

FORM A


APPLICATION FOR MODIFICATION ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

THE ISLE OF WIGHT COUNCIL  
DEFINITIVE MAP AND STATEMENT

To: Isle of Wight Council of County Hall, High Street, Newport, IW, PO30 1UD

We [full name[s]]... LESLIE RICHARD AND LYNDIA ELIZABETH THORNE.

of: [full address[es]]... 

hereby apply for an Order under Section 53(2) of the Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement for the area by  strike out what does not apply and \*delete as appropriate]

[deleting the [footpath] [bridleway] [byway open to all traffic]\* NT 46.

from THE EASTERN END OF THE TOP OF THE SEA WALL

to THE WESTERN END OF THE TOP OF THE SEA WALL - FROM THE DEFINITIVE STATEMENT.

[adding the [footpath] [bridleway] [byway open to all traffic]\*

from.....

to.....]

[[upgrading] [downgrading]\* to a [footpath] [bridleway] [byway open to all traffic]\* the [footpath] [bridleway] [byway open to all traffic]\*

from.....

to.....]

[[varying] [adding to]\* the particulars relating to the [footpath] [bridleway] [byway open to all traffic]\*

from THE FORESHORE SOUTH OF CASTLE HAVEN LANE


to THE FORESHORE APPROXIMATELY 35 METRES WESTWARD

by providing that THE DEFINITIVE STATEMENT DESCRIBES THE ROUTE OF NT 46 AS CONTINUING ALONG THE FORESHORE LINKING THE ABOVE LOCATIONS (THEREBY COMPLYING WITH THE ALIGNMENT SHOWN ON DEFINITIVE MAPS.)

as shown on the map <sup>s</sup> accompanying this application. (A) AND DEPICT (A)

We attach copies of the documentary evidence (including user evidence forms of witnesses) in support of this application (as set out on the list below).

Dated: 29 October 2013.

Signed: 

List of documents/user evidence forms (if necessary continue on the reverse of this page or on a separate sheet and attach it to this form):

- 1.) ALL RELEVANT DOCUMENTS FROM OUR APPLICATION OF 12/2009.
- 2.) PRE-CONTRACT PHOTOGRAPHS TAKEN IN BOASOM MANAGEMENT FILES IN 2011 (POST 11/4/2011) - INSPECTED COPIES INSUBMITTED.
- 3.) PHOTO 4.) FROM 2.) ABOVE - SHOWING SUEAR WALL FACE TO WESTERN END OF 86A WALL.
- 4.) PHOTO OF EXHIBIT PLACED IN NIGON VILLAGE HALL WOOD CABINET BY MR A. ELDRIQUE.
- 5.) 1/750 SCALE PLAN (A) SUPPLIED BY IWE CORRECTED/AMENDED 2 SHOWING ROUTE CLAIMED BY APPLICANT.
- 6.) DETAIL (A) OVERLAYED ON OS MAP OF 1946 - CORRECT WHEN ROWS WERE CREATED.
- 7.) 1946 OS MAP - ANNOTATED WITH FEATURES DESCRIBED IN DEFINITIVE STATEMENT.
- 8.) PLAN (B) & DETAIL (B) SHOWING ROUTE DESCRIBED IN APRIL 2011 AMENDMENT OF THE DEFINITIVE STATEMENT.
- 9.) PLAN (C) & DETAIL (C) SHOWING ROUTE DESCRIBED IN THE ORIGINAL DEFINITIVE STATEMENT.

(FORM A)



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Mrs Alex Russell  
Isle Of Wight Council  
Coastal Centre, Dudley Road  
Ventnor  
Isle Of Wight  
P038 1EJ

Your Ref: RWA/NT46  
Our Ref: FPS/P2114/14A/2  
Date: 10 February 2012

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Dear Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14  
Isle Of Wight Council  
Refusal of Application to delete part of Public Footpath NT46 Castlehaven, Niton

I enclose herewith a copy of the Inspector's decision on this Appeal.

For your information, you will also find enclosed two leaflets entitled *Our Complaints Procedure* and *Challenging the Decision in the High Court*.

Please note that this decision can only be challenged by applying to the Administrative Court for a judicial review.

If you have any queries about the enclosed decision, please contact the Quality Assurance Unit at the following address:

Quality Assurance Unit  
The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
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BS1 6PN

Tel: 0117 372 8252

<http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback/feedback>

An electronic version of the decision will shortly appear on the Planning Portal website.

Yours faithfully

*David Bourton*  
Rights of Way Section



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## Appeal Decision

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

an Inspector on direction by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 10 FEB 2012

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### Appeal Ref: FPS/P2114/14A/2

- This appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of the Isle of Wight Council not to make an Order under section 53(2) of that Act.
- The application dated 7 December 2009 was refused by way of notice from the Isle of Wight Council in a letter dated 16 May 2011.
- The appellant claims that part of the route recorded as Public Footpath NT46 Castlehaven, Niton, should be deleted from the definitive map and statement.

### Summary of Decision: The appeal is dismissed

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#### Preliminary Matters

1. I am appointed by the Secretary of State for Environment, Food and Rural Affairs to determine an appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 ("the 1981 Act").
2. I have not visited the site but I am satisfied I can make my decision without the need to do so.
3. This appeal needs to be determined in light of the evidence that was before the Isle of Wight Council ("the Council") at the time of its decision regarding the application. Two items submitted by the appellant were therefore returned to him as it cannot be the case that e-mails sent on 26 April and 4 May 2011 were evidence considered by the Council during their decision, taken at the meeting of 11 April 2011. I would note that I have not seen these documents.
4. I considered a request by the appellant to submit a recording or transcript of the Committee meeting at which the Council determined not to make an Order in relation to the application. It does not seem to me that the discussion during the meeting would provide further evidence and I was satisfied that it would not assist in my decision.
5. Whilst the appellant feels that Council Officers altered their position in relation to the matters before them, the decision on the application was one to be taken by the democratically elected Councillors. I note that there has been no judicial review application to overturn the Committee minutes on the basis that they are incorrect and so I accept them as the official record of that decision.

#### Description of the route

6. The appeal relates to part of the route recorded on the Definitive Map and Statement ("the DMS") as a public footpath numbered NT46 ("NT46"). The route runs generally in a loop at the southern end of Castle Haven Lane around the property known as Beach Cottage ("the cottage"). The application seeks to delete the southerly-most section of NT46 lying on the seaward side of the cottage.

## Main issues

7. In considering the evidence and submissions, I take account of the relevant part of the 1981 Act and relevant court judgements.
8. The appellant argues that in 1952 (see paragraph 13) there were two routes in this area, one a private route on top of the sea wall, associated with the campsite to the west of the cottage, which was then in the same ownership; and another at the base of the sea wall on the foreshore. Given the changes in this area, both as a result of the action of the sea and actions taken by the authorities to provide defences against natural erosion, the route on the foreshore no longer physically exists and so should be deleted from the DMS.
9. The Council take the view that the public footpath is not on the foreshore but on the sea wall; it has not been eroded and so should not be deleted.
10. Therefore, the main issue between the parties is the position of the footpath on the ground. Reference was made to *R oao Norfolk County Council v SSEFRA (2005)* ("*Norfolk*"), which confirmed that where there is a discrepancy in the DMS, the Map takes precedence, but "*...the correct approach to the interpretation...must be a practical one. They should be examined together with a view to resolving the question whether they are truly in conflict or the statement can properly be read as describing the position of the right of way*".
11. The 1981 Act does not state whether the Definitive Map or the Statement has precedence. However, Section 56(1)(e) of the 1981 Act indicates that the purpose of the two documents is different as "*...the map is conclusive evidence...as to a highway shown thereon, any particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position and width thereof at that date...*". The Map provides conclusive evidence as to the existence and status of any right of way shown, whilst the Statement is conclusive evidence as to the position and width.
12. It was confirmed in *Norfolk* that once there was a proposal to modify the Map, there was no artificial presumption in favour of one document or the other. If there is a clear discrepancy between the Map and the Statement, what is required is simply a consideration as to which route, on the balance of probabilities, is correct, if any, in the light of all the relevant evidence and it would be inappropriate to impose an artificial presumption on one as against the other. "*Each should be accorded the weight analysis of the documents themselves and the extrinsic evidence, including the situation on the ground at the relevant date, demonstrates is appropriate.*" This appeal does not represent the 'review stage', as no Order has been made, however, I consider that it is appropriate for me to consider the evidence in this way.
13. The DMS confirms that the public rights have existed since a particular date, which is referred to as the 'relevant date'. The current DMS has taken its information from the first DMS. I consider that I need to look at whether there is in fact a discrepancy between the Map and the Statement and evidence of whether there were two separate routes, one public and one private, at the relevant date of the first DMS, which was 11 November 1952.
14. If, having considered the above, I am satisfied that the public right of way was on the foreshore, and there was no public right of way on the sea wall, section 53(3)(c) of the 1981 Act states that an Order should be made to modify the

DMS for an area on the discovery of evidence which, when considered with all other relevant evidence, shows:

(iii) *that there is no public right of way over land shown in the map and statement as a highway of any description...*"

15. This is a slightly different situation from usual as, if I am satisfied that the footpath route is on the foreshore then the public rights may have ceased to physically exist due to the changes to the land in that area and so should be deleted. The appellant does not argue that there is no right of way but rather that the DMS has been misinterpreted by the Council. He seeks to show that the route lies on the foreshore to the south of the sea wall and not on the sea wall. I consider that defra Circular 1/09, Version 2, October 2009, is still relevant in saying that "...Where there is...an application [to delete a right of way], it will be for those who contend that there is no right of way...to prove that the map requires amendment due to the discovery of evidence, which when considered with all other relevant evidence clearly shows that the right of way should be...deleted...".
16. In relation to the weight to be placed on the DMS the authority is *Trevelyan v Secretary of State for the Environment, 2001*, which holds that the initial presumption in cases of deletion must be that the right of way exists. The standard of proof required to demonstrate that it does not is the 'balance of probabilities', however, evidence of some substance must be put in the balance to outweigh the initial presumption. The term used in this case was that 'clear and cogent' evidence was required.

### **Assessment of the evidence**

#### ***The Definitive Map and Statement***

17. The National Parks and Access to the Countryside Act 1949 ("the 1949 Act") introduced the concept of the DMS. It was generally the case that the Parish Council would provide information to the surveying authority as to the rights of way in their area and the information was compiled into the Draft Map. On publication of the Draft Map there were opportunities for anyone to object to the inclusion, omission or incorrect recording of a route, with an appeal process. Once these matters were determined a Provisional Map would be published and at this point landowners were able to raise objections through the Quarter Sessions. Following this the DMS was produced and there was a further opportunity for challenge on procedural grounds. The same process, with opportunities for challenge, was to be followed at Review.
18. NT46 was included on the first DMS of 1952, having been shown in the Niton Parish Council ("the Parish Council") Parish Survey and the Draft and Provisional Maps. No information has been provided of the review process but the current DMS dates from 2000 and so it seems that there has been a later revision or consolidation of the DMS.
19. The current Definitive Map is at such a scale that it is difficult to be clear exactly where the route runs in the section directly south of the cottage. However, there was no indication of any legal changes to the route since the 1952 DMS and I agree with the Council that the 1952 Definitive Map clearly shows route between the parallel lines denoting the sea wall in this location.
20. I understand the Definitive Statement to arise from the Parish survey form. The route is *"To shore then in front of Beach Cottage to join path 38 [starting*

from] Boat House, then down metalled road to shore, then Westward along the top of the Sea Wall in front of Beach Cottage, turn right up path beside a brook to join Path 38 about 20 yards from the start. The path is in good condition."

