

BRISTOL CITY COUNCIL

Downs Committee

4th July 2011

Report of: Tracey Morgan, Service Director, Environment and Leisure

Title: Bristol Water proposed new water main affecting the Downs

Ward: Clifton

Officer Presenting Report: Richard Ennion

Contact Telephone Number: 9222001

RECOMMENDATION

Sections of the proposed pipeline considered to be unacceptable:

1. Object to the proposal by Bristol Water to route a section of new water mains through the Downs parallel to Upper Belgrave Road;

Sections of the proposed pipeline considered to be less harmful:

2. Negotiate with Bristol Water to agree the least harmful route for the new water main where this crosses other sections of the Downs;
3. Identify and agree controls to minimise disturbance during construction;
4. Identify and agree the methods of restoration;

Site Compound

5. Options to locate a site compound on the Downs are subject to detailed proposals;

Compensation:

6. Review offer by Bristol Water for enhanced compensation.

Note: since drafting this report Bristol Water has submitted a revised route avoiding the section of Downs immediately parallel with Upper Belgrave Road instead running further north through the Downs (see Appendix 1B). A full evaluation of the impacts of this alternative route will be available

Summary

Bristol Water proposes to install a new 9.5km water main connecting north and central Bristol including laying a pipe across sections of the Downs and providing a connection to the Downs Water Tower.

Bristol Water is required to obtain consent to excavate the Downs from the Planning Inspectorate following consultation with interested parties (ongoing) as is required by the Commons Act, 2006 ("the Act").

Officers have expressed concern about the proposal as it affects the Downs. Bristol Water have been made aware of the more sensitive areas and have been asked to route the new pipe down the road to avoid any harm to the Downs.

The significant issues in the report are:

Construction of a new water pipe across section of the Downs planned by Bristol Water for 2012 will cause harm and disturbance to the Downs.

Bristol Water has been advised of the most harmful sections and have been asked to re-route down the road to avoid harm to the Downs

Bristol Water is required to gain Section 38 consent via the Planning Inspectorate where works are 'regulated' under the Commons Act, 2006. Currently, Bristol Water is consulting interested parties and a response is due from Downs Committee.

Policy

1. Protection of the recreational, wildlife and archaeological interests of the Downs are as set out in the Downs Management Plan.

Consultation

2. **Internal**
Council Highway, Planning, Legal and Landscape sections
3. **External**
None

Context

- 4.

Bristol Water proposes to install a new water trunk main that will connect

north and central Bristol. The new water pipe will be 700 mm in diameter and 9.5 km long between the A4174 (Harry Stoke) to the Company's existing reservoir in Clifton with a connection at Durdham Down water tower. The scheme has the approval of the water regulator, OFWAT and will 'enhance, protect and secure water supplies to a significant area and population'. Subject to approval the scheme is due to commence in 2012.

Officers have been in communication with Bristol Water to understand the impact of any scheme on the Downs and to agree terms to reduce harm to an acceptable level. Bristol Water propose a route which will affect 1.4 km of Downs land running from Westbury Park, across 'Granny Downs', parallel with Westbury Road, crossing Stoke Road close to the Durdham Tower water tower and then parallel with Upper Belgrave Road before leaving the Downs at Pembroke Road (see Appendix 1A). Bristol Water typically requires a 15-metre construction zone to allow access for machinery and soil storage etc. In addition, Bristol Water is seeking consent for c. 1 ha works compound in the Westbury Road / Seven Sisters area: in total 3.1 ha of the Downs have the potential to be affected by the scheme.

The Downs is designated Common Land and as such is afforded protection by the Commons Act, 2006. The [Planning Inspectorate](#) is responsible for determining applications for statutory consents in relation to common land. Specifically, under section 38 of the Commons Act 2006, consent is required to carry out any restricted works.

The Planning Inspectorate gives the following guidance about what constitutes restricted works:

'Restricted works are any that prevent or impede access to or over the land. They include fencing, buildings, structures, ditches, trenches, embankments and other works, where the effect of those works is to prevent or impede access'. The guidance states that, if the proposed works are:

- (a) for the management, improvement or protection (or to the negligible detriment) of the common or otherwise consistent with its traditional uses (eg grazing, public recreation), and
- (b) not exempt or so small as to fall outside the controls altogether,

...then the body proposing the restrictive works should apply under section 38'.

