

Report to: **Mike Eastwood
Countryside Access Team Leader, for
Approval of recommendation**

Date: **14 February 2017**

Title: **The Commons Act 2006
Section 22 – non-registration of land under
the 1965 Commons Registration Act**

**The Commons Registration (England)
Regulations 2014**

**Application 2817
20.876 hectares of land at Crantock Common,
including the Rushy Green, in the parish of
Crantock**

Divisions Affected **Newlyn and Goonhavern**

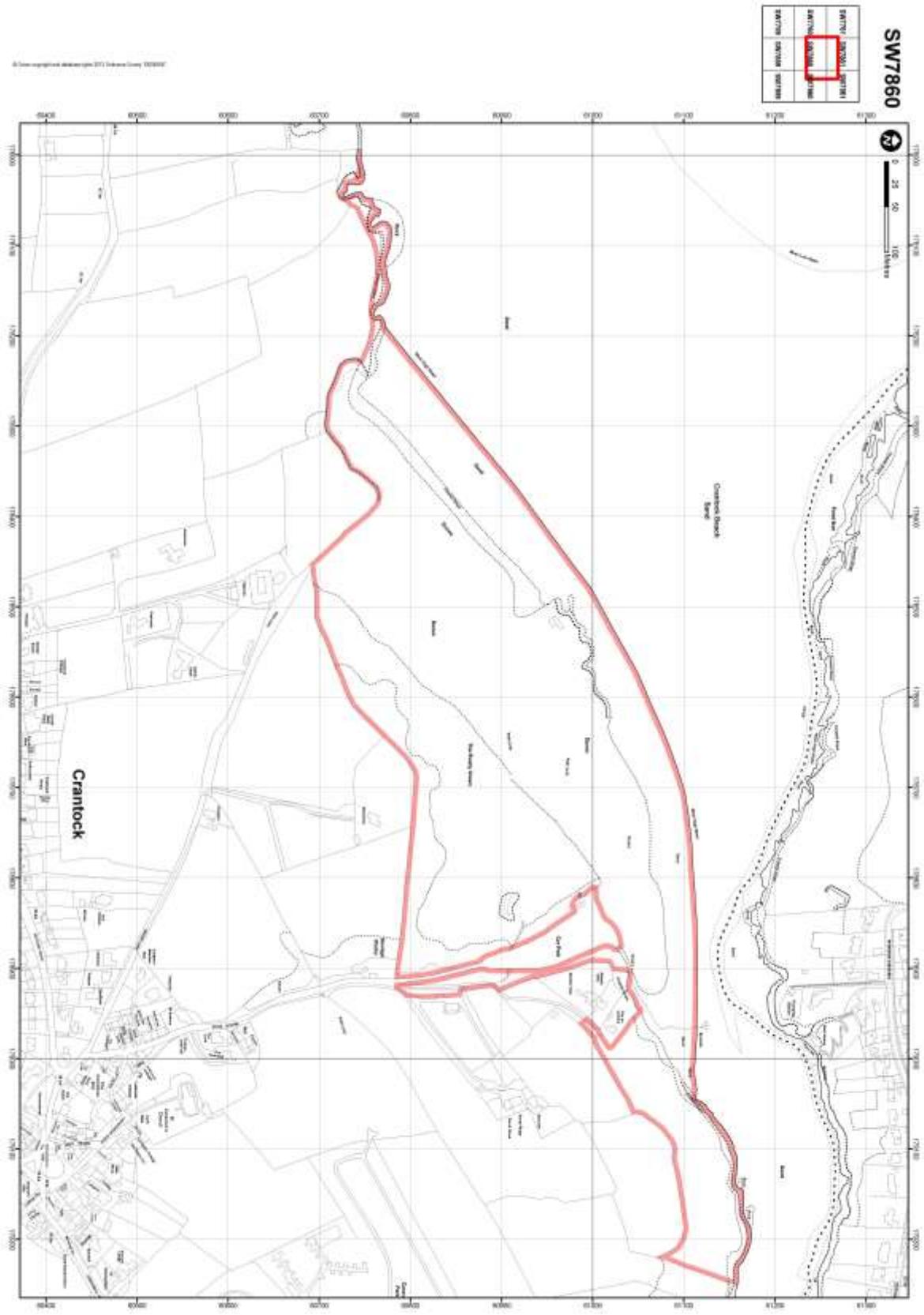
Author: **Martin Wright** Role: **Commons and Greens
Registration Officer**

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Provisional Recommendation:

19.019 hectares of the 20.876 hectares of the application be granted and registered as common land for the reasons given within this report.

