

Cabinet – 25 July 2012

Darlaston Strategic Development Area Access Project – Highways Compulsory Purchase Order

Portfolio: Councillor Tom Ansell, Transport
Councillor Adrian Andrew, Deputy Leader, Regeneration

Service: Strategic Regeneration

Wards: Bentley & Darlaston North, Pleck

Key decision: Yes

Forward plan: Yes

1. Summary

- 1.1 The previous report presented and approved by Cabinet on the 4th April 2012, set out all of the details associated with the Darlaston Strategic Development Area - Highways Improvements Scheme. This included all the information available at that time as to the extent of the land required and which might have to be acquired by a Compulsory Purchase Order (CPO).
- 1.2 Following this approval, subsequent negotiations have been held with the variety of land owners, together with work to further define the actual areas required. A draft of the schedule which will be appended to the Order and which gives details of the persons affected together with the draft CPO map are included within **Appendix A**.
- 1.3 We have been advised by our legal experts that due to the changes to the extent of the land required further approval is required to authorise the making and publication of the CPO.
- 1.4 This report notifies Cabinet of the revisions to the land required for the DSDA scheme and the negotiations which have taken place with various landowners and seeks approval to proceed with publication of the CPO.

2. Recommendations

- 2.1 To approve the making and publication of a CPO substantially in the form of the draft Order in Appendix B under sections 239, 240 and 250 of the Highways Act 1980.
- 2.2 To delegate authority to the Executive Director for Regeneration in consultation with the Portfolio Holder, to make any minor amendments required to the draft Order, to prepare all necessary documentation for the compulsory purchase order, to publish and serve all notices of the making and the confirmation of the

Order, including notices of making of a general vesting declaration and notices of entry, to serve invitations to treat and all other notices necessary to give effect to the order, including service of High Court Enforcement Officer notices where necessary, to submit the order to the Secretary of State for Transportation for confirmation and to take all steps including appearance at any public local inquiry to secure confirmation of the Order.

- 2.3 Approval is sought, in accordance with the accountable body approval matrix (appendix f of the council's grant manual), for Walsall Council to act as the accountable body to administer DfT and Centro Grants whilst ensuring all relevant grant terms and conditions are adhered to.

3. Report detail

- 3.1 To facilitate the scheme, approximately 60 plots of land have been identified and need to be acquired; these are typically small strips of land next to the existing highway boundaries and portions of individual front gardens. Currently two businesses are affected; Beswick Resources at 2 Bescot Road and a Bed & Breakfast at 1 Darlaston Road.
- 3.2 The scheme has been designed to minimise land take up and the effects on local people and businesses, the original details previously approved by Cabinet are included in **Appendix A**, with subsequent revisions following further work included in **Appendix B**.
- 3.3 To date it has not been possible to finalise any land acquisitions but negotiations are taking place and will continue with a view to securing agreement. However, whilst the Council will continue to negotiate all land/property acquisitions, it is very unlikely that agreement will be reached with all the landowners and other interests involved. Furthermore, negotiations with some landowners may take some time and in order to ensure that the scheme can be completed in accordance with the planned timetable a CPO is needed. The Council is carrying-out preparatory work for this in tandem with negotiations and has substantially completed the process of identifying land/property ownership and property valuations by working with two firms, – Cobbetts LLP and GVA Limited.
- 3.4 The investigations being undertaken as to land interests affected have been largely completed but further efforts are being made to obtain as detailed information as possible. These processes will be complete by the date of the Cabinet meeting and if any amendments are made to the draft CPO as a result, a revised draft will be made available to members at the meeting. Thereafter, only minor changes will be made to the draft and there will be no changes to the extent of the land to be acquired.
- 3.5 Cabinet's approval is therefore sought to the making and publication of a CPO substantially in the form attached at **Appendix B** or in the form of any amended draft produced at the meeting.
- 3.6 Once approved the appropriate Compulsory Purchase Order will be made and published later this summer (target of August 2012) and progressed to ensure that the scheme remains to programme timetable.

