but there is no legend on the map, nor any explanation in the particulars to clarify the purpose of the shading, and unlike the earlier sale documents it is not possible to draw any firm conclusions based on a comparison of the routes and the sale particulars. It is therefore considered that little weight can be attributed to this document.

32 Highways Handover Map – Petersfield Rural District – 1929

This map was prepared by Petersfield RDC to show those routes that it considered to be publicly maintainable highways at the time responsibility was transferred to the County Council (under the provisions of the Local Government Act of the same year). The map purports to show public footpaths as well as carriageways.

Both the Milky Way and BOAT 47 are annotated on the plan by dotted black lines, which the legend describes as *'Public Footpath – Not Repaired'*. This indicates that at the time this document was produced, the RDC considered both routes to be public highways which it was not responsible to repair. In contrast, Mead Lane and the western part of Sunwood Lane (near Coulters Dean) are shown by dotted blue lines, which marks them out as unmetalled carriageways repairable by the RDC.

The Applicant attributes some significance to the annotation of the application routes on this document as 'footpaths', and it could be said that at the time, the RDC considered neither route to be carriageways. However, it should be borne in mind that this was an internal working document which was not subject to public scrutiny - little is known about how it was compiled, and the researches undertaken as part of its preparation. It was also solely concerned with maintenance responsibilities and is therefore unlikely to be a comprehensive record of public rights in the locality at the time (and this may have been even more pertinent to two routes for which the RDC apparently claimed no responsibility). The depiction of the Milky Ways at odds with the RDC's apparent admission in the late nineteenth century that it was responsible for the maintenance of the Milky Way (see 8.2.1).

The map also includes additions in pencil, made ten years later in 1939, which show a continuous line drawn over Old Ditcham Lane and Sunwood Lane (including the hairpin to the east of BOAT 47) and annotated 'taken over 13/6/39' (see 8.2.9 for further discussion).

33 Buriton Parish Minutes – 1929-1941

In 1929 the Forestry Commission blocked a number of routes in the Buriton area which the Parish Council considered to be public, and so a list of public rights of way was drawn up in the minute book under the heading *'Foot and Bridle Paths'* and *'Foot Paths'*. The list, compiled on 23rd September 1929, includes the Milky Way under the former heading, and BOAT 47 under the latter ("*...where Ditcham carriage drive enters Miscombe Wood then south to Sunwood Farm*"). The Applicant considers that this categorisation is indicative of each route's status at the time.

In 1934, Buriton Parish Council drew up a map and schedule of rights of way, pursuant to the provisions of the Rights of Way Act 1932. The minutes record that these documents were deposited at the local school for public inspection, and that the routes listed therein were accepted by the RDC in March 1935.

The list transcribed in the parish minutes includes the following entries:

Route No.18 (Mead Lane)
Route No.19 (Milky Way)

Bridle Road & Public Carriageway
do [Ditto]

*Route No.23 (Petersfield-Harting Road
to Old Ditcham Farm)*

Bridle Road

In contrast to the earlier characterisation of the Milky Way in 1929 ('Foot and Bridle Paths'), by its association to Mead Lane the 1934 schedule lists the route as an all-purpose highway. However, it is apparent that the '*Public Carriageway*' part of the entry has been added at a later stage, as it is in a different coloured ink (although apparently the same handwriting). Notwithstanding its description as a 'Foot Path' in 1929 (and its depiction as such on the Handover Map), BOAT 47 isn't included in the schedule at all - the description of 'Route 23' refers to a route terminating at Old Ditcham Farm, nearly half a mile to the north.

34 Buriton Parish Council – Schedule of Public Rights of Way – 1934

The Applicant has also provided a copy of the typed 1934 schedule of rights of way that was placed upon deposit (which is now held by Hampshire Record Office). It appears that the schedule was thoroughly researched, as evidenced by references to the Buriton Inclosure Award and historical entries in the parish minutes.

In contrast to the list recorded in the parish minutes of the same year, the schedule records Mead Lane and the Milky Way as '*Bridle Roads*', as follows (again, BOAT 47 is not included):

Route No.18 – Bridle Road

Mead Lane

Cowhouse Road [now Pitcroft Road] to junction with Milky Way (Route No. 19). Road unobstructed throughout.

Route No. 19 – Bridle Road

Milky Way

Commences at south end of Mead Lane (Route No. 18) and proceeds south-eastwards through Cockshott Wood to junction with public highway from Dean Barn to Gard's Corner (Ditcham) and Sunwood Farm.

Road unobstructed throughout and trimmed and repaired from time to time by Petersfield Rural District Council.

Route No. 23 – Bridle Road

Petersfield – Harting Road to Old Ditcham Farm &c

Commences in the old droveway from the Petersfield – Harting Road and proceeds due south to Old Ditcham Farm where it joins the public carriage road from Old Ditcham to Sunwood Farm &c as marked on the map.

- 35 A copy of the 1934 schedule was also discovered in the County Council's parish files, which contains documents and correspondence relating to rights of way matters in Buriton parish dating back to the mid-20th century. The schedule appears to be an identical copy of the same document. The Council's copy includes additions and corrections made in blue ink which do not appear on the copy provided by the Applicant. And has apparently been updated subsequent to 1934, as the front page includes a typed subheading - '*Copy – 1.8.1949*'. Some of the alterations in blue ink are dated, and refer to changes that occurred during

1935 and 1936 (such as the replacement of stiles on some routes). There are also alterations to the status of Mead Lane and the Milky Way, both of which are recorded as follows:

Route No. 18 – Bridle Road & public carriageway
Mead Lane

Route No. 19 – Bridle Road & public carriageway
Milky Way

It is not known who made these alterations and when (they are undated), but it would appear that they are linked to the corrected entries in the parish minutes (see 8.2.7) and probably date from the period between 1934 (when the schedule was first drafted) and 1949 (when the copy was submitted to the County Council). Both dates would place this document before the publication of the first definitive map.

