

COUNCIL

4 MARCH 2010

A228 STOKE CROSSING COMPULSORY PURCHASE ORDER

Portfolio Holder: Councillor Phil Filmer, Front Line Services

Report from: Robin Cooper, Director of Regeneration, Community and Culture

Author: Ian Wilson, Head of Capital Projects, Road safety and Networks

Summary

This report seeks agreement to make a Compulsory Purchase Order (CPO) in respect of land required for the A228 Stoke Crossing bridge.

1. Budget and Policy Framework

- 1.1 The A228 Stoke Crossing is funded by the Homes and Communities Agency (HCA). The improvement schemes to the A228 of which this forms part are supported by relevant policies contained within the Local Transport Plan and are key to the delivery of the regeneration proposals for the former refinery site at Grain. The project will be part funded from HCA and part from a developer contribution.
- 1.2 Whilst much of the land required for the works is within the Council's control, there is a need to acquire some additional land and in order to ensure the works are delivered within the funding period a CPO is proposed. The decision to make a CPO must be made by Full Council.
- 1.3 The funding from HCA is only available until 31 March 2011 and must be fully spent by then. The S106 contribution will have the usual 5-year spend window. Delays in land acquisition would affect environmental mitigation works, which can only take place during specific periods of the year. Mitigation of environmental impact is critical to the delivery of this project and it is proposed to include mitigation land within the CPO, although it is still the intention to try to secure rights to enter onto land and to manage and monitor the mitigation through agreement.

2. Acquisition of Land

- 2.1 There are only 3 freehold landowners directly affected by the project. There are others who have rights of access, which will be maintained during the works and ultimately re-provided on a slightly different line but with no detriment to the right. There is also an agricultural tenancy. One owner is Network Rail whose operational land cannot be acquired by CPO but the primary requirement from this organisation is the agreement of air rights to permit the building of a bridge over the railway line. There is a standard procedure and form of agreement for local highway authorities to acquire such rights for new roads and this is not expected to present any particular problems.
- 2.2 Cabinet approved the line and layout of the proposed bridge on 15 December 2009. As a result, the exact land requirements have now been determined. Government guidance on the use of CPO powers indicates that before embarking on compulsory purchase and throughout the preparation and procedural stages, acquiring authorities should seek to acquire land by negotiation wherever practicable. Negotiations have been started with affected landowners, but given the time constraints it is considered that unless the Council initiates the use of its CPO powers, there is a risk that the scheme will either be substantially delayed or will not occur at all. The biggest risk is that in the absence of the CPO, the legal completion of the transfers may not be completed in time given that the programme is extremely tight. Government guidance accepts that, given the amount of time which needs to be allowed to complete the compulsory purchase process, it may often be sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations.
- 2.3 It is to address this particular risk that it is important that CPO powers are available. Once CPO powers have been confirmed by the Secretary of State, the Council has powers to serve notice to enter and use the land even though the formal transfer has not taken place. This means that the transfer can take place once all formalities have been concluded without affecting project delivery.
- 2.4 Landowners and tenants are protected because 90% of the Council's valuation of the land can be paid to the owner prior to completion of the legal documentation, the balance being paid, with interest, on completion of legal documentation.
- 2.5 The CPO can only be enacted once planning permission has been granted and an application is currently being prepared.
- 2.6 With regard to the site plans, the pink land is that which is to be acquired as freehold and which is essential to the structure or its management or maintenance. Land that is needed only during construction is shown in blue. The Council will acquire the right to occupy and use the land during the construction but will return it to the owner after that. The land will be reinstated and compensation payable. **Please note that the site plans (appendix 1) have been sent to Members under separate cover alongside the Council agenda.**

- 2.7 Where rights of access are to be changed it will be necessary for a 'Side Roads' Order (SRO) to be published as part of the CPO process. This is a legal mechanism whereby an existing right of access is stopped up and a new one created at a slightly different location.

3. Procurement Issues and Risks

- 3.1 There are no procurement issues for the land.
- 3.2 The primary risk is of failure to be able to move onto the land when needed. This risk can only be mitigated by the ability to serve notice and enter which comes from the CPO powers.

4. Cabinet – 16 February 2010

- 4.1 The Cabinet considered this report on 16 February 2010 and recommended that the Council make a Compulsory Purchase Order for the acquisition of the land identified on the plans, as set out in section 7.

5. Legal implications

- 5.1 The Council, as the highway authority, has the power (compulsorily or by agreement) to acquire land required for the construction or improvement of a highway pursuant to section 239 of the Highways Act 1980, subject to the distance limits set out in Schedule 18 of the Act. Under sections 240-246 the Council has powers to acquire other land in connection with its highway powers (e.g. under s246 the power to acquire land required for mitigating the adverse effects of constructing or improving a highway).
- 5.2 Circular 06/2004 "Compulsory Purchase and the Crichel Down Rules" advises that a Compulsory Purchase Order should only be made where there is a compelling case in the public interest to do so. In determining whether to make an Order, regard should be had to the rights protected under the Human Rights Act 1998.
- 5.3 The proposal raises implications under the Human Rights Act 1998, the First Protocol Article 1 and (where the properties to be included in the Order are residential properties) Article 8. There are no residential properties directly affected.
- 5.4 The First Protocol, Article 1 protects a person's peaceful enjoyment of his possessions (including property). The Article states that no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. However, the provisions do not impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. The making of a Compulsory Purchase Order will interfere with the peaceful enjoyment of property, however, such interference is permitted by law, under the Highways Act 1980 and the Acquisition of Land Act 1981 (which sets out the procedure for making and confirming a CPO). It is considered that the making of this CPO, for the reasons set out in the report, is in the public interest and that the interference with the

peaceful enjoyment of property is proportionate having regard to the legitimate aims pursued by the Council in making the CPO.

- 5.5 Article 8 states that everyone has the right to respect for his private and family life, his home and his correspondence. There may be no interference with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Where the property to be included in the CPO is residential property (in this case it is not) there will be interference with this right, but such interference is in accordance with the law: the Highways Act 1980 and the Acquisition of Land Act 1981. It is considered that the making of the CPO, for the reasons set out in the report is necessary for public safety, economic wellbeing, protection of health and for protection of the rights and freedoms of others and that the interference with the right to respect for homes is proportionate having regard to the legitimate aims pursued by the Council in making the CPO.
- 5.6 A CPO may be made by the Council, but must be confirmed by the Secretary of State. If objections are made to the Order, the Secretary of State will hold a public inquiry before determining whether or not to confirm the Order, in full or in part.
- 5.7 A resolution of the Council to make a CPO under s246 of the Highways Act 1980 or the inclusion of land on plans approved by a resolution of the Council as the site of a highway proposed to be constructed, improved or altered by the Council would enable qualifying persons (as defined in the Town & Country Planning Act 1990) to serve a blight notice on the Council, requiring the Council to acquire the blighted land. Otherwise, if the Council acquires land under the CPO the statutory provisions as to compensation will apply when the CPO is exercised. If the Council acquires land under the CPO it will be required to pay market value and additional costs such as loss payments, disturbance, removal costs and fees and statutory interest.
- 5.8 In some cases where the Council proposes to acquire part only of a property, it may be required to purchase the whole unless it can show that part can be taken without material detriment to the whole or without seriously affecting the remaining property's amenity or convenience. In this case it is unlikely that the council will be required to buy large areas of land which are not needed for the scheme. The costs of land acquisition and the cost of making a CPO if necessary will be met from Homes and Communities Agency grant funding.

6 Financial Implications

- 6.1 The budget for the scheme is made up of £7.584m from HCA and £5m from National Grid making a total of £12.584m.
- 6.2 With the information available it is considered that this budget is sufficient for the project. It should, however, be noted that funding for the construction phase is not guaranteed and is still subject to approval

by HCA. It is not planned to enter into contracts for either the construction or the environmental mitigation land until after such approval has been given.

- 6.3 There is a risk that not all the claims will be settled and paid by the time the HCA funding window ends on 31 March 2011, in which case the council would use the S106 funding.
- 6.4 The Council may receive part 1 claims up to 7 years after the road has been opened and by then there will be no external funding available to meet these. Officers will be assessing the possible cost of these claims when the scheme has been designed and the likely level of compensatable factors from the road is known. However, it is thought that the level of claims will be low compared to the total cost of the scheme.

7. Recommendations

- 7.1 The Cabinet recommends that the Council:
- 7.1.1 Resolves to make a Compulsory Purchase Order for the acquisition of the land and rights needed for the scheme as shown on the plans set out in appendix 1 to this report;
- 7.1.2 Grants delegated powers to the Director of Regeneration, Community and Culture to finalise the details of the Compulsory Purchase Order and make the Compulsory Purchase Order including making minor variations to the areas to be acquired;
- 7.1.3 Grants delegated powers to the Director of Regeneration, Community and Culture to finalise the details of the Side Roads Order and make the Side Roads Order including making minor variations to the areas to be included;
- 7.1.4 Resolves to hold a joint Compulsory Purchase Order/Side Roads Order and Planning Inquiry should one be requested by the Secretary of State.

Lead officer contact

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Appendices:

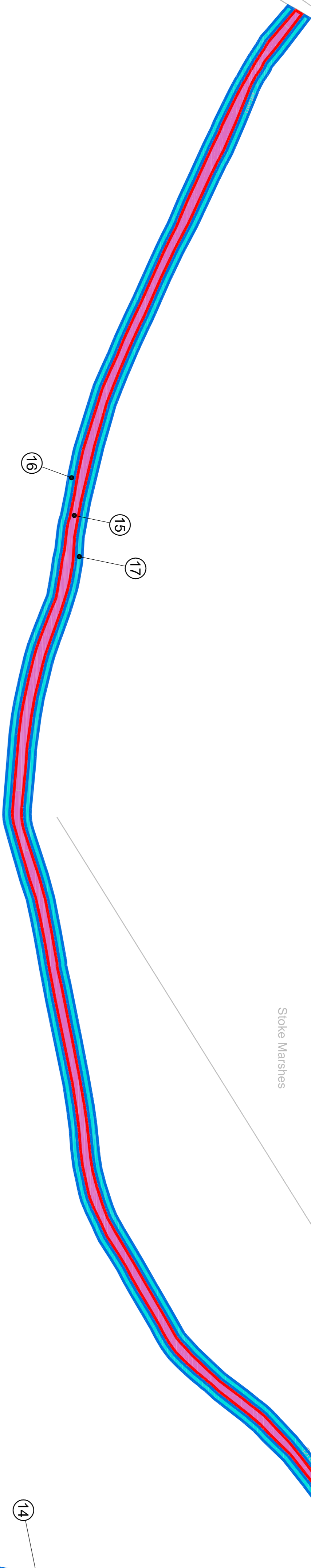
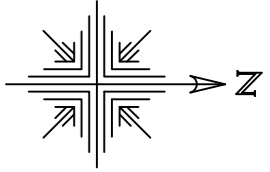
Plans of land affected.