4. Council priorities

- 4.1 The construction of an improved road network in the area will benefit all sections of the community by providing better links between major distributor roads. The redevelopment of derelict land in the area is projected to provide new jobs, many of which will directly benefit the local community. Facilitating new investment in job opportunities is the ultimate objective of the highways project. There is therefore a compelling need for a CPO to be made in order to deliver the scheme to timetable and to secure the necessary land interests.
- 4.2 The proposed highway improvements will be designed and constructed to the latest standards and permit new links within the area thereby benefiting all road users including cyclists, pedestrians, the elderly and children.
- 4.3 Highways scheme and regeneration sites are adjacent to the busy M6 motorway and in an area where there is known ground contamination. However, the impact of the highway proposals is limited to a small geographic area and the Planning Authority has confirmed that the proposals do not require an Environmental Impact Assessment. An initial scoping study has already been undertaken, and site investigation prior to construction will address any outstanding issues.

5. Risk management

- 5.1 Risk: The approvals sought in this report will enable officers to progress project appraisal and ultimately obtain final funding approval.
- 5.2 At this stage the key risk to the project is financial – as with all projects that are funded by central government, there is no guarantee that the project will receive full and final approval. The project received Programme Entry from the Department for Transport on the 14th December, 2011.
- 5.3 Failure to secure Full Approval will result in abortive costs relating to the Compulsory Purchase Order, utility diversions and staffing costs incurred to date to move the scheme forward. The Council will not be tied into any contracts with the Civil Engineering contractor until after Full Approval is received, which is expected in April 2013.
- 5.4 As part of the Comprehensive Spending Review and the reduction in all departmental budgets, the Department for Transport have removed the overall risk layer on major transport projects. The implication for Walsall Council is that the scheme has to be delivered for the amount agreed with the Department for Transport. Any overspend on the project costs will have to be met in full by the local authority.
- 5.5 There are other key risks that will apply throughout the project and irrespective of the Department for Transport funding decision. The following have been identified and actions taken to mitigate wherever practicable as follows: -
 - Design – the scheme includes an aqueduct and two bridges. Liaison with Network Rail and British Waterways is a prerequisite to ensure delivery –

there is a risk they could formally object to elements of the scheme. Network Rail has agreed to remove the existing rail structure in Bentley Road South and construct a new bridge in line with the scheme programme. Risk associated with the bridge construction and rail possessions have thereby been transferred to Network Rail and reduce the overall risk of delay to the construction programme. British Waterways have been fully involved in the design process of the canal bridges and Bentley Bridge has been successfully delivered as part of the advance works.

- Partners – formal project management arrangements have been put in place with a Joint Board and Strategic Management Team to ensure coordination and effective delivery.
- Ground conditions – the Council is responsible for ground conditions on land directly affected by the highway proposals. Ground investigation has taken place to identify contaminants and inform mitigation measures; further work will now be undertaken.
- Programme & land acquisition – although the Council's Estates & Assets Management Team have been liaising with affected landowners, it is evident that all necessary land cannot be acquired by negotiation. Consequently, statutory orders have been prepared and the project programme has been developed to allow for a possible local public inquiry associated with a Compulsory Purchase Order. There is also the risk that the Secretary of State may not confirm the order.
- Public relations – promoting the scheme has the potential to blight land and properties. Progressing the detailed design of the scheme will help mitigate this risk. Legal support will also help manage any such issues, should they arise. Residents in Pleck may object to the short- and long-term implications of constructing the scheme, when the ultimate objective is to bring new employment investment to the neighbouring area of Darlaston. A high-profile public consultation and PR exercise carried out in summer 2009 and a follow-up campaign in 2011 have helped local people understand why the Council is promoting the project and reassure people about the short-term inconvenience and long-term benefits. A key aim of all consultation has been to reduce the risk of possible objectors forcing a local public inquiry.

6. Financial implications

Expenditure to Date – Advance Works

- 6.1 Due to the threat of road closure to Heavy Goods Vehicles presented by two weak bridges in Bentley Road South, Cabinet agreed at its 18th March 2009 meeting that advance works funded from the Council's Local Transport Plan Capital Programme and the European Regional Development Fund should take place to reconstruct Bentley Bridge. The £1.2m works commenced on 11th May 2009 and were completed in July 2010.