Other, unedited entries in the schedule are also instructive, either through references to the application routes, or the terminology used (emphasis added in bold):

- i. The entry for Route No.1 (now Buriton Footpath 1) concludes “...*the path then enters the Milky Way which is a **public highway**.*”
- ii. The entry for Route No. 2 (Footpath 2) concludes “...*the route then continues through the Hanger and emerges on to New Barn Road [now U216 Dean Barn Lane] which is a **public highway**.*”
- iii. The entry for Route No.21 (Bridleway 21) begins “*Commences on the **public road** from Dean Barn to Sunwood Farm at the corner near Coulters Dean Farm...*”.
- iv. The entry for Route No. 22 (Footpath 22) describes the route as “...*emerging on to Harris Lane [Clanfield Bridleway 17] which is a **Bridle Road**.*”

The following can be inferred from the 1934 schedule:

- The status of ‘Bridle Road and Public Carriageway’ ascribed to Mead Lane and the Milky Way in the copy of the schedule in the County Council’s possession mirrors that set out in the parish minutes of 1934, and it appears that the Parish Council revisited and revised the status of the routes after the schedule was originally drafted.
- The description for Route No.23 (Bridleway 23) describes the route running southward from Old Ditcham Farm as a ‘public carriage road’ that runs to Sunwood Farm. In view of the information contained in the sales particulars of the 1920s, and the fact that the hairpin route was not dedicated as highway until 1939, it is quite possible that the ‘*public carriage road*’ connecting to Route No.23 included BOAT 47.
- In the context of a document dealing with a range of public highways, the Parish Council misapplied the term ‘Public Highway’, using it as a narrow definition to describe a particular class of highway. However, in doing so it

appears to have used the term to describe carriageways (see example 'ii' above), in which case the reference in 'i' to the Milky Way as a 'public highway' would suggest carriageway status. The description is also distinct from other examples, where routes are said to terminate upon 'Bridle Roads' (see example 'iv' above).

- Example 'iii' indicates that the route between Dean Barn and Sunwood Farm (now 'Sunwood Lane') was considered to be a public road prior to the dedication of 1939. This is consistent with the description of the access to Ditcham House in the 1921 sales particulars as being "*approached from Petersfield on the north side by a Private Road rising from the Parish Road*" (see 8.2.3), and indicates that at the time, BOAT 47 was not isolated from the rest of the public highway network prior to 1939, as is asserted by the Applicant.

36 Dedication of Roads at Ditcham – 1939

Officers have located dedication agreements dating from 1939, entered into by the County Council and local landowners for the dedication of highway rights on the routes to the north and west of Sunwood Farm (as detailed in the pencilled annotation that was added to the 1929 Handover Map). The dedication plans relating to the section of Sunwood Lane heading westward from Sunwood Farm, and the north-south section of Ditcham Lane, show narrow shaded areas running along both sides of the road, indicating that the landowners were dedicating extra land for use as a highway, as opposed to full highway rights over the entire route. This suggests that at the time, the main part of each route was already considered to carry full highway rights.

However, the third dedication (by Colonel Ebenezer Pike) included the entire length and breadth of the hairpin section east of BOAT 47, with one exception - a section forty-eight metres in length where the route intersected the line of the BOAT itself. It can therefore be inferred that the dedication expressly excluded the extent of what is now recorded as BOAT 47 because it was already considered to be full highway, thus rendering a further dedication of highway rights unnecessary.

These dedications provide further insight into the simple annotation on the 1929 Handover Map and indicate that the road network at this location (including BOAT 47) was already considered to be an all-purpose highway prior to 1939. This evidence compliments the position set out in the sale documents of 1921 and 1924, and appears to rebut the application insofar as it affects BOAT 47.

37 Highways Maintenance Map (Hampshire) – 1946

This map is not cited by the Applicant but has been inspected by officers as it provides an updated picture of those routes considered to be publicly maintainable by the County Council, subsequent to the handover process in 1929. Routes are annotated with coloured solid or dashed lines and labelled with road numbers which are recognisable today (for example, C200 Nursted Lane is recorded as '200', U206 Kiln Lane is '206' etc).

Mead Lane, the Milky Way and BOAT 47 are numbered '216' and shown by a dashed orange line, which a subsequent memorandum from the County Surveyor

clarifies is the notation for 'unmetalled roads'. The footpaths and bridleways set out in the Parish Council's 1934 schedule of rights of way are also annotated, using the same notation that was subsequently used on the definitive map (purple lines for footpaths, green lines for bridleways), and nearby Bridleways 21 and 23 are shown on their current alignments. It is possible that these annotations were added at a later date, and subsequent correspondence indicates that the classification ascribed to the Milky Way may also have been added after 1946 – see 8.2.12).

This document marks a departure from what was shown on the 1929 Handover Map, with the County Council recognising both application routes as 'unmetalled roads' that were distinct from footpaths and bridleways (which were also shown on the map) before the publication of the first definitive map.

38 Buriton Parish Council Minutes – 1943 – 1950

The status of the Milky Way was again discussed by the Parish Council during the 1940s, as reflected in the below extracts.

4th January 1943 – Public rights of Way Milky Way No.19 on Parish Map

Attention was called to the obstruction of this bridleway caused by the felling of trees by the Ministry of Supply Home Grown Timber Department. The Clerk was instructed to inform the Highway Surveyor and ask for the removal of the trees.

16th April 1943

The Clerk reported that he had written to the Highway Surveyor as instructed at the last meeting....it was pointed out that although there had been a long spell of fine weather the bridleway was still obstructed...

11th May 1943

Correspondence with the Divisional Highway Surveyor was read and it was reported that the work of clearing the timber was in progress and that the way would be cleared in a day or two.

6th July 1943

The Clerk reported that in response to representation by the Highway Authority the Ministry...had had the obstructing timber removed from this bridleway in May last.

5th January 1948

A letter dated December 27th was received from the Footpaths Secretary of the Southern Federation of the Ramblers Association calling attention to fallen tree at Milky Way and requesting the Parish Council to take steps to have the obstruction removed. Mr Legg stated that Mrs Abel Smith, the landowner concerned has already had the tree removed. Clerk to reply accordingly.

5th July 1948 – Public Rights of Way – Parish Map

The Rural District Council had borrowed the Parish Map in order to check it with the District and County Maps of Public Rights of Way in accordance with the Parish Council's suggestion.

4th July 1949 – Public Rights of Way National Parks & Access to the Countryside Bill

A letter dated 30th May from the County Secretary was received pointing out that this Bill makes it the duty of the County Council as the Highway Authority to prepare a statutory map showing all public rights of way. A map of the parish accompanied the letter and the Parish Council were asked to state whether they were in complete agreement with the rights of way marked thereon. Clerk instructed to deal with the matter.

12th March 1950 – National Parks and Access to the Countryside Act 1949 – Survey of Rights of Way

This Act requires County Council to carry out a survey of all lands in their area over which public rights of way are alleged to exist....In his letter dated 14th February the County Surveyor stated that in view of the comprehensive nature of information contained in the map and schedule of public rights of way prepared by the Buriton Parish Council in 1934 which was submitted to the County Council in 1949 a further statement will not be called for. The County Surveyor however requested that this map and schedule be formally submitted to the Annual Parish Meeting and any amendment which may be reported to him and the schedule returned with or without modification. The County Council would then arrange to carry out the survey.