21. I agree that the scale of the current Definitive Map is such that the width of the route marked could encompass a route on the foreshore, however, giving appropriate weight to the purpose of the Map and the Statement, as set out in section 56 of the 1981 Act, see paragraph 11, I consider that the Statement clearly describes the route shown on the Map to the south of the cottage. I agree with the Council that, in relation to this section, there does not seem to be a conflict between the Map and the Statement. I am satisfied, as set out in *Norfolk*, that "...the statement can properly be read as describing the position of the right of way".
22. The appellant claims that in 1952 there was a 4 metre drop at the western end of the sea wall, such that it could have been used as a public right of way. Whilst the Council seem to have accepted this position in their decision to delete this section, corresponding to approximately B - C on the application plans, this would not prevent there having been rights on that route. Their loss to the sea, as accepted by the Council, would not remove any public rights on the sea wall, although the result might be that this became a cul-de-sac route.
23. There is a discrepancy west of the cottage as the Map shows the route south of the castle mound, joining Footpath 38 ("NT38") further south, whilst the Statement describes the route as running north beside the cottage. I do not consider that the apparent mistake in the recording of the route west of the cottage automatically affects the weight to be placed on the DMS as a whole. I am satisfied that there is no discrepancy between the Map and Statement in relation to section A - B, however, I will look to other evidence to see how this relates to the appellant's claim that the route did not run on the sea wall but instead further to the south on the foreshore.

### **Mapping**

24. Ordnance Survey ("OS") has developed a variety of maps to meet the need for accurate and up-to-date maps of the UK. Later OS maps, especially the larger scale plans, provide an accurate representation of routes on the ground at the time of the survey.
25. The 1908 OS map shows the sea wall south of the cottage and a route running west in front of the castle mound to join a route, annotated 'F.P.'. These are the routes shown on the Definitive Map as NT46 and NT38 respectively. To the east of the cottage there is the green.
26. By the time of the survey for the 1939 OS map no route was shown west of the cottage joining NT38. The appellant argues that it is possible to determine the height of the sea wall from the 1939 OS map, by reference to the sea levels and judging from photographs of the gradient of the foreshore in that area. I simply cannot follow this argument and do not consider it possible to determine the height of the sea wall in relation to the surrounding land at that time from the information supplied.
27. I note that the appellant received an opinion from the National Map Centre that a feature south of the sea wall on the 1939 map may indicate a ramp. Given the appellants' argument, by reference to a 1946 photograph, that access to the foreshore was available from the green I can see no reason for a ramp in

this location running westerly, as set out in his 'perspective sketch', and there is no other evidence to confirm this assumption.

28. The rest of the mapping arises after the relevant date. The 1971<sup>1</sup> OS map is of interest in that it shows a route west of the cottage, running from the sea wall, which appears to relate to the route described in this area in the 1950 Parish survey and now the Definitive Statement.
29. The OS mapping shows that there were two routes west of the cottage, both having access from the sea wall, one before and one after the relevant date. The OS maps do not show the status of any routes thereon but indicate that they physically existed, and must therefore have been in use, at the times of the relevant surveys. The maps do not show a feature that could represent a footpath on the foreshore.

### ***The Parish Council Survey and Minutes***

30. The Parish Council survey form, which led to the Definitive Statement, shows the route was walked on 22 June 1950. The appellant says that the "boat house" referred to is a coal barn, however, the current or recent use may not reflect use some 60 years ago. Without further evidence on this point, I give it no weight in showing that the statement suggests a lack of local knowledge.
31. The survey map was on an OS base which showed the route seen on the 1908 OS mapping. Given that the 1939 mapping did not show this route it seems that the base mapping used was at least eleven years out-of-date at the time of the survey.
32. The appellant referred to a statement relating to the involvement of Parish Councils in the 1949 Act processes, apparently made in the House of Lords. However, he did not set out the details of the relevant case and so I have not been able to consider it.
33. He commented on the Parish minutes, which he felt showed that there had not been opportunities in the preparation of the Parish survey for errors to be found. However, I consider that the minutes do show that the Parish Council met specifically to discuss the 'Footpaths Survey' and responded to queries from the Council. It appears that they did approach their role as they should.
34. It should also be remembered that the process of finalising the DMS had several, public, stages, as set out above. In the absence of a demonstrable error in procedural matters it appears that everything that should have been done under the 1949 Act, and subsequent Acts, was done as required. There have been several opportunities to challenge the DMS at the Draft and Provisional stages and subsequently on procedural grounds both in relation to the original and current DMS but this did not occur.
35. I also note the consultation response of the current Parish Council that this route "...is in constant public use and has been, exactly as it exists now, for the past 50 years." The appellant fairly acknowledges that sometimes people walk along the sea wall, as well as the coastal protection boulders.
36. The Parish Council survey and minutes do not lessen the weight I would place on the Definitive Map in relation to the route on the sea wall. There is nothing to suggest that anything was not done properly, only that a mistake in relation

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<sup>1</sup> This is the date given by the appellant but it is possible that this should be 1977.



to the position of the route to the west may have arisen from the use of out-of-date mapping.

### **Photographs**

37. The supplied photographs were not of great quality. Given that the time of day a photograph was taken, and the location of the camera, can be significant, as shadows and other objects in the frame can hide or distort features, I am wary of placing great evidential weight on them in any case.
38. There were some photographs dating from the 1920s and 1940s, however, generally the focus of view is to the east of the cottage and cannot assist in relation to the state of the sea wall at the western end. The 1946 aerial photograph copy was not of particularly good quality and does not assist other than in identifying general features.
39. Other photographs were dated after the relevant date. The appellant notes that one from the '1960s' shows the sea wall gated at the eastern end and claims that this shows the sea wall was private. However, the only evidence of the presence of a gate arises after the relevant date and would not necessarily prevent the existence of public rights in any case.

### **Documentary Evidence Summary**

40. The limited documentary evidence arising from before the relevant date shows that a route did exist on the Definitive line and does not show, or suggest, a route existed on the foreshore. I do not find it sufficient to show that the Definitive line was not a public right of way prior to the relevant date.

### **Witness Statements**

41. The appellant relied upon an interview he conducted with a local resident, who had been born in Niton in the mid - late 1940s and had always lived there. This witness apparently said that there was a route through the cottage from the green to the caravan site to the west, as the cottage and caravan site were in the same ownership and this gave access to the toilets and tea rooms. The entrance was gated and was not meant for general public use as it only led to the caravan site. He did not recall a pathway in front of the castle mound or west of the caravan site.
42. One of the witnesses relied upon by the Council referred to there being two routes to the west of the cottage, one up alongside the stream, which was a private path connected to the caravan site, and one onto the rocks and in front of the castle mound. The drop at the western end varied due to the tide and weather. All these witnesses referred to the sea wall as the public right of way.
43. Concerns were raised regarding the lack of signed statements, however, given that the majority of the witness evidence arises after the relevant date it is limited in its usefulness in any event. I have placed very little weight on any of the witness statements.
44. I note that the appellant believed that there were more witnesses who could assist the Council in their decision, however, the burden of proof lies on the person who wishes to alter the DMS. If the appellant does have other witnesses, or any other evidence, relating to the route in, or before, November 1952, then it is open to him to present that evidence to the Council.

### **Other Information**

45. It seems that the affected land at that time was in one ownership, with a caravan site, toilets and tea rooms. The appellant says that this included the foreshore but, even if this were the case, which has not been demonstrated, there is no evidence to support the proposition that the Parish survey was undertaken with a view to ensuring continued access to the foreshore. The survey specifically refers to the sea wall and not the foreshore in this area.
46. I note that the appellant felt that the response to search enquiries indicated that the Council believed the route not to follow the sea wall. It is not clear to me whether or not ownership of the sea wall itself lies with the cottage; the land charges plan from 2006 suggests it does whilst plan A attached to the application suggests that it does not. However, regardless of ownership, I consider that the description that the cottage "...appears to abut [the footpath]..." can be reasonably understood to refer to a route on the sea wall abutting the cottage garden wall.
47. I also note the response of the Definitive Map Officer in 2007 that the right of way round the seaward side of the cottage was "...no longer used or usable in practice...". Whilst, as suggested by the appellant, it may be the case that her understanding of the route at that time was that it did not follow the sea wall, I do not consider this can help determine the actual location. That can only be determined from the evidence.

### **Discussion**

48. Section 53(3)(c) relies on there having been a "...discovery...of evidence...". It is my understanding that this is to avoid the possibility of changes where the evidence on which the routes were first based has been lost. This was set out in *R v Secretary of State for the Environment, ex parte Hood, 1975* ("Hood") where it was said "*The definitive map in 1952 was based on evidence then available, including, no doubt, the evidence of the oldest inhabitants then living. Such evidence might well have been lost or forgotten by 1975. So it would be very unfair to reopen everything in 1975.*" We are now almost 60 years on from the relevant date of 11 November 1952 and so even further than set out in *Hood*, which I consider makes it even more important to bear in mind that there may have been information then that is no longer available.
49. The appellant has relied upon an interview with a local resident, who was at most 7 years old in 1952, and the interpretation of maps and photographs to show that there was a drop of around 4 metres from the western end of the sea wall which would have prevented anyone from continuing to the west from that point. He argues, therefore, that this could not have been a public route.
50. I consider that the evidence shows, on the balance of probabilities, that a route did exist from the east of the cottage along the sea wall, continuing west, south of the castle mound. This route is referred to by one witness and clearly shown on the 1908 OS map. However, it seems likely that by the time that the Parish survey was undertaken in 1950, this route was not in use. The Council have accepted that by this time there was a drop at the western end of the sea wall, making continued use of the Definitive route unlikely. This was the route recorded on the survey map, as it was shown on the base mapping, but that mapping seems to have been at least eleven years out of date.