Application Map



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1. Introduction:

Cornwall Council has a duty under Section 4 of the Commons Act 2006 to keep a register of common land and a register of town and village greens. Cornwall Council also has a duty under paragraph 26 of the Commons Registration (England) Regulations 2014 to determine applications to amend the registers of common land and town and village greens, unless the registration authority has an interest in the outcome of the application such that there is unlikely to be confidence in the authority's ability impartially to determine it.

Commons Registration Application No. 2817 was made by Mr Tomas D.J.S. Hill seeking to register 20.876 hectares of land at Crantock Common including the Rushy Green, as common land under Schedule 2.2 of the Commons Act 2006.

This report examines the evidence for and against whether the application meets the statutory tests set out in Schedule 2.2 of the Commons Act 2006.

The report has been prepared to be presented to a delegated officer. The delegated decision is to consider whether to accept, refuse or refer the matter to an independent inspector to make a recommendation to accept or refuse the application.

2. Background and Corporate Objectives:

The legislative background is for the applicant to show that:

- The land was not at any time finally registered as common land or as a town or village green under the 1965 Act;
- Is land which is
 - Regulated by an Act made under the Commons Act 1876 (c.56) confirming a provisional order of the Inclosure Commissioners;
 - Subject to a scheme under the Metropolitan Commons Act 1866 (c.122) or the Commons Act 1899 (c.30);
 - Regulated as common land under a local or personal Act; or
 - Otherwise recognised or designated as common land by or under an enactment;
- and for the registration authority to comply with section 27 of the Commons Registration (England) Regulations 2014 – Method of determining applications and proposals.

3. Decision and Supporting Information (Including Options):

Objections have been received from the owners of parts of the application land:

- (i) The National Trust, and
- (ii) Mr Gerald Alan Northey, Mrs Gillian King and Mrs Jane Fielden (as joint owners).

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Objections have not been received from Cornwall Council either in their capacity as owner of part of the application land, or as lease holder of the Crantock Surf Lifesaving Club house.

As Cornwall Council has not objected to the application all parties can be confident that the registration authority can impartially determine the application, and there is no need to refer the application to the Planning Inspectorate for determination, as would otherwise be the case.

The options available to the registration authority are to:

- i approve the application, in whole or in part;
- ii reject the application; or
- iii refer the application to an independent inspector to recommend accepting or refusing the application.

It is recommended that the available evidence is sufficient for the Council to approve the application in part. Regulation 27(7)(a) requires that an application cannot be accepted or refused without first offering the interested parties an opportunity to make oral representations.

4. Contributions to Corporate Priorities:

In determining the application the Council is performing its statutory duty set out in sections 6 to 17, 19 and 22 of the Commons Act 2006 to determine applications seeking to amend the registers of common land and of town and village greens.

5. Financial Implications and Budget:

The process of determining whether the application is accepted or refused is met from existing budgets.

The management of the common will continue to be the responsibility of the owners.

6. Other Resourcing Implications:

None.

7. Legal Implications:

Cornwall Council has a statutory duty set out in paragraph 26 of the Commons Registration (England) Regulations 2014 to determine applications to amend the registers of common land and town and village greens.

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8. Equality Impact Assessment:

It is not considered that an Equality Impact Assessment is required or that there is likely to be any equality impact as a consequence of this decision.

9. Significant risks:

Should the Council make a decision which is opposed there may be a risk of judicial review. These costs can be significant and can represent a financial risk to the Council, though this should not allow this information to influence the decision about whether the application should be accepted or refused, as such decision should be based on the evidence before it.

10. Consultation including Overview and Scrutiny Committee and Local Member Representation:

10.1 Overview and Scrutiny Consultation/Comments:

As this is a regulatory matter and not a matter of strategic importance the Environment Overview and Scrutiny Committee has not been consulted.

10.2 Local Division Member Comments:

Councillors Mrs Shuttlewood and Mrs Lisa Gorman were sent copies of the Notice of application, but no representations were received.

On 28 July 2016 Mrs Maggie Vale was elected Member for the electoral division of Newlyn and Goonhavern. Mrs Vale was consulted on 1st November 2016 with the draft decision, but has made no comment.

Appendices:

None

Background Papers:

All papers relating to this application [No. 2817].