Improved Funding Offer – Main Works

- 6.2 The funding package for the remaining elements of the scheme was improved in 2011 by reducing the scheme scope and cost; increasing third party contributions; and increasing the Council's contribution.
- 6.3 With this in mind, officers have set out a proposed funding package for the revised scheme to 2016/17, which includes Department for Transport funding of £14.316m (55%); Council funding of £5.600m (22%), which includes the £1.200m already incurred on advance works; Centro funding of £5.000m (19%); and private sector contributions of £0.992m (3%). The scheme was appraised by the Department for Transport on this basis.
- 6.4 The outstanding Council elements will be funded from £1.500m of the Council's Integrated Transport Block allocation for the 2011/12 – 2014/15 period; and the remaining £2.900m (11% of the total scheme cost) will be financed through prudential borrowing.
- 6.5 Prudential borrowing repayments will be met from Integrated Transport Block resources. Commencing in 2015/16, this will be split proportionally over a set number of years to allow delivery of other Council priorities in each financial year.

Third Party Contributions

- 6.6 Centro will match Walsall Council's local contribution to a value of £5.665m. To date Walsall has received approval for £5.000m of this funding in the 2011/12 – 2014/15 period, which was approved at the ITA Urgency Sub-Committee meeting on 7th September 2011. Officers are currently negotiating with Centro regarding the outstanding £0.665m to be provided in 2015/16.
- 6.7 Private sector contributions (in land or cash) have been agreed with three land owners/developers as part of the bid. These are £0.098m (land) from European Metal Recycling (EMR); £0.094m (land) from J H Holland Limited; and £0.800m (cash) from Parkhill Estates Limited. At present the contributions have been confirmed in writing, but legal agreements will need to be established to formalise the payment.
- 6.8 The Parkhill Estates Limited contribution is subject to proposals planning on the IMI site for the full scale remediation proceeding, for which planning permission has not yet been secured. If the IMI remediation project does not proceed then the Council will be liable for the £0.8m shortfall in scheme funding.
- 6.9 The scheme is to be benchmarked as shown in Appendix A. Any developments or changes due to developments requested will need to be funded from additional budgets to prevent the scheme from overspending against the allocated budget.
- 6.10 The land acquisition will be funded in advance of receiving Full Approval from the DfT, by drawing down some of Centro's contribution towards the scheme (£2.5m) and Walsall Council IT Block Allocation for 12/13 of (£375k). In the event Full Approval is not granted, any funds drawn from Centro's allocation may be subject to repayment at the discretion of the ITA Board.

- 6.11 In the interim a summary of the total funds Walsall Council has underwritten is as follows:
- £665k Centro contribution
 - £992k private sector contributions
 - Any abortive costs incurred to date subject to receiving Full Approval for the scheme from the DfT

7. Legal implications

- 7.1 The acquisition of land and property to implement the scheme requires appropriate legal support. Following a decision of Cabinet in November 2008, Cobbetts LLP were appointed to provide external legal support in line with Council guidelines.
- 7.2 GVA have been appointed to lead on the negotiations for the land acquisition required on behalf of Walsall Council. They have lead on negotiated sales to date and will continue to advise throughout the Compulsory Purchase Order process that is now required.
- 7.3 Section 6 of the Human Rights Act 1998 prohibits local authorities from acting in a way which is incompatible with the European Convention on Human Rights. The main articles of the Convention which apply where a compulsory purchase is to be made are Article 1 of the First Protocol (the protection of property) and Article 8 (the right to respect for private and family life).
- 7.4 The Ministerial Guidance for compulsory purchase orders (Circular 06/04) also states that:
- “A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making the compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected, having regard, in particular, to the provisions of Article 1 of the First Protocol of the European Convention on Human Rights and , in the case of a dwelling, Article 8 of the Convention.”*
- 7.5 When using compulsory purchase powers the Council must act in a manner which is proportionate and takes into account the appropriate balance between the public interest in confirming the compulsory purchase order and the private interests affected.
- 7.6 Article 8(1) provides that everyone has the right to respect for his/her private and family life but Article 8(2) allows the state to restrict that right where it is necessary to do so in a democratic society and in the public interest.
- 7.7 Article 1 of the First Protocol states the every natural or legal person is entitled to the peaceful enjoyment of his possessions and that no-one shall be deprived of those possessions except in the public interest and subject to conditions provided for by law.