Bristol Water recognise that section 38 consent is required (presumably they will argue that the works are of 'negligible detriment' as defined in the Commons Act). As such they have consulted the relevant interested parties, albeit formal consultation with the Downs Committee was not submitted until the 18th May 2011 and a formal response is outstanding.

The Planning Inspectorate give the following guidance when assessing section 38 applications:

‘Our decision will be based on the merits of your proposal, and will balance all the interests in the common, taking account of all views expressed. The criteria we will have regard to are set out in section 39 of the Act. These are:

(a) the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);

(b) the interests of the neighbourhood;

(c) the public interest, which includes the public interest in:

- nature conservation
- conservation of the landscape
- protection of public rights of access to any area of land, and
- protection of archaeological remains and features of historic interest;

(d) any other matter considered relevant.

We will view these criteria in the light of our policy objective of managing, improving or protecting the common, of maintaining its traditional uses, and of ensuring that the overall stock of common land is not diminished. This enables us to safeguard the diversity, variety, and overall extent, of common land. You will therefore need to demonstrate, with regard to the section 39 criteria, how the proposed works address those considerations.

Where more evidence is needed, we may proceed by one of the following options, depending on the particular circumstances of the case:

site visit – where outstanding queries are resolved by a visit to the area by a planning inspector, who will invite you and may invite objectors to attend;

hearing – where the outstanding issues can be resolved within one day by an informal meeting of interested parties, facilitated by an inspector;

public inquiry – where the issues are complex or finely balanced, contentious or raise issues that have wider than local significance. This is a meeting, open to the public and facilitated by an inspector, normally lasting between 1 and 2 days.

As a guide, if there are no objections, and the issues can be resolved by correspondence, we would expect to determine your application within three months of receiving the complete application papers from you. This might extend to five months if an exchange of correspondence is needed, seven months for cases involving a site visit, or eight months for a public inquiry or hearing. More complex inquiry cases, or cases where an inquiry is held alongside a related inquiry (e.g. into a planning application) may take much longer’.

Officers have already provided Bristol Water with informal comments via a letter sent to them on the 6th May 2011 (see Appendix 2). Officers ‘expressed deep concern about the proposed laying of the water main across the Downs’, stating that the ‘pipeline will cause significant impacts on a number of sensitive parts of the Downs’, which are ‘unacceptable and avoidable’. The view was given that the ‘impacts should be avoided as far as possible by the rerouting the pipeline along the adjacent roads’. Particularly sensitive locations identified to Bristol Water include Granny Downs and adjacent Upper Belgrave Road. Some re-routing has reduced the impact on the Granny Downs but further options are being considered including crossing Westbury Road further north than is currently proposed. However, despite concerns raised about the section adjacent to Upper Belgrave Road where harm would be caused to unimproved grassland, the complex humps and bumps and potential for archaeological features, the proposal by Bristol Water remains to drive the pipeline through the Downs and not to re-route down the road. Further to concerns about damage during construction are concerns that this area would be extremely difficult to restore to the same condition reflecting the thin soils overlaying rock. Currently, Bristol Water does not wish to re-route down the road due to higher costs, project delays, more challenging safety management and impact on traffic. Council Highway’s officers are working with Bristol Water to determine options for re-routing the pipeline down Upper Belgrave Road including impacts on traffic and options to mitigate this to an acceptable degree.

A further complication is whether the total (9.5 km) scheme requires an Environmental Impacts Assessment and associated Planning Approval.

Bristol Water has submitted a formal ‘Screening Opinion’ referring to their ‘permitted development rights’ to lay water pipelines under Part 17 of Schedule 2 of the Town and Country Planning General Permitted Development Order 1995.

Regulation 35 of the Town and Country Planning (EIA) (England and Wales) Regulations 1999 (the EIA Regulations) amends the GPDO to the effect that where the Local Planning Authority has adopted a screening opinion under Regulation 5 of the EIA Regulations that the development is not EIA development, permitted development rights under Part 17 to Schedule 2 of the GPDO will apply.

However, if the Local Planning Authority determine that the scheme is EIA development and no contrary input has been provided by the Secretary of State, permitted development rights is dis-applied and the full scheme would be subject to a full planning application.

Bristol Water duly submitted to the LPA a 'Screening Opinion' on the 5th April 2011. Bristol Water in their detailed submission 'considered that there would be no significant environmental effects likely to arise from the works' and on that basis ... conclude that no EIA is required). In response, the Planning case officer dealing with this opinion has highlighted deficiencies with the ecological surveys as the affect the Downs and the erroneous conclusion by Bristol Water that only improved (amenity) grassland would be affected. Bristol Water has been asked to re-survey for botanical interests along the proposed route and to amend their Screening Opinion accordingly. It is not expected, however, that this itself would raise the scale of impacts to warrant an EIA.