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11. BACKGROUND

- 11.1 An Application was received on the 28th November 2012 from Mr Tomas D.J.S. Hill for the registration of land as common land under Schedule 2.2 of the Commons Act 2006, for 20.876 hectares of land at Crantock Common including the Rushy Green, Crantock in the County of Cornwall. The application form and map is shown as an appendix to this report.
- 11.2 Paragraph 16 of the Commons Registration Regulations 2014 requires an application to be made in accordance with, amongst other things, Schedule 4 of the Regulations. Section 14 of Schedule 4 of the Regulations refers to applications made under Schedule 2, complying with paragraphs (2) and (3) if applicable of the 2006 Act.
- 11.3 The following describes where the application meets and does not meet the legislative requirements for registration as common land.

LEGISLATIVE REQUIREMENTS

Schedule 2(2)(a) of the 2006 Act

12 'The land was not at any time finally registered as common land or as a town or village green under the 1965 Act.'

It is confirmed that whilst part of the application land was provisionally registered as common land under unit No. CL 380 on 6 November 1968, the provisional registration was cancelled on 26th July 1973; therefore the land was not at any time finally registered as common land or as a town or village green under the Commons Registration Act 1965.

Schedule 2(2)(b) of the 2006 Act

13 'Is land which is:

- Regulated by an Act made under the Commons Act 1876 (c.56) confirming a provisional order of the Inclosure Commissioners; or
- Subject to a scheme under the Metropolitan Commons Act 1866 (c.122) or the Commons Act 1899 (c.30); or
- Regulated as common land under a local or personal Act; or
- Otherwise recognised or designated as common land by or under an enactment.'

It is claimed the land is common land by virtue that it is recognised or designated as common land under the 1840 Tithe Map for Crantock Parish, made under the Tithe Commutation Act 1836. It is further claimed in the applicants supporting evidence that the land falls within parcel No's 110, described as Crantock Common being 29 Acres 3 Roods and 31 Perches, and 292 also described as Crantock Common being 8 Acres 3 Roods and 7 Perches.

Schedule 2(2)(c) of the 2006 Act

14 'Is land to which this Part applies.'

It is confirmed that the application land is land to which this Part of the 2006 Act relates.

Section 14(1) of Schedule 4 to the 2014 Regulations

15 'An application made under Schedule 2 to the 2006 Act, for the purpose of remedying non-registration or mistaken registration under the 1965 Act must be made on or before 31st December 2020, where the application is to an original registration authority.'

Cornwall Council is an original registration authority, and the application was made on 28th November 2012.

Section 14(2) of Schedule 4 to the 2014 Regulations

16 'An application made under Schedule 2 to the 2006 Act must include a description of the land to which the application relates.'

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The land is described as Crantock Common including land known as The Rushy Green, located in the parish of Crantock, and comprises approximately 20.876 hectares.

Section 14(3) of Schedule 4 to the 2014 Regulations

17a 'In an application made under paragraph 2 or 3 of Schedule 2 to the 2006 Act, the land to which the application relates may only include land that is covered by a building or which is within the curtilage of a building if the owner of that land consents to its registration.'

17b The application land includes land covered by a building, namely a Surf Lifeguards hut/club house, centred on grid reference SW 7852 6096. The owner of the land covered by this building and its curtilage has not consented to the land being registered as common land; therefore this part of the application land fails to meet the legislative requirements for registration as common land. The club house is shown in Appendix A.

17c The application land includes land covered by a building, namely a smaller Surf Lifeguards hut at grid reference SW 7899 6108. The owner of the land covered by this building has not consented to the land being registered as common land; therefore this part of the application land fails to meet the legislative requirements for registration as common land. The hut is shown in Appendix B.

17d The application land includes land covered by a concrete platform at grid reference SW 7899 6108. During the summer months a container is placed on the platform which is used by the owners in the sale or hire of beach goods. The platform and container, neither being buildings, discussed further at paragraph 27b below, fail to meet the legislative requirement above to require the owners consent for registration as common land.

Section 14(4a) of Schedule 4 to the 2014 Regulations

18 'An application made under paragraph 2 of Schedule 2 to the 2006 Act must include evidence of the application of that paragraph, as described in paragraph 2(2) of that Schedule, to the land to which the application relates.'

The application land relates to Schedule 2(2)(b)(iv) of the 2006 Act. The applicant has identified the Tithe Commutation Act 1836 as the Act under which the land was designated as common land.

