

The Keadby Next Generation Power Station Project

Document Ref: 8.7

Planning Inspectorate Ref: EN0110001

The Keadby Next Generation Power Station Development Consent Order [year]

Land at, and in the vicinity of, the existing Keadby Power Station (Trentside, Keadby, Scunthorpe DN17 3EF)

Applicant's Responses to Action Points for Deadline 2 (submitted at Deadline 2)

The Planning Act 2008

Applicant: Keadby Next Generation Limited

Date: February 2026

Revision: 0

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1. Introduction

1.1. Overview

- 1.1.1 This document ‘Applicant’s Responses to Action Points for Deadline 2’ (**Document Ref. 8.7, Rev. 0**) has been prepared on behalf of the Applicant, Keadby Next Generation Limited, in respect of an application (the ‘Application’) for a Development Consent Order (DCO) in respect of the Keadby Next Generation Power Station (the ‘Proposed Development’) that was submitted to the Secretary of State (SoS) for Energy Security and Net Zero under Section 37 of ‘The Planning Act 2008’ on 29 August 2025. The Application was accepted for examination by the SoS on 22 September 2025. The Examination of the Application commenced on 21 January 2026.
- 1.1.2 The Applicant is seeking a DCO for the construction, operation and maintenance of a new combined cycle gas turbine (CCGT) electricity generating station on land at, and in the vicinity of, the existing Keadby Power Station, Trentside, Keadby, Scunthorpe, DN17 3EF (‘the Site’).
- 1.1.3 The Proposed Development is a new CCGT electricity generating station with a capacity of up to 910 megawatts electrical output. The CCGT electricity generating station will be designed to run on 100% hydrogen and able to run on 100% natural gas or a blend of natural gas and hydrogen and will be located on land to the west of the existing Keadby 1 and Keadby 2 power stations. The Proposed Development includes connections for cooling water, electricity, hydrogen, natural gas, and construction laydown areas and other associated development. It is described in full in **Environmental Statement (ES) Volume I Chapter 4: The Proposed Development [APP-038]**.
- 1.1.4 The DCO, if made by the SoS, would be known as ‘The Keadby Next Generation Power Station Order’ (‘the Order’).

1.2. The Purpose and Structure of this Document

- 1.2.1 The purpose of this document is to set out the Applicant’s responses to the actions points resulting from Issue Specific Hearing 1 (ISH1) held on 21 January 2026.

2. Responses to Action Points for Deadline 2

2.1. **ISH1 Action Point 1: The Applicant to provide further explanation on the control of operating hours for the scheme and comment on the Secretary of State not requiring similar controls on other granted Development Consent Orders.**

Applicant's Response

2.1.1 The Applicant has considered the questions from the Examining Authority on the operating hours, and proposes to outline:

1. the operating hours assessed in the Environmental Statement;
2. the basis on which the Applicant does not consider it is appropriate to impose a DCO requirement restricting the operating hours of the Proposed Development; and
3. relevant precedents.

Assumptions on operating hours in the ES

2.1.2 The Environmental Statement, in accordance with the EIA Regulations, contains a reasonable worst case assessment of the Proposed Development. In line with the concept of the Rochdale Envelope, the assessment of each topic has been adjusted to ensure the parameters assessed allow for a reasoned conclusion to be made by the Examining Authority, and Secretary of State, on the likely significant effects of the Proposed Development.

2.1.3 The Applicant is unable to provide a set annual operating hours figure for the future operating regime of the proposed generating station as the final figure will be determined by market demand, UK security of supply needs as well as what is required from the power station in terms of maintenance and shut down periods. Notwithstanding this point, the Applicant has accounted for this uncertainty by carrying out assessments depending on the topic chapters of the ES.

2.1.4 The annual average of 3,500 hours per annum for the first 15 years of operation used for the GHG assessment in ES Chapter 18 (Climate Change) [APP-052] is not consistently used as, for example, ES Chapter 8 (Air Quality) [APP-042] assesses 8,760 hours per annum. The assumptions made in respect of yearly operational hours for the purposes of the Air Quality chapter are precautionary, and allow for assurance that there are no adverse significant effects under any annual operating scenario which would require further mitigation measures. The

assumptions in respect of GHG emissions are informed by the Applicant's experience in operating flexible generation power stations in the UK.

Applicant's position on an operating hour requirement in the DCO

2.1.5 In summary, the Applicant's position is that a proposed requirement on operating hours:

- a) would not comply with the planning policy tests which apply to the imposition of DCO requirements, primarily on the basis that:
 - (i) such controls are not necessary because (i) a number of appropriate mitigation measures are in place for that worst case scenario, and (ii) a number of controls exist out with the DCO which can be relied upon in this context (and is therefore duplicative of other controls in place); and
 - (ii) would not be reasonable on the basis that would unfairly prejudice the Proposed Development compared with its competitors and other comparable developments consented.
- b) does not account for the use of differential operating hours scenarios which are assessed in the ES;
- c) would create the risk of uncertainty and inconsistency across different planning and environmental controls;
- d) does not follow the practice of the Secretary of State (see below the DCOs which have been granted without operating restrictions); and
- e) risks making a project commercially unviable by imposing an artificial restriction that is outside the remit over which the applicant has any control. This in turn risks preventing a key offtaker project for the hydrogen economy from moving forward and thereby reduces the certainty of the UK being able to develop a hydrogen to power decarbonisation pathway; this is counter to UK strategy.

2.1.6 The Applicant elaborates on these issues below.

Contrary to Policy

2.1.7 EN-1 (2023) sets out that the Secretary of State should only impose requirements in relation to a development consent that are "necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects" (per paragraph

4.1.16). The Applicant does not consider an operating hours restriction would align with these requirements.

- 2.1.8 The Applicant does not consider controls are necessary on the basis that, as set out in the Environmental Statement, no mitigation measures have been identified for what the Applicant considers to be very unlikely scenarios (i.e., Scenario E to G). EN-1 is clear that “Operational emissions will be addressed in a managed, economy-wide manner, to ensure consistency with carbon budgets, net zero and our international climate commitments” (paragraph 5.3.12).
- 2.1.9 This policy must be seen in the wider context of the controls which Government has at its disposal to control emissions. NPS EN-1 Section 2.4 and paragraphs 5.3.11 - 5.3.12 discuss the range of non-planning policies that can be used to decarbonise electricity generation such as the UK Emissions Trading Scheme, the Contracts for Difference, Carbon Price Support, and incentivisation for CCUS and low carbon hydrogen production. Decarbonisation Readiness, and the impending commencement of the Environmental Permitting (Electricity Generating Stations) (Amendment) Regulations 2025 adds to that list of controls. In addition, the control provided by the Climate Change Act 2008, through the use of carbon budgets frames the wider use of these measures. The Applicant has set out judicial consideration of this further below.
- 2.1.10 The government's strategy prioritises carbon pricing to phase out unabated fossil fuels. This is through the UK Emissions Trading Scheme and merit orders. The UK ETS ensures that the total volume of carbon is limited; if this plant runs, another must run less or pay more. This market mechanism ensures the most efficient plants (like new, high-efficiency CCGTs) run ahead of older, less efficient ones. In tandem the merit order / capacity market refers to the way in which the UK's electricity network is managed, meaning that due to carbon prices, high-emitting unabated gas plants will naturally move down the "merit order" and run for fewer hours.
- 2.1.11 Imposing a requirement that seeks to control operational emissions would therefore be contrary to the Government's position on how such impacts are to be managed. It would also contribute to regulatory and policy duplication. As set out in Appendix 1, the practice of Secretary of State

and the ExAs has been to lawfully assume that other regulatory regimes and processes operate effectively.

- 2.1.12 The Applicant would stress that the National Policy Statements are explicit about what mitigation is expected in the context of an application of development consent for this reason.
- 2.1.13 In particular, the mitigation section of EN-1 relating to greenhouse gas emissions sets out that a Greenhouse Gas Reduction Strategy should be prepared (which the Applicant has done). The only specific measures referenced in that section are “*consider the creation and preservation of carbon stores and sinks including through woodland creation, hedgerow creation and restoration, peatland restoration and through other natural habitats*”. The Applicant has considered and incorporated appropriate measures into the Proposed Development via the Outline Biodiversity Enhancement Plan (**Document Ref. 5.10, Rev. 2**), in addition to the production of a Greenhouse Gas Reduction Strategy.
- 2.1.14 The Applicant would note that EN-1 does not refer to restrictions on operating hours in the context of pollutants and greenhouse gas emissions. By contrast, EN-1 expressly states that “limiting operating times” should be considered in the context of noise but does not specify that in the context of greenhouse gas emissions. In line with this policy position, Requirement 26 of the draft DCO **[REP1-003]** requires that noise “from the operation of the authorised development must be no greater than +3dB higher than the defined representative background sound level during each of the daytime and the night time adjacent to the nearest residential properties”. This underlines a number of existing controls such as the operational noise controls but also shows that there is no policy support for operating restrictions more generally.

Role of the Environmental Permit

- 2.1.15 In addition, the Applicant does not consider that it is necessary on the basis that under the Environmental Permitting Regulations 2016, the Environment Agency will, in due course, consider if operational limits are required within the Environmental Permit when assessing the environmental impacts of the Proposed Development. By way of example, the operational units on the existing Keadby Power Station which are capable of operating in open cycle mode have an operational hour restriction imposed within the Environmental Permit: “*The [open cycle] activities shall operate for less than 1,500 hours per year as a rolling average over a period of five years with a maximum of 2,250 hours operated in any one year*”. The Environment Agency is currently considering which operational controls may be relevant to the Proposed Development, but the Applicant considers that it is reasonable to expect that it will include appropriate operational controls, and as part of the

impending Decarbonisation Readiness proposals, properly consider and account for measures to ensure decarbonisation through either the hydrogen-ready, or carbon capture, routes.