Background papers

Model CPO and Side Roads Order Appendices provided by KCC

Circular 06/04: Compulsory Purchase and The Crichel Down Rules

“A228 Stoke Crossing Compulsory Purchase order” – Report and Record of Decision of Cabinet on 16 February 2010



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Stoke Marshes

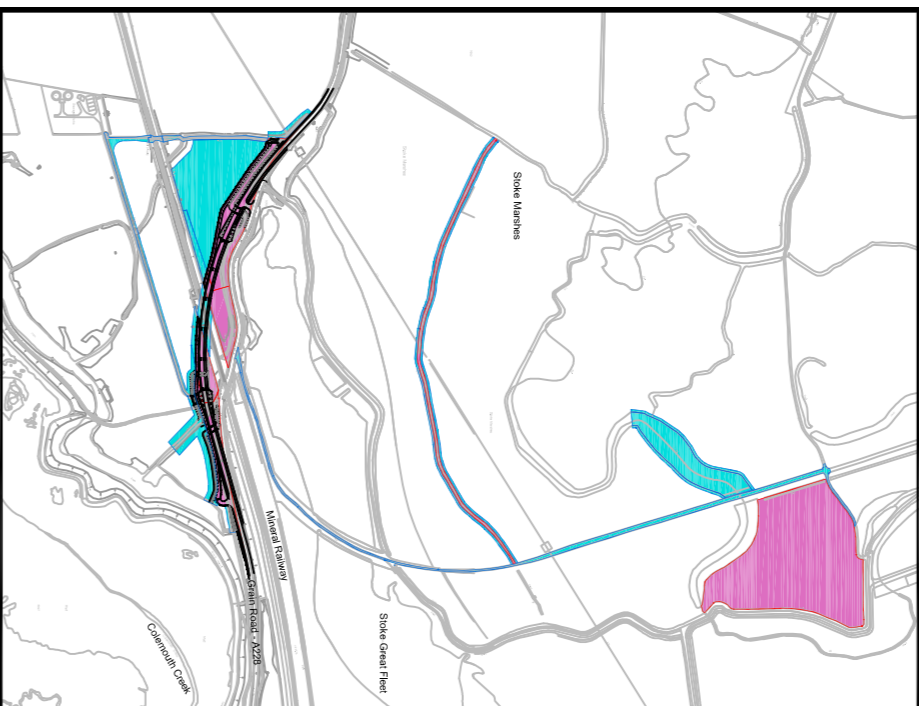
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Notes:

1. Do not scale. Report any errors or omissions to the client. All areas shown are subject to change without notice. The client is responsible for all work or preparing any detailed drawing.

Legend:

- Areas of Plots to be Acquired
- Areas of Plots for Rights Access



Key Plan

INDEX	AMENDMENTS	DATE
P5	Areas revised to suit updated layout. Issued for approval.	08.02.10
P4	Areas revised to suit updated layout. Draft for comment.	04.02.10
P3	Environmental mitigation plans added. Draft for comment.	03.02.10
P2	Environmental mitigation plans added. Draft for comment.	02.02.10
P1	First Issue	08.01.10

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PROJECT

Stoke Bridge
 Compulsory Purchase Order 2010

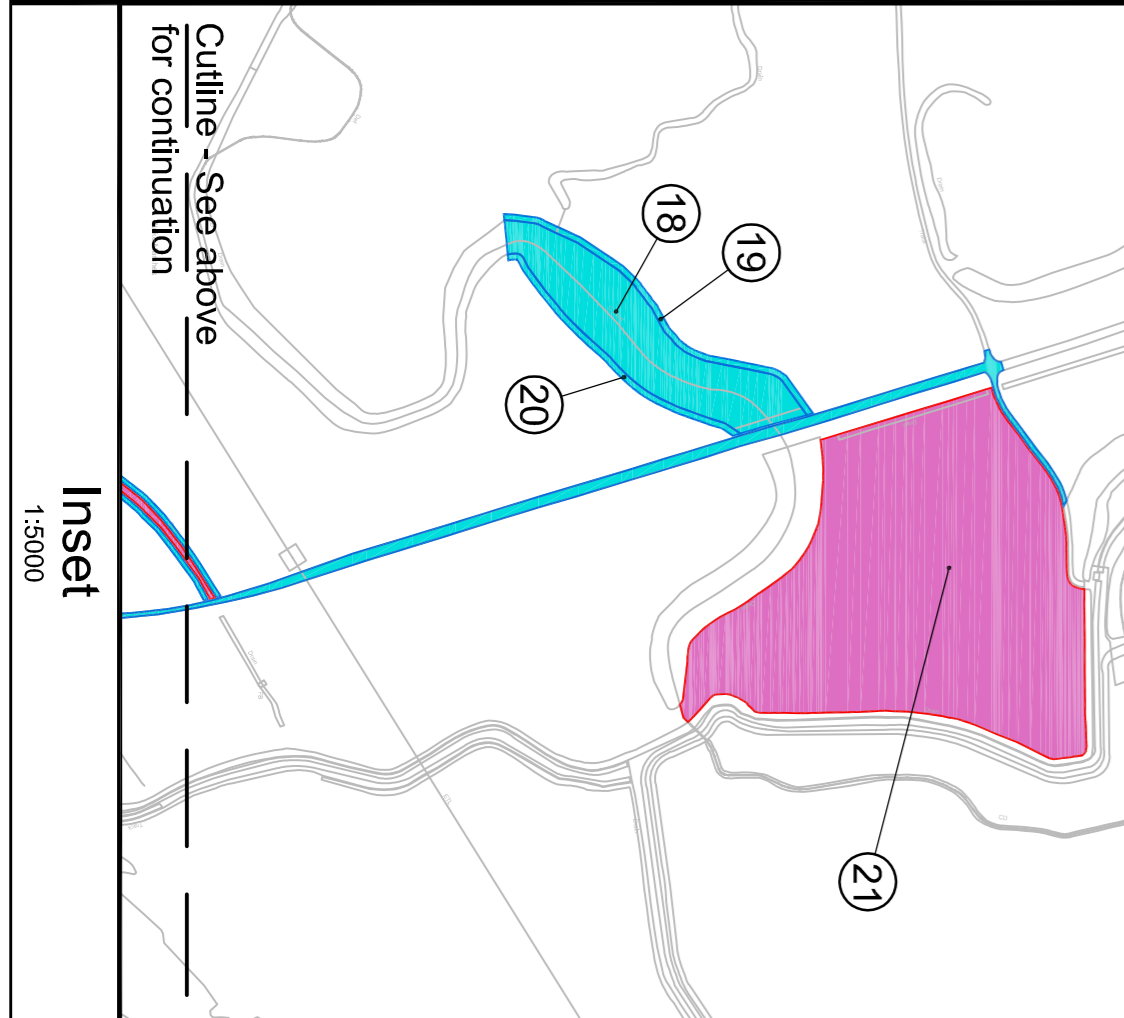
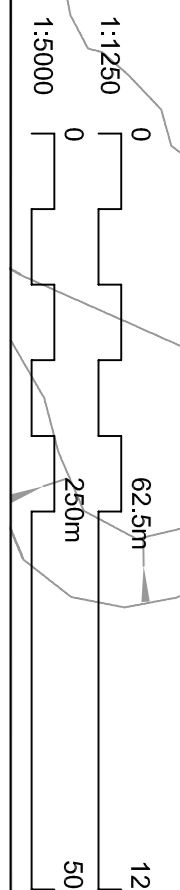
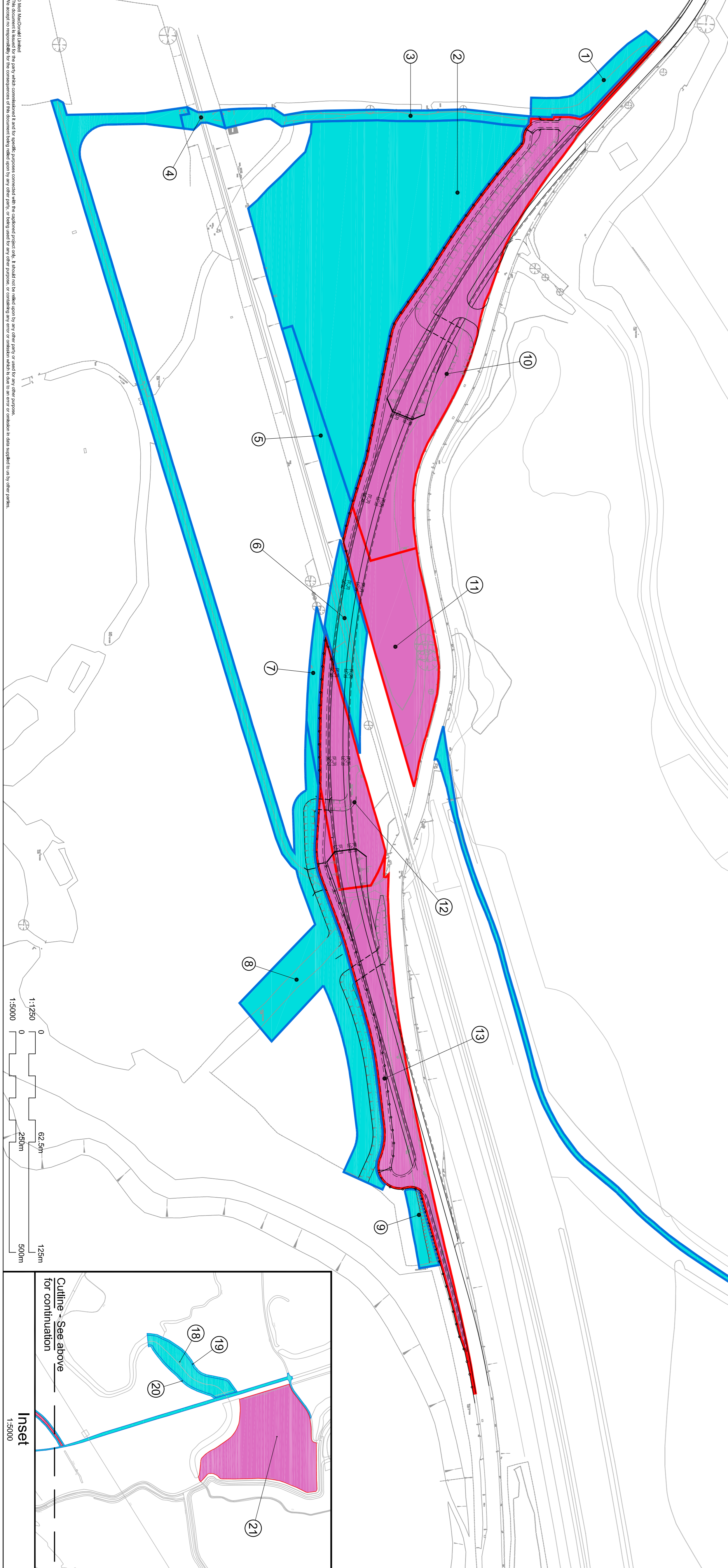
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EP	January 2010