Section 14(4b) of Schedule 4 to the 2014 Regulations

19 'An application made under paragraph 2 of Schedule 2 to the 2006 Act must include a copy of any enactment or scheme referred to in paragraph 2(2)(b) of that Schedule, by which the land to which the application relates is regulated, recognised or designated, or to which it is subject.'

The application was accompanied by an extract of the Tithe map and apportionment for the parish of Crantock (1840).

Section 14(4c) of Schedule 4 to the 2014 Regulations

20 'An application made under paragraph 2 of Schedule 2 to the 2006 Act must include evidence, if applicable, that any consent required under sub-paragraph (3) has been given.

The application was not accompanied by evidence of consent from the owners of land on which were sited buildings and therefore these parts of the application land fail to meet the legislative requirements for registration as common land.

21 Representations by the National Trust

21a It is argued that the application is deficient in not including at the time of application a complete copy of the 1836 Tithe Act.

21b The owner reserves its position as to whether or not land marked as common land by virtue of the Tithe Commutation Act 1836 and the associated 1840 Tithe Award is sufficient for the purposes of paragraph 2 of Schedule 2 to the Commons Act 2006.

21c It is argued that land immediately abutting the sea is shaded dark grey on the Tithe Plan and there is no number on it to match up with the various parcels identified in the schedule to the 1840 Tithe Award. Therefore the grey land was not marked as common land under the 1840 Tithe Award.

21d It is argued that some of the land is uncoloured on the Tithe Plan (land north of parcels 96, 97 and 63) does not have a number either, and therefore is not marked as common land under the 1840 Tithe Award.

22 Applicants comments

The applicant confirmed that he was happy to remove the surf lifesaving club from the application (please see paragraph 17b above).

23 Defra's Guidance

"Commons registration authorities – correct mistakes" – states:
"Any land in an application or a proposal under the Commons Act 2006, Schedule 2, paragraphs 2 or 3 must still be legally recognised as a common or a green by the relevant piece of law – the legislation that created that particular common or green can't have been revoked."

24 Registration Authority's view

The Registration Authority makes the following comments.

24a Regulation 16(3) states: "An applicant is not required to include with an application a copy of any document specified in Schedule 4 if ... the document has been deposited with the registration authority in

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accordance with any enactment.” Paragraph 6.4.5 of Defra’s Guidance to applicants in the pioneer implementation area, version 1.22 gives the inclosure awards made under the Inclosure Act 1845 as an example of this.

A copy of the Tithe Commutation Act 1836 was supplied to the objector by the registration authority on 17th July 2013, inviting any comments by Friday 30th August 2013.

In the circumstances I think it would be unfair for the registration authority to refuse an application on the grounds the applicant had not included something the Regulations and Guidance had identified as being the responsibility of the registration authority. The registration authority provided a copy of the 1836 Act and extended the time for which representations could be made, therefore affording fairness to all parties concerned.

- 24b** Cornwall Council has processed an application from Wendron Parish Council in January 2010 claiming land at Rame Common to be common land by virtue of the Tithe and Commutation Act 1836. In that case the Council had a pecuniary interest in part of the application land, and in accordance with the regulations, the matter was forwarded to the Planning Inspectorate for determination. In that case the Planning Inspectorate found that the majority of the land met the legislative requirements for registration as common land on the basis of it being recognised or designated common land under the Tithe and Commutation Act 1836. The full decision can be found on the National Archives web site:
<http://webarchive.nationalarchives.gov.uk/20150612123823/http://www.planningportal.gov.uk/planning/countryside/commonland/decisionarchve2012#2012> under their reference COM 322, or Cornwall Councils website: <http://www.cornwall.gov.uk/environment-and-planning/land-and-property/common-land-and-town-and-village-greens/> under reference Application 2749.

Whilst the Tithe Commutation Act 1836 has been amended, it has not been revoked.

The Council is of the view that land marked as common land by virtue of the Tithe Commutation Act 1836 and the associated 1840 Tithe Award is sufficient for the purposes of paragraph 2 of Schedule 2 to the Commons Act 2006.

- 24c** The area shaded grey on the Tithe Map co-incides with areas closely hatched on the Ordnance Survey First Edition 1875-1901 and Second Edition 1906-1908 maps, which is Ordnance Surveys usual symbol indicating an embankment.
An electronic measurement of the ‘29 Acres, 3 Roods and 31 Perches’ of parcel No. 110 was made and this plan can be found on page 15 of this report. This area was found to include the area shaded grey being objected to. It is therefore considered that the areas shaded grey are part of parcel No. 110, and therefore included in the description on page 10 of the Tithe Award as part of Crantock Common.