- 2.1.16 In this context, the Applicant notes that no decisions on the Environmental Permit have been made in the context of the Proposed Development (though an application was submitted in December 2025). The Applicant does not consider it would be appropriate to impose an operating hour restriction under the DCO, which may be different from an operational restriction imposed under the Environmental Permit in accordance with the application of BAT (Best Available Techniques). Moreover, the use of differential operating hours to ensure a robust assessment would make that restriction unduly onerous or give rise to an inconsistency between any restrictions that may be imposed under the DCO and further regulatory controls.

The effect of blanket restriction

- 2.1.17 The Applicant also does not consider that an operating hours restriction would be reasonable. A cap on hours would conflict with the government's security of supply objectives. Section 2.3 of EN-1 identifies a continued need for unabated gas to provide capacity to back up intermittent renewables. If the DCO restricted hours, the plant might be legally unable to generate electricity during a prolonged low wind, low sun period, even if NESO requested it under a Capacity Market obligation. This could undermine security of supply or result in older and less efficient, more carbon intensive plants coming on stream. The plant is intended to operate on hydrogen and natural gas. An operating hours limit imposed in the interests of managing GHG emissions would, in the Applicant's view, perversely limit operations in connection with hydrogen, or blended scenarios. This would run directly contrary to Government policy. In addition, an operating hours restriction would also stifle the development of a high efficiency plant that would, in turn, be capable of running on hydrogen.
- 2.1.18 In addition, the Applicant, in the next section, sets out all of the DCO precedents which have been granted since 2020 (which, in the Applicant's view, reflects the Secretary of State's practice). The imposition of a requirement on the Proposed Development, which is being developed to facilitate decarbonisation, and hydrogen-specific, ambitions set out in national policy, whilst it is absent in other projects which do not make that contribution, would lead to a situation in which the competing developments would be utilised, thereby constituting an anti-competitive measure working against Government's low carbon agenda.
- 2.1.19 The Applicant notes that the utilisation of the Proposed Development will, in due course (if development consent is granted), turn on market

demand. If the Proposed Development is bound by a restriction, it would mean other comparable developments with no restriction (even where those developments have worse or comparable effects) would be utilised. The Applicant considers that outcome, and the effect on the Applicant, would be unreasonable.

Precedents

- 2.1.20 The Applicant would highlight that none of the DCOs below, which relate to gas-fired power stations, have imposed an operating hours restriction:
- Net Zero Teesside (2024)
 - Keadby 3 (2022)
 - VPI Immingham OCGT (2020)
 - Drax Power (Generating Stations) (2019)
 - Eggborough CCGT (2018)
 - Palm Paper 3 CCGT Power station Kings Lynn (2016)
 - North Killingholme (2014)
- 2.1.21 The Applicant would note that it has identified that each of the above included assumptions relating to operating hours (including in some cases differential assumptions based on topic chapters). The Applicant has reviewed relevant generating station DCOs made since 2020. None of these DCOs granted between 2020 and 2026 impose restrictions on operating hours. The Applicant does not consider that the Proposed Development, or the draft DCO **[REP1-003]**, has any characteristics which would justify a departure from these precedents.
- 2.1.22 For completeness, the Applicant has identified DCOs for Progress Power OCGT, Hirwaun OCGT, Millbrook Power OCGT and Abergelli OCGT Power Station which do impose operating hour restrictions. The Applicant does not consider these comparable because all of these projects are open cycle gas turbine (peaking plant) projects for which the regulator (Environment Agency or NRW) have clear rules around restricted running hours in accordance with the Energy Efficiency Directive and Large Combustion Plant Directive (which has now been superseded by the Industrial Emissions Directive). This restriction reflects the Environment Agency position which is aligned with the wording contained within Commission implementing Decision (EU) 2021 2326. This states that combined cycle operation is “Generally applicable to new gas turbines and engines except when operated < 1 500h/yr”. The rationale in imposing this operating hour restriction on OCGTs is to drive the development of combined cycle power plants, which are significantly more efficient than

open cycle power plants. This requirement does not therefore apply to the Proposed Development given it does not entail an OCGT.

- 2.1.23 The Applicant submit its position is consistent with a number of judicial precedents in the context of DCOs. These are contained in Appendix 1 of this document.

2.2. **ISH1 Action Point 2: The Applicant to provide further information regarding timings for connection agreement and existing processes to explain works 4A & 4B**

Applicant's response

- 2.2.1 The Applicant has noted in the Electricity Grid Connection Statement **[APP 063]** at Section 3.0 that it is currently in discussions with NESO to optimise the connection and a formal Modification Application (the process to modify the existing connection agreement) will be applied for prior to construction to cover any update to requirements.
- 2.2.2 To maintain flexibility pending the outcome of the NESO Connections Reform Process, the Applicant has applied for two potential connection routes in the DCO Application. The Applicant currently holds a connection agreement to connect to the NGET substation via Work Number 4A. This agreement is now being revised under the NESO Connections Reform Process, and the Applicant has been issued with a Notification for a Gate 2 Phase 2 Connection (2031–2035), which is still awaited in final form.
- 2.2.3 On 29 January 2026, NESO published a document¹ which set out that *“Additional work related to these matters will take longer than planned, which means some delivery dates will shift.”* Subsequently NESO has advised that Transmission connected projects such as the Proposed Development should receive an offer by mid-January 2027. Following the issuance of that offer, the Applicant will then have a time period (which is typically 3 months) to accept.
- 2.2.4 The Applicant has identified Work No. 4B as an alternative, more direct connection route to the substation, located entirely on land owned by the Applicant. Using this route would require a separate Modification Application to switch between the relevant substation connection bays. However, this application cannot be submitted until the NESO Connections Reform Process discussed above has concluded and the

¹ [Connections reform timeline | National Energy System Operator](#)

outcome would be dependent on NGET's technical and feasibility assessment.

- 2.2.5 In the background of the wider Connections Reform Process, the Applicant is having ongoing discussions with NGET and NESO about the Proposed Development. Notwithstanding these steps, the Applicant does not anticipate it will be able to confirm which alternative is being taken forward until 2027/2028 at the earliest, a date which falls after the DCO being made (if the development consent is granted). Therefore, there remains a need to include the alternate provision of either grid connection route (Work Nos. 4A or 4B) in the draft DCO **[REP1-003]**.

2.3. ISH1 Action Point 3: The Applicant to provide further information regarding the East Coast Hydrogen project. This should include information regarding functions surrounding repurposing and justification for the assumption for a 4-kilometre distance being an appropriate assessment for transportation of hydrogen within the Environmental Statement

Applicant's response

- 2.3.1 Project Union² is a proposed national hydrogen network that will be delivered by National Gas through a combination of repurposing existing national natural gas pipelines and installation of new pipelines to transport hydrogen across the country. The first section of Project Union will be Project Union: East Coast which is being delivered by the East Coast Hydrogen project.
- 2.3.2 Further information regarding the East Coast Hydrogen project is available at "<https://www.eastcoasthydrogen.co.uk/>" which describes the project as "*A collaboration between National Gas, Northern Gas Networks and Cadent to connect planned hydrogen production and storage with industrial users in the region, over the next 15 years.... They aim to use new and repurposed pipework to bring a supply of 100% hydrogen to the*

² [Project Union – Energising Britain | National Gas](#)

region, providing an essential route to decarbonisation for industry and making a vital contribution to Net Zero.”

- 2.3.3 The ‘East Coast Hydrogen Feasibility Report’³ published in 2021 describes Phases 1-4 of the project with a diagram showing the planned network on page 5.
- 2.3.4 The ‘East Coast Hydrogen Pipeline (ECHP) North – Phase 1 NZASP Re-opener Submission (Public (Redacted) Version)’⁴ published in March 2024 shows: a map of the proposed East Coast Hydrogen pipelines by 2037 at Figure 2 and the preferred route for ECHP North – Phase 1 passing to the south of Keadby at Figure 4.
- 2.3.5 The routeing of ECHP was developed specifically to connect likely hydrogen production and storage facilities with likely offtakers. As can be seen from the Feasibility Report, the Applicant (SSE) as an entity and this Proposed Development in particular, have been identified as key offtakers to which ECHP needs to connect.
- 2.3.6 The programme for the delivery of ECHP North – Phase 1 is presented in Figure 5, indicating a DCO submission in 2027 and construction being completed in 2031.
- 2.3.7 The Applicant assumes that the Proposed Development will tie into East Coast Hydrogen. Based on the available routeing information the Applicant therefore adopted a distance of 4km as a reasonable distance for the spur pipeline based on the location of the Proposed Development and the indicative routeing of the East Coast Hydrogen pipeline.

2.4. ISH1 Action Point 4: The Applicant to submit a stand-alone plan identifying the retention and loss of trees within the order limits

Applicant’s response

- 2.4.1 The Tree Protection Plan which has been provided at Deadline 2 is extracted from Annex 4 of Appendix E: Arboricultural Assessment of the

³ [East Coast Hydrogen](#) published in 2021

⁴ [East-Coast-Hydrogen-Pipeline-North-Phase-1-NZASP-Reopener-Submission-Public-Redacted-Version-March-2024.pdf](#)

Outline Landscaping and Biodiversity Management and Enhancement Plan Report [REP1-010].