51. The route to the west of the cottage, described in the Parish survey, matches a route remembered by witnesses and identified in the 1971 OS map. There is agreement from the general witness evidence, on all sides, that there was access to and from this western route and the green over the sea wall. I note that the Council have taken the view that the "...path beside a brook..." outside the former cottage garden boundary could not have been a public right of way at the relevant date and are to make an Order to this effect, which will allow evidence in relation to this point to be tested.
52. I do not consider, on the balance of probabilities, that the discrepancy as to the route that should be recorded to the west of the cottage displaces the presumption that the DMS are correct in relation to the remaining section subject to this appeal. In reaching this conclusion I take account that there is map and witness evidence showing the existence of both routes west of the cottage, albeit potentially existing at different times. Both these routes connected, at some time, with the sea wall and it has not been demonstrated that the sea wall was private.
53. No evidence has been presented, in terms of maps, photographs or witness statements, to support the argument of the appellant that there was an alternative route on the foreshore, which then connected with any route running west from the cottage.
54. Taking all the evidence together I consider, on the balance of probabilities, that there has not been a discovery of clear and cogent evidence to displace the presumption that the Definitive Map and Statement taken together are correct in recording the route on the top of the sea wall as a public footpath.

#### **Other Matters**

55. Concerns about procedural matters in relation to the Council investigation of the application and the running of the Committee meeting at which it was considered are not relevant to the appeal. I note concerns that the Council altered their stance as to the position of the route from 2007 and that this might be associated with planning issues, and about health and safety in relation to use in this area. These points are not relevant and I have not taken them into account.
56. I note that the appellant was concerned that the Council had taken account of a suggestion of steps but no evidence has been provided to me in relation to steps and so I have not considered this possibility.
57. The appellant raised matters occurring after the relevant date as showing that the route did not exist, or had previously existed on a different alignment, however, I do not consider that these assist in showing the situation in 1952.

#### **Conclusion**

58. Having regard to these and all other matters raised in the written representations I conclude that the appeal should be dismissed.

#### **Formal Decision**

59. The appeal is dismissed.

*Heidi Cruickshank*

**Inspector**



## Our Complaints Procedures

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### **Complaints**

We try hard to ensure that everyone involved in the rights of way process is satisfied with the service they receive from us. Applications and orders to amend the rights of way network can raise strong feelings and it is inevitable that someone will be disappointed with the decision. This can sometimes lead to a complaint, either about the decision itself or the way in which the case was handled.

Sometimes complaints arise due to misunderstandings about how the system for deciding application appeals and orders works. When this happens we will try to explain things as clearly as possible. Sometimes the objectors, applicant, the authority or another interested party may have difficulty accepting a decision simply because they disagree with it.

Although we cannot re-open a case to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how long an order making authority took to submit an order to the Secretary of State) In which case we will explain why and suggest who may be able to deal with the complaint instead.

### **How we investigate complaints**

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the system for deciding rights of way appeals and orders and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly held.

We therefore do our best to ensure that all complaints are investigated quickly, thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

When investigating a complaint we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

### **What we will do if we have made a mistake**

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future.

However, the law does not allow us to amend or change the decision.



INVESTOR IN PEOPLE

### **Taking it further**

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

### **Frequently asked questions**

*"Why can't the decision be reviewed if a mistake has happened?"* – The law does not allow us to do this because a decision is a legal document that can only be reviewed following a successful High Court challenge.

*"If you cannot change a decision, what is the point of complaining?"* – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve.

*"How can Inspectors know about local feeling or issues if they don't live in the area?"* – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

*"I wrote to you with my views, why didn't the Inspector mention this?"* – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

*"How long will I have to wait for a reply to my complaint?"* – You can expect a full reply within 3 weeks.

### **Further information**

Each year we publish our Annual Report and Accounts, setting out details of our performance against the targets set for us by Ministers and how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'Contacting us').

### **Contacting us**

#### **Website**

[www.planningportal.gov.uk/planning/countryside](http://www.planningportal.gov.uk/planning/countryside)

#### **General Enquiries**

Phone: 0117 372 6372

E-mail: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

#### **Complaints and Queries in England:**

Please refer to our website:

[http://www.planning-inspectorate.gov.uk/pins/agency\\_info/complaints/complaints\\_dealing.htm](http://www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm) or write to:

Quality Assurance Unit  
The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN  
Phone: 0117 372 8252

#### **Cardiff Office**

The Planning Inspectorate  
Room 1-004  
Cathays Park  
Cardiff CF1 3NQ  
Phone: 0292 082 3866  
E-mail: [Wales@pins.gsi.gov.uk](mailto:Wales@pins.gsi.gov.uk)

#### **Parliamentary and Health Service Ombudsman**

Millbank Tower, Millbank  
London SW1P 4QP

Complaints Helpline: 0345 015 4033

Website: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

Email: [phso.enquiries@ombudsmah.org.uk](mailto:phso.enquiries@ombudsmah.org.uk)



## Challenging a Decision in the High Court

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### ***Challenging a decision***

Once a decision is issued we have no power to amend or change it. Decisions are therefore final unless successfully challenged in the High Court. We can only reconsider a decision if a challenge is successful and the decision is returned to us for re-determination.

### ***Grounds for challenging the decision***

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful, you would have to show that the Inspector had misinterpreted the law or that some relevant criteria had not been met. If, in relation to an order decision, a mistake has been made, and the Court considers it might have affected the decision, it will quash the decision and return the case to us for re-determination or it will quash the order completely. If the Court considers a mistake has been made on a Schedule 14 Appeal, it will quash the decision and return the case to us for re-determination.

### ***Different order types***

The Act under which the order decision has been **confirmed** will specify the conditions under which it can be challenged, and is thus a statutory right to challenge a confirmed order - often referred to as a Part 8 claim as it is brought under Part 8 of the Civil Procedure Rules 1998. There is no statutory right to challenge where an order is **'not confirmed'**; in these circumstances a judicial review under Part 54 of the Civil Procedure Rules 1998 of the decision not to confirm may be applied for. Both scenarios are set out in more detail below.

### ***Challenges to confirmed orders made under the Wildlife and Countryside Act 1981***

Any person aggrieved by the confirmed order can make an application to the High Court under paragraph 12 of Schedule 15 to the 1981 Act on the grounds i) that the order is not within the power of section 53 or 54; or ii) that any of the requirements of the Schedule have not been complied with. If the challenge is successful, the court will quash the order. The Inspectorate will not be asked to re-determine the case.

**Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of publication of the notice of confirmation - this period cannot be extended.**

### ***Challenges to confirmed orders made under the Town and Country Planning Act 1990 and the Highways Act 1980***

Any person aggrieved by the confirmed order can make an application to the High Court under paragraph 287, in the case of an order made under the 1990 Act, or paragraph 2 of Schedule 2 in the case of an order made under the 1980 Act, on the grounds that i) the order is not within the powers of the Act; or ii) that any of the requirements of the Act or regulations made under it have not been complied with. If the challenge is successful, the court will quash the order.

**Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of publication of the notice of confirmation - this period cannot be extended.**

## ***Challenges to orders which are not confirmed and all Schedule 14 Appeal decisions***

If an order made under any of the Acts is not confirmed, an aggrieved person can only challenge the decision by applying for a judicial review to the Administrative Court for a court order to quash the decision, the matter will then go back to the Inspectorate to re-determine. This also applies to an aggrieved person to a Schedule 14 Appeal decision as there is no statutory right to challenge.

**For applications for judicial review, the Claim form must be filed with the Administrative Court promptly and in any event not later than 3 months after the date of the decision, unless the Court extends this period.**

### ***Who should be named as Defendant in the claim form?***

In order cases the Inspector is usually appointed on behalf of the Secretary of State for Environment, Food and Rural Affairs to confirm an order made by a local authority. In Schedule 14 appeal cases the Inspector is acting as the Secretary of State. The claim form for all types of proceedings should therefore be issued against the Secretary of State for Environment, Food and Rural Affairs and served upon The Solicitor, Litigation and Prosecution Division, Nobel House, 17 Smith Square, London, SW1P 3JR.

### **Interested parties**

Interested parties can find out whether a case has been challenged by contacting the Administrative Court. If you do not know the name of the likely claimant, you will need to provide the Court with the date of the decision and the full title of the order or appeal (including the name of the relevant local authority). The more information you can provide, the easier it will be for the Court to identify it. If a person wants to become a formal party to the Court proceedings then they can make representations to the Court under Part 19 of the Civil Court Procedure Rules 1998 (see overleaf). Should you wish to become a formal party you may wish to seek legal assistance or ask the court for guidance. To be a party to a judicial review a person would have to have a sufficient interest.

**Important Note** - This leaflet is intended for guidance only. It should be noted that there are different procedures involved for statutory challenges and judicial reviews and they follow different timetables. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

### ***Frequently asked questions***

**"Who can make a challenge?"** - In principle, a person must have a sufficient interest (sometimes called standing) in the decision to be able to bring a challenge. This can include statutory objectors, applicants, interested parties as well as the relevant local authority.

**"Who is notified of the challenge?"** - In Part 8 statutory claims, the claimant will serve proceedings on the named defendants. In Judicial Review claims the claimant will serve proceedings on the persons the challenge is against and anyone else they have identified as an interested party. The Planning Inspectorate will not notify anyone of the challenge. The claimant would be expected to identify and include the Council as an interested party. If the defendant and any interested party is aware that

another party should be made aware of the proceedings as an interested party they should include the details of that party in the acknowledgment of service.

*"How much is it likely to cost me?"* - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees - see 'Further Information'). The legal costs involved in preparing and presenting your case in Court can be considerable though. It is usual for the costs of a successful party to be paid by the losing party, therefore if the challenge fails you will usually be ordered to pay the defendant's costs as well as having to cover your own. If the challenge is successful, the defendant may be ordered to pay your reasonable legal costs. However, the court ultimately has the power to issue whatever costs it sees fit.

*"How long will it take?"* - This can vary considerably.

*"Do I need to get legal advice?"* - You do not have to be legally represented in Court but it is advisable to do so, as you may have to deal with complex points of law.

*"Will a successful challenge reverse the order decision?"* - Not necessarily. The Court will either quash the order or quash the decision. Where the decision is quashed, we will be required to re-determine the order. However, an Inspector may come to the same decision again, but for different or expanded reasons. Where the order is quashed, jurisdiction will pass back to the Order Making Authority. They will need to decide whether to make a new order.

*"Will a successful challenge reverse the appeal decision?"*  
Yes. We will be required to re-determine the appeal. However, an Inspector may come to the same decision again, but for different or expanded reasons.

*"If the decision is re-determined will it be by the same Inspector?"*

The same Inspector will be used unless there is a good reason not to do so.

*"What can I do if my challenge fails?"* - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

*"What happens if the order is quashed?"* - Jurisdiction will pass back to the Order Making Authority. They will need to decide whether to make a new order.

*"What can I do if I am not listed as an interested party on the challenge but want to be involved?"* - You can contact the Administrative Court and ask to be listed as an interested party (see Part 54.1(2) of the Civil Procedure Rules 1998 for the definition of an interested party).

*"Can the Planning Inspectorate or the Department for Environment, Food and Rural Affairs, advise me on a challenge?"*  
- Neither the Planning Inspectorate nor the Department for Environment, Food and Rural Affairs can advise you on a challenge or on becoming a formal party - you should seek advice from your own legal adviser.