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EP	As Shown

CHECKED	APPROVED
DJM	SPC

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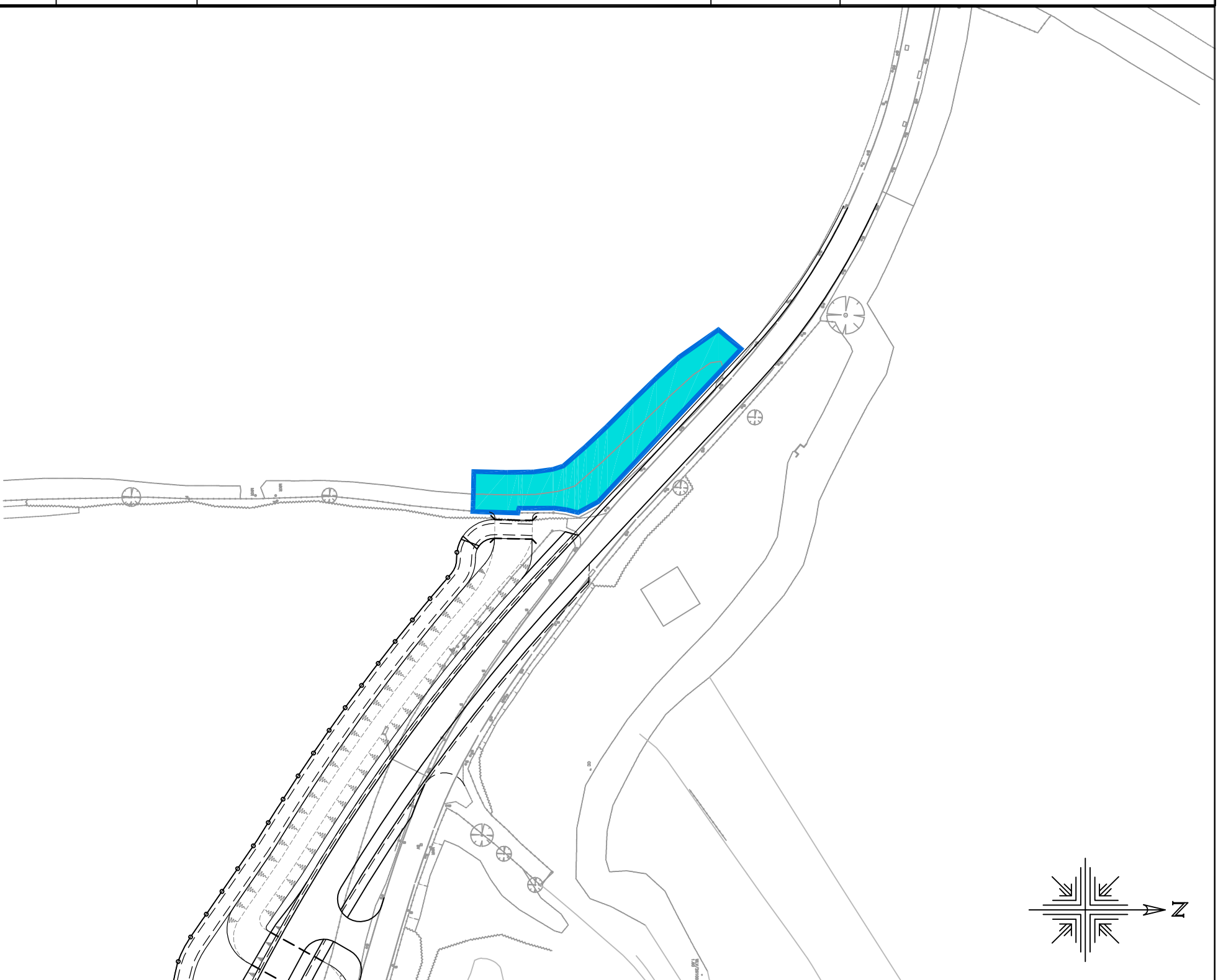
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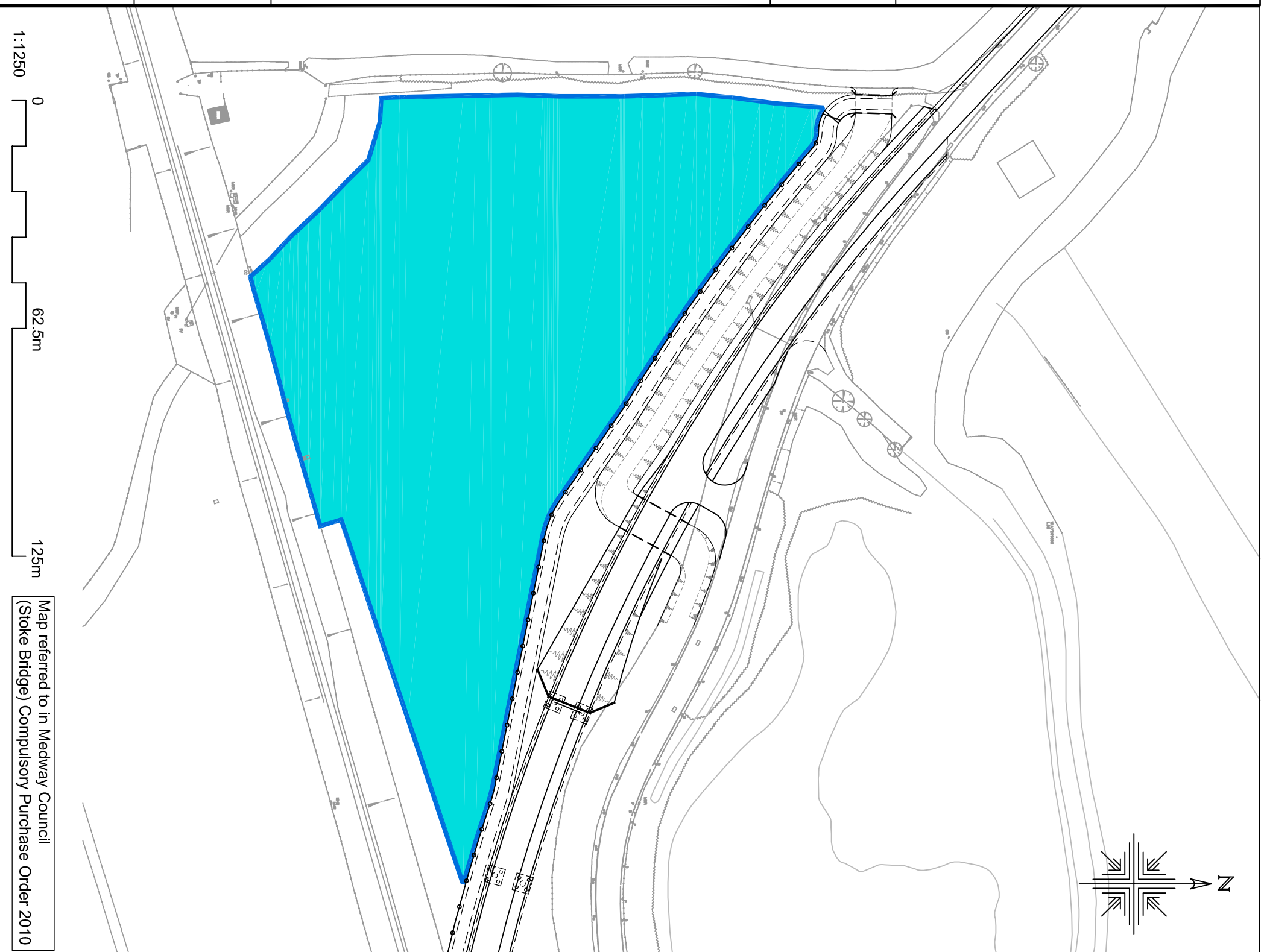
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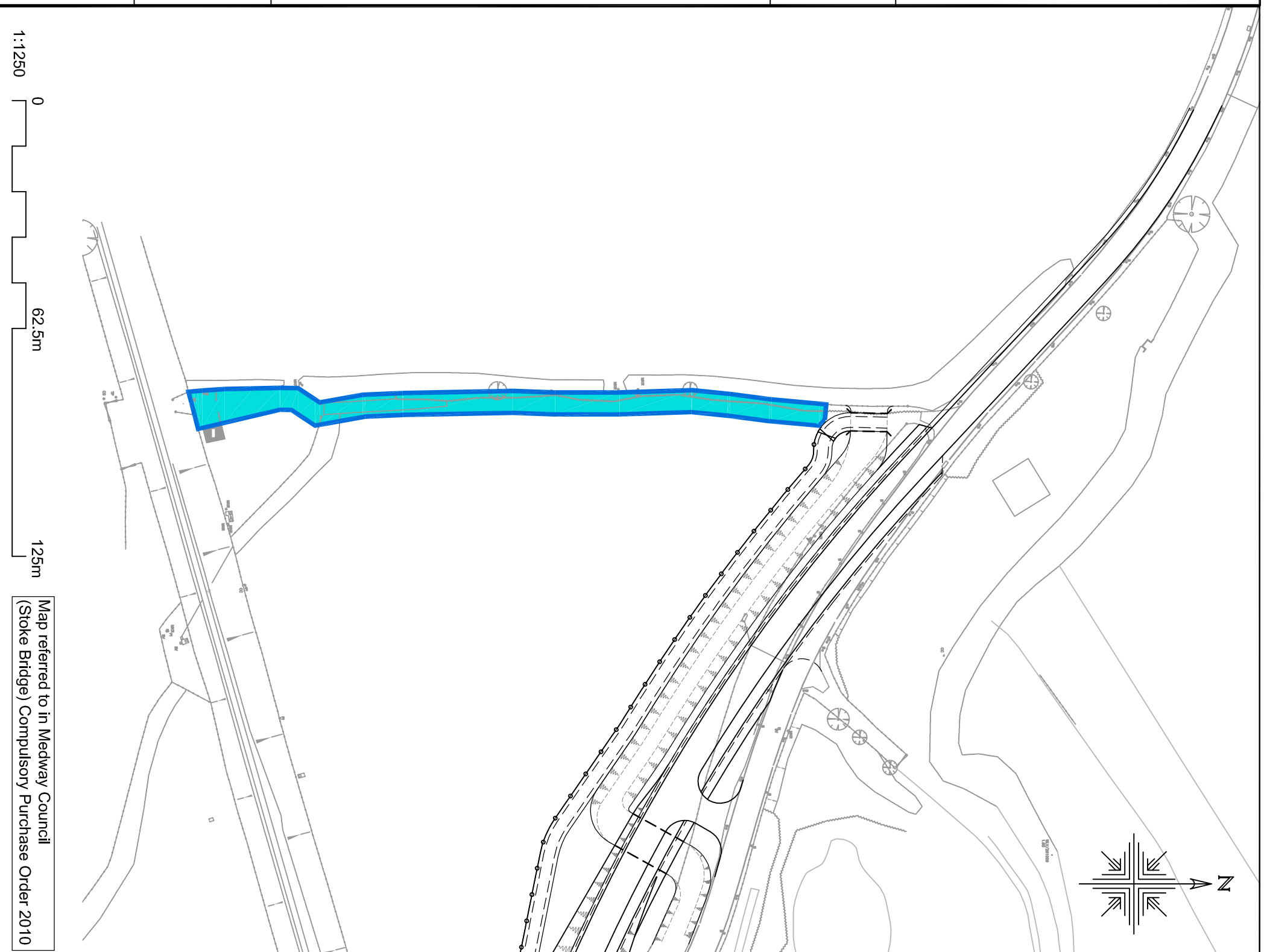
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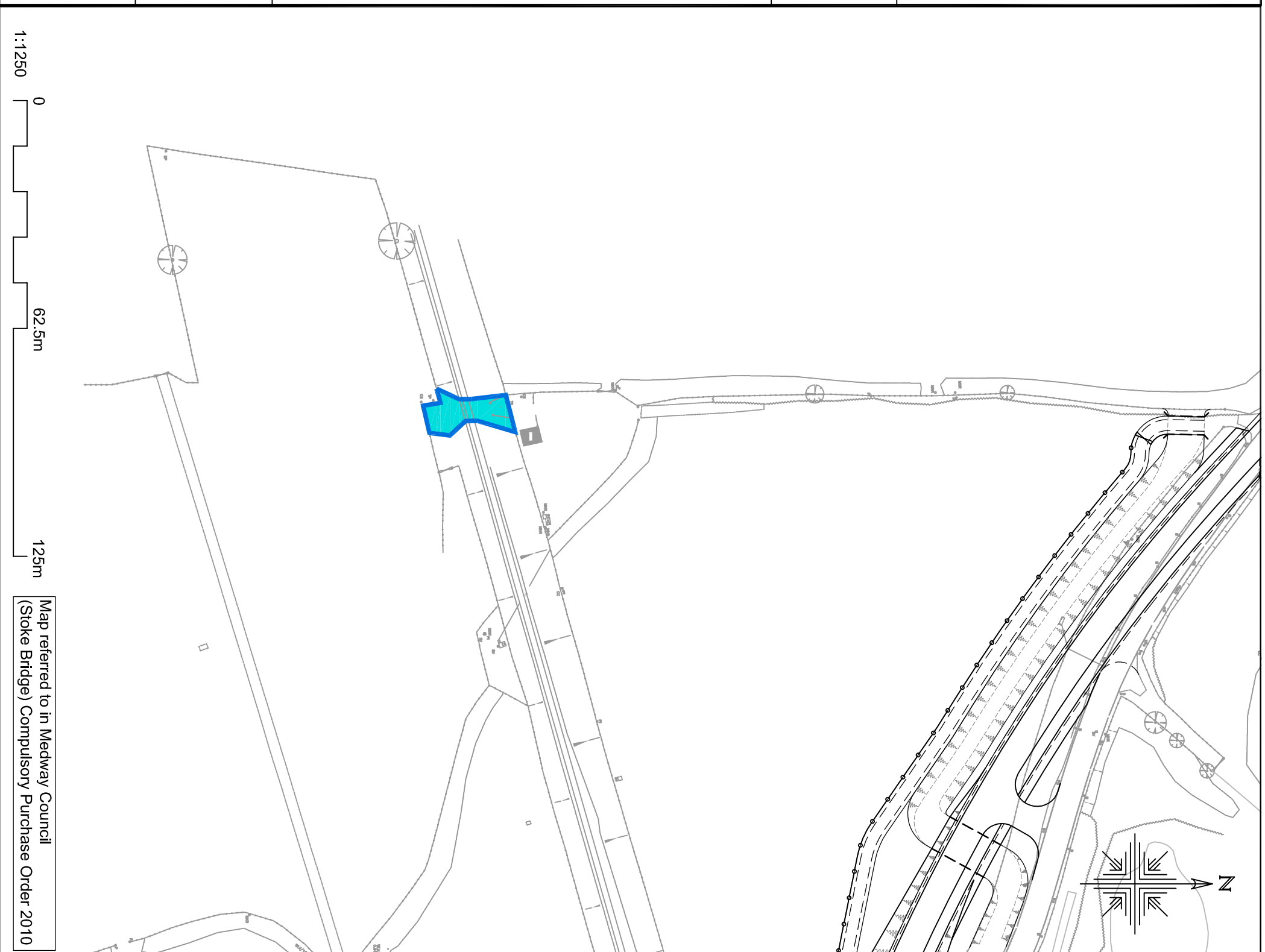