- 2.4.2 The plan is presented as a standalone copy in response to the request raised by the Examining Authority for clarification on which trees would be removed as part of the Proposed Development. This request was raised at ISH1 and is summarised in Section 5: Agenda item 2C – Landscape and visual effects, Paragraph 5.3 of the ISH 1 Written Summary [REP1-030]. The extracted Tree Protection Plan is contained in Appendix 2 of this document

2.5. ISH1 Action Point 5: The Applicant to provide further information regarding most appropriate mechanism for securing species enhancement measures on land owned by the applicant but outside of the order limits to ensure the works are deliverable and considered a benefit of the scheme.

Applicant's response

- 2.5.1 During ISH1 the ExA sought clarification of the area identified for species enhancement within the former ash tip shown hatched pink on Sheet 2 of the Indicative Landscape and Biodiversity Plan [AS-007]. The ExA asked the Applicant to clarify how this land is, or is to be, secured for the purposes of the Proposed Development given it is outside the Order limits.
- 2.5.2 As confirmed by the Applicant during ISH1, the land in question is owned by an SSE Group Company (title no. HS211933) and is therefore within the Applicant's control.
- 2.5.3 The Outline Landscaping and Biodiversity Management and Enhancement Plan Report (**Document Ref. 5.10, Rev. 2**) confirms that the ash tip area will be used for the provision of various enhancement measures. Paragraph 5.2.64 states: "*Additional enhancement measures for species are proposed within the Site and the adjacent former Keadby Ash Tip. The latter is also land within the control of the Applicant.*" Paragraph 5.2.65 lists a number of species features that are to be provided, including bat boxes and tawny owl nesting boxes on suitable trees within the former Keadby Ash Tip and ring-barking of suitable trees within the former Keadby Ash Tip to enhance the resource of standing deadwood available to willow tit and other birds needing standing deadwood. The Indicative Landscape and Biodiversity Plan is included as Figure 2 in the Outline LBMEP.
- 2.5.4 Requirement 6 of the draft DCO [REP1-003] secures the delivery of the Landscape and Biodiversity Management and Enhancement Plan, which

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is required to be submitted to and approved by the relevant planning authority prior to the commissioning of any part of the Proposed Development. Paragraph (4) states that the plan submitted and approved must be in general accordance with the principles of the Outline LBMEP and the Indicative Landscape and Biodiversity Plan and must be accompanied by a statement explaining how any planting proposed adjoining the Order limits has been subject to consultation with Keadby with Althorpe Parish Council. Paragraph (5) states that the plan submitted must be implemented and maintained as approved during the operation of the Proposed Development unless otherwise agreed with the relevant planning authority.

- 2.5.5 Requirement 6 therefore secures the delivery of the proposed measures on the former ash tip land even though it is outside the Order limits.
- 2.5.6 There is precedent for this approach in recently granted orders, including on the Keadby3 DCO (where mitigation was also secured outside of the Order limits). This is not restricted to the Keadby site: for example, Requirement 5 (off-site mitigation) of the Port of Tilbury (Expansion) Order 2019 secures off-site mitigation / compensation measures, as acknowledged in paragraph 4.11.28 of the Examining Authority's Recommendation Report: *"In addition to these on-site mitigation measures, offsite compensation is required to fully meet impacts on terrestrial ecology, and this would be secured through the ECMP as part of requirement 5 of the draft DCO. Two locations have been identified in the ECMP for off-site compensation."* Paragraph 4.11.29 goes on to explain that the areas in question are up to 30 miles away from the Tilbury site, much further than in this case, where the former ash tip land is adjacent to the Order limits.
- 2.5.7 In summary, the measures proposed on the former ash tip land adjacent to the Order limits are secured by Requirement 6 of the draft DCO (REP1-003). The land is within the Applicant's control, therefore the works are deliverable and can be considered a benefit of the Proposed Development.

Appendix 1 Relevant Precedents for Reliance on non DCO controls

Luton Airport – Development Consent Order / Luton and District Association for the Control of Aircraft Noise v Secretary of State for Transport [2025] EWHC 3206 (Admin)

1. In the Luton Airport DCO application, the Recommendation Report from the Examining Authority set out that:

“In deciding an application, the Secretary of State should focus on whether the development is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. The Secretary of State should assess the potential impacts of processes, emissions or discharges to inform decision making, but should work on the assumption that, in terms of the control and enforcement, the relevant pollution control regime will be properly applied and enforced...”

Ultimately UK GHG emissions, including those from the aviation sector, are controlled by the carbon budgets and requirement to meet net zero by 2050 in the CCA 2008. The UK ETS is an important control mechanism to help deliver the legislative requirements and the Government has the ability to introduce other mechanisms as needed. The ANPS (paragraph 4.54) is clear that decisions under the PA 2008 should complement but not duplicate those taken under the relevant pollution control regime. The ExA concludes that the CAA is such a regime and must work on the assumption that it will be properly applied and enforced.”

2. The Secretary of State agreed with that conclusion (see paragraph 235 of the Decision Letter). Subsequently, this conclusion was challenged. The High Court concluded there was nothing impeachable about the ExA or Secretary of State’s position and held that the Climate Change Act 2008 should be considered a pollution control regime that should be assumed to operate effectively. Notwithstanding the development in that case was an airport, the conclusions that 1) the wider framework is a pollution control regime which should be assumed to work properly; 2) reliance can be placed on that framework; and 3) an endorsement that non-reliance would be “to duplicate the system of controlling aircraft emissions, put in place by the CCA” supports the Applicant’s position set out above.

Immingham Eastern Ro-Ro Terminal DCO / Associated Petroleum Terminals (Immingham) Ltd & Anor, R (On the Application Of) v Harbour Master for the River Humber [2025] EWHC 1992 (Admin)

3. In the Immingham Ro-Ro Terminal DCO, the Applicant had made assumptions about the “design vessel” (i.e., they had assumed particular parameters about vessels). The “design vessel” reflected a fictional vessel size. The ExA and the Secretary of State found that the handling characteristics of a notional DV in terms of matters such as propulsion and manoeuvrability could not be reasonably defined but this would also be unnecessary given that the ability to use any vessel - including the DV – would be subject to control by the Harbour Master for the River Humber.
4. A legal challenge was made which alleged that the Secretary unlawfully failed to set parameters which “tied” the DCO to the effects assessed in the ES. He said she should have imposed a restriction in the DCO – as requested by the Claimants – which limited the use of the berths to the assessed vessels. The High Court in relation to that issue set out that:

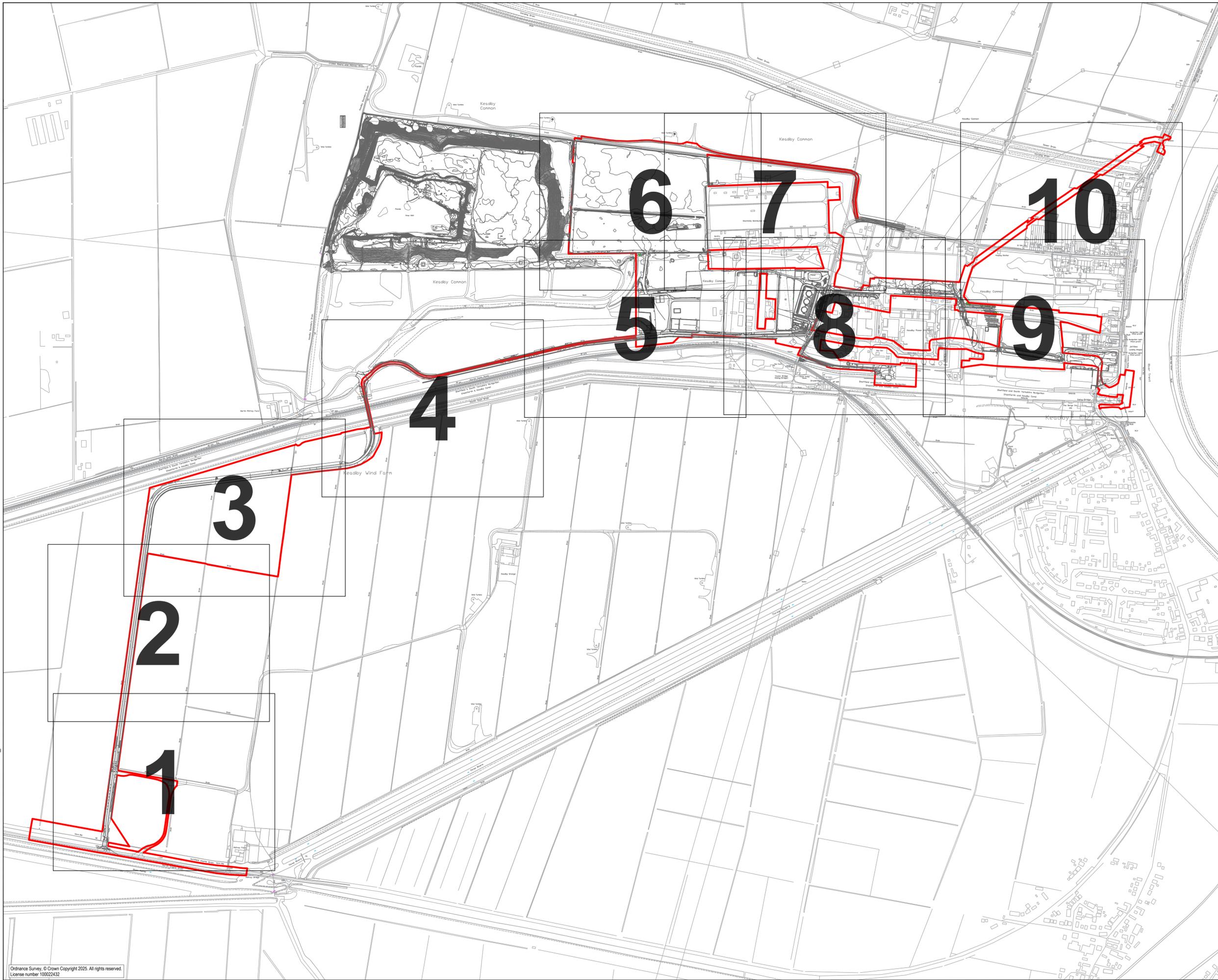
“A decision-maker, in reliance on the Gateshead principle, is entitled to “consider how the [relevant regulator] was likely to deal with the details and to conclude that the way the details would be dealt with would mitigate the adverse effect on the environment...” (Smith at [49]). In light of that conclusion, Waller LJ in Smith approved a condition that simply required that “No development shall take place until a scheme to suppress dust generated on site, has been submitted to and approved in writing by the Local Planning Authority...”, despite the claimant’s critique that this left the significant impact of dust and its mitigation undetermined and in the hands of the local planning authority and not the Inspector, who was the relevant decision-maker for EIA purposes. But the Inspector was entitled to find that the Environment Agency’s regulatory regime would likely prevent dust from causing significant environmental effects by way of an effective mitigation scheme.