#### **Contacting us**

High Court Section  
The Planning Inspectorate  
4/11 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

Phone: 0117 372 8962

#### **Website**

[www.planningportal.gov.uk/planning/countryside](http://www.planningportal.gov.uk/planning/countryside)

#### **General Enquiries**

Phone: 0117 372 6372

E-mail: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

#### **Complaints**

Please refer to our website:  
[http://www.planninginspectorate.gov.uk/pins/agency\\_info/complaints/complaints\\_dealing.htm](http://www.planninginspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm)  
Phone: 0117 372 8252

#### **Cardiff Office**

The Planning Inspectorate  
Room 1-004  
Cathays Park  
Cardiff CF1 3NQ

Phone: 0292 082 3866

E-mail: [Wales@pins.gsi.gov.uk](mailto:Wales@pins.gsi.gov.uk)

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Website: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

Email: [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)



### ***Inspection of order documents***

We normally keep most case files for one year after the decision is issued, after which they are destroyed. You can inspect order documents at our Bristol office, by contacting the case officer dealing with the case, or our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey, it may be more convenient to arrange to view the documents at the offices of the relevant local authority.

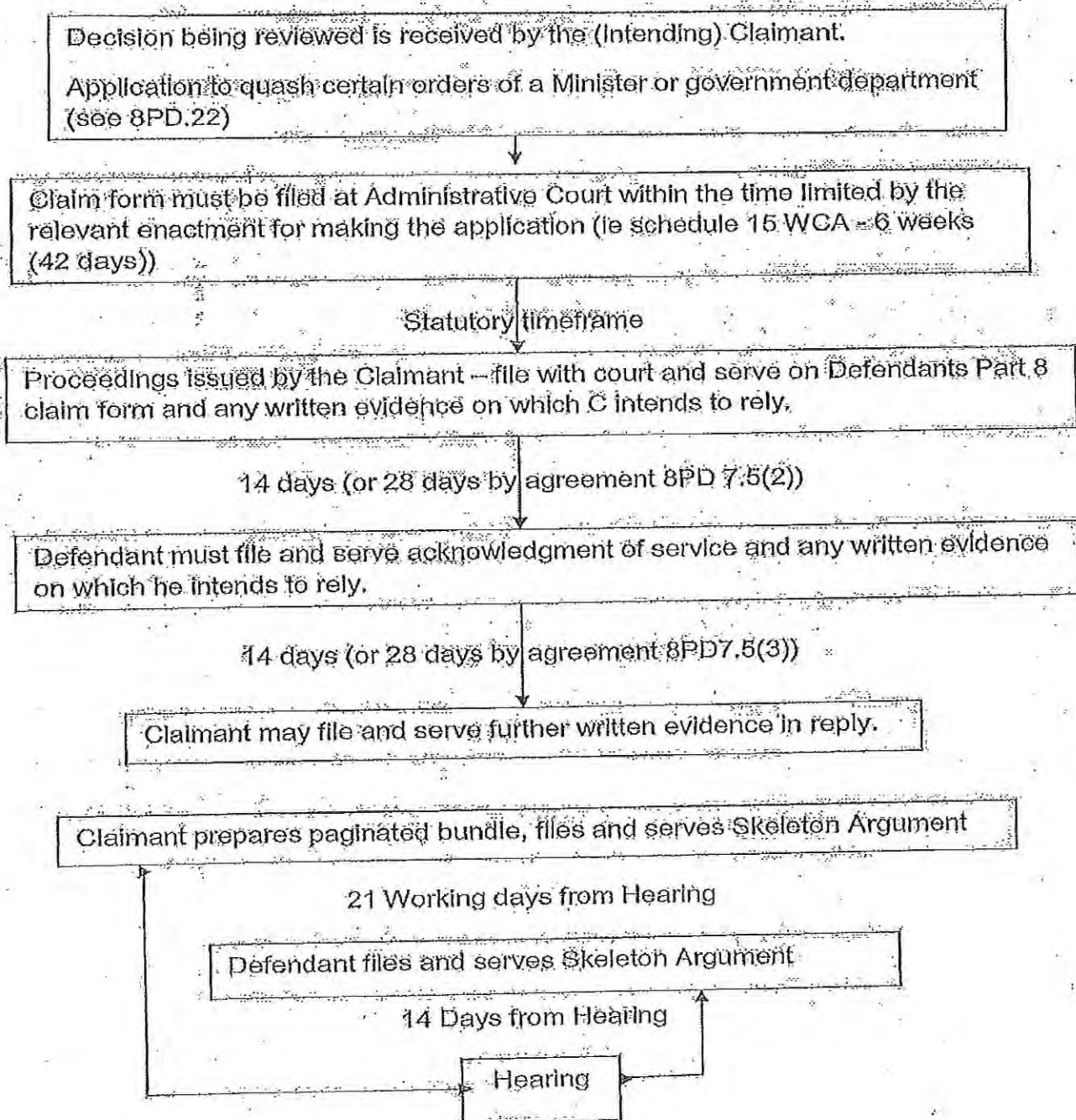
### ***Further information***

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: [www.courtservice.gov.uk](http://www.courtservice.gov.uk). Please see the attached flow charts setting out the main steps to be followed for both the statutory and judicial review procedures.

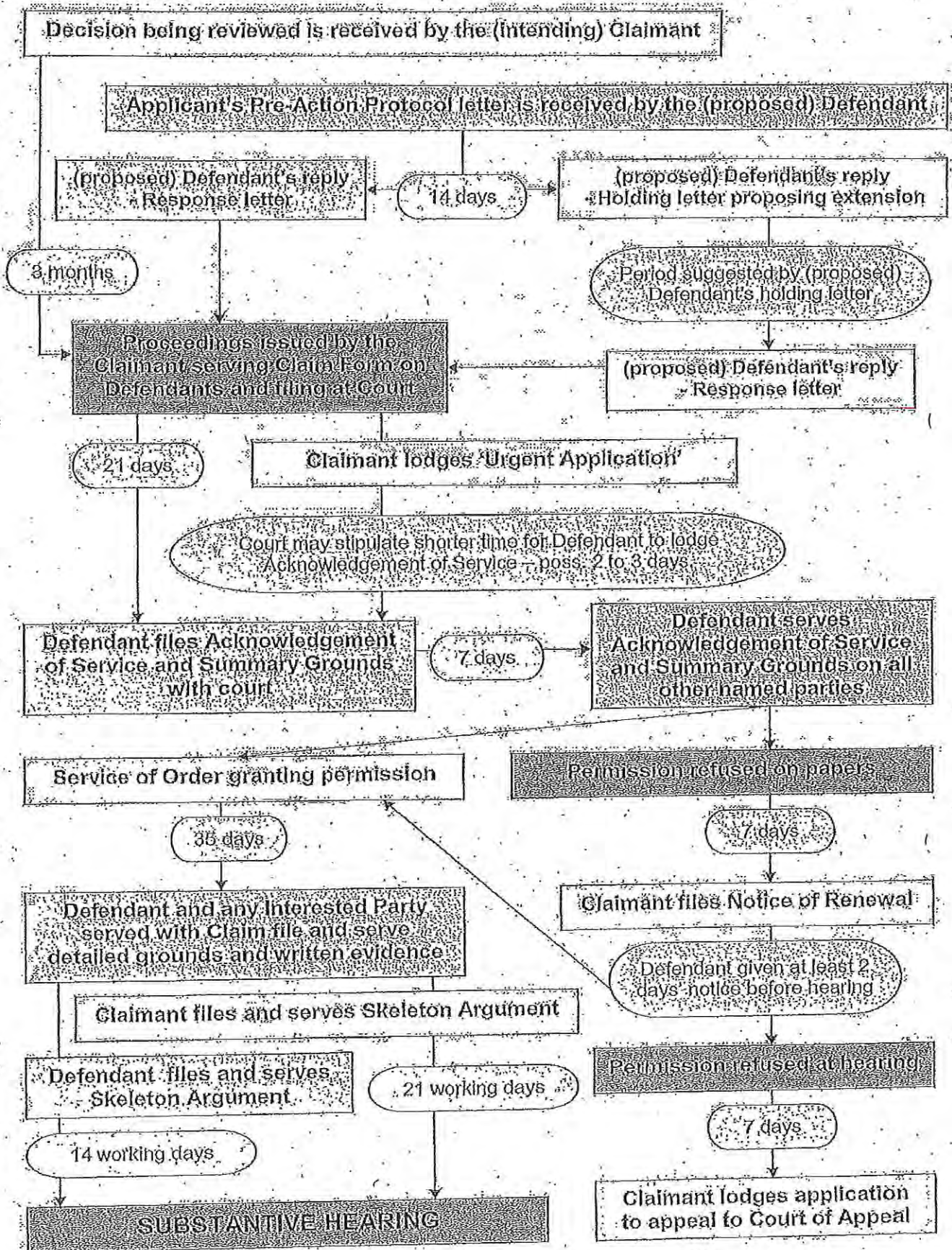
### ***Administrative Justice and Tribunals Council***

If you have any comments on our procedures, you can contact the Administrative Justice and Tribunals Council, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: <http://www.ajtc.gov.uk>. However, it cannot become involved with the merits of individual cases or change a decision.