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- 24d** There is land between parcel numbers 96, 97 and 63 and the line of high water which is uncoloured, or coloured dark brown/grey against the sea and which is un-numbered. The electronic measurement of the '29 Acres, 3 Roods and 31 Perches' referred to at 24c above, was found to exclude this area being objected to. It is therefore considered that this land does not meet the criteria for registration as common land.
- 25 Representations by Messrs Northey, King and Fielden.**
- 25a It is argued that in terms of their land, contained in Land Registry Title No. CL158033 and amounting to 0.194 hectares, it is owned with absolute title to the freehold. The Deeds of the land do not contain any provision for the land to be subject to a tithe rent charge.
- 25b It is argued that the land is not open, uncultivated and unoccupied. It is used to site an ice cream kiosk as part of their business known as Fern Pit Café and Ferry between late April and late September every year and during those months the land is occupied. Outside of those months whilst not running the business from the land, access is allowed to it but not as of right. In addition there is an electrical supply to the land which is used solely by the owners and terminates on the land.
- 25c The registration authority asked and subsequently received photographs of the business activity run on the beach. The photographs show a container placed on a concrete platform, and an ice cream van, together with associated beach goods for hire.
- 26 Applicants comments**
"The representations confirm that at the date of the application, no container was situated upon the land and was therefore unoccupied. I have no objection to the presence of a container during the summer months but such temporary use should not preclude the application land from being registered as common land."
- 27 Registration Authority's view**
The Registration Authority makes the following comments.
- 27a** It is the historic record of the Tithe Map and Apportionment which is used to meet the legislative criteria of the land being described as common land, not the current status of the land. The land falls within parcel No. 655 which is described as Tregunnel Sands under the heading of Commons, roads and wastes on page 10 of the apportionment, with no amount of rent being charged.
- 27b** The online Oxford English dictionary defines a building as: "That which is built, a structure, edifice; now a structure of the nature of a house built where it is to stand".
The online Cambridge dictionary defines a building as: "a structure with walls and a roof, such as a house or factory."
The online Collins dictionary defines a building as: "something built with a roof and walls, such as a house or factory."

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Neither the platform nor container can properly be described as buildings and as such do not fall within Regulation 14(3) as commented upon at paragraph 17 above.

28 Other Considerations

- 28a** The electronic measurement of the '29 Acres, 3 Roods and 31 Perches', referred to at paragraphs 23c and d above was found to exclude the eastern part of the application land. The applicant has since confirmed the eastern part is numbered 655 on the Tithe Map and not part of parcel number 110. Page 10 of the Tithe Award supplied identifies parcel number 655 as 97 acres and 2 roods of Tregunnel Sands, also under the heading of Commons, Roads and Wastes. This information is provided under Regulation 20(2) where the registration authority may direct the applicant to provide further information or documents necessary to enable the application to be determined. It is therefore considered that this land meets the criteria for registration as common land.
- 28b** Mapping anomaly. In comparing the Tithe Act map with modern Ordnance Survey mapping, there is a discrepancy concerning the north-west boundary against the sea. It is assumed the Tithe Map shows the high water mark or presumed high water mark at the time the map was drawn which differs from the current line of the high water mark; however the high water mark appears to be the sea-ward boundary of the common. Given that the high water mark is a changeable line, as accretion and diluvion changes the course of a river, it is proposed to make an entry along the lines that at the date of registration the northern boundary coincides with the high water mark of medium tides to help clarify the sea-ward boundary of the common, as appears in standard entry 9 of The Commons Registration (Disposal of Disputed Registrations) Regulations 1972.

29 Method of Determining Application

The Commons Regulations (England) Regulations 2014 states that:

27(1) The determining authority must, in determining any application or proposal, take into account:

(d) any oral representations made by any person in accordance with paragraph (7)

27(6) Paragraph (7) applies in relation to any application which the determining authority decides to determine without holding a public inquiry or hearing in accordance with regulation 32.

27(7) the determining authority:

(a) May not refuse an application without first offering the applicant an opportunity to make oral representations; and

(b) May not grant or refuse an application without first offering any person (other than the applicant) for whom the grant or refusal would represent a determination of that person's civil rights an opportunity to make oral representations.