In light of that conclusion, Waller LJ in Smith approved a condition that simply required that “No development shall take place until a scheme to suppress dust generated on site, has been submitted to and approved in writing by the Local Planning Authority...”, despite the claimant’s critique that this left the significant impact of dust and its mitigation undetermined and in the hands of the local planning authority and not the Inspector, who was the relevant decision-maker for EIA purposes. But the Inspector was entitled to find that the Environment Agency’s regulatory regime would likely prevent dust from causing significant environmental effects by way of an effective mitigation scheme... In my judgment, there is no

justification for the imposition of restrictions on vessel size and type, let alone the failure to do so being unlawful.”

5. The Applicant considers that the imposition of a control in relation to operating hours mirrors the attempt to impose limits in relation to vessels and in relation to the other case cited within the judgment relating to air quality. As in those cases, there are appropriate controls in place, and it is to be assumed those controls will operate effectively, with the effect that a condition in the planning consent is unnecessary and duplicative.

Appendix 2 Tree Protection Plan



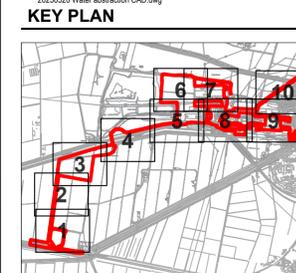
PROJECT
 KEADBY NEXT GENERATION
 POWER STATION PROJECT

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GENERAL NOTES

- TREE CATEGORIES AS DEFINED BY BS 5837:2012
- TREE LOCATIONS ARE BASED ON THE TOPOGRAPHICAL SURVEY, AERIAL IMAGERY AND GPS CO-ORDINATES FROM ON SITE WALKOVER.
- * INDICATES A TREE / GROUP WHOSE POSITION IS APPROXIMATE AS BASED UPON AERIAL PHOTOGRAPHY AND ON SITE OBSERVATIONS.
- PLANS SHOULD BE READ IN CONJUNCTION WITH THE AECOM ARBORICULTURAL REPORT.
- THE ORIGINAL OF THIS DRAWING WAS PRODUCED IN COLOUR - A MONOCHROME COPY SHOULD NOT BE RELIED UPON.
- DRAWING REFERENCES:
 108300 - SSE - Keadby - Topographical & GPR and Utility Mapping Survey.dwg
 36 Topo survey May 23.dwg
 60721867-ACM-XX-XX-AB-TPP-004 - Work Plans CAD (Aligned RLB) - SHP Export.dwg
 FireLocalOSMap.dwg
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 20250520_Water_abstraction_CAD.dwg



KEY

- RED LINE BOUNDARY
- EXISTING TREE, GROUP, WOODLAND, OR HEDGE TO BE RETAINED
- EXISTING TREE, GROUP, WOODLAND, OR HEDGE TO BE REMOVED
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- PRIORITY HABITAT (CONSIDERED AN AREA OF PRIORITY HABITAT)
- SSSI AREA (AREA CONTAINING SITE OF SPECIAL SCIENTIFIC INTEREST)

ISSUE/REVISION

NO	DATE	DESCRIPTION
P03	27.11.25	TREE DATA AMENDMENTS
P02	20.05.25	SECOND ISSUE
P01	23.04.25	FIRST ISSUE
I/R	DATE	DESCRIPTION

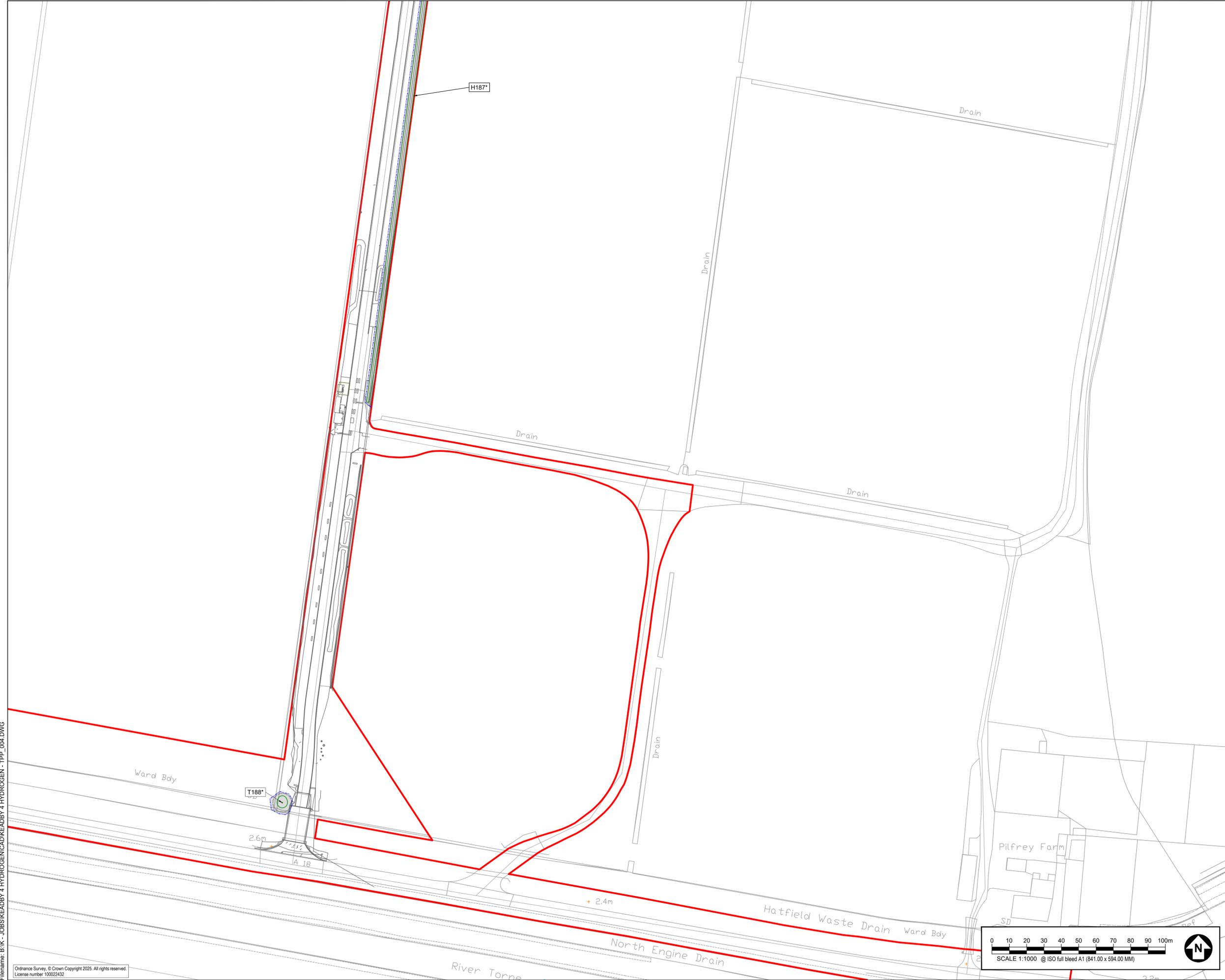
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 ISSUE

PROJECT NUMBER
 60721867

SHEET TITLE
 TREE PROTECTION PLAN
 (SHEET 00)

SHEET NUMBER **REV.**
 60721867-ACM-XX-XX-AB-TPP-000 P03

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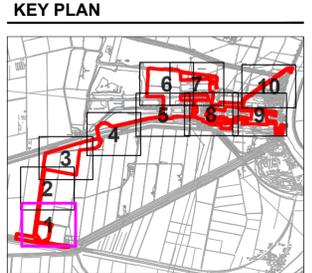
PROJECT
 KEADBY NEXT GENERATION
 POWER STATION PROJECT