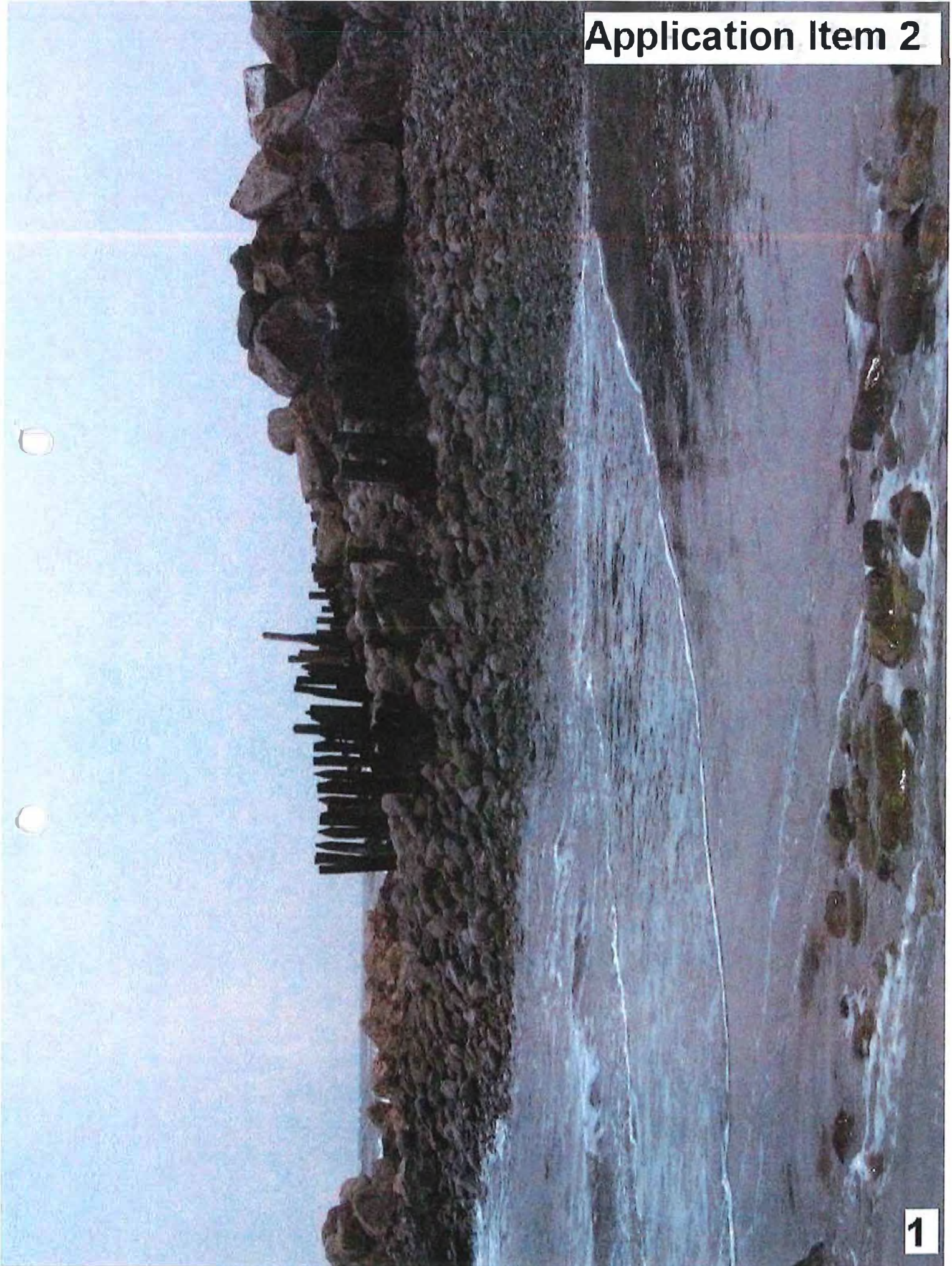
## Timetable for Part 8 Claims



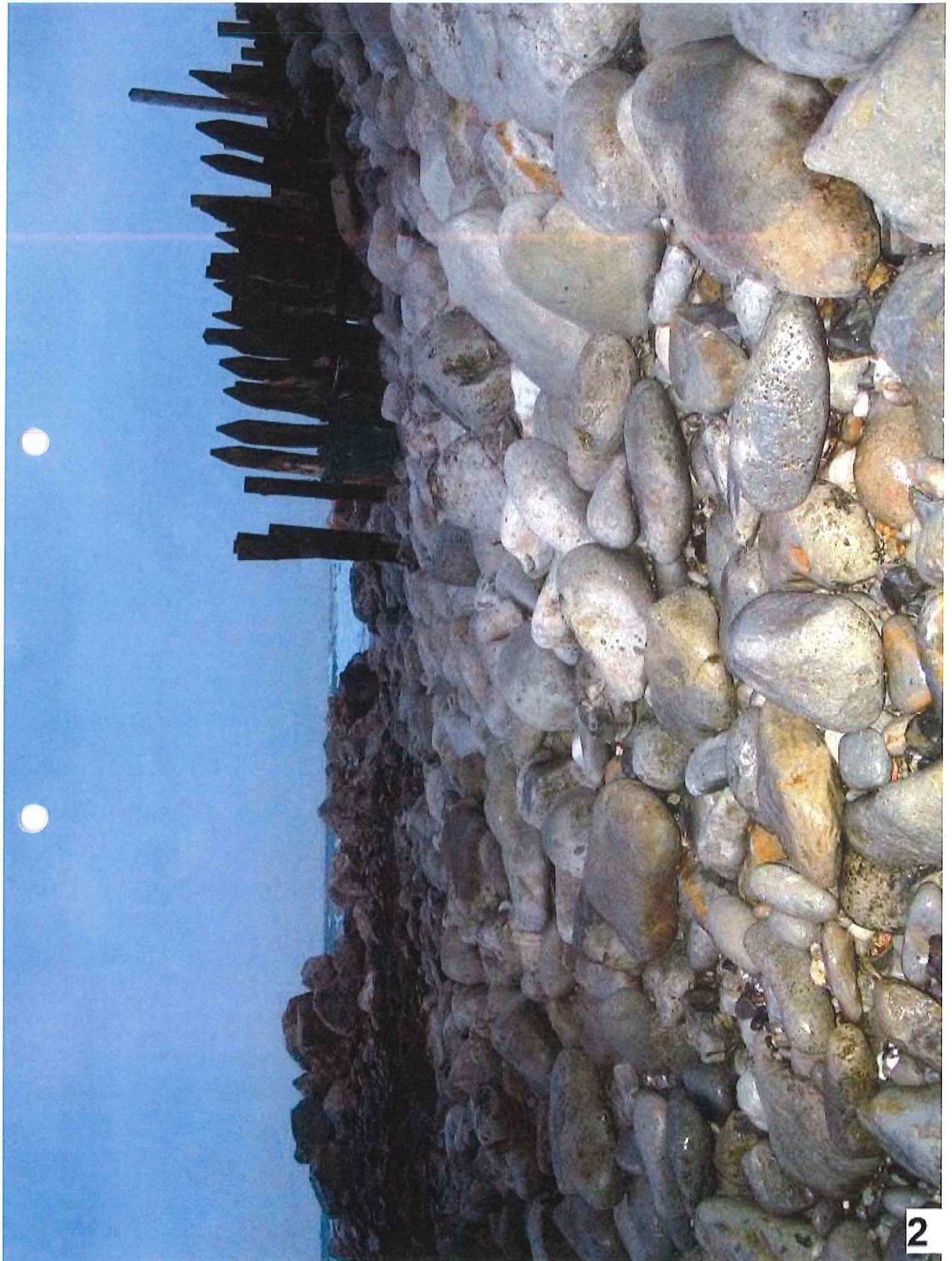
## Timetable for Judicial Review



Application Item 2



1



2

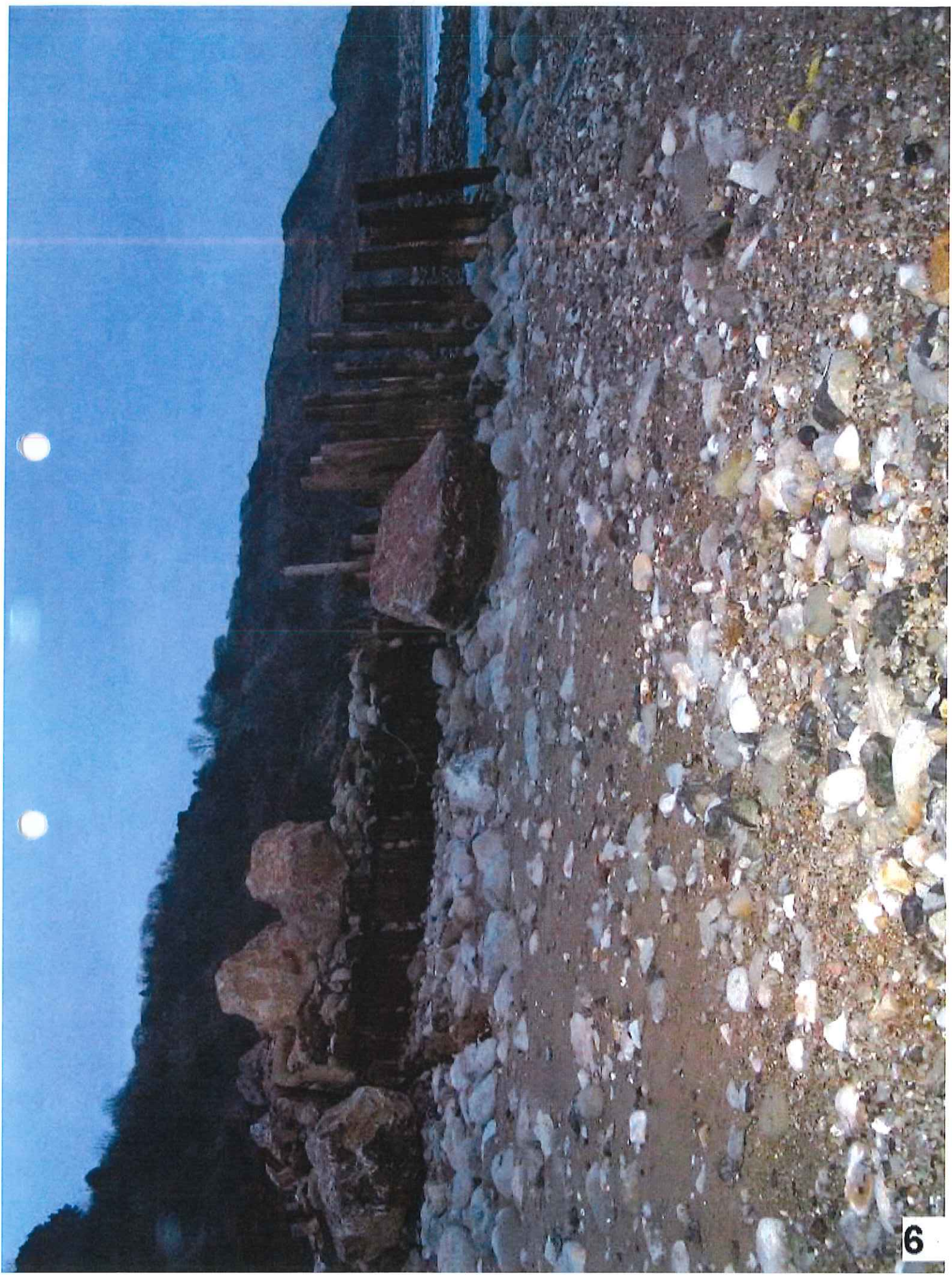


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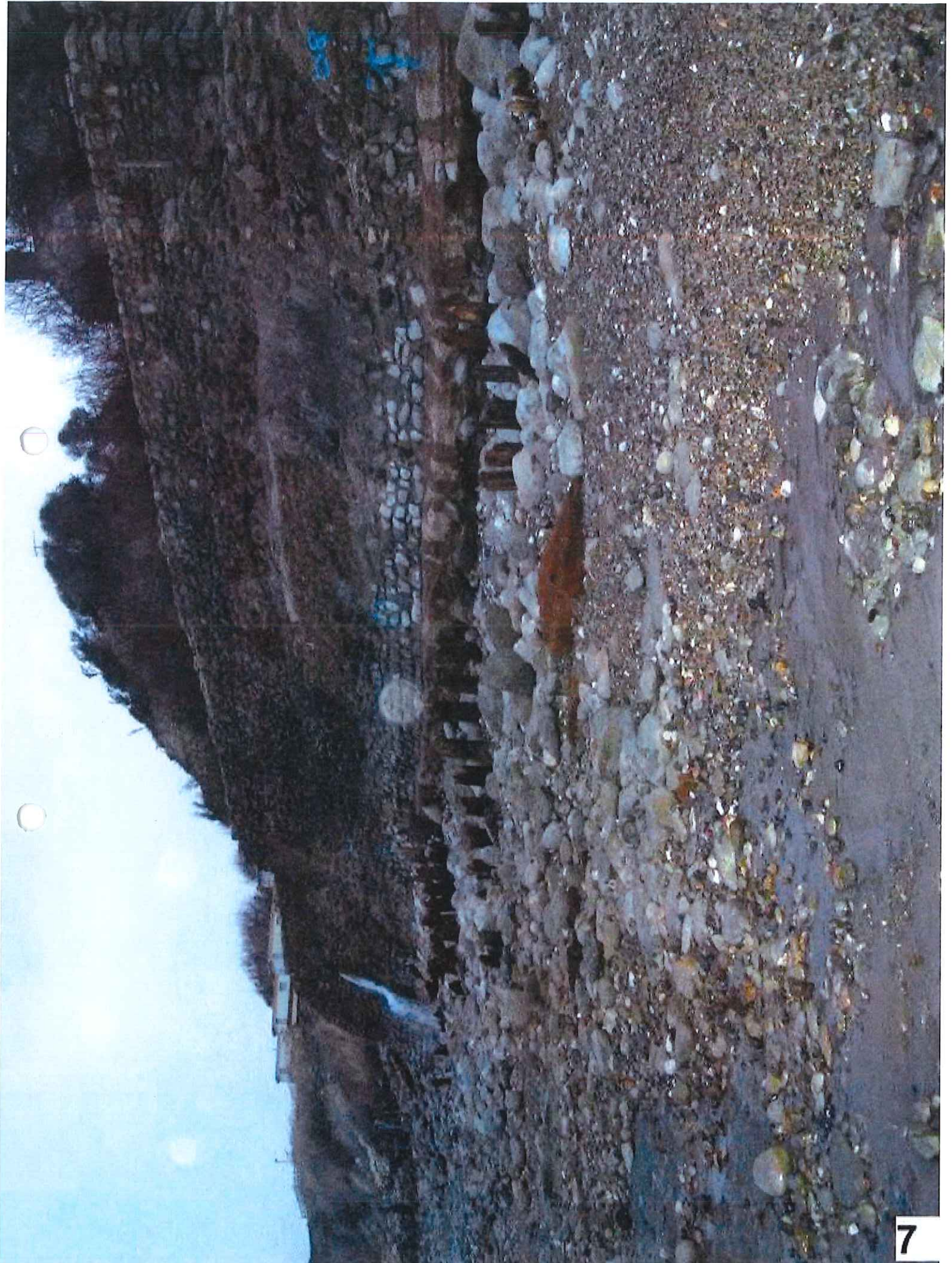