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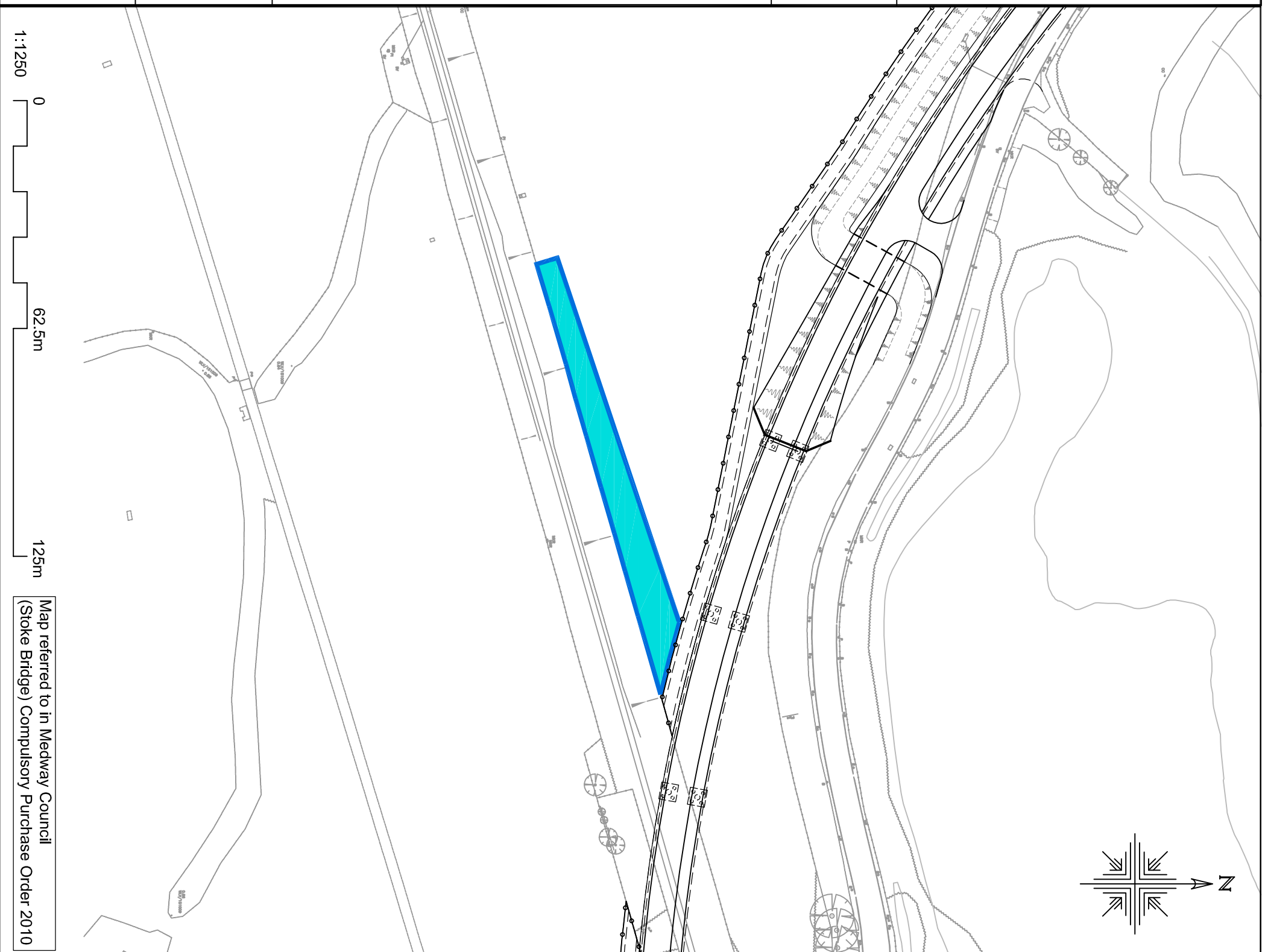
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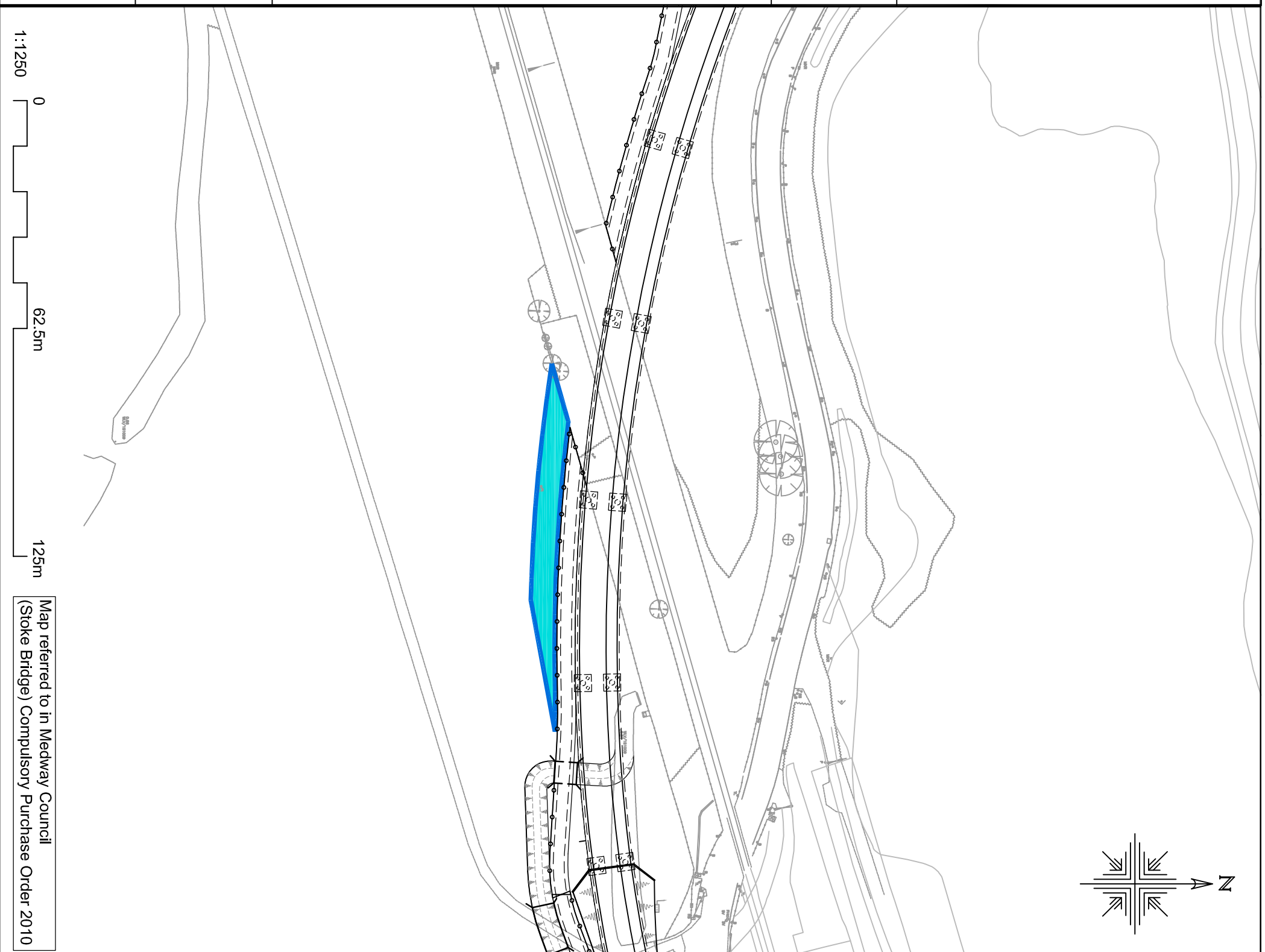
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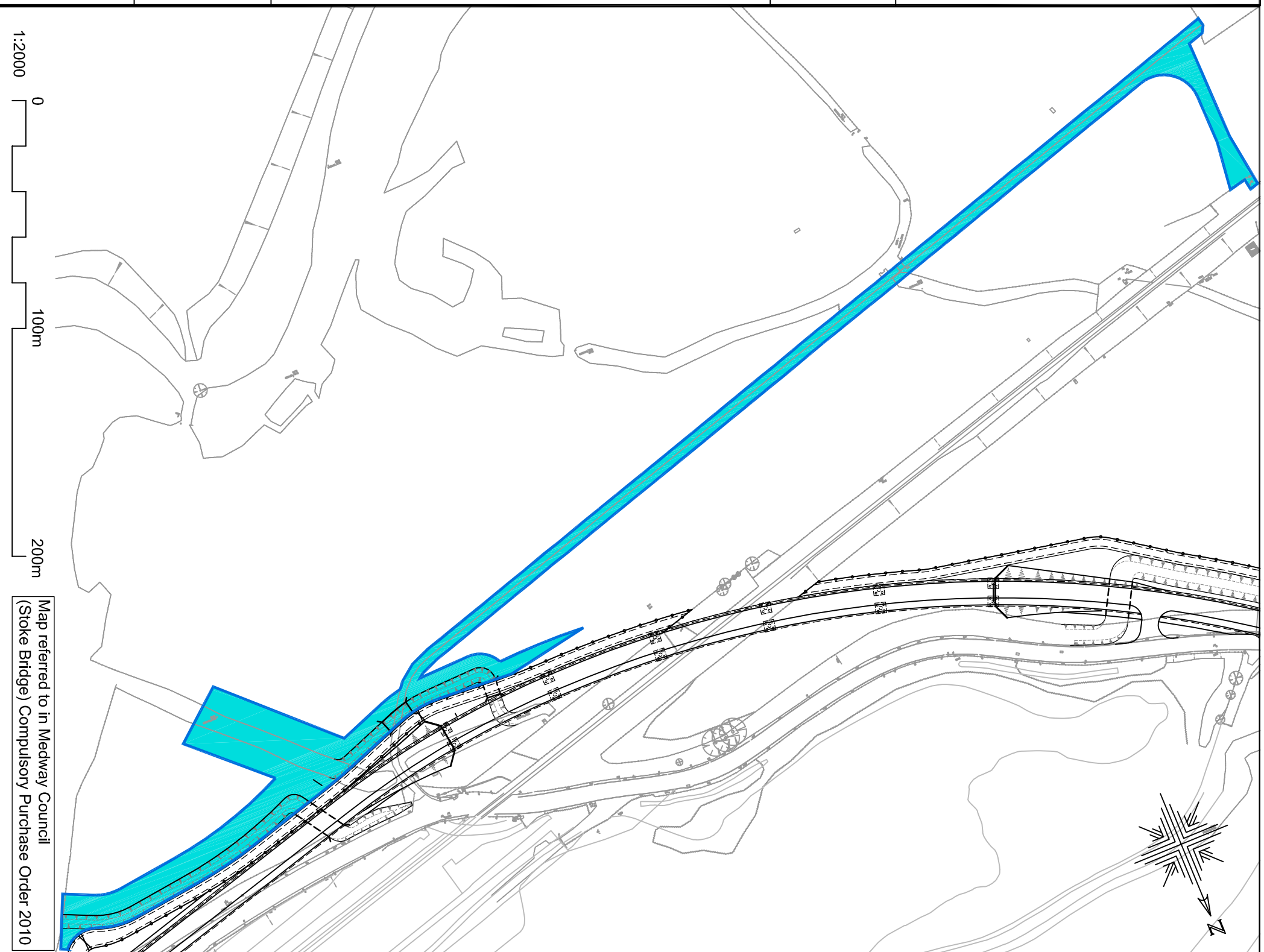
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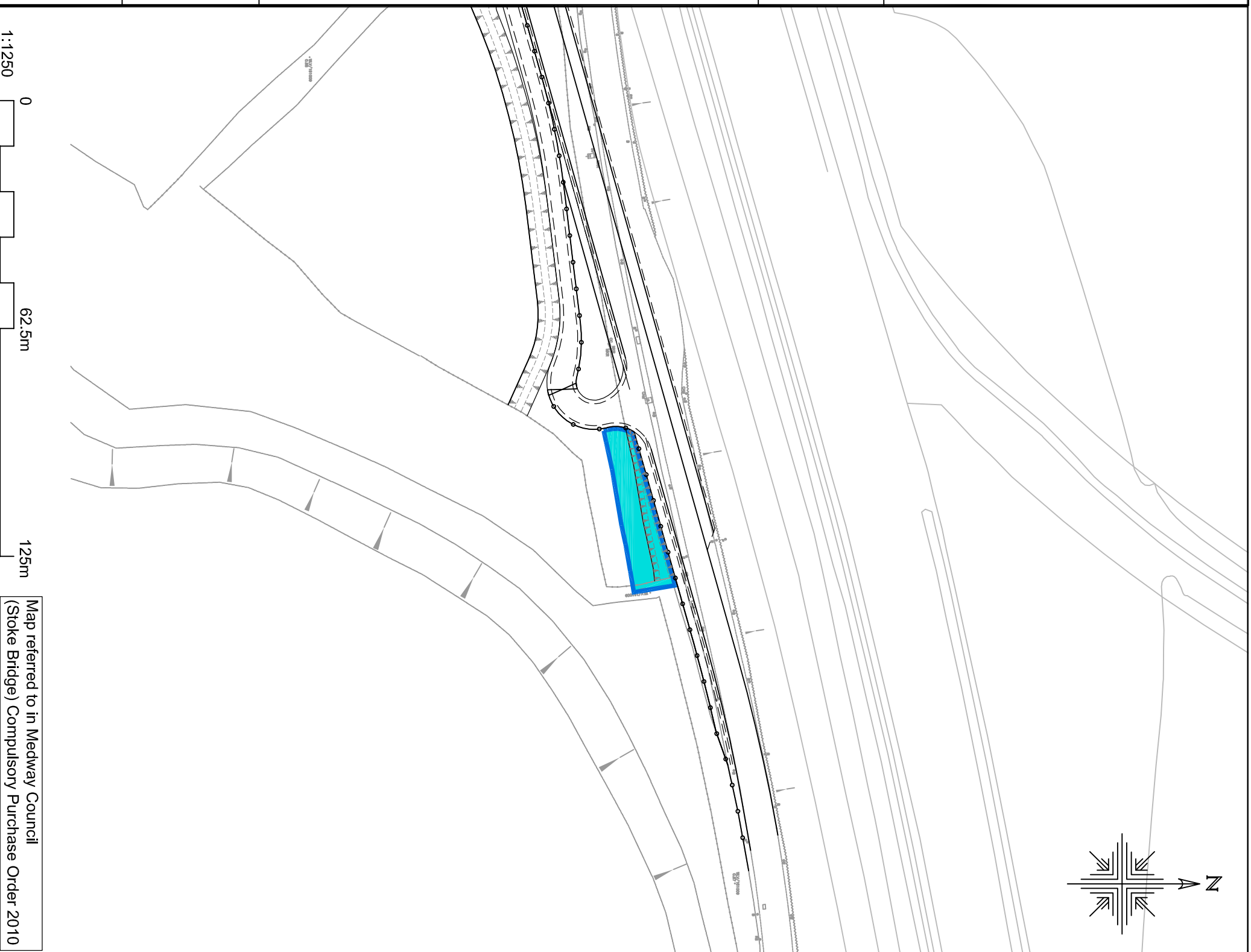
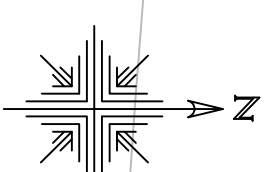
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TQ 8475	8917	10	TITLE