CLIENT
 KEADBY NEXT GENERATION
 LTD

CONSULTANT
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 108300 - SSE - Keadby - Topographical & GPR and Utility Mapping Survey.dwg
 30 Topo survey May 23.dwg
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 FieldLocOSMap.dwg
 20250331_Designations.dwg
 OS_Meaning_Topography_Layer_932581_1185624_OS_Mastermap.dwg
 20250520 Water abstraction CAD.dwg



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P03	27.11.25	TREE DATA AMENDMENTS
P02	20.05.25	SECOND ISSUE
P01	23.04.25	FIRST ISSUE
IVR		

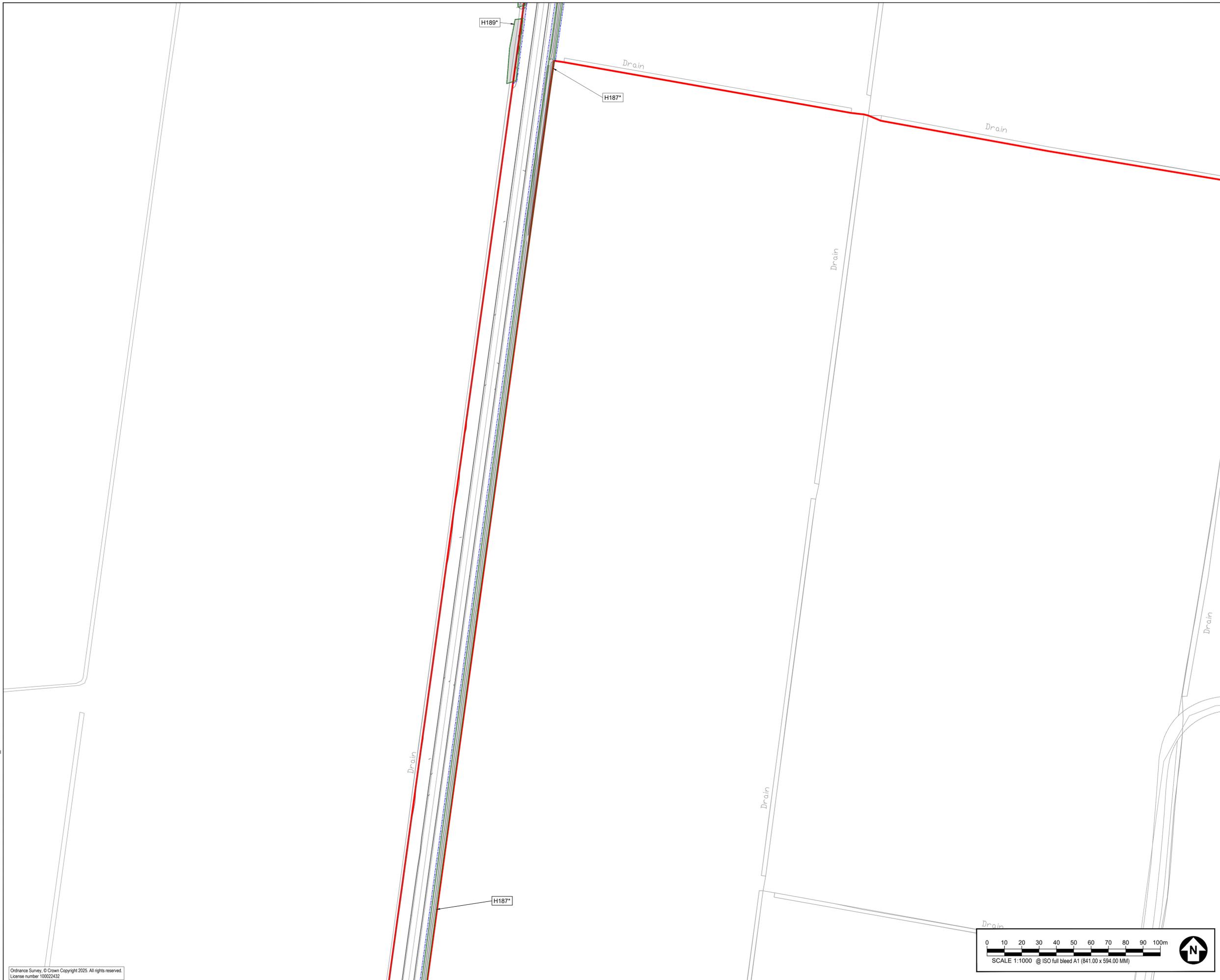
DRAWING STATUS
 ISSUE

PROJECT NUMBER
 60721867

SHEET TITLE
 TREE PROTECTION PLAN
 (SHEET 01)

SHEET NUMBER **REV.**
 60721867-ACM-XX-XX-AB-TPP-001 P03

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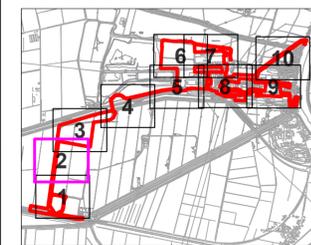
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 FirstLocOSMap.dwg
 20250331_Designations.dwg
 OS_Meaning_Topography_Layer_932581_1185624_OS_Mastermap.dwg
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KEY PLAN



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IVR		

DRAWING STATUS

ISSUE

PROJECT NUMBER

60721867

SHEET TITLE

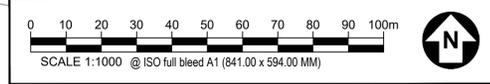
TREE PROTECTION PLAN
 (SHEET 02)

SHEET NUMBER

60721867-ACM-XX-XX-AB-TPP-002

REV.

P03



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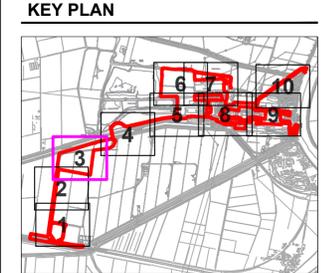
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 30 Topo survey May 23.dwg
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 FieldLocalOSMap.dwg
 20250331_Designations.dwg
 OS_MeaningMap_Topography_Layer_932581_1185624_OS_Mastermap.dwg
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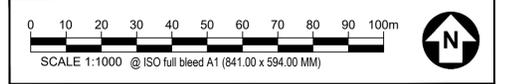
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PROJECT NUMBER
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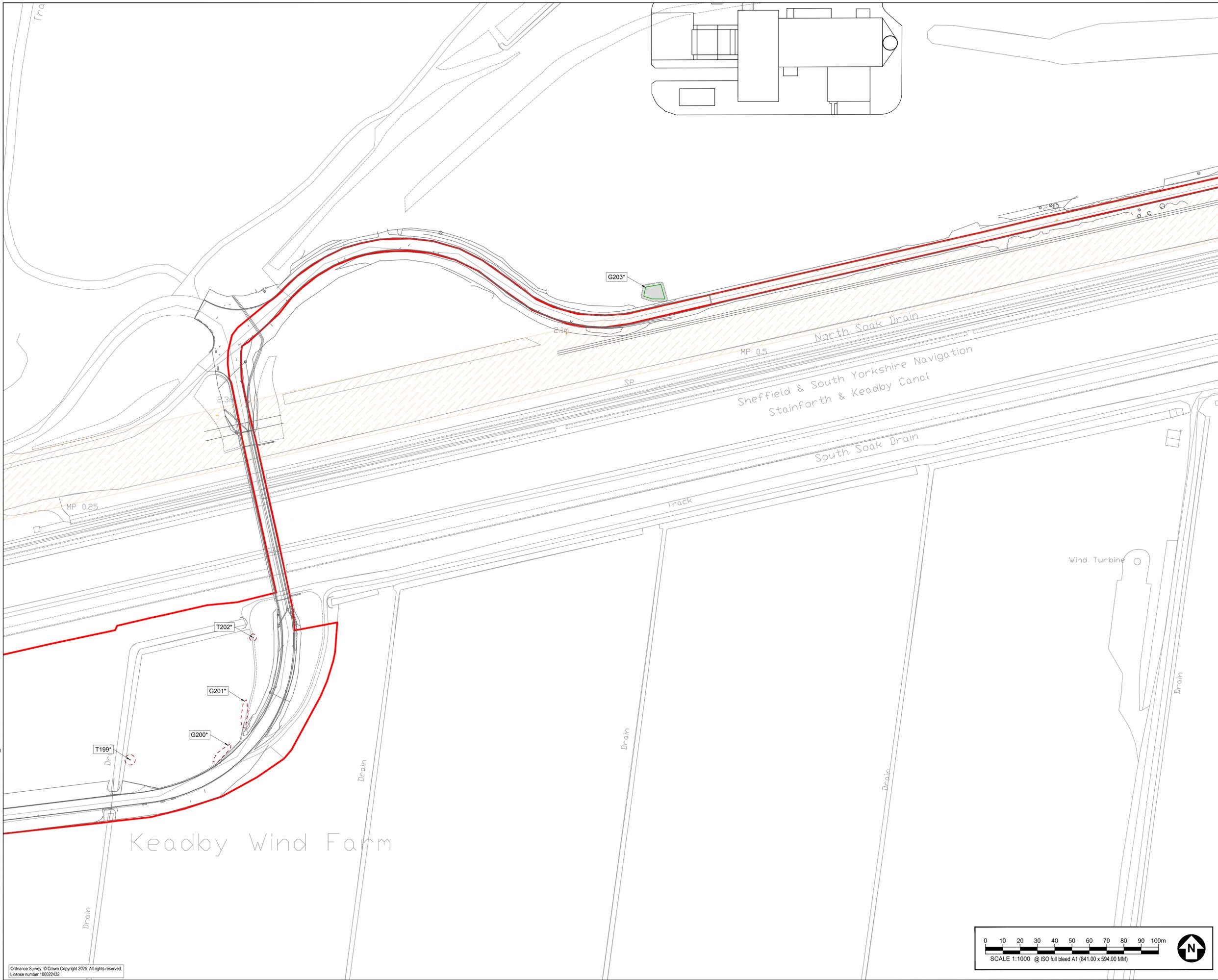
SHEET TITLE
 TREE PROTECTION PLAN (SHEET 03)