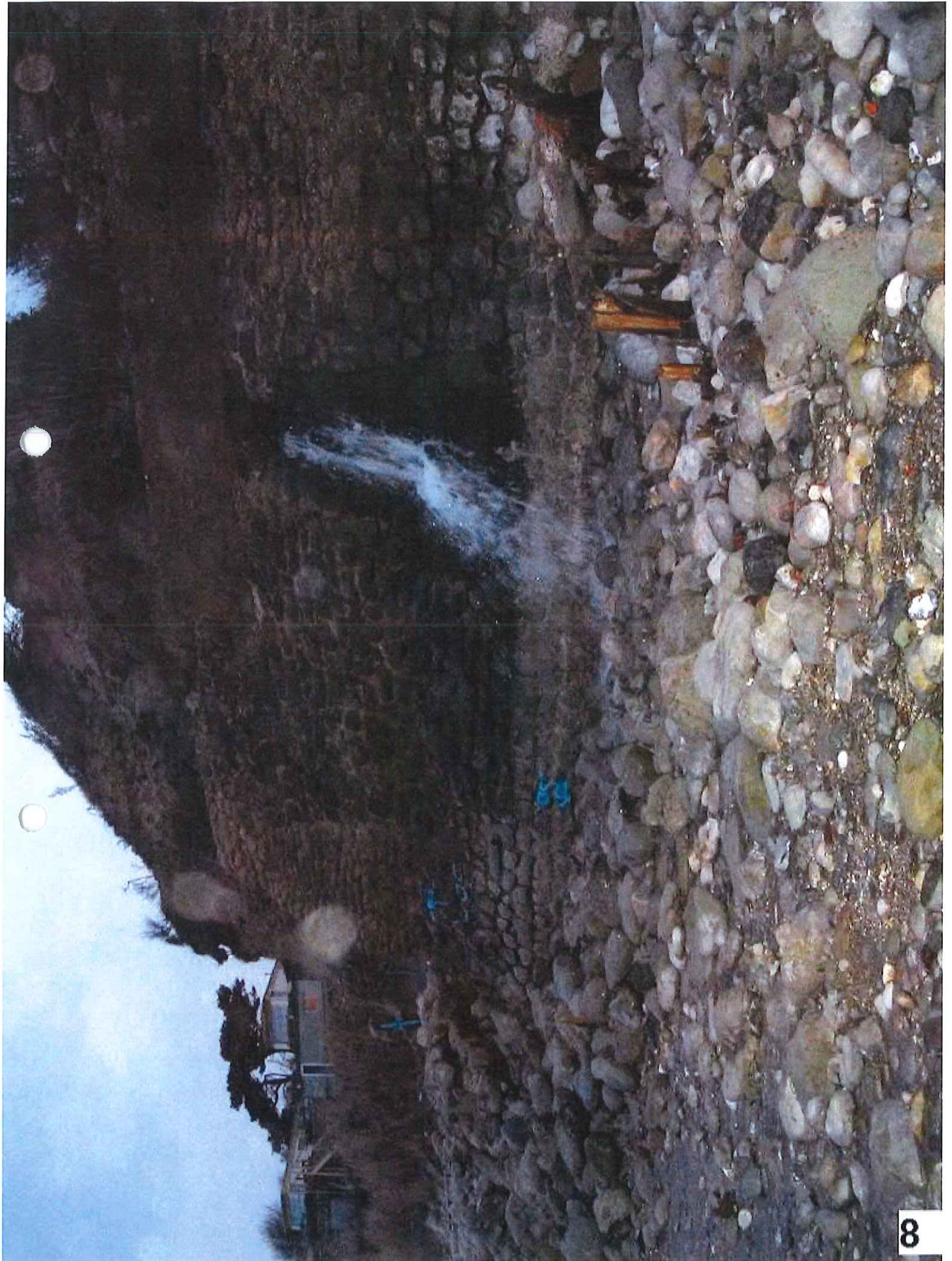


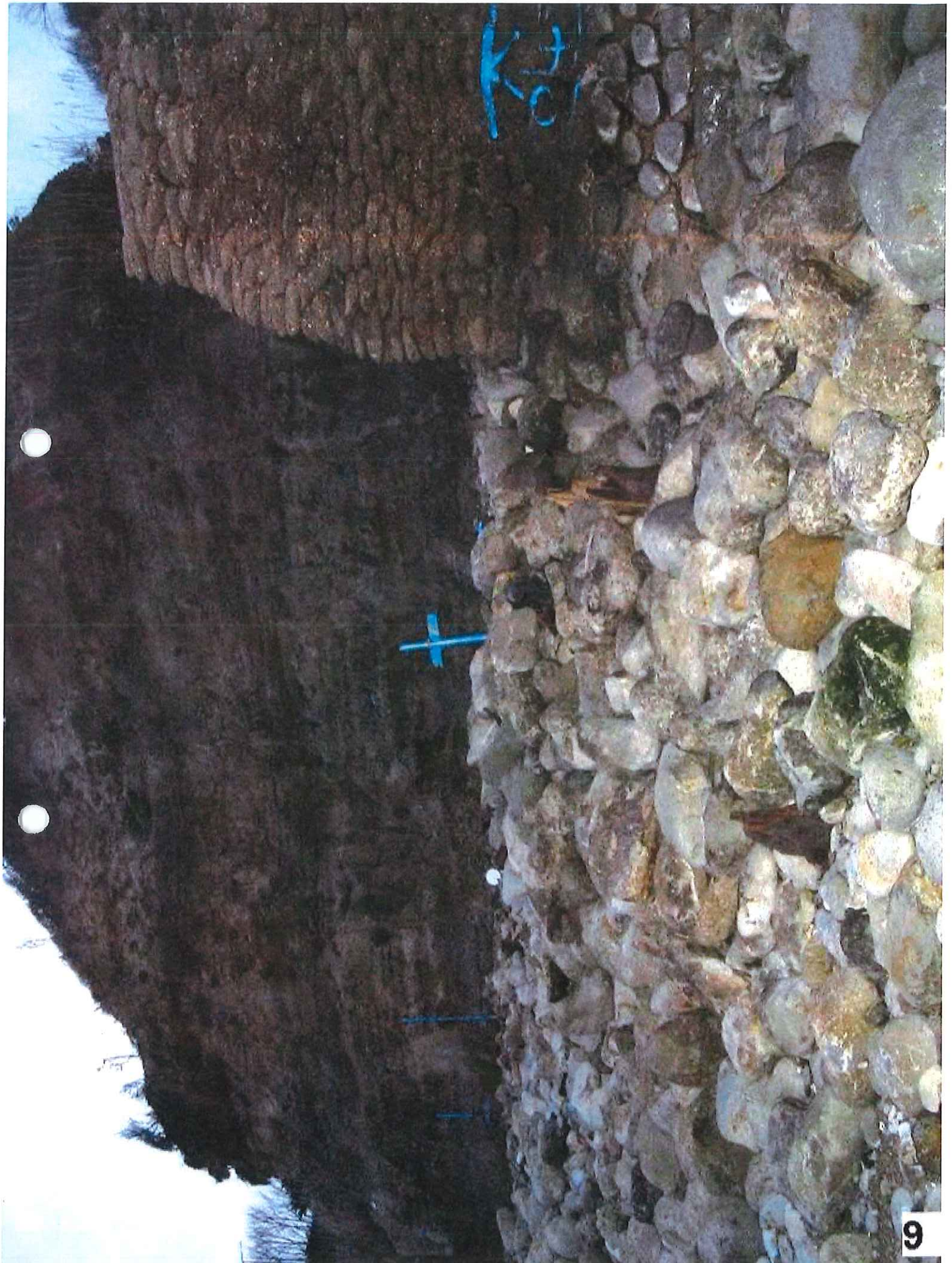


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7

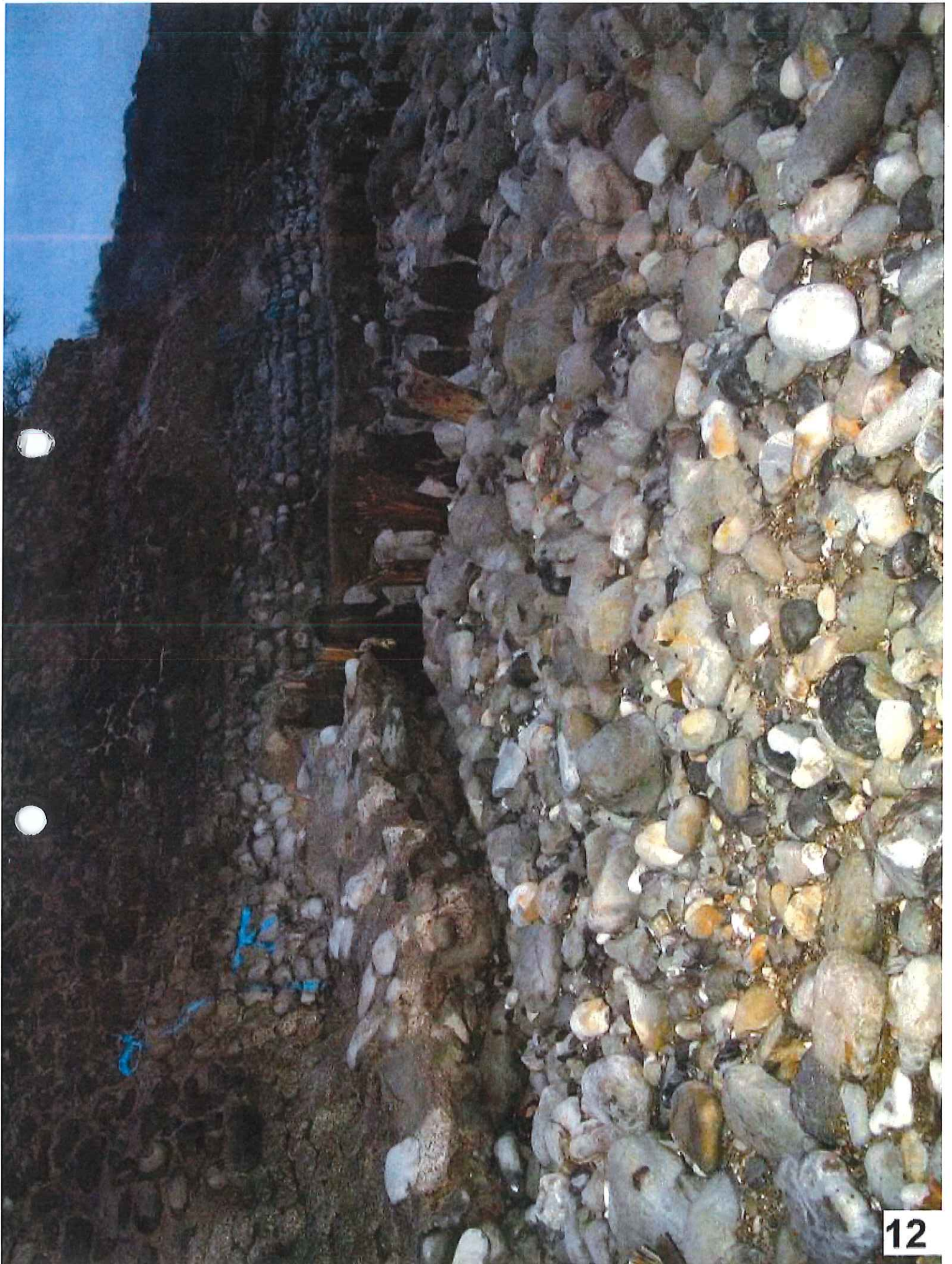






10





12



↓ TOP OF SEA WALL.

↓ BOTTOM OF SEA WALL.

WESTERN END  
OF BEACH COASTAL  
SEA WALL.