Officers do not consider that it is appropriate to object to all sections of pipeline as this affects the Downs on the basis that the scale of harm is lower in certain sections and restoration is more straightforward. For example, the section parallel with Westbury Road was previously disturbed by Bristol Water in 2003 and the section parallel to the Roman Road has previously been disturbed and it is considered reasonable to allow excavation in this area on the basis of a 'watching brief' for of any archaeological interests / impacts during excavation.

Further, Bristol Water has been keen to offer some form of compensation reflecting impacts on the Downs beyond their statutory duty to restore any disturbed ground to the original condition. Officers have noted this offer but have not actively pursued this accepting that the primary question at this stage is whether consent should be given at all for certain sections.

Proposal

5.

The routing of this new water pipe will cause differential harm to the Downs. The most sensitive sections in terms of impact on wildlife, topography and potential archaeology is that adjacent to Upper Belgrave Road and Granny Downs. It appears that an alternate route can be found to avoid most harm to Granny Downs and negotiations are ongoing to achieve this. But currently, the proposal to route the pipe through the Downs parallel with Upper Belgrave Road is not considered acceptable and Bristol Water are being urged to route the pipeline down Upper Belgrave Road. It is accepted that this option would increase costs to Bristol Water and cause some traffic disruption which may not be considered acceptable: options and impacts are

being considered by the Council's Highway section.

Any objection to the proposal would be for the Planning Inspectorate to decide in accordance with their role as set out in the Commons Act, 2006. The Planning Inspectorate could resolve dispute via a site inspection, hearing or public inquiry as they see fit. It is not clear, however from the guidance given by the Planning Inspectorate their attitude to works that were of a temporary nature.

It is accepted that some sections of pipeline be allowed. The priority for these sections is to ensure that disturbance is minimised, accepting that a general 15-metre wide construction zone is required plus temporary fencing. Bristol Water has already been advised of the dates of events that could be disturbed by such works. Compensation is due if disruption caused economic loss.

Bristol Water have been advised that their efforts to restore sections of the Downs disturbed in 2003 by a similar new / upgraded water pipe were incompetent and that permanent harm was caused to areas of wildflower meadow. Accepting this, Bristol Water are at pains to assure that they will not repeat the same mistakes and a competent process would be in place to ensure that any disturbed area are restored to the

Other Options Considered

The recommendations in this report are to object to part of the scheme and accept the rest subject to further negotiation to reduce harm and ensure effective restoration. The following alternate positions could be made:

6. Object to a greater percentage of the route crossing the Downs as currently proposed;
7. Object to any disturbance to the Downs;
8. Object to the placing of a site compound on the Downs.

Risk Assessment

9. There appears to be no penalty to object to a proposal and for this to be overturned by the Planning Inspectorate, as such there is limited risk to making an objection. Objecting to the whole scheme would seem to be unreasonable and it is anticipated that this would not be successful on the basis that parts of the Downs have similarly been disturbed in the recent past and that restoration is relatively straightforward.

Public Sector Equality Duties

- 8a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
 - iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
 - tackle prejudice; and
 - promote understanding.
- 8b) Bristol Water be required to prepare an Equalities Impact assessment of the agreed route as it affects the Downs accepting that the excavation period will be disruptive and restrictive.

Legal and Resource Implications

Legal

The Clifton and Durdham Downs (Bristol) Act 1861 provided that the Downs remain open and unenclosed as a place for the public resort and recreation of the citizens and inhabitants of Bristol. The Downs Committee may by virtue of the Act, prevent obstructions, nuisance and encroachments on the Downs.

The Commons Act 2006, Section 38, prohibits restricted works on common land except with ministerial consent. These include works which impede access, and in particular the digging of trenches.

As part of an application for consent under Section 38 Bristol Water's letter of the 1st of April 2011, which was served on the Council but not on Downs Committee, formed part of its pre-application informal consultation; the formal application for ministerial consent not yet having been made. It was addressed to the Chief Executive, and did not reach parks staff until the 27th of April, although BW had set a deadline for responses of the 6th of May. Officers gave an informal view by this deadline (Appendix 1).

The Downs Committee should have been included in the initial informal consultation, as they have statutory powers in relation to the entire area of the Downs. Bristol Water has now done this in their letter dated 17th May 2011, but has not set a deadline for response. However, once the formal application is made under section 38, it has to be advertised, and further time allowed for comments, under a formal consultation process.