The Registration Authority issued a draft determination on 15th September 2016 along much the same lines as this document to the interested parties asking if any wished to make oral representations. It is confirmed that none of the interested parties expressed a wish to make oral representations.

30 Decision

On the balance of probabilities all of the criteria for the registration of most of the application land as common land have been satisfied and:

The application is granted in part and the land edged red on the plan on the following page, now excluding:

(i) the western most part of the application land described at paragraph 24d above,

(ii) the Surf Lifeguard hut described at paragraph 17b above and

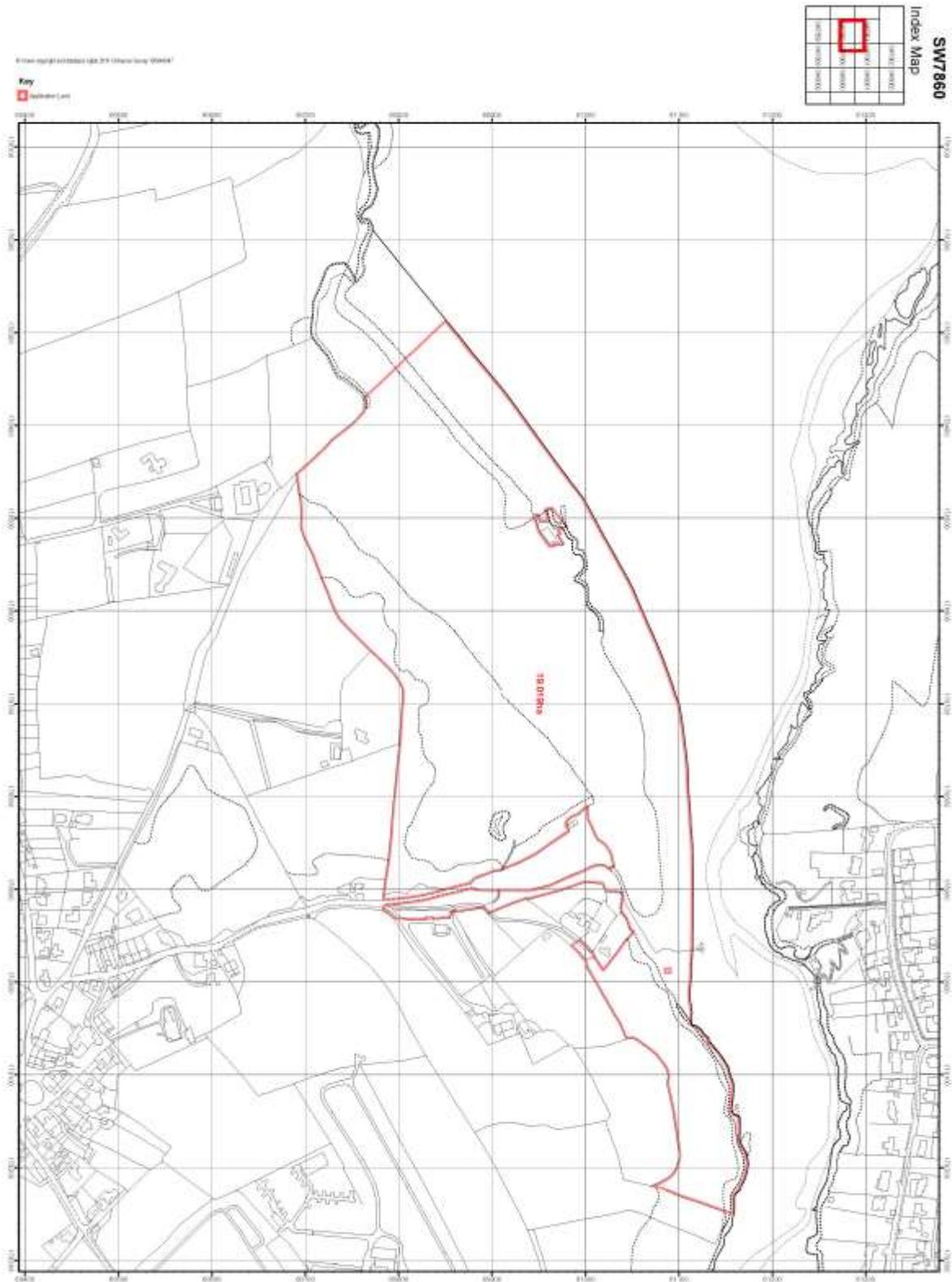
(iii) the Surf Lifeguard hut described at paragraph 17c above,

shall be added to the register of common land, comprising approximately 19.019 hectares.