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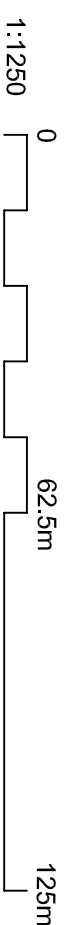
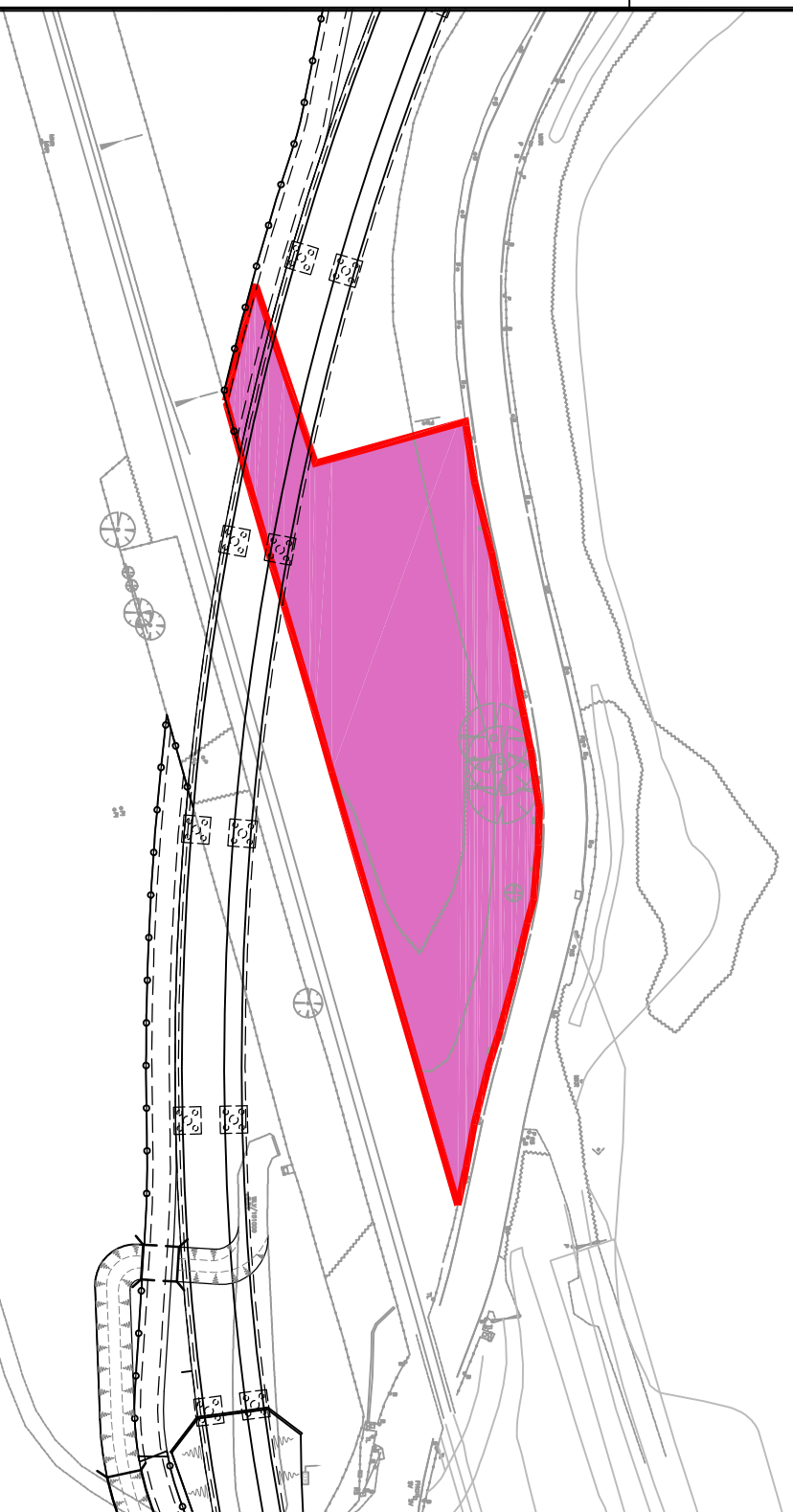
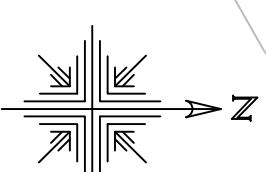
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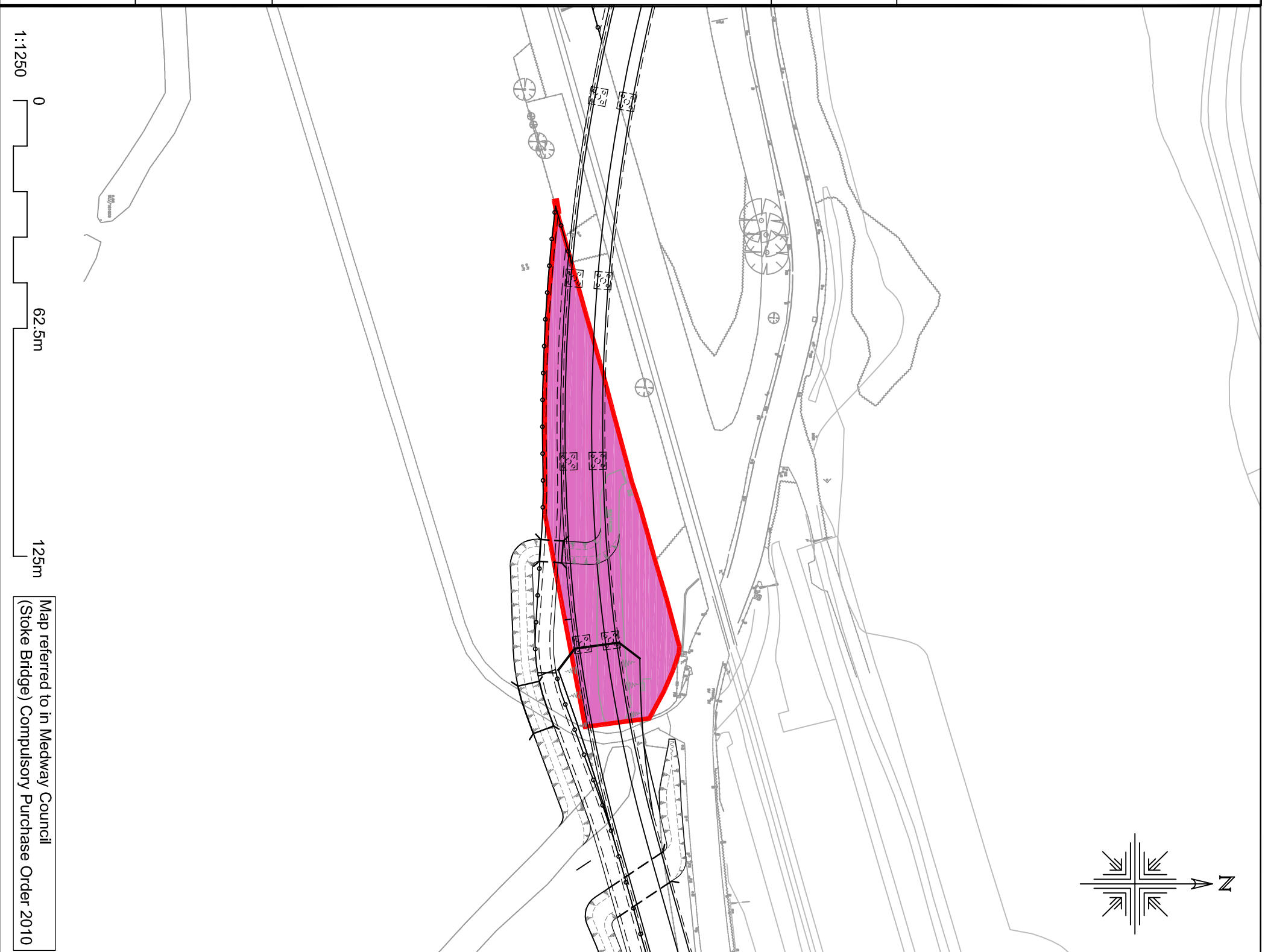
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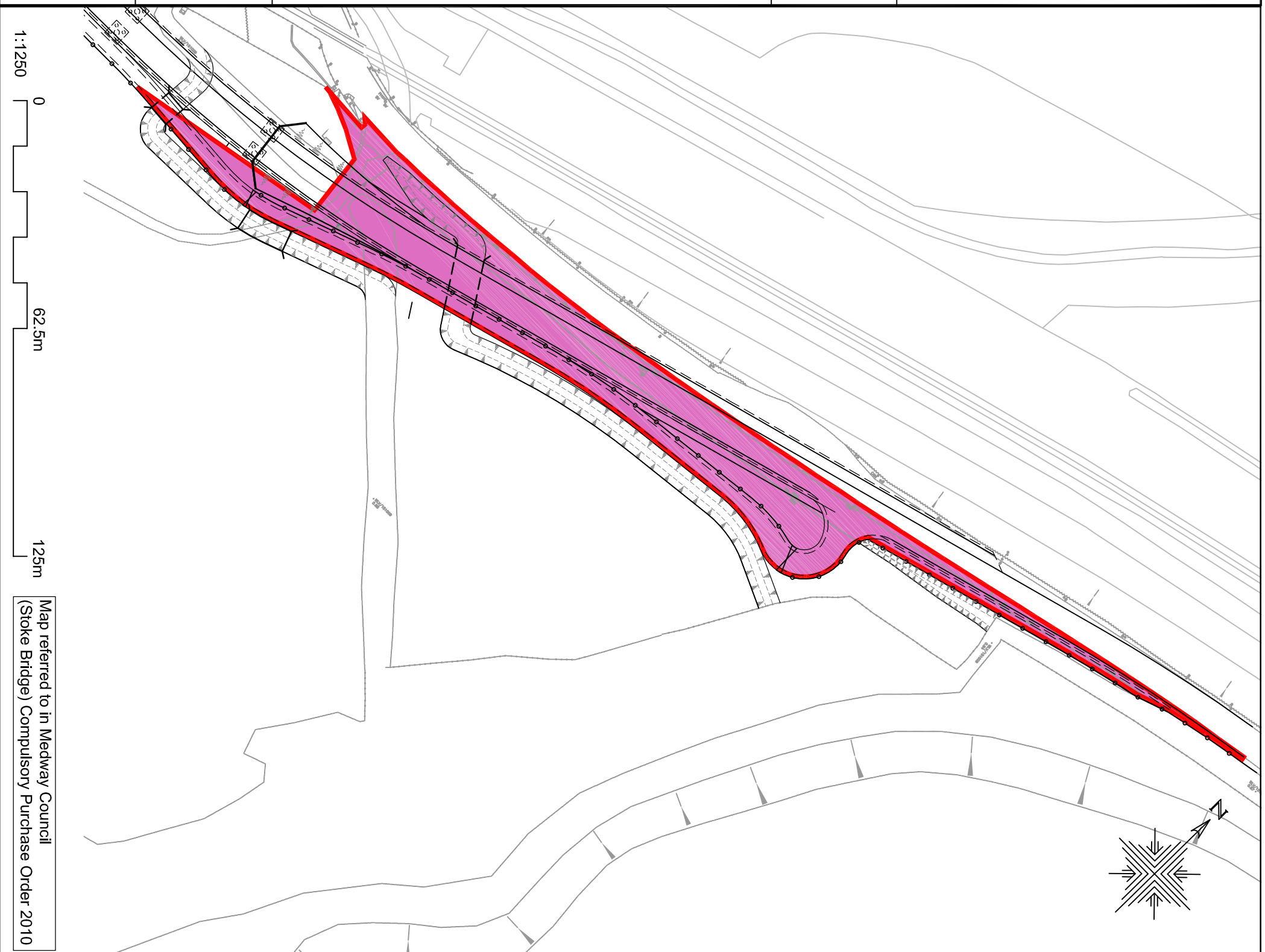
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OCCUPIER
J CASTLE (STOKE)
MACKAYS COURT FARM
STOKE
ROCHESTER
KENT
ME3 9RJ
BRIAN STONE (MANAGER)