In my view, both the Council and the Society should be consulted as landowners, and also the committee as manager of the entire area.

Once an application for consent under section 38 is formally advertised, i.e. once there has been full compliance with the advertising requirements, at least 28 days have to be allowed during which any-one can send their comments to the Inspectorate.

(Legal advice provided by Frances Horner, Senior Solicitor)

Financial

(a) Revenue

Not consulted

(b) Capital

Not consulted

Land

See Appendix 3 for comments by Corporate Property

Property advice provided by Joanna Mellors, Portfolio Management Officer

Personnel

Not applicable

Appendices:

Appendix 1A: Proposed route of water pipe across the Downs

Appendix 1B: amended route of water pipe adjacent to Upper Belgrave Road

Appendix 2: informal response of officers to Section 38 consultation

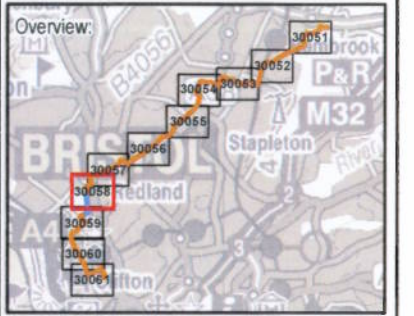
Appendix 3: comments received from Corporate Property

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
Background Papers:**

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- Legend**
- Durham Down Combined Main - 700mm diameter
 - Durham Down Combined Main - 450mm diameter
 - 100m markers
 - 25m markers



Safety Health and Environment Information

In addition to the hazards/risks normally associated with the types of work detailed on this drawing, note the following:

| Construction |
|------------------------------------|
| |
| Maintenance / Cleaning / Operation |
| |
| Decommissioning / Demolition |
| |

| Rev | Drawn | Chkd | Rev'd | Apprd | Date | Description |
|-----|--------|------|--------|-------|-------|-------------------|
| B | S.J.H. | L.V. | A.E.W. | A.W. | 03/11 | ISSUE |
| A | S.J.H. | L.V. | | | 01/11 | DRAFT FOR COMMENT |

Designed by: SJH Date: Mar 11



Client Drawing No. 169934 - 30058 Revision B



Project: DURHAM DOWN COMBINED MAIN

Drawing title: PIPELINE ROUTE MAP 008

Drawing scale: 1:2,500 @ A3 Sheet size: A3

Drawing no. 169934 - 30058 Revision B

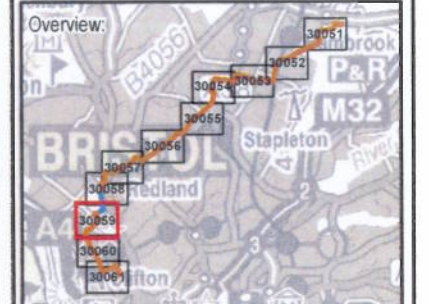




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- Legend**
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 - Durham Down Combined Main - 450mm diameter
 - 100m markers
 - 25m markers



Safety Health and Environment Information

In addition to the hazards/risks normally associated with the types of work detailed on this drawing, note the following:

Construction

Maintenance / Cleanout / Operation

Decommissioning / Demolition

| B | SJH | LV | AEW | AJW | 03/11 | ISSUE |
|-----|-------|------|-------|---------|-------|-------------------|
| A | SJH | LV | | | 01/11 | DRAFT FOR COMMENT |
| Rev | Drawn | Chkd | Rev'd | Apprv'd | Date | Description |