- 7.8 Taking into account these Articles and the guidance in Circular 06/04, the Council is satisfied that in light of the significant public benefit which would arise from the successful implementation of the highways development, the making of the compulsory purchase order would not amount to an unlawful interference with any person's rights under the Convention.
- 7.9 The Council will of course consider any representations which are made by landowners affected, and further representations can be made should there be a public inquiry into the compulsory purchase order. Persons who are affected by the order will be entitled to compensation in accordance with the compensation code.

8. Property implications

- 8.1 Land owners and Freeholders shall be divested of all land required for the scheme. Compensation shall be awarded to all land owners and freeholders who can provide full legal documentation of their claim to the property concerned. The value of any compensation awarded will be determined through negotiations between the Council and all individuals with an interest in each individual area of required land.

9. Staffing implications

- 9.1 The Council will need to continue to commit staff resources to the project in order to negotiate with landowners and other interested parties; conduct public consultation; for project management; to progress the detailed design; and to support the implementation of any statutory orders that may be required. In addition to site supervision required once construction commences.
- 9.2 Staff from the Transportation Strategy and Policy team (Regeneration) and Major Projects and Minor Improvements (Neighbourhoods) have now joined to form a combined project team to deliver the DSDA project. Once complete all staff will revert back to their substantive posts, with costs associated with the posts accounted for within the DSDA budget.
- 9.3 **Performance management:** The DSDA Performance Board is responsible for monitoring key performance indicators (KPIs) and achievement of project milestones. Performance management data is also regularly shared with the Department for Transport and West Midlands Chief Engineers & Planning Officers Group (via Major Project Monitoring Reports).

10. Equality implications

- 10.1 Broadly the highways scheme will impact positively upon members of groups with protected characteristics. The proposed improved highway network will provide improved transport links into the regenerated area. The scheme will greatly improve conditions for pedestrians and cyclists. Footway improvements will cater for use by disabled people.

- 10.2 The facilitative CPO will impact in similar ways across groups with protected characteristics, with much of the land being a few square metre strips from the front (highway-adjacent) edges of driveways or gardens. The groups from whom this comes are broadly split between people of non-British origin and those of British origin. The impacts to be accrued to each are minimal, being associated with the acquisition of only the front few metres of gardens or driveways, rather than the considerable impacts which would be accrued were the Council to acquire entire properties, whereby residents would be forced to sell and then relocate to a new property.
- 10.3 The one group with protected characteristics who may be impacted to a greater extent by the CPO and by the subsequent land acquisition will be disabled people, and the details of this are outlined below.
- 10.4 At present a care service operates at Beswick House, on the corner of Darlaston Road and Bescot Road. This houses around 40 adult males and provides day-to-day care and assistance for the individuals. Some individuals at Beswick House are cared-for at the facility for a short period of time whilst others are long-term or repeat residents. Those who are cared-for at Beswick House are usually housed there owing to the individuals concerned having problems relating to alcohol.
- 10.5 The CPO will see the full acquisition of this property (i.e. the structure as well as the grounds will be acquired) with a view to demolition to allow for the safe realignment and widening of the highway.
- 10.6 The result of the CPO for the 40 disabled people impacted will be that they will be moved to alternative suitable accommodation. The Council's negotiators (GVA) have already been involved in detailed discussions with the care providers and this is to ensure that suitable alternative accommodation is sourced for all current residents and also to ensure that they are not without care or accommodation for any period of time.
- 10.7 Note that overall, people who exhibit this protected characteristic will benefit significantly from the highways scheme itself, albeit with the (approximately) 40 disabled people currently accommodated at Beswick House being moved to alternative accommodation. Again, note that although the move to new accommodation may have negative impacts for those concerned, this will be done as sensitively and as quickly as possible with there being no time for which those impacted will be without care or housing.
- 10.8 Further information on equality impacts are provided by the attached Equality Impact Assessment.