SHEET NUMBER
 60721867-ACM-XX-XX-AB-TPP-003

REV.
 P03



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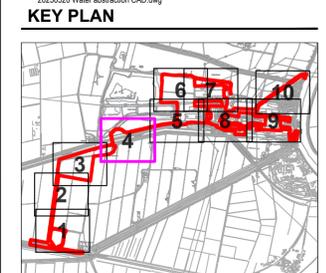
PROJECT
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 POWER STATION PROJECT

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KEY

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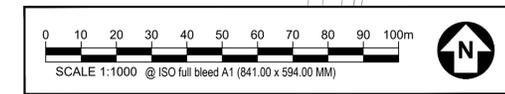
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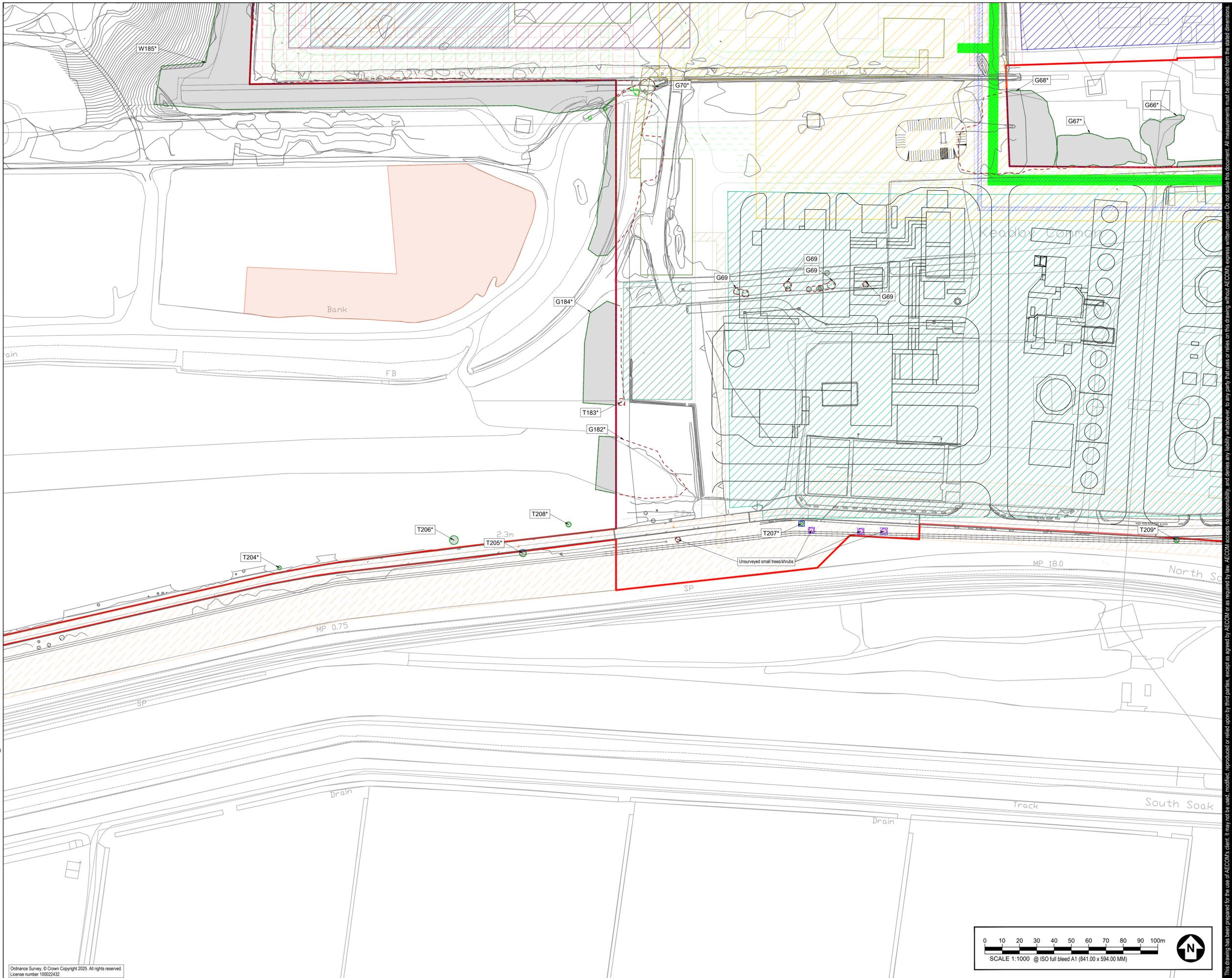
PROJECT NUMBER
 60721867

SHEET TITLE
 TREE PROTECTION PLAN
 (SHEET 04)

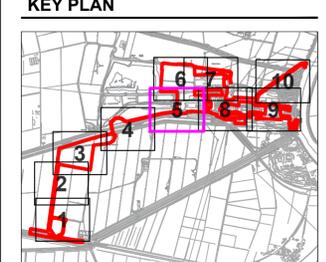
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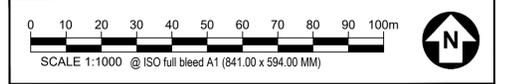
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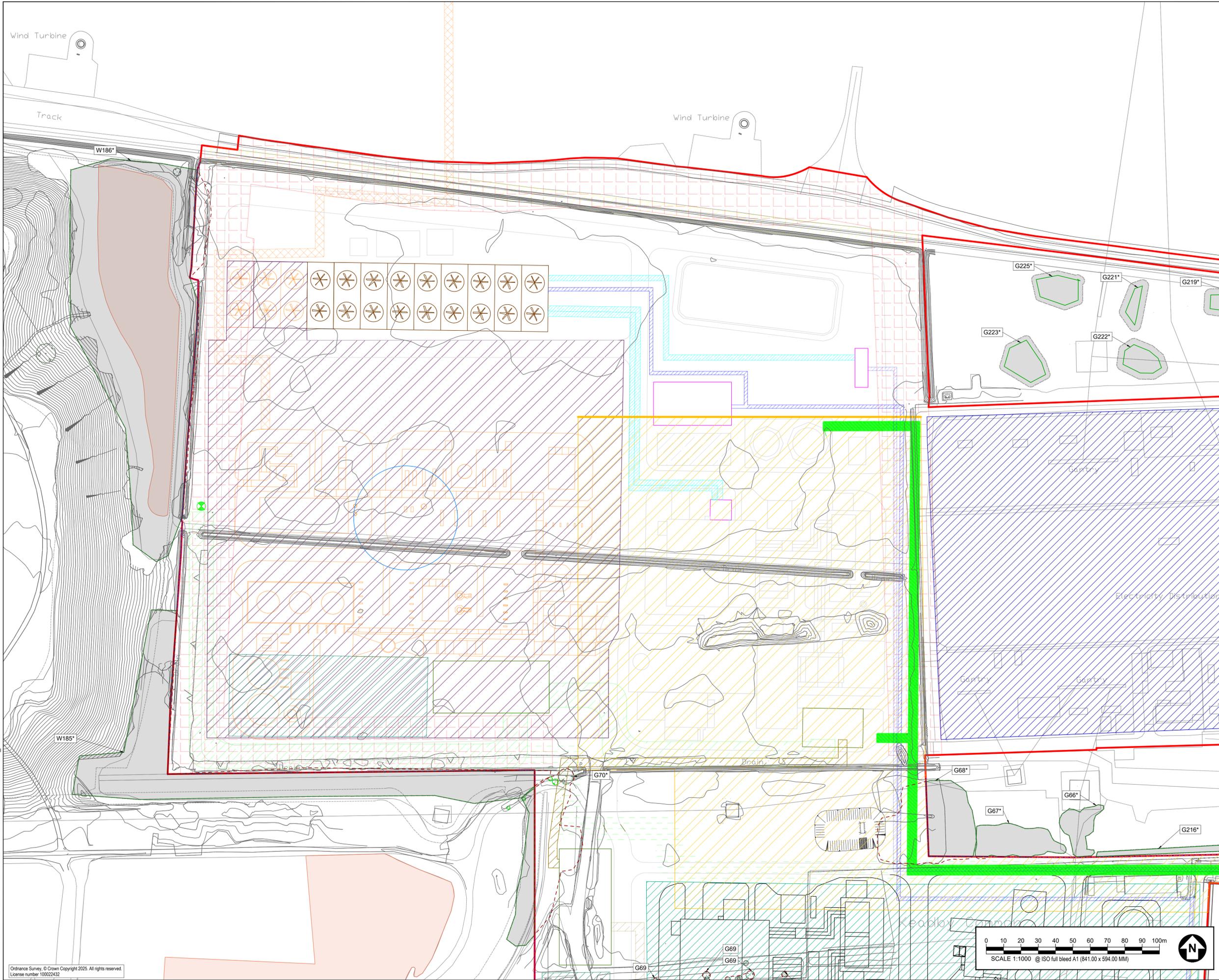
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 TREE PROTECTION PLAN (SHEET 05)