Designed by: SJH Date: Mar 11



Client Drawing No. 169934 - 30059 Revision B



Project: DURDHAM DOWN COMBINED MAIN

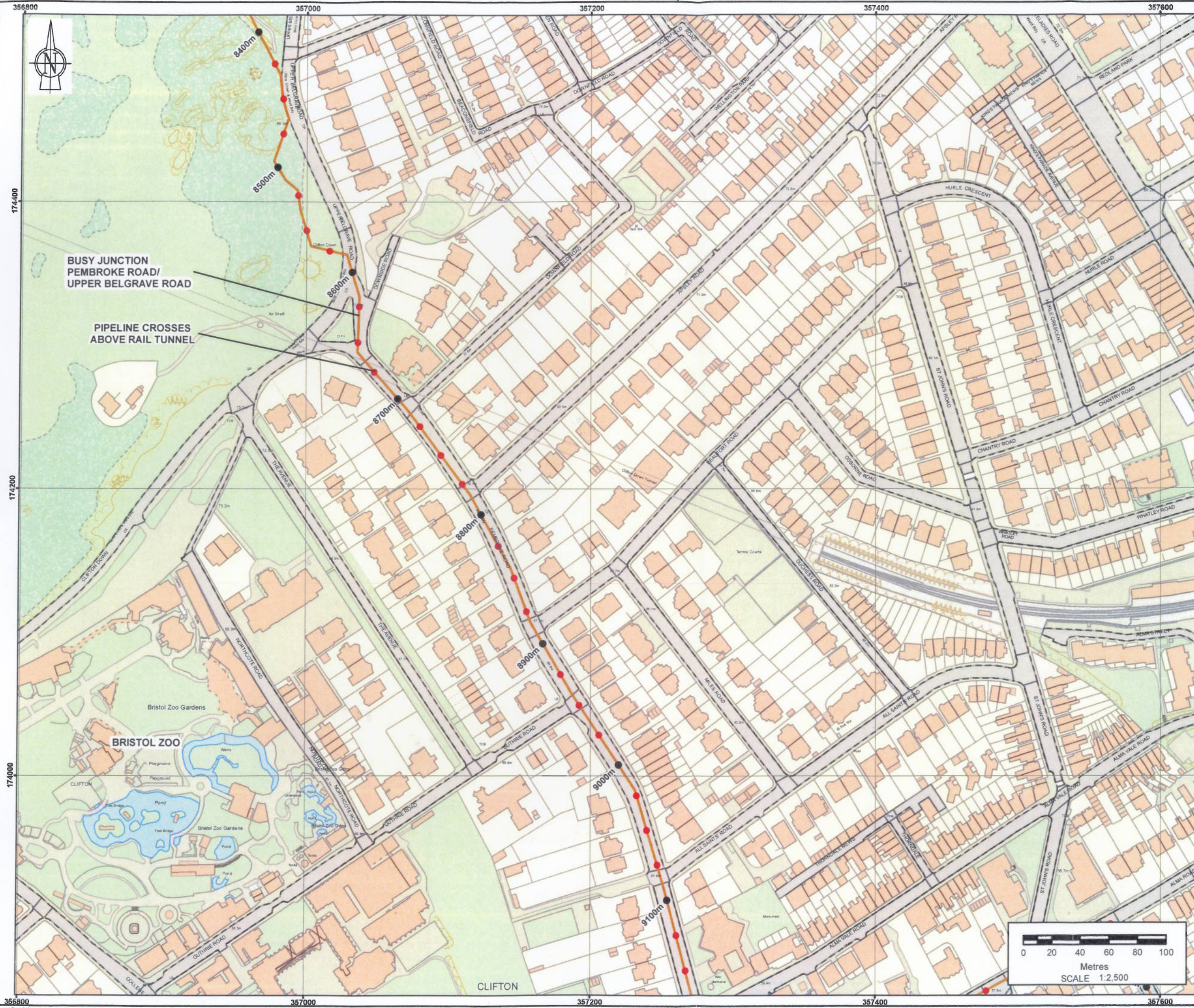
Drawing title: PIPELINE ROUTE MAP 009

Drawing scale: 1:2,500 @ A3 Sheet size: A3

Drawing no. 169934 - 30059 Revision B

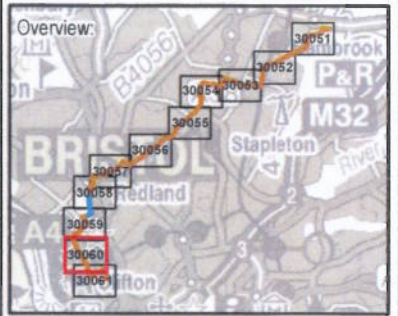


R:\p\app\169934_Durham Down Tower\Map\Map009.dwg, 169934_300 Map009.dwg, SJH Mar 11



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- Legend**
- Durham Down Combined Main - 700mm diameter
 - Durham Down Combined Main - 450mm diameter
 - 100m markers
 - 25m markers



Safety Health and Environment Information
 In addition to the hazards/risks normally associated with the types of work detailed on this drawing, note the following:

| |
|------------------------------------|
| Construction |
| Maintenance / Cleanout / Operation |
| Decommissioning / Demolition |