11. Consultation

- 11.1 There has already been consultation with key stakeholders, residents and businesses that may be partially or significantly affected by the proposals. In conjunction with regeneration officers, consultation will be ongoing and developed as an integral part of the development of the project.

11.2 Further consultation and engagement will continue during the build up towards construction and during the works whilst out on site.

Background papers

None

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Tim Johnson
Executive Director
Regeneration

25 July 2012



Councillor Adrian Andrew
Deputy Leader
Portfolio holder – Regeneration

25 July 2012



Councillor Tom Ansell
Portfolio holder Transportation
& Environment

25 July 2012

NOTE:
Original drawings are A3
All drawings are to be read in conjunction with the project brief and any other relevant documents.

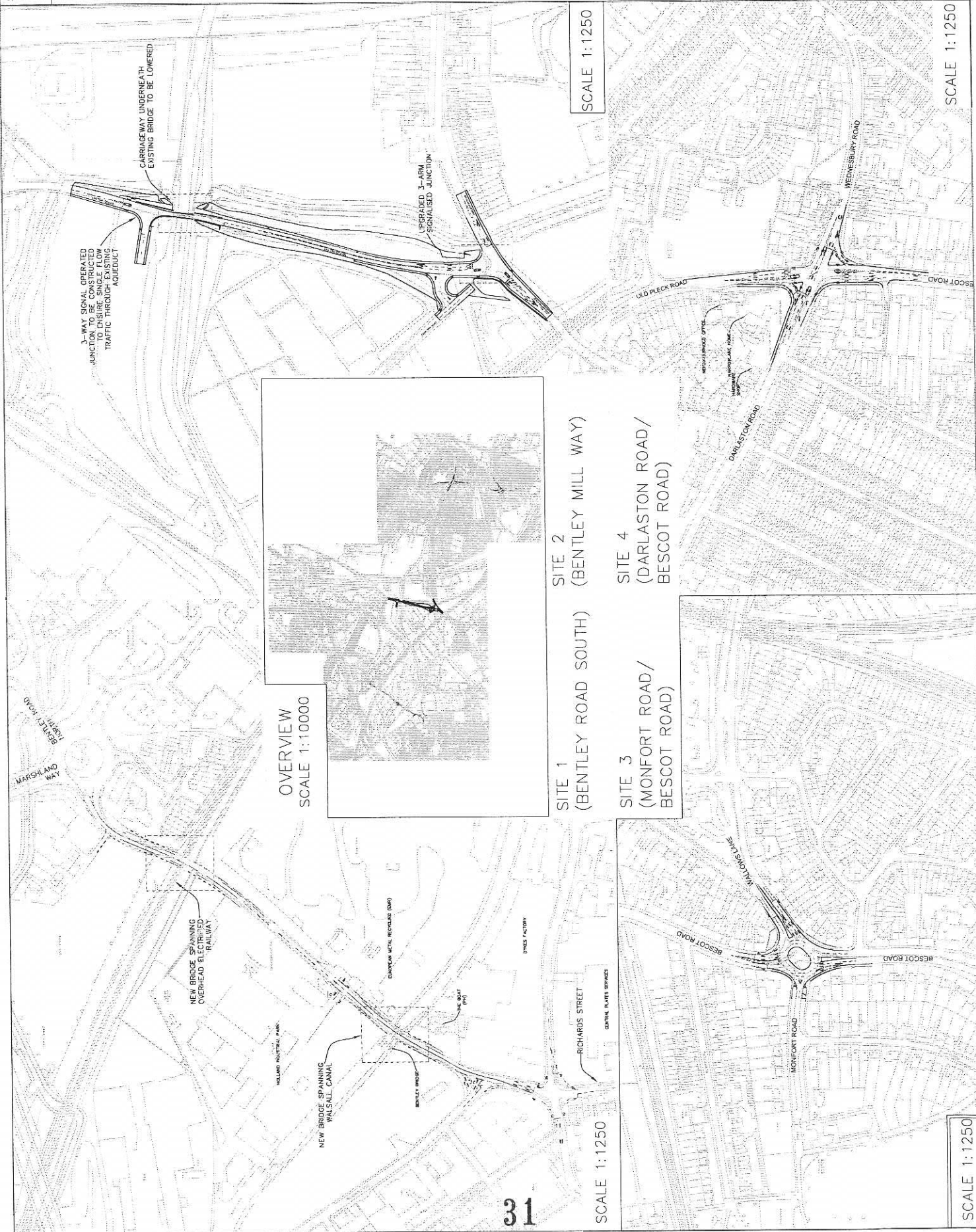
Project:
DARLASTON STRATEGIC
DEVELOPMENT AREA
ACCESS PROJECT