Name: *Mike Eastwood*
Title: Countryside Access Team Leader
Date: 14 February 2017

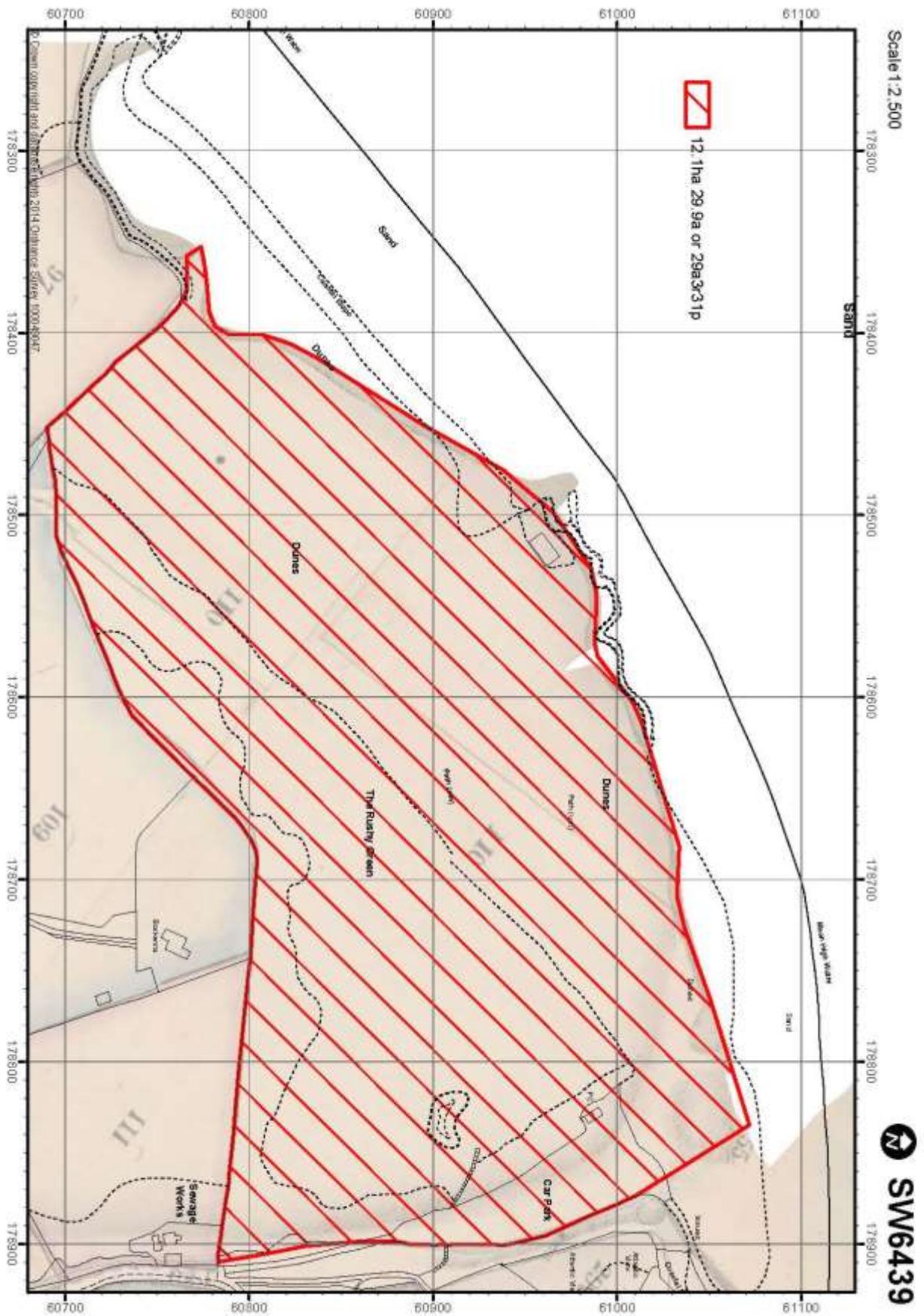
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Plan of land to be registered as common land



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Plan of measurement of Tithe Map parcel No.110



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21 Supporting Information

Application 2817

22 Background Papers:

The Commons Act 2006:

<http://www.legislation.gov.uk/ukpga/2006/26/contents>

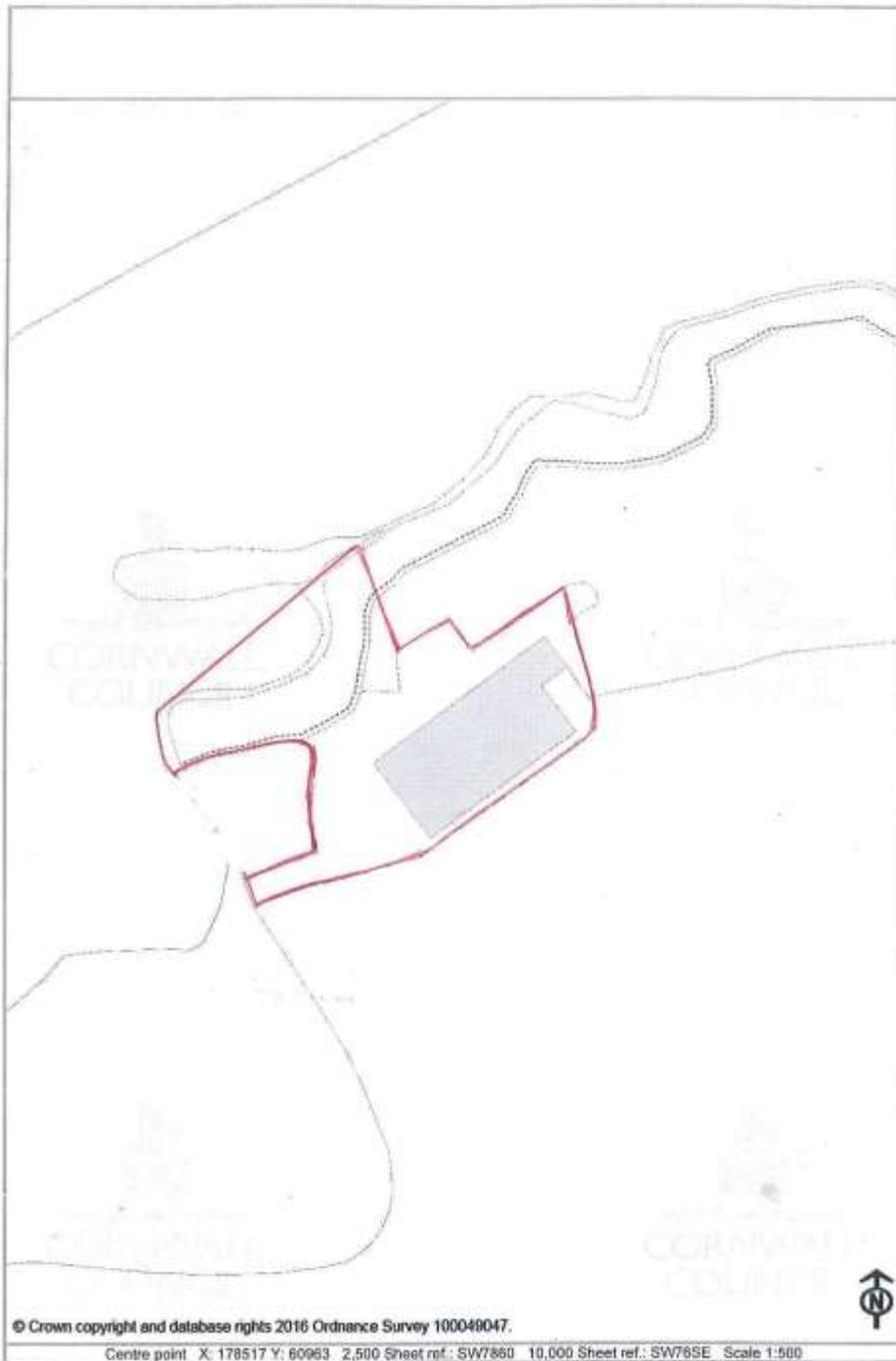
The Commons Registration (General) Regulations 2008:

<http://www.legislation.gov.uk/uksi/2008/1961/contents/made>

Guidance to commons registration authorities and the Planning Inspectorate for the pioneer implementation (version 2.0, December 2014) (Defra)

<https://www.gov.uk/common-land-management-protection-and-registering-to-use>

(Scroll down to heading: Pioneer documents including guidance and statutory instruments)



<https://map.cornwall.gov.uk/website/ccmap/?zoomlevel=11&xcoord=178517&ycoord...> 17/08/2016