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|-----|-------|---------|---------|----------|-------|-------------------|
| B | SJH | UV | AEW | AJW | 03/11 | ISSUE |
| A | SJH | UV | | | 01/11 | DRAFT FOR COMMENT |
| Rev | Drawn | Checked | Revised | Approved | Date | Description |

Designed by: SJH Date: Mar 11



Client Drawing No: 169934 - 30060 Revision: B



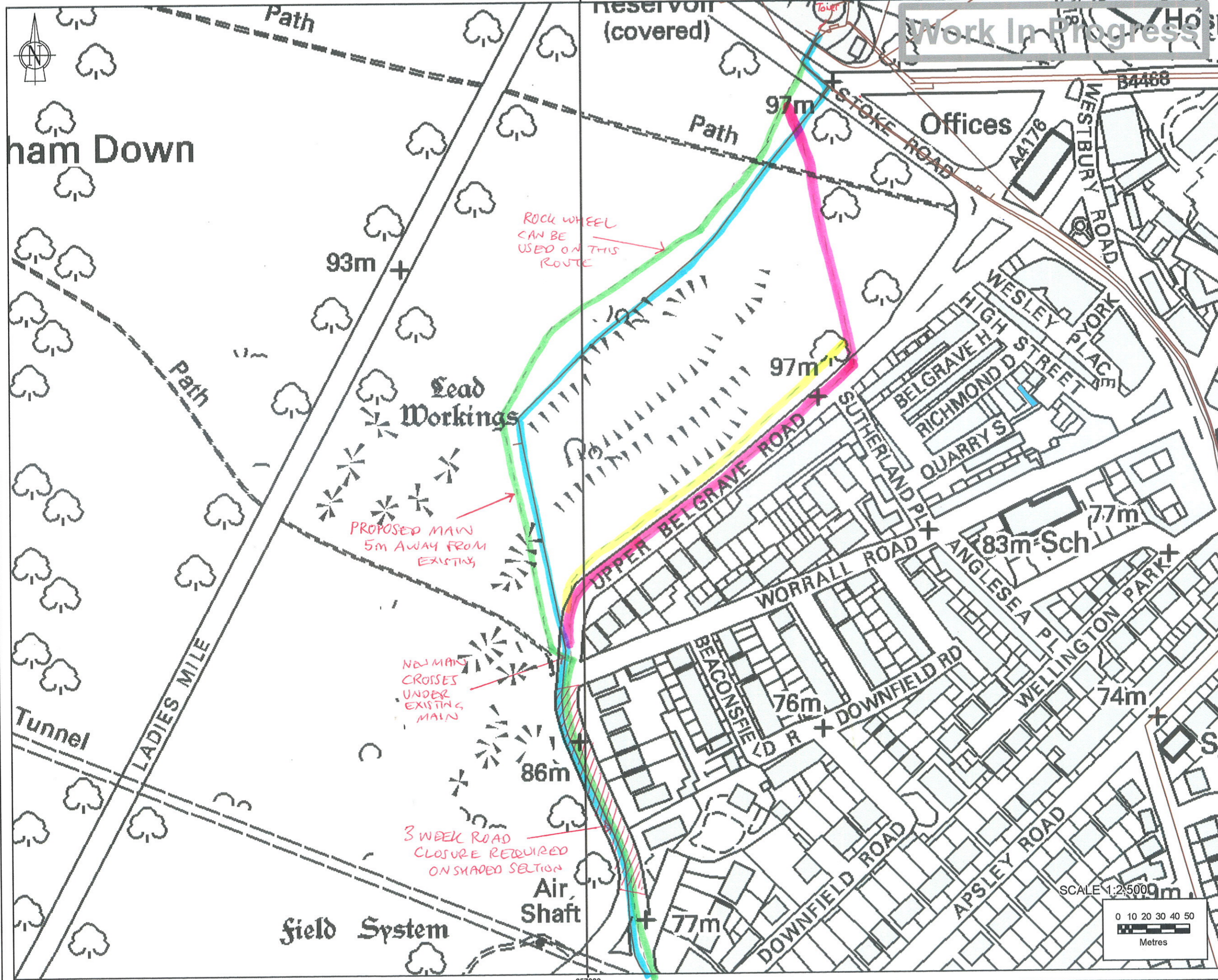
Project: DURDHAM DOWN COMBINED MAIN

Drawing title: PIPELINE ROUTE MAP 010

Drawing scale: 1:2,500 @ A3 Sheet size: A3
 Drawing no: 169934 - 30060 Revision: B