HIGHWAY ALIGNMENT
PROPOSALS

Design:	John Woodcock	CAD:	Steve Woodcock
Date:	April 2010	Scale:	AS SHOWN

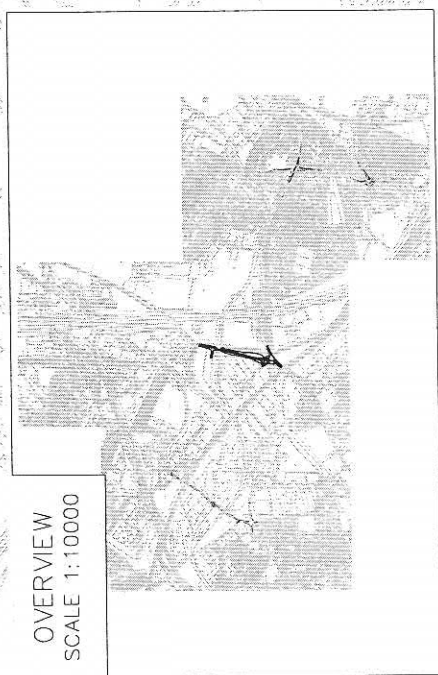


No. MPIDAPGEN-01
Rev. B



SCALE 1:1250

SCALE 1:1250



OVERVIEW
SCALE 1:10000

SITE 1
(BENTLEY ROAD SOUTH)

SITE 2
(BENTLEY MILL WAY)

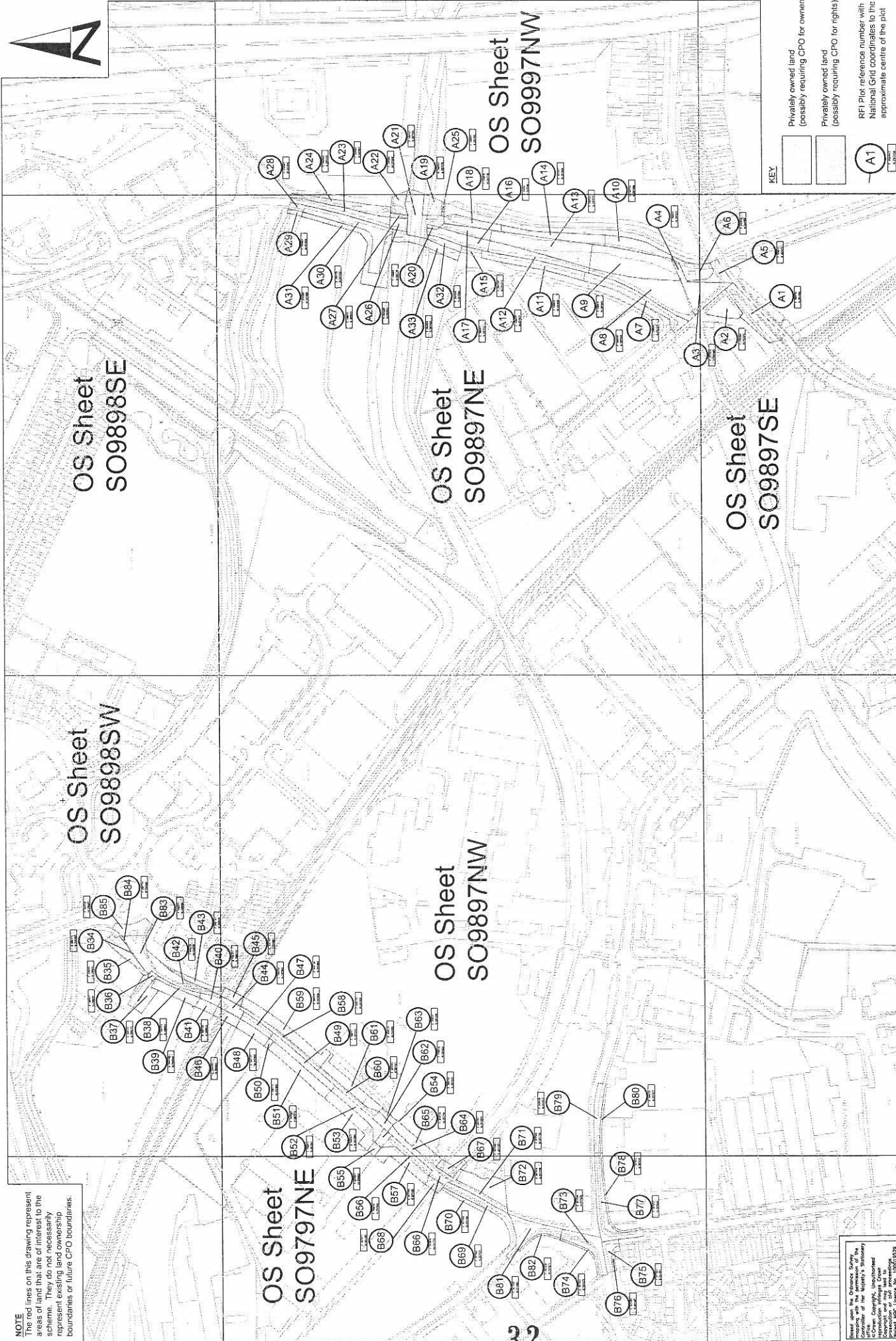
SITE 3
(MONFORT ROAD/
BESCOT ROAD)