The county Surveyor called attention to the fact that Mead Lane is a public unmetalled highway and any other claim is therefor superfluous. He also stated that Milky Way (route No.19 on the Parish Council Map) is incorrectly described as a public carriageway and should be amended to Bridle Road. Resolved that in the opinion of the Council the existing map and schedule comprise the correct record of public rights of way in the Parish of Buriton and, subject to further consideration regarding the status of the Milky Way, the map and schedule be submitted to the Annual Parish Meeting for approval and forwarded to the County Council for the purpose of the survey being carried out by them.

17th April 1950

The Clerk read his letter to the County Surveyor dated 21st March 1950. The Clerk reported that the map of rights of way sent to the County Surveyor had been duly endorsed and signed by the Chairman and returned. Copies of the Minutes of the Council and the Parish Meeting relating to the survey had also been sent and the County Surveyor had been asked to state what evidence existed to refute the Parish Council claim the Milky Way (route No.19 on the Map) is a highway. A representative of the County Surveyor had called and informed the Clerk that since the County Council became the highway authority the route had been scheduled in their records as a bridle road but he would consider any evidence to the contrary which either the Rural District Council or the Parish Council may possess. Minutes of the Parish Council of 1897 and 1898 disclosed by the Parish Council and the Rural District Councillor for the Parish, the Rural District Council carried out repairs in that year. Flints for the surface were supplied free of charge by Mr L.T. Cave Chairman of the Parish Council and owner of Ditcham Park. The Clerk was instructed to send a copy of these minutes to the County Surveyor.

39 National Parks and Access to the Countryside Act 1949 - Correspondence

As is evident from the minutes from the 1940s, as part of the preparations for drafting the first definitive map all parishes in Hampshire were asked to submit an Ordnance Survey plan showing all the routes that they wished to be included on the map, and their status (footpath, bridleway or RUPP). Buriton Parish Council's

map (dated 1st August 1949) shows footpaths coloured blue and bridleways coloured green, but does not show any RUPPs. Both Mead Lane and the Milky Way are shown as bridleways, as is the entire route between Old Ditcham Farm and Sunwood Farm (incorporating what is now BOAT 47). Given that the published definitive map for the parish ultimately recorded nine RUPPs, it appears that there was further discussion as to the status of some of the routes put forward on this map - it is possible that the Parish Council initially overlooked which of its routes might be of a status other than footpaths or bridleways.

The below correspondence from 1950 provides an insight into the preparation of the map for the Buriton area:

Letter from Buriton Parish Council Clerk to the County Surveyor – 28th March 1950

"Your letter of the 14th February was considered by my Council on the 13th instant and I enclose an extract from the minutes from which it will be seen that the existing map and schedule were held to be a correct record of the public rights of way in the Parish of Buriton subject to a) the designation of Mead Lane being changed from Bridle Road to Unmetalled Highway and b) to further consideration of the status of Milky Way (No.19 on the map). I shall be obliged if you will let me know what evidence exists to refute the Parish Council's claim that Milky Way is a highway. This route appears to be a continuation of Mead Lane linking up with the unmetalled highway from Dean Barn and Coulters Dean Farm to Sunwood Farm, Ditcham and thence to Petersfield-Harting Road...."

Letter from County Surveyor to Buriton Parish Council Clerk – 18th April 1950

"...Milky Way has always been recognised, both by this authority and the Petersfield Rural District Council as a bridle way only, but from an inspection on the site my representative agrees that this route does indeed appear to be a continuation of Mead Lane linking up with U216 between Coulters Dean and Sunwood Farm.

I am arranging for it to be recorded in future as an unmetalled public highway..."

Memorandum from Divisional Surveyor to County Surveyor – 20th April 1950

"In reply to your memo of the 18th inst., as instructed the length of unmetalled highway from the south end of Mead Lane, Buriton, to its junction with U216 between Coulters Dean and Sunwood Farm, Ditcham has been added to Group U216, Mileage .38, and my maps altered accordingly."

Letter from Buriton Parish Council Clerk to County Surveyor – 25th April 1950

"...With regard to 'Milky Way' my Council will be glad to know that this road will henceforth be recorded as an unmetalled public highway but they submit that it always has been and that it is not correct to say that the Petersfield Rural District Council recognised it as a bridle way only. I send you extracts from the minutes of the Parish Council of 1897 and 1898 which tend to support this view. Since those days employees of the Rural District Council have carried out work on this road of a type not usually done in the case of a bridle way."

The Applicant contends that the Parish Council, having hitherto regarded the route as a bridleway, changed its mind about the status of the route in 1950 based solely upon the parish minutes of the late nineteenth century, and in doing so it misdirected itself. It certainly appears that the minutes from 1897 and 1898 were influential, and officers note the reference in the letter of 25th April 1950 to the RDC having carried out works on the route since that time "of a type not

usually done in the case of a bridleway.” However, putting to one side the issue of whether or not the Parish Council drew the correct conclusions from this evidence, it is clear that it was fully considered at the time the first definitive map was prepared, and so does not constitute ‘new evidence’.

40 First Definitive Map – Petersfield Rural District (1955)

Both routes are shown on the first definitive map for the area (along with Mead Lane, the eastern end of Pitcroft Lane and various others) by dotted green lines, marking them out as RUPPs, and distinct from bridleways, which are shown by solid green lines.

41 Reclassification of RUPPs – 1986 - 1992

On 20th November 1986 a brief report was presented to the Rights of Way Sub-Committee, seeking approval for the making of a reclassification order under Section 54 of the Wildlife and Countryside Act 1981. It concerned nine RUPPs in the parish, all of which are listed in the report underneath the following text:

“There are nine RUPPs in Buriton and all are county unclassified roads. The Parish Council have indicated that they would wish RUPPs 18 and 19 to be downgraded to bridleways but they are county unclassified roads, have vehicular usage and are signed ‘Cart Track to.....’ and therefore must be reclassified to BOAT...East Hampshire District Council agree all RUPPs in Buriton be reclassified to BOAT.”