SHEET NUMBER
 60721867-ACM-XX-XX-AB-TPP-005

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PROJECT
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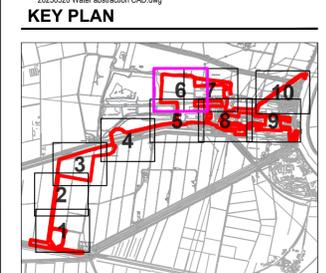
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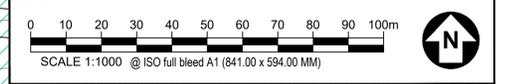
DRAWING STATUS
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 60721867

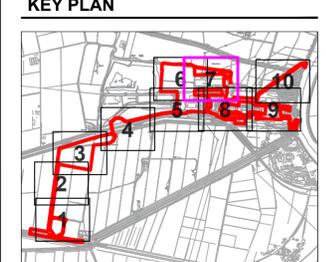
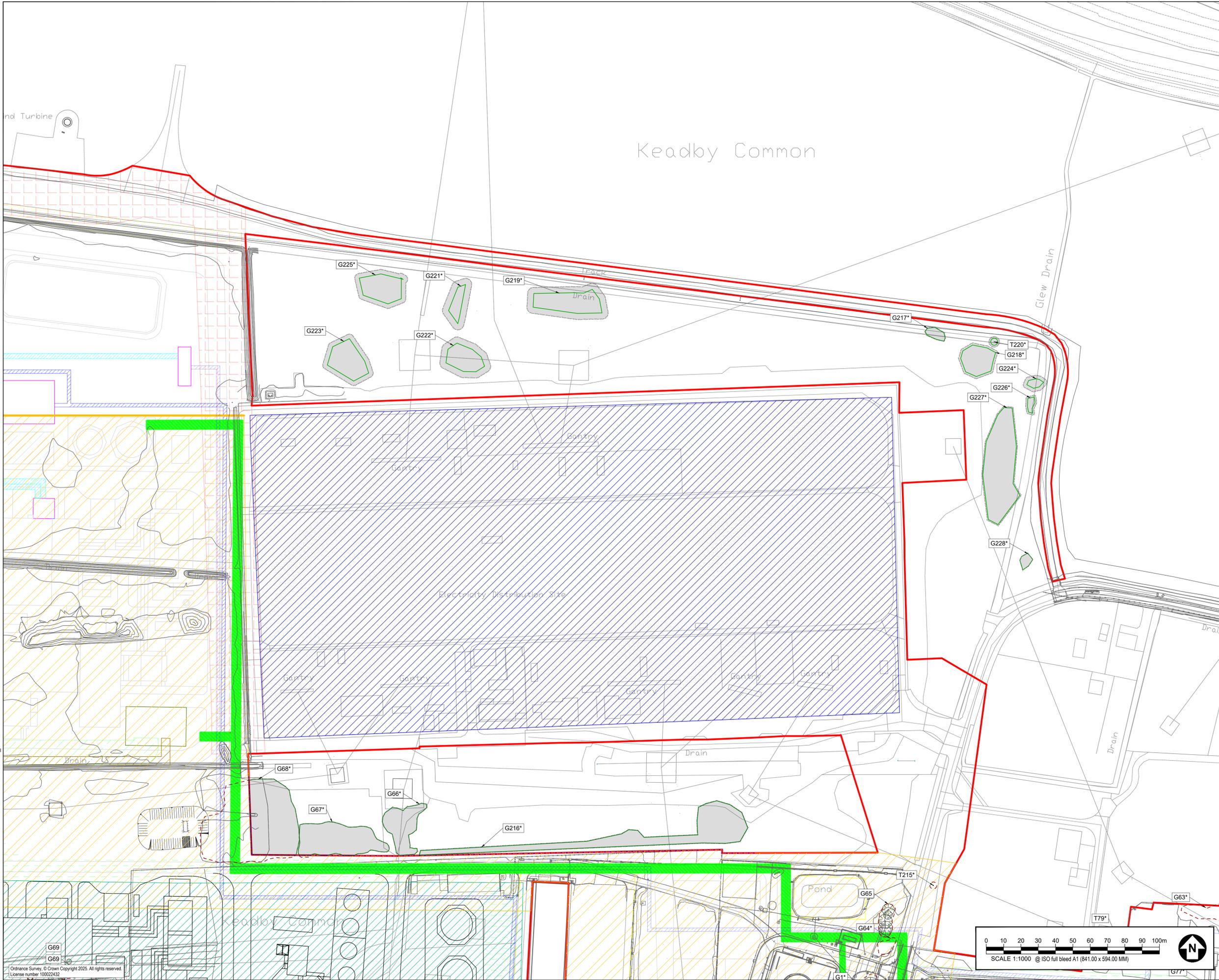
SHEET TITLE
 TREE PROTECTION PLAN (SHEET 06)

SHEET NUMBER **REV.**

60721867-ACM-XX-XX-AB-TPP-006 P03



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KEY

- RED LINE BOUNDARY
- EXISTING TREE, GROUP, WOODLAND, OR HEDGE TO BE RETAINED
- EXISTING TREE, GROUP, WOODLAND, OR HEDGE TO BE REMOVED
- ROOT PROTECTION AREA OF RETAINED TREES (AS DEFINED BY BS 5837:2012)
- LIKELY VETERAN TREE (INDICATES POSITION OF TREE OF VETERAN STATUS)
- LIKELY ANCIENT TREE (INDICATES POSITION OF TREE OF ANCIENT STATUS)
- TREE PROTECTION FENCING
- CONSTRUCTION EXCLUSION ZONE (TRACKING OF PLANT, MATERIALS STORAGE, EXCAVATION AND ALL OTHER CONSTRUCTION ACTIVITIES ARE EXCLUDED WITHIN THESE AREAS FOR THE PURPOSES OF PROTECTING TREE HEALTH)
- CONSTRUCTION WORKING ZONE (MANAGED CONSTRUCTION PROCESSES PERMITTED IN ACCORDANCE WITH THE PRINCIPLES SET OUT WITHIN THE ARBORICULTURAL IMPACT ASSESSMENT)
- PROPOSED DEVELOPMENT LAYOUT (BASED UPON DRAWING REFERENCES LISTED IN THE GENERAL NOTES SECTION)
- PRIORITY HABITAT (CONSIDERED AN AREA OF PRIORITY HABITAT)
- SSSI AREA (AREA CONTAINING SITE OF SPECIAL SCIENTIFIC INTEREST)

ISSUE/REVISION

NO	DATE	DESCRIPTION
P03	27.11.25	TREE DATA AMENDMENTS
P02	20.05.25	SECOND ISSUE
P01	23.04.25	FIRST ISSUE
IVR		DATE DESCRIPTION