SITE 4
(DARLASTON ROAD/
BESCOT ROAD)

SCALE 1:1250

SCALE 1:1250

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KEY

- Privately owned land (possibly requiring CPO for ownership)
- Privately owned land (possibly requiring CPO for rights)
- RPI Plot reference number with National Grid coordinates to the approximate centre of the plot

Walsall Council
 ENGINEERING & TRANSPORTATION SERVICES
 MAJOR PROJECTS & HIGHWAY DESIGN DIVISION
 Drawing No. MPDSDA/LAN-01

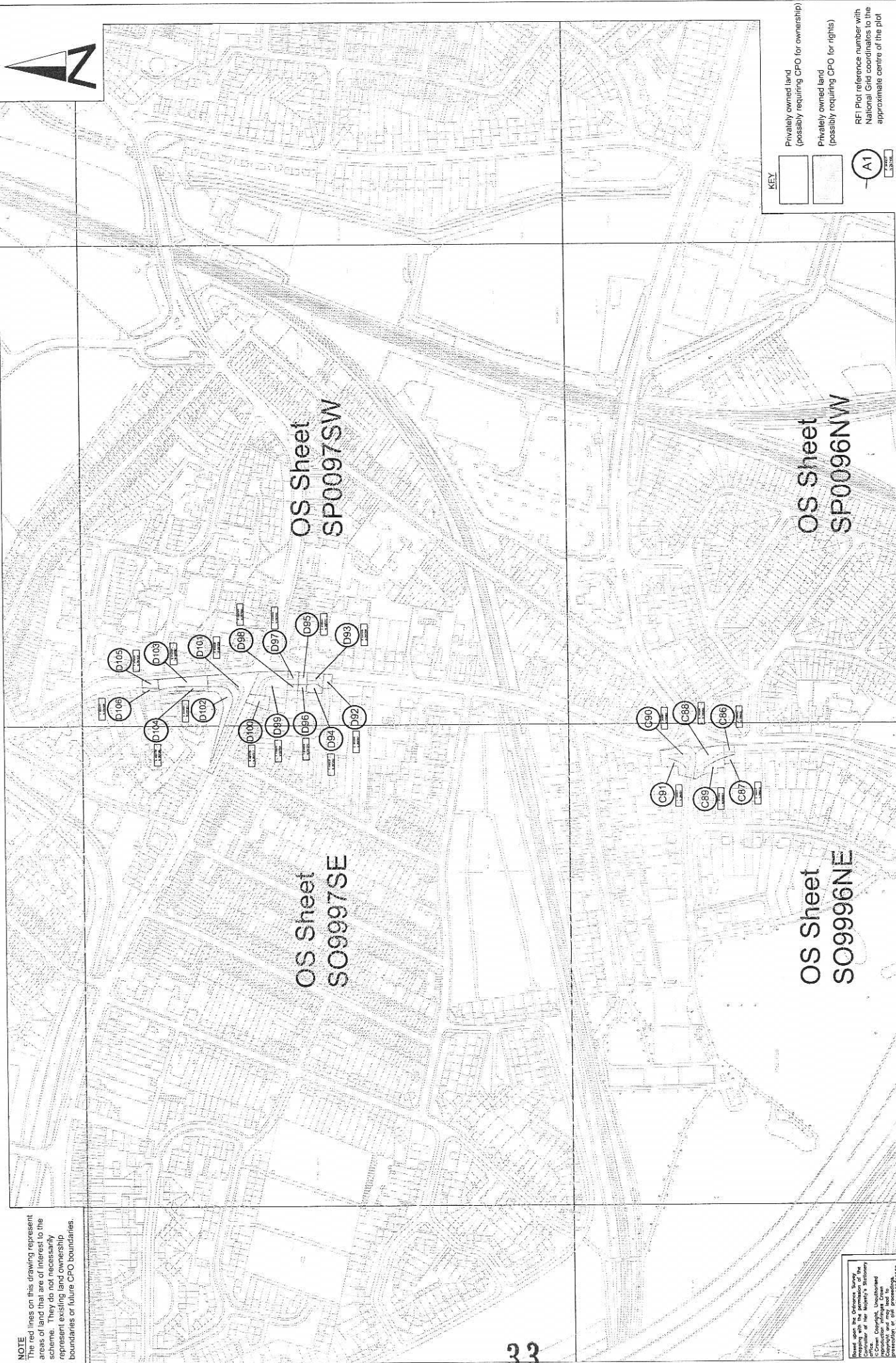
Drawn: P.W.
 Checked: P.R.S.
 Date: March 2009
 Scale: 1:1250
 Original drawing size A0
 All dimensions are in millimetres unless otherwise stated.
 This drawing is for reference only and does not constitute a contract.

NOTE
 The red lines on this drawing represent areas of land that are of interest to the scheme. They do not necessarily represent existing land ownership boundaries or future CPO boundaries.

**DARLASTON STRATEGIC DEVELOPMENT AREA
 LAND INTERESTS PLAN
 SITE OVERVIEW - SHEET 1 OF 2**

No.	Revisions:	By	Chkd	Date	Purpose of Issue	Rev	Auth	Date