VIEW FROM FORESHORE TO SOUTH, LOOKING NORTH.

IWC COASTAL  
MANAGEMENT  
PHOTO TAKEN  
PRE COASTAL  
PROTECTION.

3a.



TOP OF  
SEA WALL



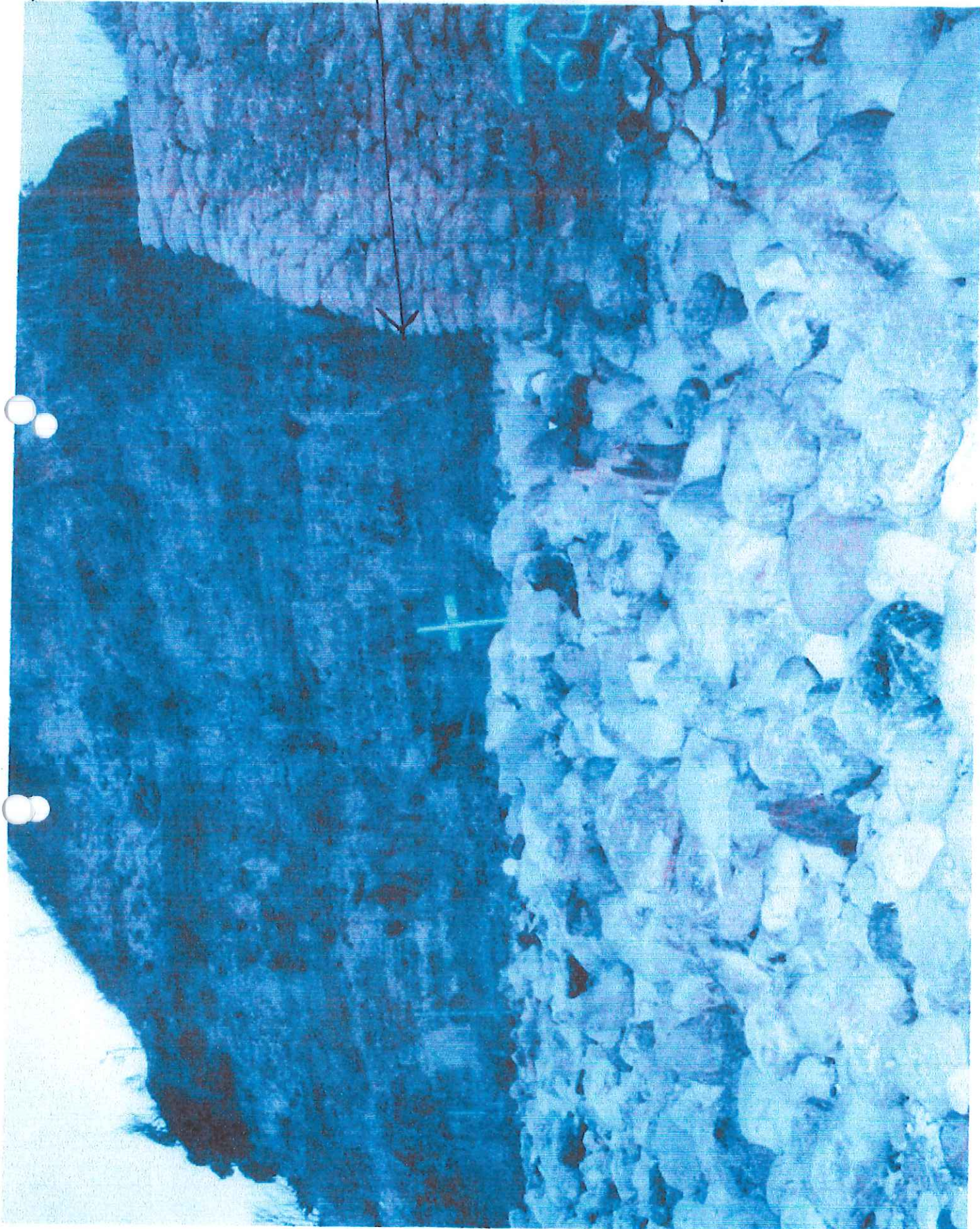
NORTH  
END OF  
BRACK  
CISTERN'S  
SEA WALL

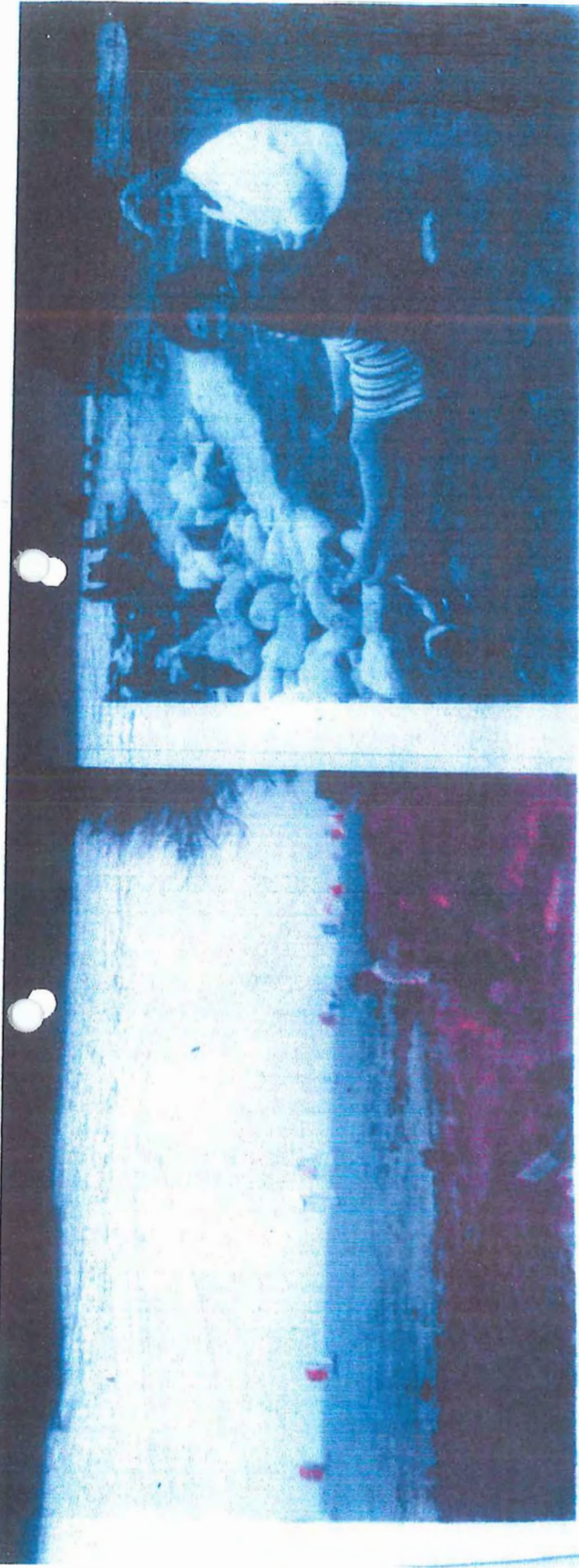


BOTTOM OF  
SEA WALL



IWC  
PHOTO.