The resulting reclassification order, made in 1988, sought to reclassify all nine routes. It did not attract any objections in respect of BOATs 19 and 47, but objections were received in respect of RUPPs 32 and 46, necessitating a referral to the Secretary of State for determination. In his decision letter, dated 11 September 1992, the Inspector appointed by the Secretary of State confirmed that the Order had been submitted for confirmation *“in respect of two of the nine public paths therein addressed. The remainder were confirmed unopposed on 10 April 1991.”*

It is not clear what other researches were undertaken during the reclassification process, but taken at face value, officers would agree with the applicant that the 1986 report is a little lightweight. However, the reclassification process itself was open and consultative, as evidenced by the objections made to the reclassification of RUPPs 32 and 46 (it is clear from correspondence on file that the Parish Council played an active role in this process and took part in the resulting inquiry). Although the Parish Council was apparently reluctant to see RUPPs 18 and 19 reclassified to BOAT status, no objection was made to the reclassification order by it or anyone else, in respect of these two routes, or RUPP 47.

42 Summary of 20th century evidence

As with the earlier evidence of the 18th and 19th centuries, most of the 20th century evidence submitted in support of the application was available at the time the first definitive map was prepared. Other evidence which may not have been widely available at the time (1939 highway dedications, sales particulars, Bartholomew’s map) either appears to be neutral or provides positive evidence of full highway status. It is not clear what researches were undertaken during the reclassification

process, but the Section 54 order-making process was consultative, providing the opportunity for objections, and it is reasonable to assume that all the evidence available during the early 1950s was available to the County Council in 1986.

Consultations

43 The following people and organisations have been consulted on this application: The Ramblers, Auto Cycle Union, British Driving Society, Byways and Bridleways Trust, South Downs Harness Club, Cyclists' Touring Club, Open Spaces Society, Trail Riders Fellowship, Land Access Recreation Association, All Wheel Driving Club, East Hampshire District Council, County Councillor Robert Mocatta, and officers of Hampshire County Council (Hampshire Highways and the Area Countryside Access Manager). Responses received are detailed below.

44 Local South Downs Harness Club Representative

I understand that both BOATS 19 and 47 used to be driven, but because of the damaged caused by off-road vehicles and lack of maintenance these routes became too dangerous to drive although they are ridden.

BOAT 19 is known locally as the Cart Track and looking at historic maps they indicate both these BOATS were routes that would have been used by horse drawn vehicles.

Carriage drivers cannot continue to use these BOATS without major repairs (and cost). As horse drawn vehicles have very little off-road access (good or bad) we would not wish to lose the right to use them if historic evidence should prove that these routes were indeed used by horse drawn vehicles.

45 County Councillor Robert Mocatta

Councillor Mocatta supports the application and has stated that in his view neither route should be recorded as a BOAT.

46 Land Access Recreation Association - Local Representative

"I do not see how this application can lead to an Order being made that will satisfy the applicant for the following reasons:

a) it was the Parish that would have put this route down as a RUPP at the inception of the DM&S post the '49 Act.

*b) The presumption of regularity must apply**

c) this route was reclassified back when it was recorded as a RUPP. The Parish/OMA [Order Making Authority] were content that the evidence before them justified a BOAT decision. I do not know if the evidence was weighed by the OMA and an unopposed Order sealed or if the matter was heard by a Lord Chancellor's Inspector. Either way we return to my point b) above.

*d) *case law has it that there must be new and cogent evidence (that is to say evidence that was not before the authority at the inception of the DM&S and during the RUPP reclassification process). I am not aware that the applicant has*

submitted any evidence to show that the two aforementioned processes were flawed, misled or ignorant of the facts.”

47 Trail Riders' Fellowship

“At this distance in time from the reclassification (33 years) of the BOATs, and about 65 years since the surveying and recording of the RUPPs, there has to be cogent evidence of a mistake being made in each process, capable of overturning the strong presumption that the definitive map and statement was and is correct.

Nobody knows what the path surveyors, and the surveying authority, knew at the time. We can only form an opinion from the records that survive, and in our view those records do not provide the essential cogent, direct, evidence of mistake that is essential for this application to proceed. The application evidence robustly supports the presumption that the decisions to record as RUPP then BOAT were properly made.

The recording of BOAT 19 as a “fourth class road” and reference to it in parish council minutes (15.1.1897) as a “High Road” (in the context of it being a through route comprising BOAT 18 & 19), is consistent with carriageway status to the extent that the decisions to record it as RUPP and then reclassify as BOAT were properly made. BOAT 47 and 19 are shown on pre-WW1 Bartholomew’s Maps as roads.

Where Bartholomew’s shows BOAT 47, it does not show the present-day tarmac road that comprises the hairpin turn. The application relies on “handover map” evidence which indicates that the hairpin road was “taken over 13.6.1939”. Handover maps were produced prior to 1939 to facilitate the transfer of maintenance functions from rural district councils to county councils in 1929. Exhibit 16 [copy of the Handover Map in the Applicant’s submission] would post – date that handover exercise. We note that the index to evidence dates [the Handover Map] as “1930” and observe that date to be inconsistent with the annotation on the map which indicates BOAT 47 having been taken over in 1939....The logical conclusion is that BOAT 47 provided the only publicly maintained carriage road to travel the hillside until the hairpin road was taken over in 1939. The depiction of BOAT 47 on Bartholomew’s is consistent with the application evidence and the decisions to record as RUPP and BOAT.

BOAT 19 and 47 are on through routes that comprise carriageways leading to public places. The through route presumption applies – BOAT 19 and 47 are presumed to have the same status as the carriageways that form the through route.

The Trail Riders Fellowship would robustly oppose an order or orders made on the basis of these applications, and respectfully asks Hampshire County Council to reject the applications.

48 No other comments have been received.

Comments by the Landowners

- 49 The affected landowners have been consulted on this application but have provided no relevant evidence (although one landowner has responded to confirm that they do not believe the routes are currently suitable for vehicular traffic).

Conclusions

- 50 As set out earlier in this report, for an Order to be made to downgrade both routes to bridleway status, there must be a discovery of new evidence, which must be cogent, and of sufficient substance to displace the presumption that the current depiction of the routes on the definitive map is correct. It is considered that the evidence submitted in support of (or reviewed as part of the further investigation into) this application falls into one of two categories.
- 51 The first category of evidence includes that which was available during the preparation of the first definitive map, and includes the Tithe Award, the Handover Map, and parish minutes and correspondence dating from between the late 19th and mid-20th centuries. It is this evidence upon which the Applicant places the greatest reliance. However, because it was reviewed during the drafting of the first definitive map, this evidence alone is insufficient to warrant the making of an Order – to do so would in effect be a re-examination of the evidence, which is not possible in the wake of the *Burrows* case. There must be a discovery of new evidence which, when considered alongside this original evidence, is sufficient to justify the making of an order to modify the definitive map.
- 52 The second category of evidence includes documents which may not have been known to the decision-makers at the time but which, when considered alongside the originally available evidence, are insufficient to warrant the making of an order to downgrade BOATs 19 & 47. This evidence provides no clear indication that either route was *not* vehicular (and the sale documents and 1939 dedication of highway rights appear to rebut the application insofar as it relates to BOAT 47) and thus falls short of constituting the ‘*evidence of some substance*’ described by Lord Phillips in the *Trevelyan* case.
- 53 In light of the above, it is considered that the tests set out in Section 53 of the Wildlife and Countryside Act 1981, by recent case law, and recognised in current DEFRA guidance, have not been met. There has been no ‘discovery of evidence’ sufficient to overturn the initial decision that vehicular rights subsist on BOATs 19 & 47. It is therefore recommended that the application is refused.