A	Plans changed to reflect recent layout.	P.W.	P.R.S.	06/11				
B	Plans changed to reflect revised layout.	P.W.	P.R.S.	12/12				
C	Plans rechecked & revised.	P.W.	P.R.S.	02/12				

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NOTE
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KEY

Privately owned land (possibly requiring CPO for ownership)

Privately owned land (possibly requiring CPO for rights)

REF Plot reference number with National Grid coordinates to the approximate centre of the plot

0 10 20 30 40 50 60 70 80 90 100 METRES

No.	Revisions	By	CIV	Date	Rev	Auth	Date
	A	CPIs changed and renumbered	PJW	PRS	08/09		
	B	Plots changed to reflect revised layout	PJW	PRS	09/11		
	C	Plots renumbered & revised	DJ	PCE	02/12		
<p>DARLASTON STRATEGIC DEVELOPMENT AREA LAND INTERESTS PLAN SITE OVERVIEW - SHEET 2 OF 2</p>							
<p>Drawn: P.J.W. Checked: P.H.S. Date: March 2009 Scale: 1:1250 This drawing is at any other size, then scale shown does not apply.</p>		<p>Walsall Council ENGINEERING & SURVEYING SERVICES LAND INTERESTS & MINOR AMENDMENTS</p>		<p>Drawing No. MP/SDA/LAN-02</p>		<p>C</p>	