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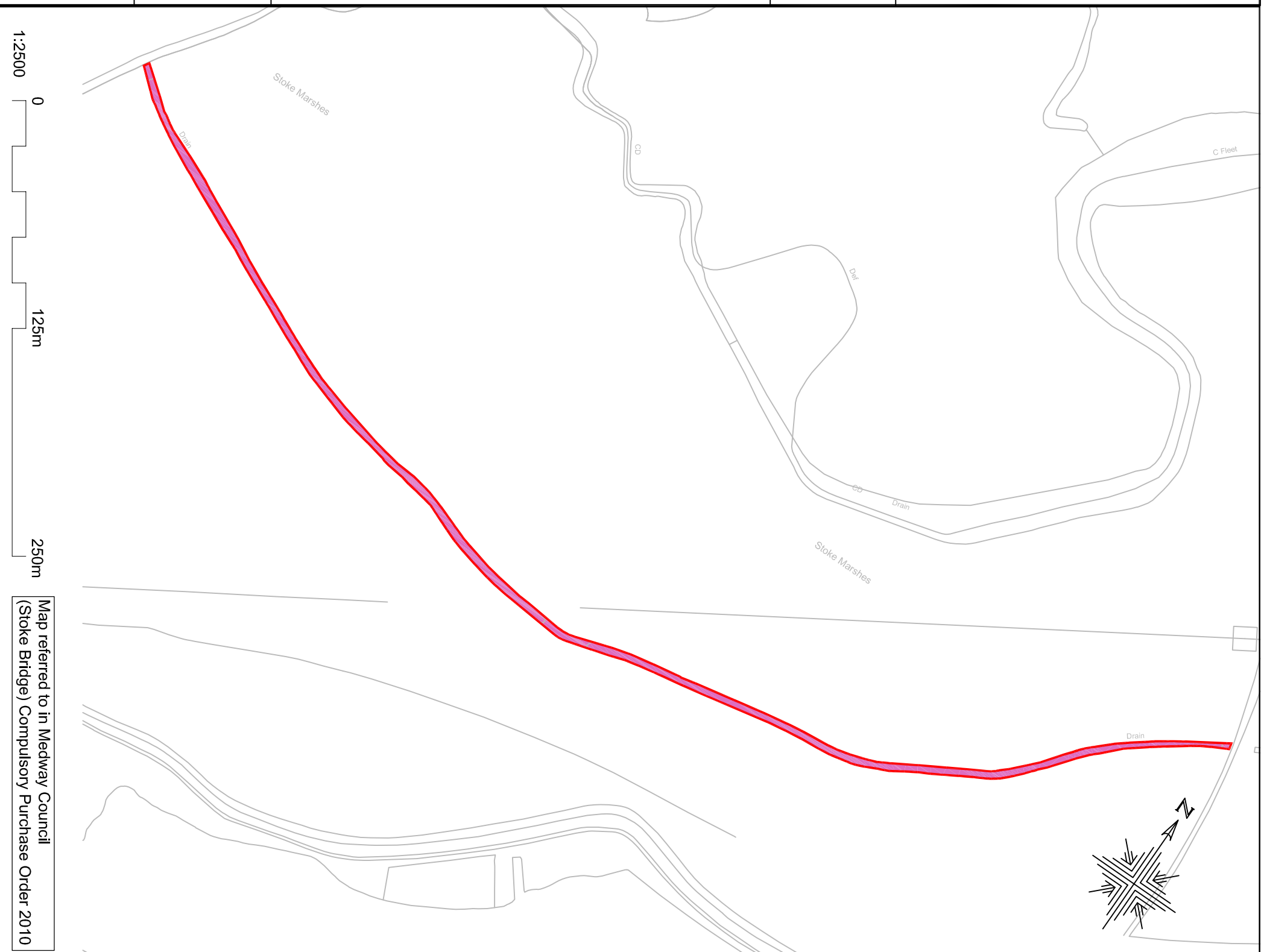
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TQ 8476	3117	15	TITLE