CORPORATE OR LEGAL INFORMATION:**Links to the Strategic Plan**

Hampshire maintains strong and sustainable economic growth and prosperity:	Yes
People in Hampshire live safe, healthy and independent lives:	Yes
People in Hampshire enjoy a rich and diverse environment:	Yes
People in Hampshire enjoy being part of strong, inclusive communities:	Yes

Other Significant Links

Links to previous Member decisions:	
	Date

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
Claim Reference: Case File (CR/1168)	Countryside Access Team Castle Avenue Winchester SO23 8UL

IMPACT ASSESSMENTS:

1 Equalities Impact Assessment: N/A

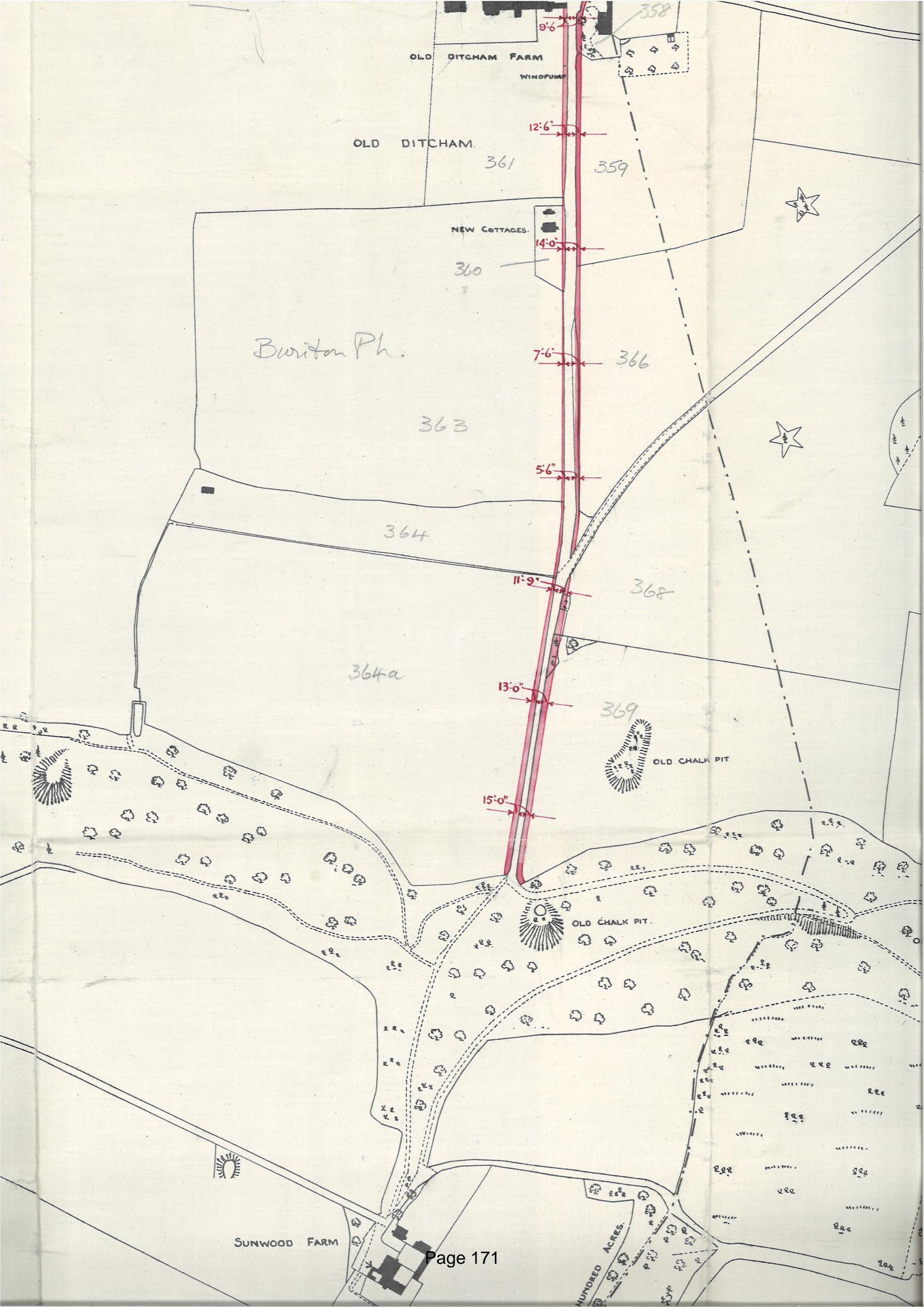
2. Impact on Crime and Disorder: N/A

3. Climate Change:

How does what is being proposed impact on our carbon footprint / energy consumption? N/A

How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? N/A

This report does not require impact assessment but, nevertheless, requires a decision because the County Council, in its capacity as the 'surveying authority', has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.



OLD DITCHAM FARM

WINDPUMP

OLD DITCHAM.

361

359

NEW COTTAGES.

360

Bwiton Ph.