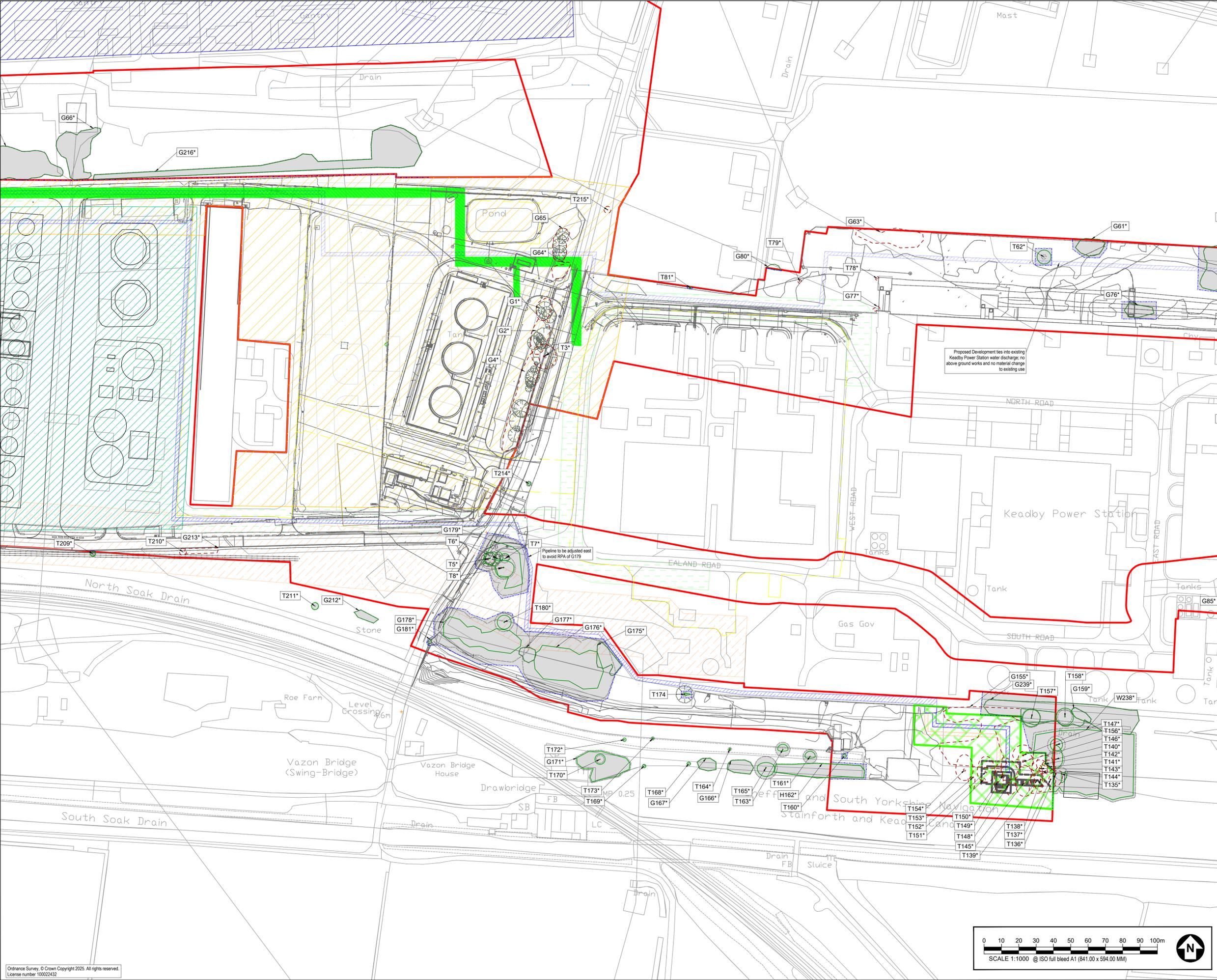
DRAWING STATUS
ISSUE

PROJECT NUMBER
 60721867

SHEET TITLE
 TREE PROTECTION PLAN (SHEET 07)

SHEET NUMBER **REV.**
 60721867-ACM-XX-XX-AB-TPP-007 P03

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Proposed Development ties into existing Keadby Power Station water discharge; no above ground works and no material change to existing use

Pipeline to be adjusted east to avoid RPA of G179

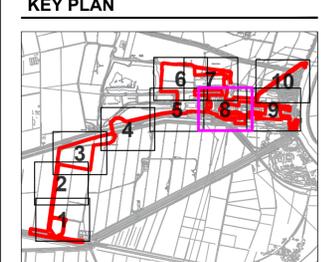
AECOM

PROJECT
 KEADBY NEXT GENERATION POWER STATION PROJECT

CLIENT
 KEADBY NEXT GENERATION LTD

CONSULTANT
 AECOM
 Plumer House, Third Floor,
 East Wing, Talylour Road
 Plymouth, PL6 5DH
 Tel +44(0)1752 676700
 Fax +44(0)870 238 6023
 www.aecom.com

- GENERAL NOTES**
- TREE CATEGORIES AS DEFINED BY BS 5837:2012
 - TREE LOCATIONS ARE BASED ON THE TOPOGRAPHICAL SURVEY, AERIAL IMAGERY AND GPS CO-ORDINATES FROM ON SITE WALKOVER.
 - * INDICATES A TREE / GROUP WHOSE POSITION IS APPROXIMATE AS BASED UPON AERIAL PHOTOGRAPHY AND ON SITE OBSERVATIONS.
 - PLANS SHOULD BE READ IN CONJUNCTION WITH THE AECOM ARBORICULTURAL REPORT.
 - THE ORIGINAL OF THIS DRAWING WAS PRODUCED IN COLOUR - A MONOCHROME COPY SHOULD NOT BE RELIED UPON.
 - DRAWING REFERENCES:
 108300 - SSE - Keadby - Topographical & GPR and Utility Mapping Survey.dwg
 36 Topo survey May 23.dwg
 60721867-ACM-XX-XX-AB-TPP-004 - Work Plans CAD (Aligned RLB) - SHP Export.dwg
 FireLocOSMap.dwg
 20250331_Designations.dwg
 OS_MapsMap_Topography_Layer_932581_1185624_OS_Mastermap.dwg
 20250520_Water_abstraction_CAD.dwg



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ISSUE/REVISION

NO	DATE	DESCRIPTION
P03	27.11.25	TREE DATA AMENDMENTS
P02	20.05.25	SECOND ISSUE
P01	23.04.25	FIRST ISSUE
LR		DATE DESCRIPTION

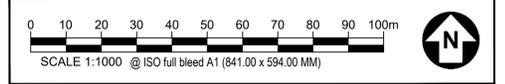
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PROJECT NUMBER
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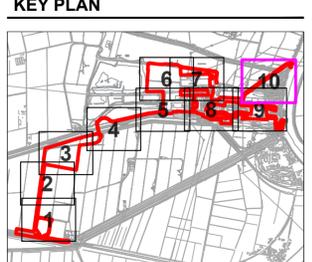
SHEET TITLE
 TREE PROTECTION PLAN (SHEET 08)

SHEET NUMBER
 60721867-ACM-XX-XX-AB-TPP-008

REV.
 P03



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ISSUE/REVISION

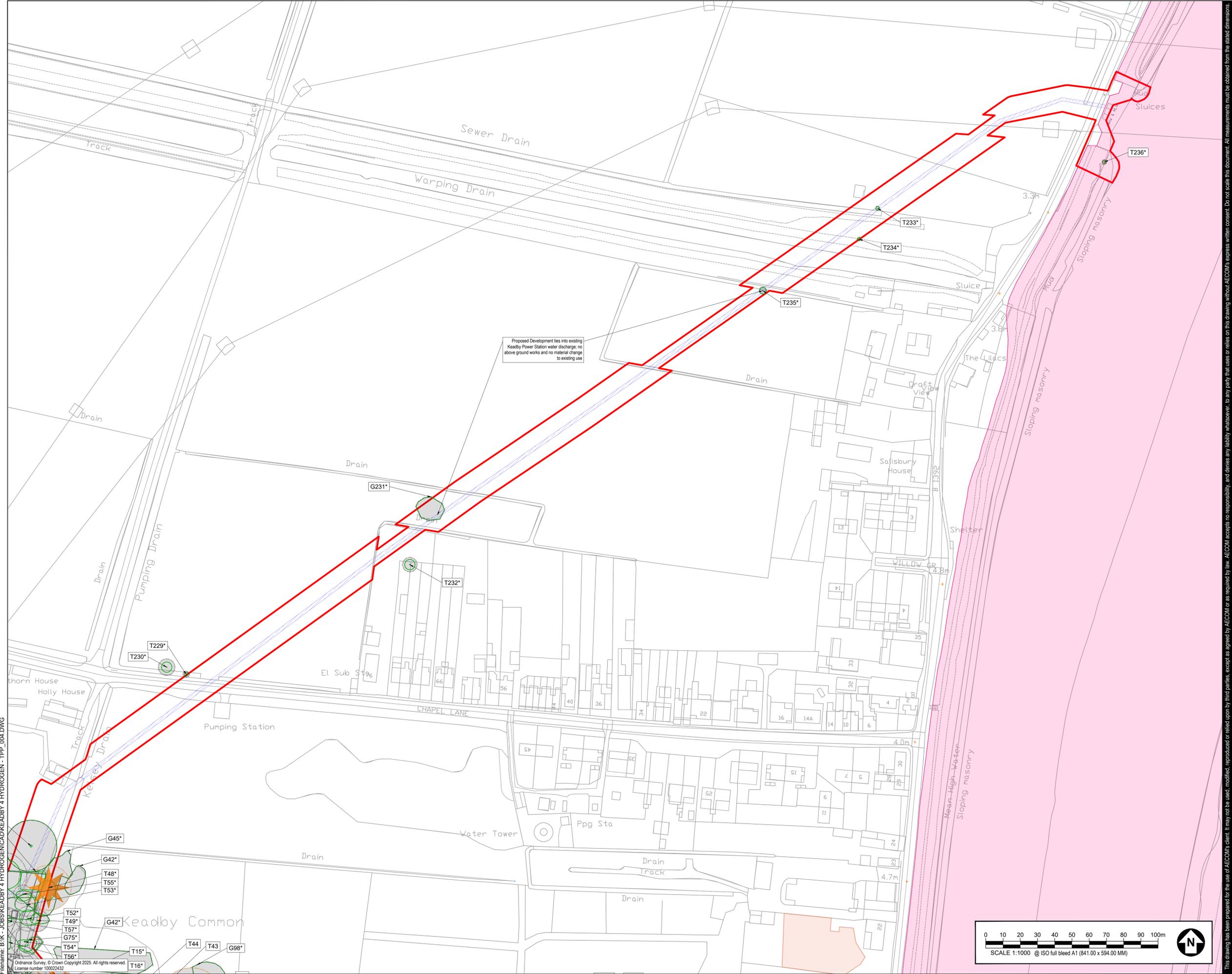
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P02	20.05.25	SECOND ISSUE
P01	23.04.25	FIRST ISSUE
IVR		DATE DESCRIPTION

DRAWING STATUS
ISSUE

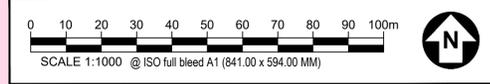
PROJECT NUMBER
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SHEET TITLE
 TREE PROTECTION PLAN
 (SHEET 10)

SHEET NUMBER **REV.**
 60721867-ACM-XX-XX-AB-TPP-010 P03



Proposed Development ties into existing Keadby Power Station water discharge; no above ground works and no material change to existing use



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