OCCUPIER
J CASTLE (STOKE)
MACKAYS COURT FARM
STOKE
ROCHESTER
KENT
ME3 9RJ
BRIAN STONE (MANAGER)

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J CASTLE (STOKE)
MACKAYS COURT FARM
STOKE
ROCHESTER
KENT
ME3 9RJ
BRIAN STONE (MANAGER)

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STOKE BRIDGE

CPO PLAN - LEASEHOLD PLAN

ORDNANCE SHEET No.	AREA IN SQUARE METRES	PLOT No.	REQUIREMENT
TQ 8476	2121	17	TITLE

OCCUPIER
J CASTLE (STOKE)
MACKAYS COURT FARM
STOKE
ROCHESTER
KENT
ME3 9RJ
BRIAN STONE (MANAGER)

SCALE	DATE	REVISION
1/2500 @A3	02.02.10	P2
DRAWING No. 211194/BLC/IN68/0138		REVISION





REGENERATION, COMMUNITY AND CULTURE
STOKE BRIDGE

CPO PLAN - LEASEHOLD PLAN

ORDNANCE SHEET No.	AREA IN SQUARE METRES	PLOT No.	REQUIREMENT
TQ 8476	8396	18	TITLE

OCCUPIER
J CASTLE (STOKE)
MACKAYS COURT FARM
STOKE
ROCHESTER
KENT
ME3 9RJ
BRIAN STONE (MANAGER)

SCALE	DATE	REVISION
1/1250 @A3	02.02.10	P2
DRAWING No. 211194/BLC/IN68/0139		REVISION



Map referred to in Medway Council
(Stoke Bridge) Compulsory Purchase Order 2010



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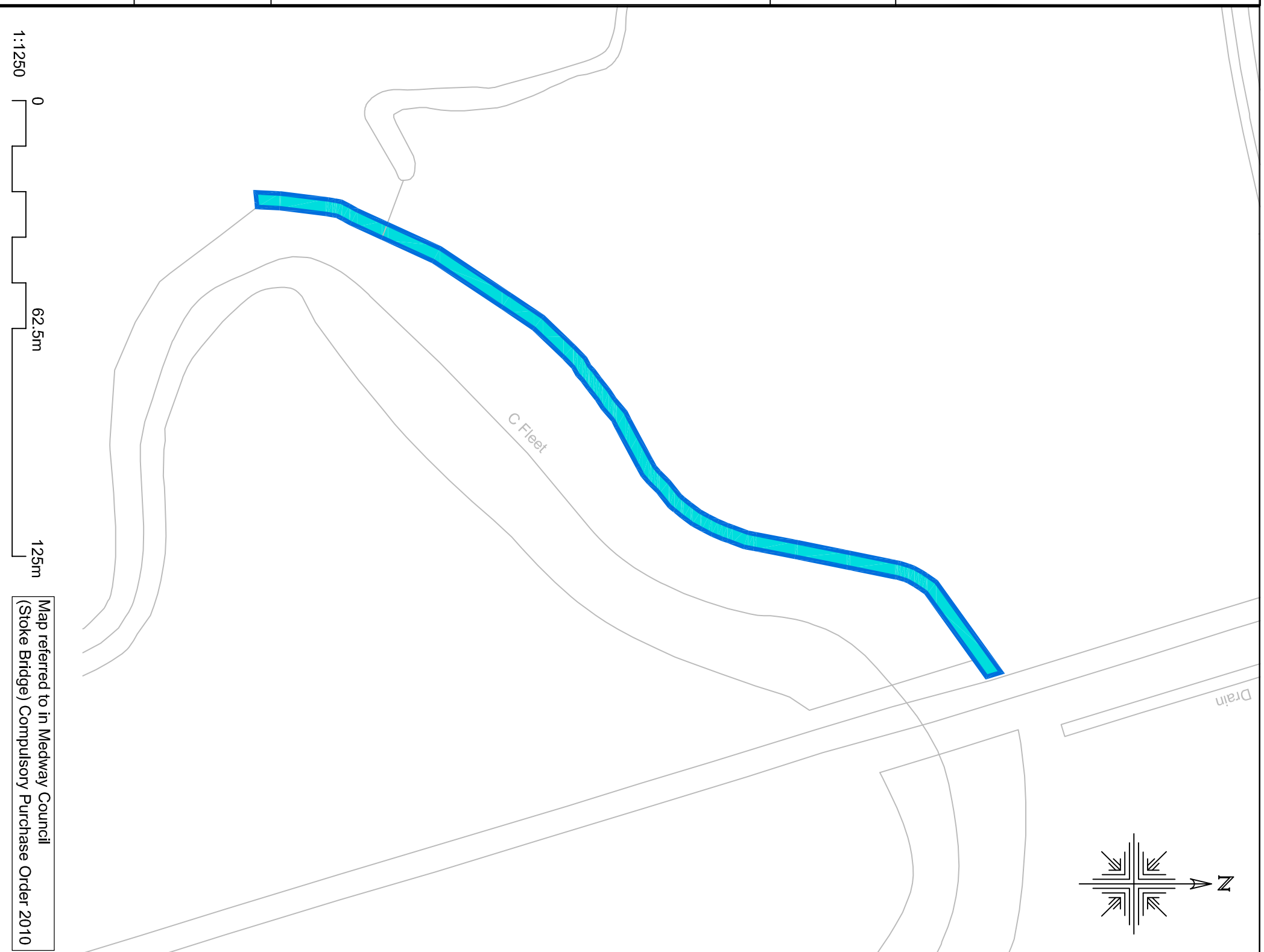
REGENERATION, COMMUNITY AND CULTURE
STOKE BRIDGE

CPO PLAN - LEASEHOLD PLAN

ORDNANCE SHEET No.	AREA IN SQUARE METRES	PLOT No.	REQUIREMENT
TQ 8476	1010	19	TITLE

OCCUPIER
J CASTLE (STOKE)
MACKAYS COURT FARM
STOKE
ROCHESTER
KENT
ME3 9RJ
BRIAN STONE (MANAGER)

SCALE	DATE	REVISION
1/1250 @A3	03.02.10	P2
DRAWING No. 211194/BLC/IN68/0140		REVISION



Map referred to in Medway Council
(Stoke Bridge) Compulsory Purchase Order 2010



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REGENERATION, COMMUNITY AND CULTURE
STOKE BRIDGE

CPO PLAN - LEASEHOLD PLAN

ORDNANCE SHEET No.	AREA IN SQUARE METRES	PLOT No.	REQUIREMENT
TQ 8476	789	20	TITLE

OCCUPIER
J CASTLE (STOKE)
MACKAYS COURT FARM
STOKE
ROCHESTER
KENT
ME3 9RJ
BRIAN STONE (MANAGER)