363

364

364a

368

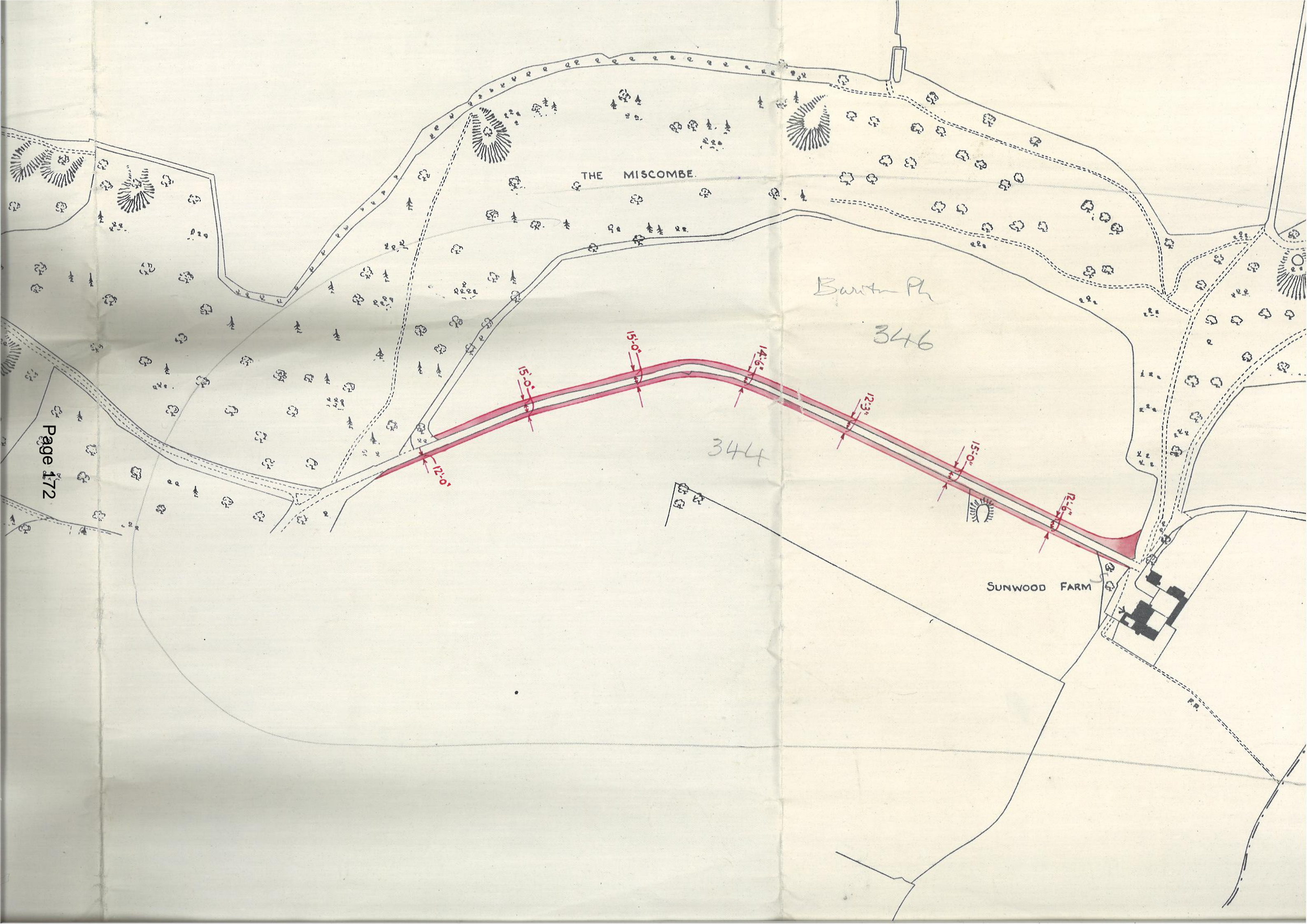
369

OLD CHALK PIT

OLD CHALK PIT.

SUNWOOD FARM

HUNDRED ACRES.



THE MISCOMBE

Barth Ph
346

344

SUNWOOD FARM

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12-0'

15-0'

15-0'

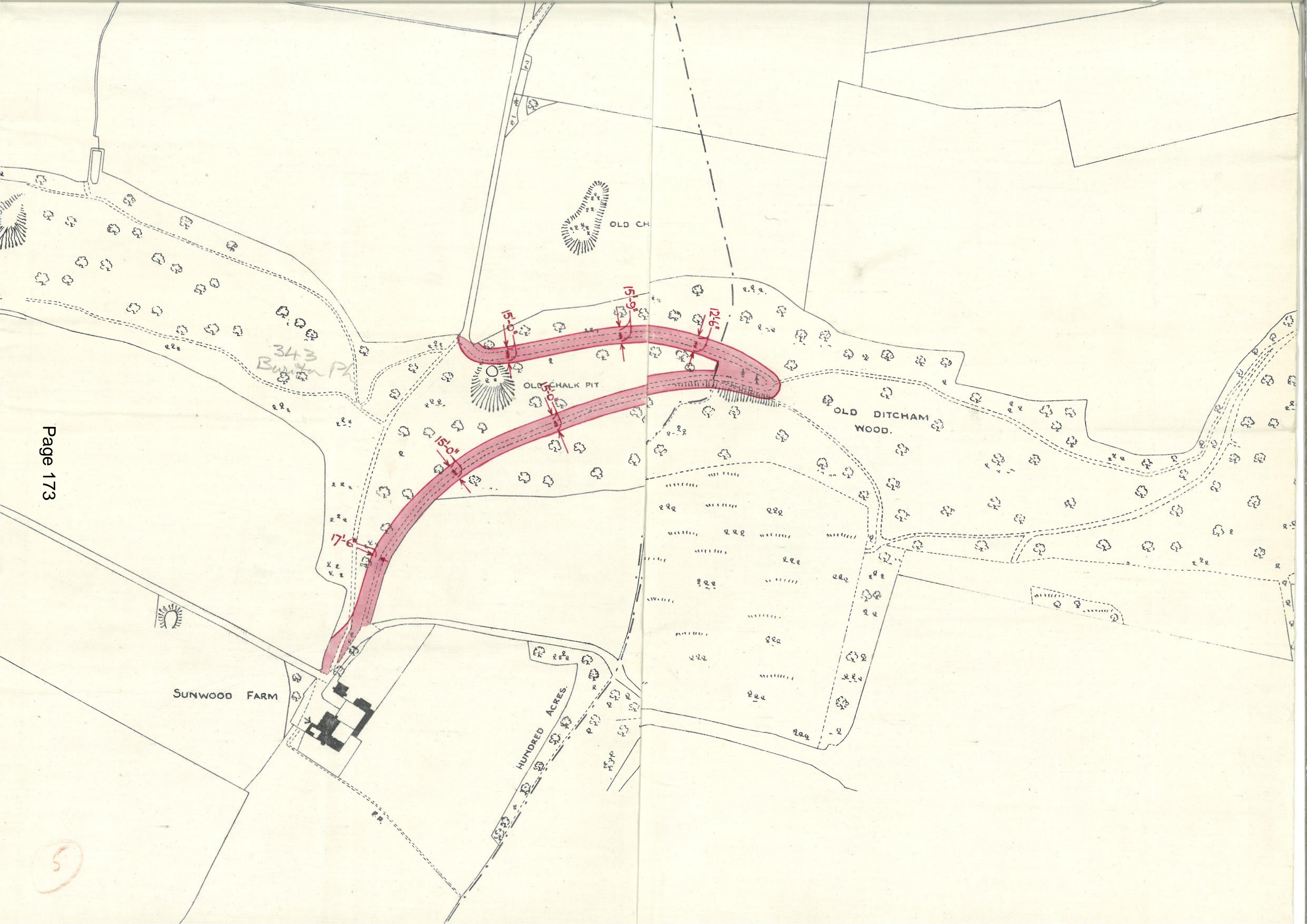
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12-3'