REF: project/169934_Durham Down Combined Main/Workpackages/30060/Map010.mxd, SJH, Mar 11
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Legend

- EXISTING 20" MAIN
- PREFERRED ROUTE
- EDGE OF DOWNS
- UPPER BELGRAVE ROAD
- ROAD CLOSURE

| Chd | Rvld | Appvd | Date | Description |
|-----|------|-------|--------|-------------|
| PH | | | AUG 10 | |

CLIFTON DOWN OPTIONS

Revision XX

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DURDHAM DOWN

MAIN LAYING OPTIONS

SCALE 1:2500 Sheet size: A3

Revision XX



File Path Goes Here



Stuart Cleland,
Bristol Water Plc,
PO Box 218,
Bridgewater Road,
Bristol,
BS99 7AU

Reply to
Telephone 0117 9222001
Minicom
Fax
E-mail richard.ennion@bristol.gov.uk
Our ref
Your ref SC/MH/045/BRS/DDCM
Date 06/05/11

Dear Stuart,

**Re. Water Industry Act 1991 - Sections 159 & 168
Bristol Resilience Scheme - Water Main Laying Proposals
Durdham and Clifton Down**

Thank you for consulting us regarding the above issue. We would like to take this opportunity once again to express our deep concern about the proposed laying of the water main across the Downs.

As you will be aware the Downs is one of our most important and popular destination parks and of very high wildlife, landscape and archaeological interest. It is our opinion that the pipeline will cause significant impacts on a number of sensitive parts of the Downs, which we regard as unacceptable and avoidable.

These impacts have already been explained to you directly by officers and through our response to the EIA scoping opinion. We have also expressed concerns to you about the quality of your nature conservation data, which does not properly reflect the actual nature conservation interest present on the Downs.

We believe the impacts should be avoided as far as possible by the rerouting of the pipeline along the adjacent roads. The detail of this needs to be agreed with yourselves and we would welcome a constructive discussion with you to resolve this matter.

2005-2006
Promoting Racial Equality

2006-2007
*Transforming the Delivery of
Services Through Partnerships*

2007-2008
*Healthy Schools
Preventing and Tackling
Anti-social Behaviour*



Neighbourhoods

Parks & Estates
Colston 33, Colston Avenue,
Bristol, BS1 4UA

Tracey Morgan
Environment & Leisure
Service Manager

Website
www.bristol.gov.uk/parks
bristolparks@bristol.gov.uk



INVESTOR IN PEOPLE

The above is the summarised view of officers but it must be stressed that it is the Downs Committee (constituted of Councillors, Merchant Venturers and chaired by the Lord Mayor) which is legally responsible for Clifton and Durdham Down and you need to formally consult with this committee.

Yours sincerely,

Richard Ennion



Resources

Corporate Property, B Bond, Smeaton Road, Bristol, BS1 6EE

Telephone: 24087

Fax: 24676

To: Richard Ennion, Parks Horticultural Services Manager, Neighbourhoods

From: Joanna Mellors, Management Team, Valuation Practice, Corporate Property

Date: 01/06/11

Subject: Bristol Water (proposed Resilience Scheme): Durdham & Clifton Down

As a contribution towards Tracey Morgan's report to the Downs Committee for 4th July 2011 from Corporate Property:

1. Land ownership.

Please see the plan attached.

Area verged blue: owned by Bristol City Council

Area verged red: owned by the Society of Merchant Venturers.

The whole is administered through the Downs Committee.

In particular, the Merchant Venturers own most of the area affected by the route running parallel to Upper Belgrave Road and the section immediately surrounding the water tower.

Bristol Water were advised of the two ownerships in December 2011 and should be consulting with the Merchant Venturers as well as the Council. There may need to be dialogue with the Merchant Venturers to establish whether they wish to make their own objections to the proposals, including formally through the s38 process, or whether the Council is to represent them through any powers that may exist under the Downs Act.