SCALE	DATE	REVISION
1/1250 @A3	03.02.10	P2
DRAWING No. 211194/BLC/IN68/0141		REVISION



Map referred to in Medway Council
(Stoke Bridge) Compulsory Purchase Order 2010



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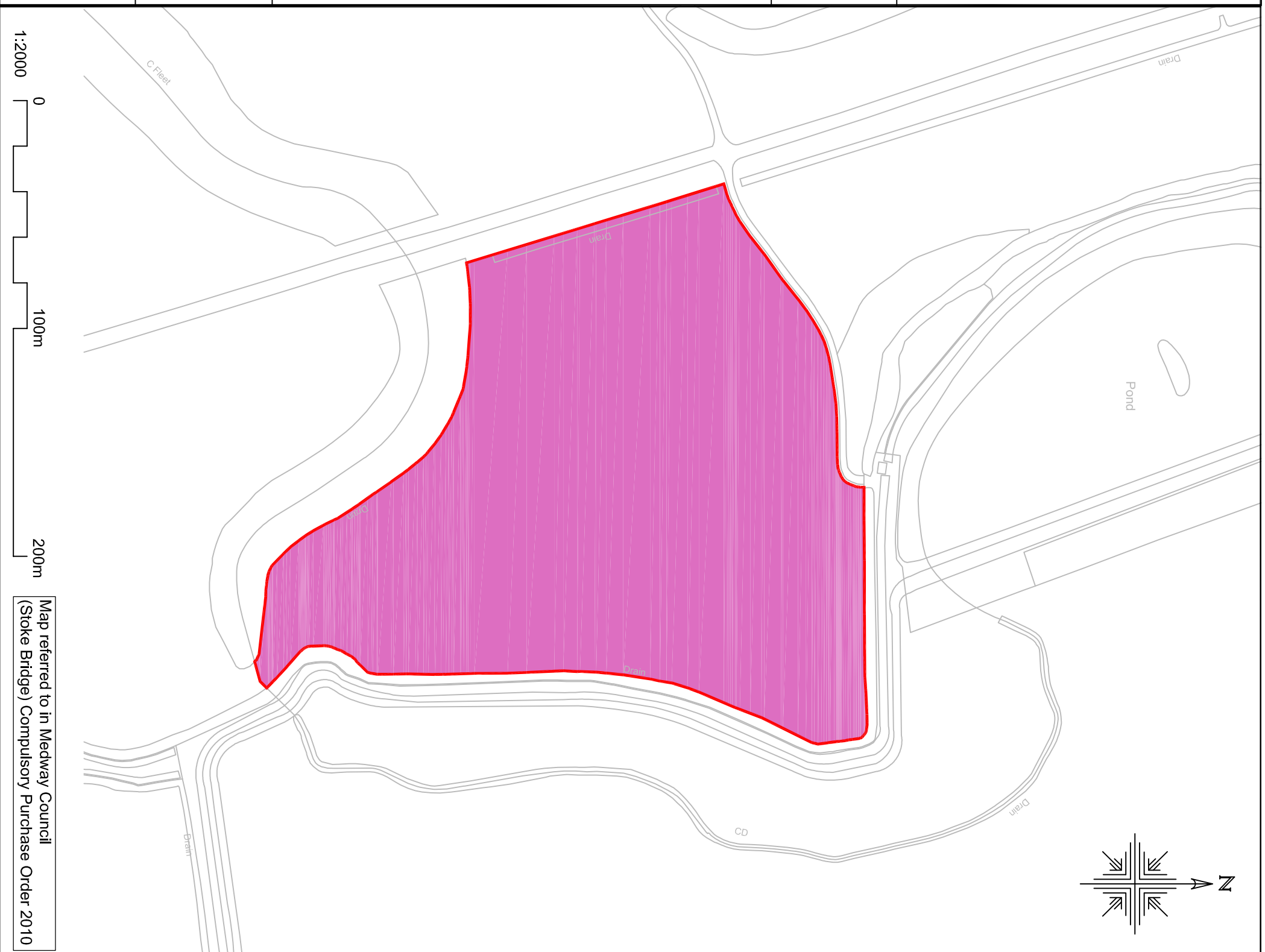
REGENERATION, COMMUNITY AND CULTURE
STOKE BRIDGE

CPO PLAN - LEASEHOLD PLAN

ORDNANCE SHEET No.	AREA IN SQUARE METRES	PLOT No.	REQUIREMENT
TQ 8476	41817	21	TITLE

OCCUPIER
J CASTLE (STOKE)
MACKAYS COURT FARM
STOKE
ROCHESTER
KENT
ME3 9RJ
BRIAN STONE (MANAGER)

SCALE	DATE	REVISION
1/2000 @A3	03.02.10	P2
DRAWING No.		
211194/BLC/IN68/0142		








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Notes:

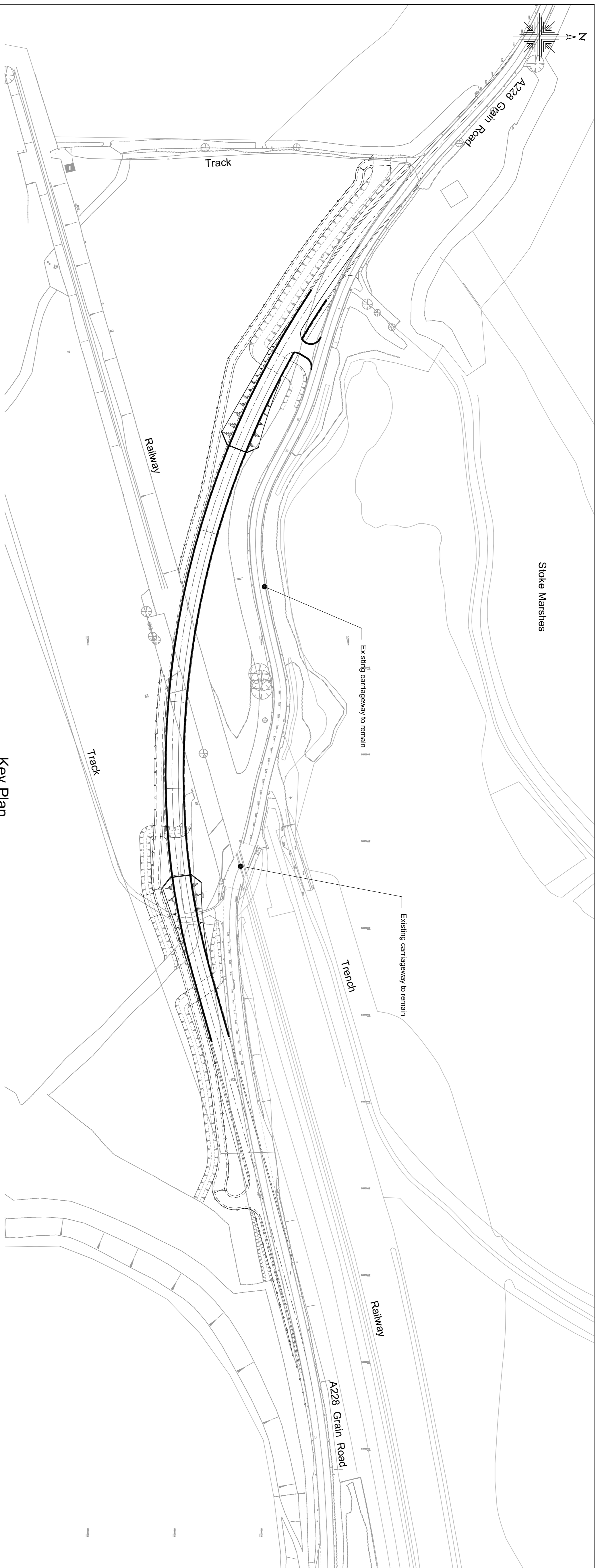
1. Do not scale. Report any errors or omissions to the designer. Responsibility for all work or preparing any detailed drawing.


Key:

-  The A228 Classified Road
-  Route of New Highway
-  Highway to be improved
-  Private Means of Access to premises to be stopped up
-  Route of new Private Means of Access

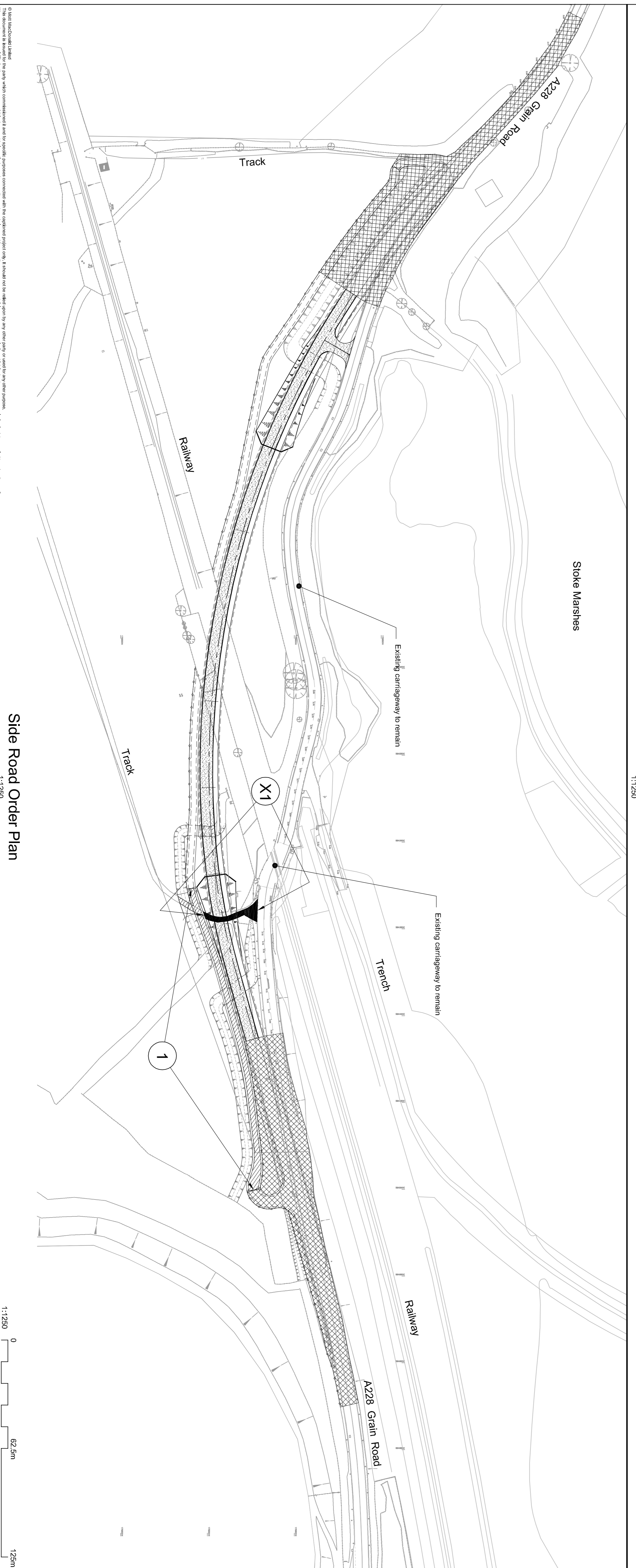


Key Plan
1:1250



 <p>Mott MacDonald 8410 Spinkers Road Croydon, CR0 2EE T +44 (0)20 8714 2000 F +44 (0)20 8818 1500 www.mottmac.com</p>		<p>DATE 08/02/10</p>			
<p>CLIENT Medway Council Serving You REGENERATION, COMMUNITY AND CULTURE GUN WHARF DOCK ROAD KENT ME4 4TR MEDWAY (01634) 306000</p>		<p>INDEX AMENDMENTS</p> <table border="1"> <tr> <td>P1</td> <td>First Issue - For Approval</td> <td>08/02/10</td> </tr> </table>	P1	First Issue - For Approval	08/02/10
P1	First Issue - For Approval	08/02/10			
<p>TITLE A228 Stoke Bridge Highway Improvement</p>					
<p>DRAWN DESIGNED CHECKED APPROVED</p>	<p>DATE February 2010</p> <p>SCALE @ A1 1:1250</p>	<p>REV P1</p>			

Side Road Order Plan
1:1250



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