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12-6'

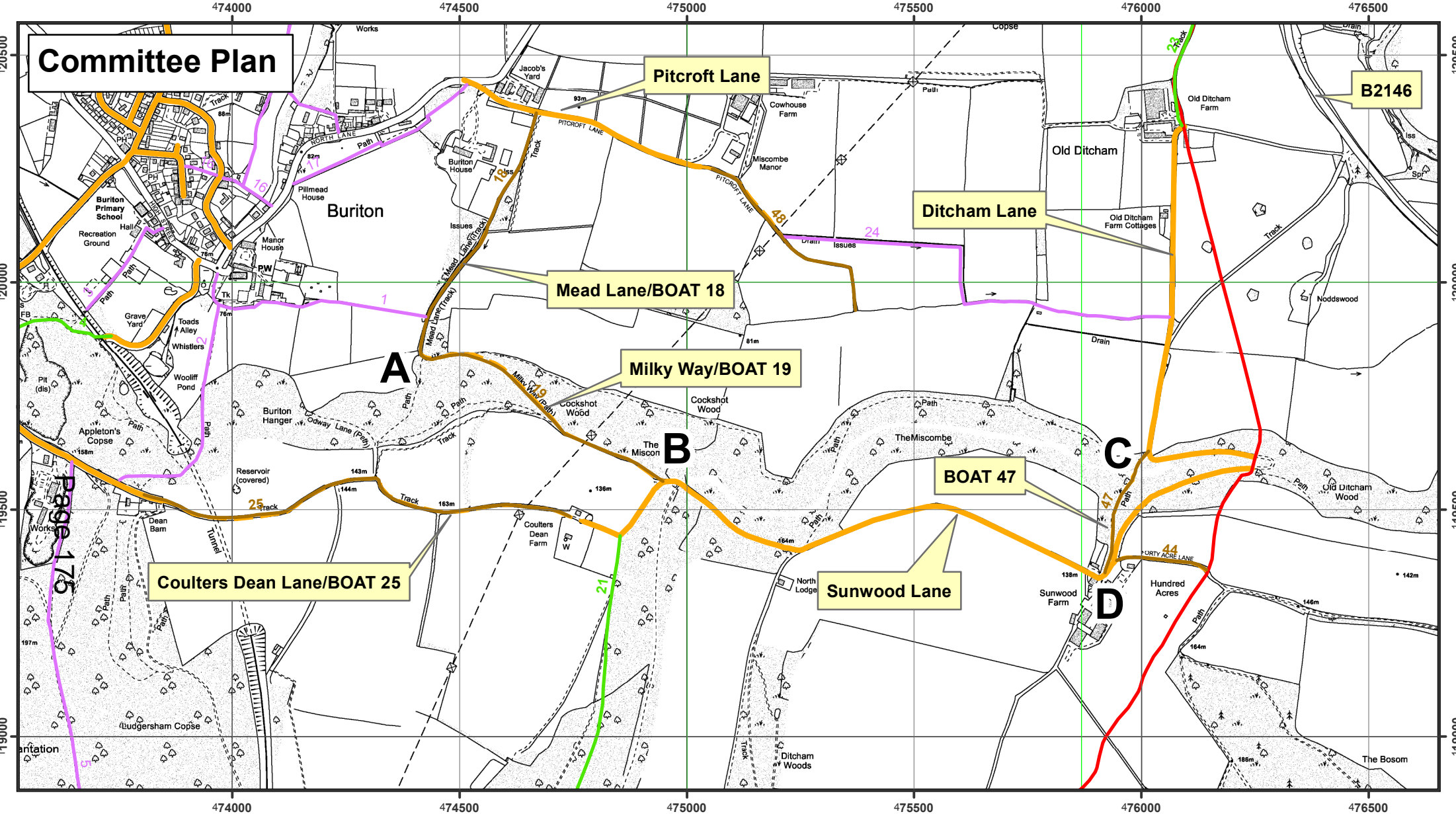
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Committee Plan



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Application for a Map Modification Order to record Buriton BOATs 19 & 47 as bridleways

LEGEND

- County Boundary
- Public Footpath
- Public Bridleway
- Byway Open to All Traffic
- - - - Unclassified Unmetalled Highway
- Unclassified Metalled Highway

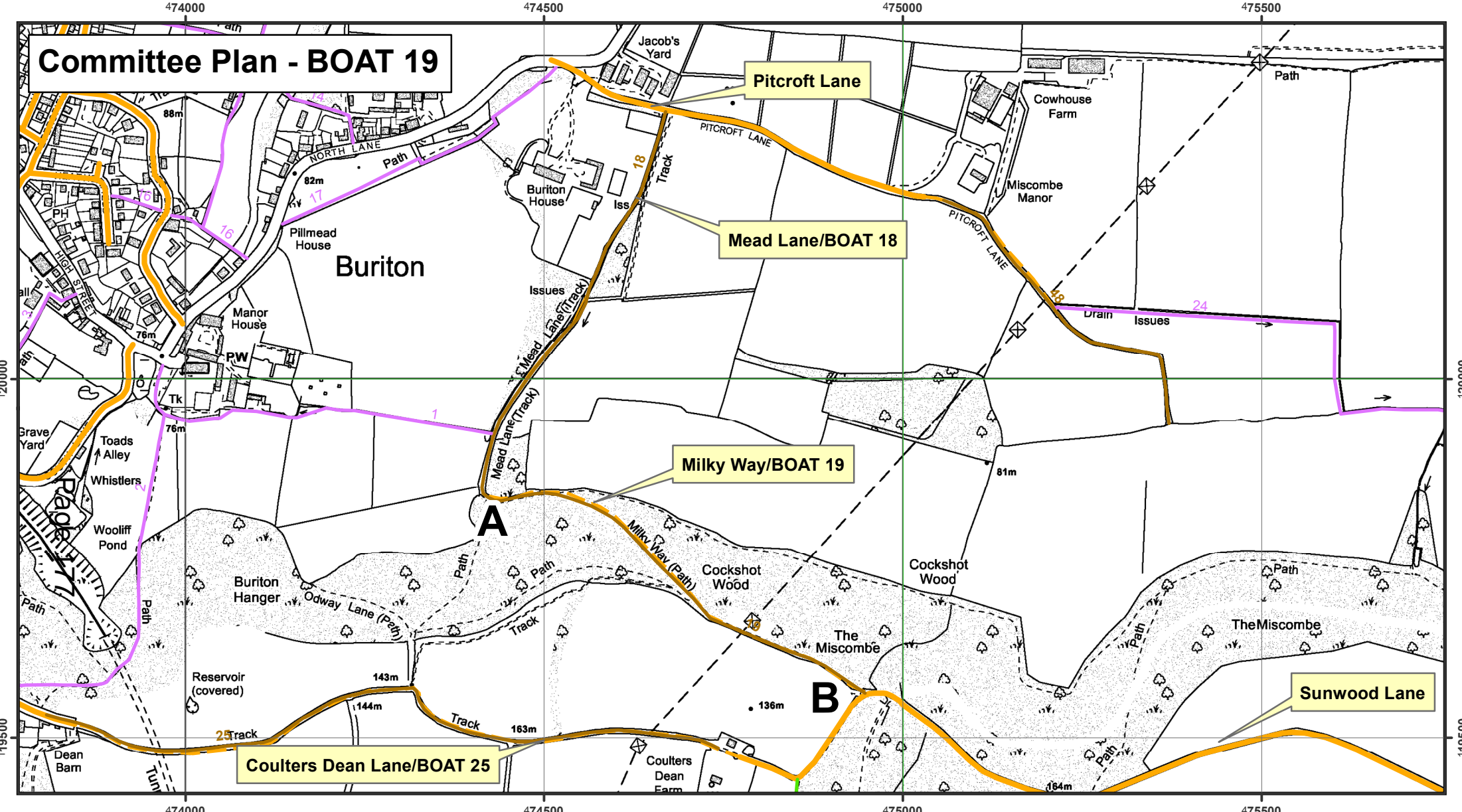
Countryside Access Team
 Culture, Communities &
 Business Services
 Castle Avenue
 Winchester, SO23 8UL