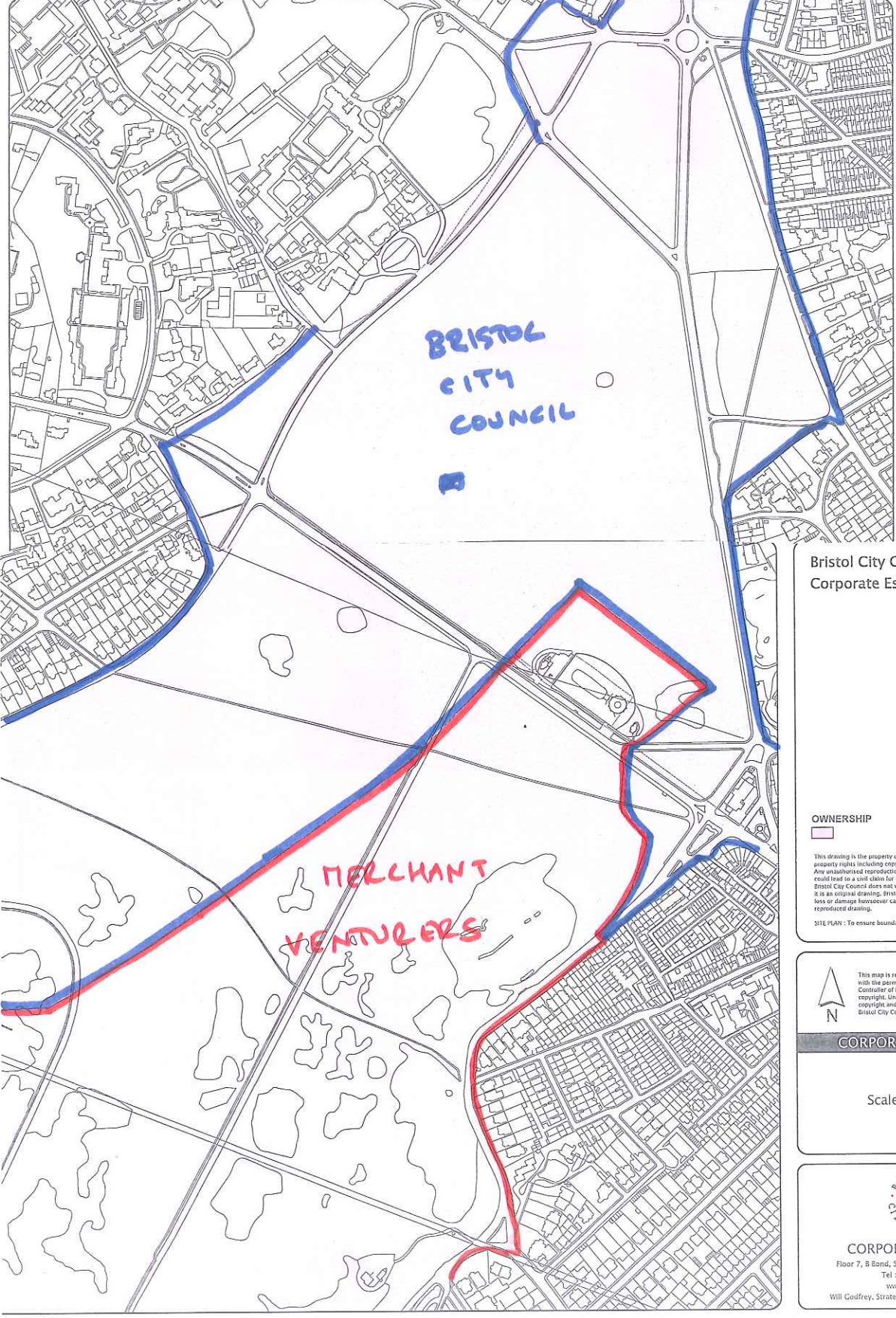
2. Consultation with Bristol Water

Your letter of 6th May 2011 clearly sets out the Council's position, as part of the requisite consultation process. Bristol Water have in fact been aware of the Council's concerns and objections since December 2010.

3. Compensation

The Council will be due compensation:

- a) for any temporary losses or disturbance. This includes financial loss (eg if an event on the Downs cannot take place) and reinstatement of the land to the Council's satisfaction.
- b) for any permanent reduction in the value of the land affected by the pipe; this to include the restrictions that will be placed on the use of the strip of land above the pipeline and extending to a width of 5 metres to either side (10m in total). This office will in due course be responsible for negotiating the compensation due, but I have to say that my preliminary thoughts are that the amount is likely to be nominal. The existence of the pipe will have negligible impact on the current use of the land which is predominantly open space. Bristol Water's wish to run the pipe across the Downs rather than in the roads is likely to be primarily driven by cost considerations, and there is unfortunately little pressure that the Council can bring to bear on them with regard to the final compensation figures - except perhaps through the enhanced compensation referred to in para. 6 of the Report.



**Bristol City Council
Corporate Estate**

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**Bristol City Council
Corporate Estate**

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