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Committee Plan - BOAT 19



Application for a Map Modification Order to record Buriton BOATs 19 & 47 as bridleways

LEGEND

- Public Footpath
- Byway Open to All Traffic
- - - Unclassified Unmetalled Highway
- Unclassified Metalled Highway

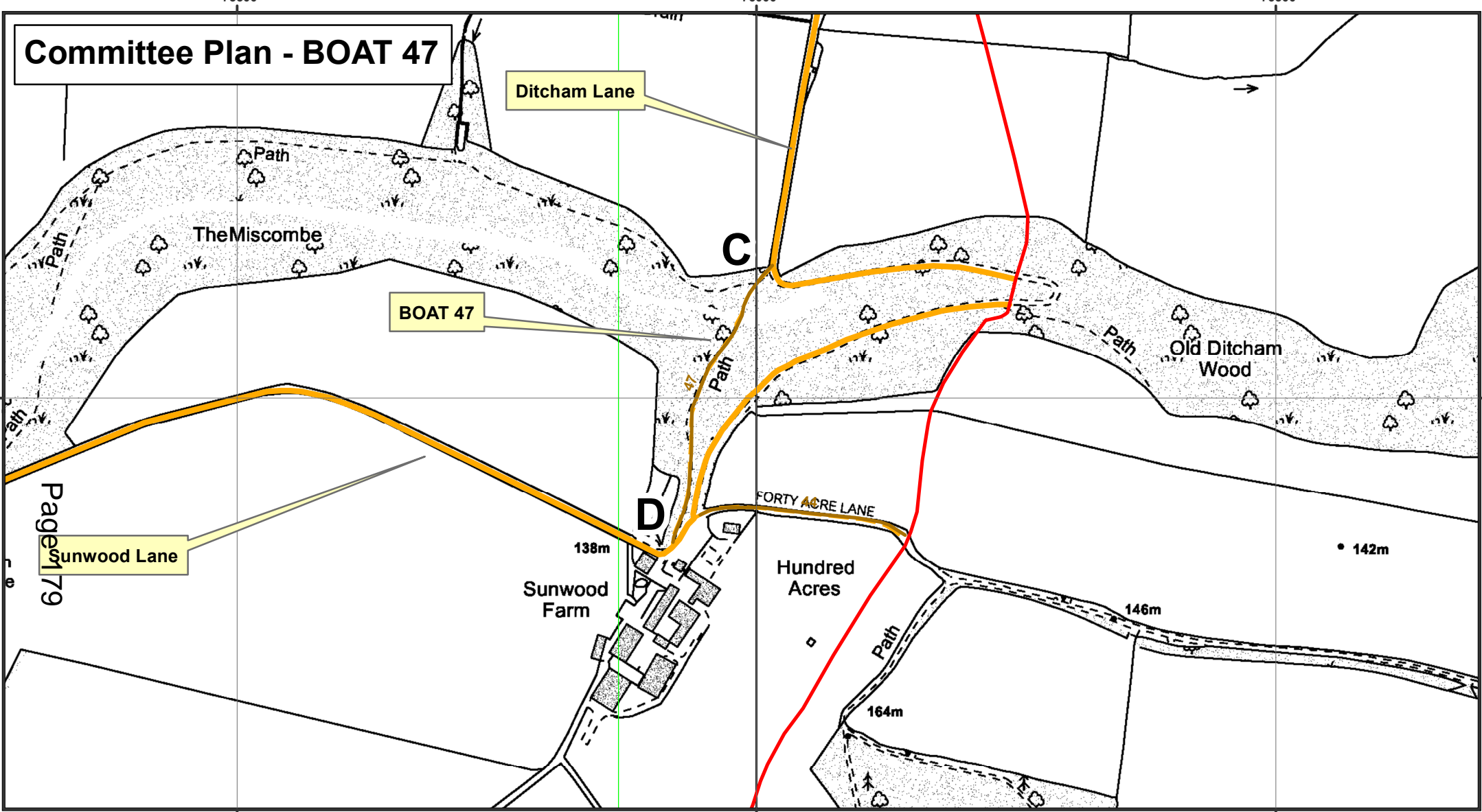
Countryside Access Team
 Culture, Communities &
 Business Services
 Castle Avenue
 Winchester, SO23 8UL

1:7,000

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Committee Plan - BOAT 47



Application for a Map Modification Order to record
Buriton BOATs 19 & 47 as bridleways

LEGEND

- County Boundary
- Byway Open to All Traffic
- - - - Unclassified Unmetalled Highway
- Unclassified Metalled Highway

Countryside Access Team
Culture, Communities &
Business Services
Castle Avenue
Winchester, SO23 8UL

1:5,000

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