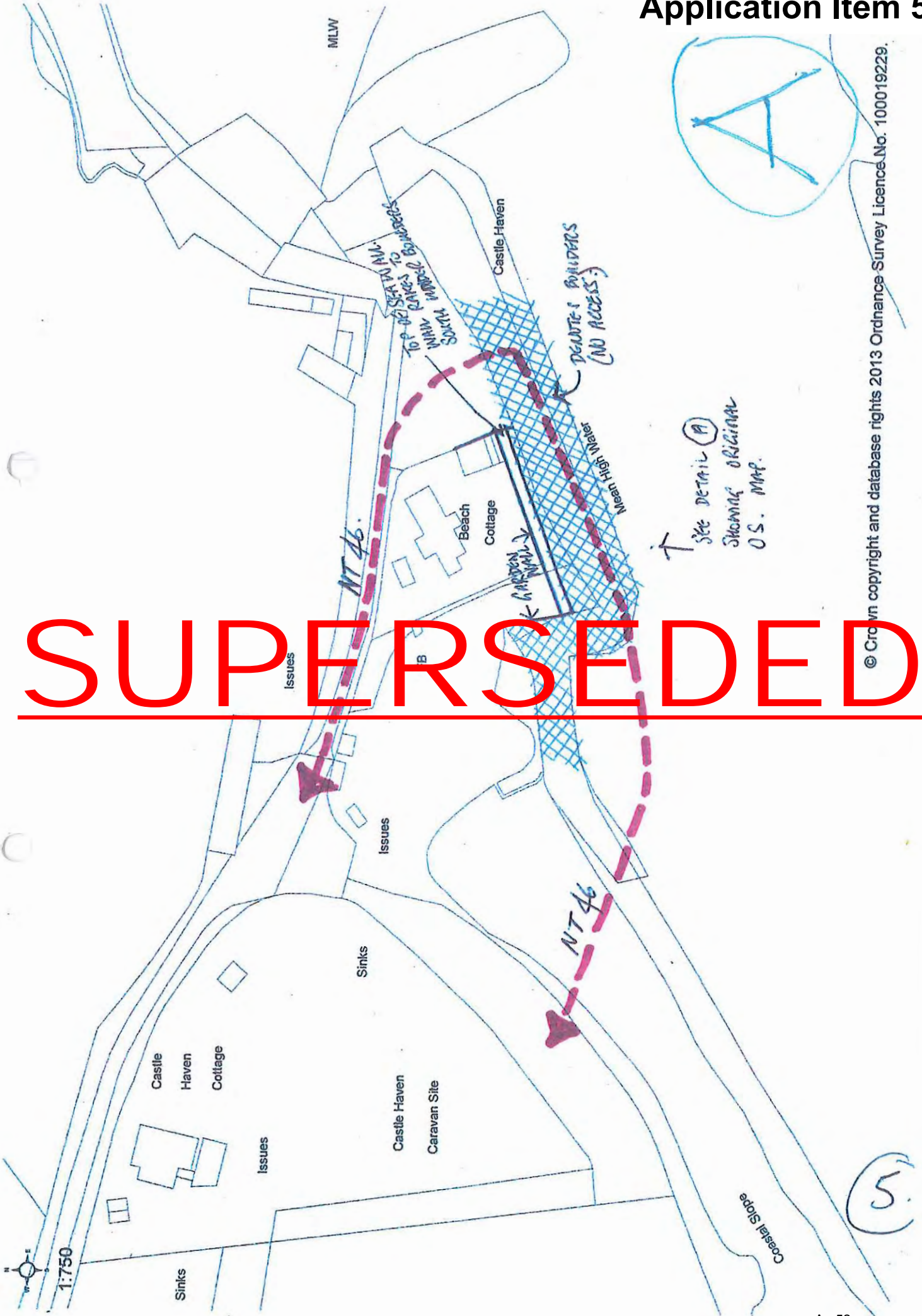
THE 2 PHOTOS OF CASTLEHAVEN TAKEN  
ONE IN THE LATE 60'S AND ONE IN THE  
70'S CLEARLY SHOW THAT THERE WAS A  
GATE ACROSS THE SEA WALL WITH A  
PRIVATE SIGN, AND CONTRARY TO LOCAL  
GOSSIP!! AND TO MY MEMORY ( HAVING  
LIVED IN THE VILLAGE FOR 60 PLUS  
YEARS) THE GATE WAS THERE IN THE  
VERY EARLY 50'S AND THE COASTAL  
FOOTPATH WAS IN FRONT OF THE SEA  
WALL NOT ON TOP OF IT

4a



CLEARER COPIES OF ORIGINAL PHOTOS BEING OBTAINED  
FROM MR A. ELDRIDGE.  
PHOTOS ALREADY SEEN BY MR CLARKE.

4b.



**SUPERSEDED**

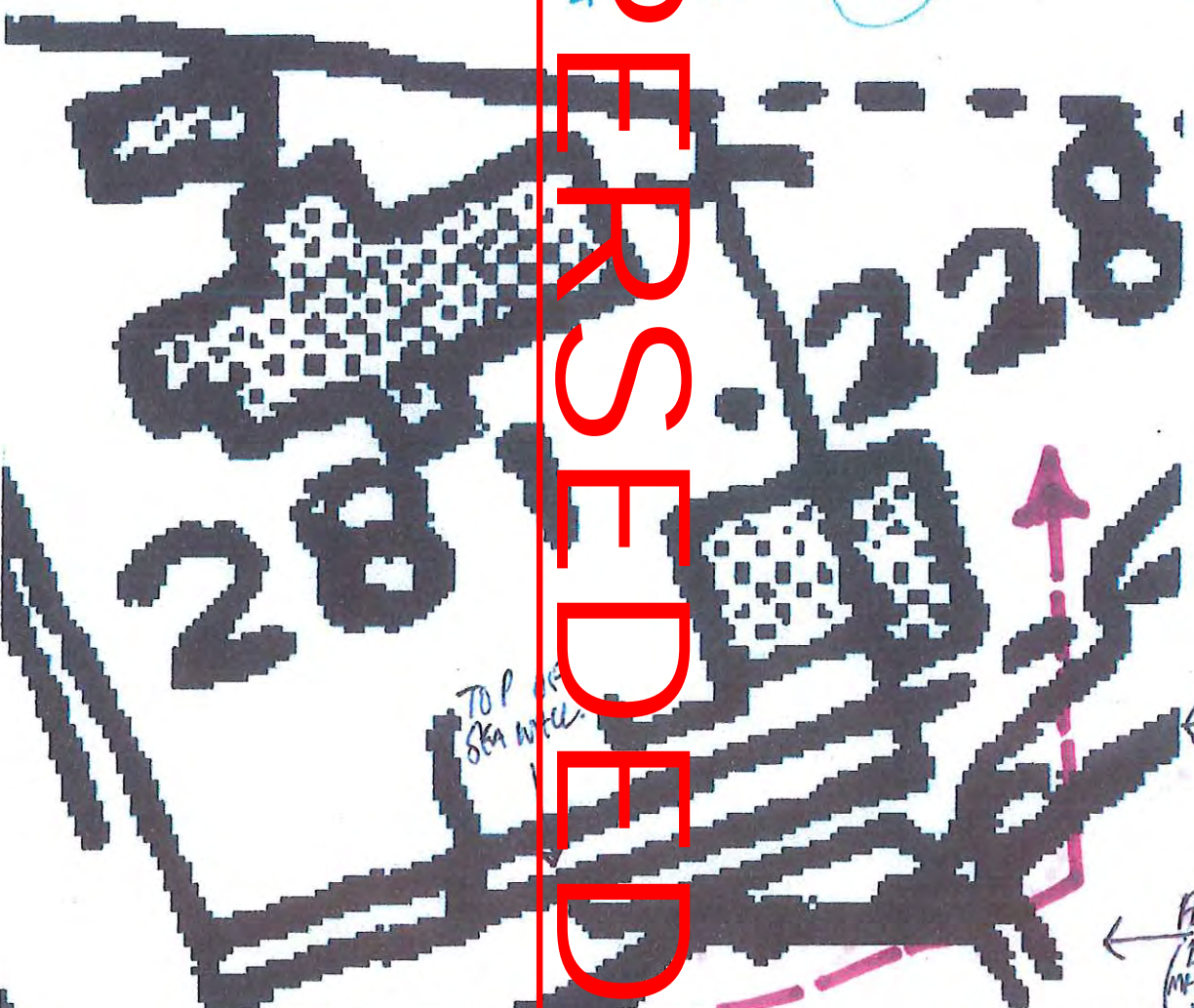
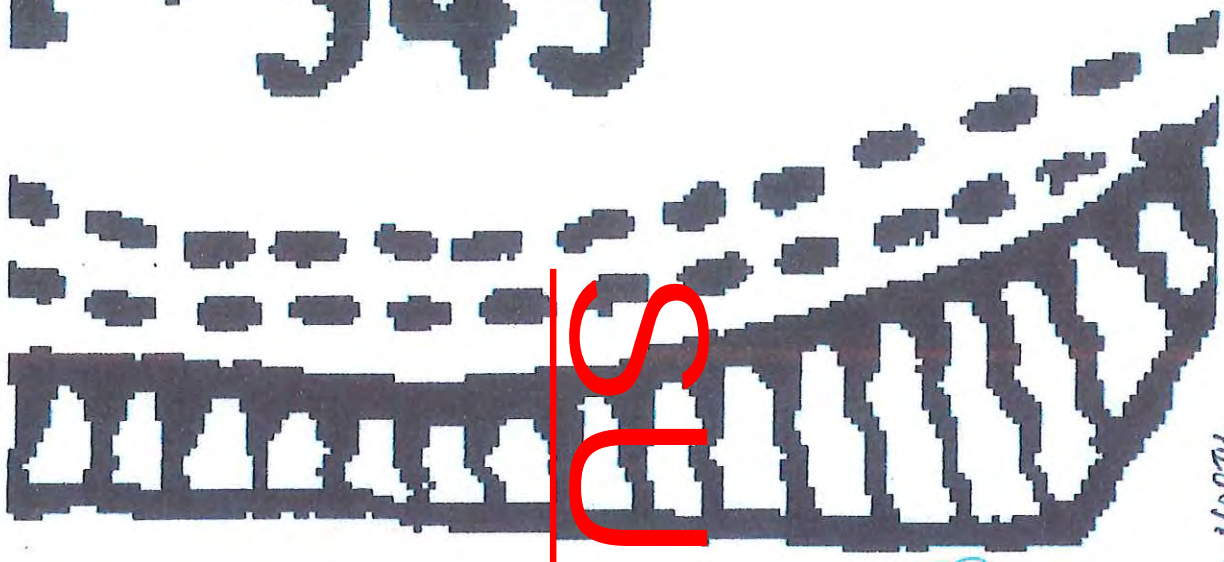
↑ SEE DETAIL (A)  
 SHOWING ORIGINAL  
 O.S. MAP.

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L. 545

SUPERSEDED

DETAIL (A)



TOP OF SEA WALL



MLW

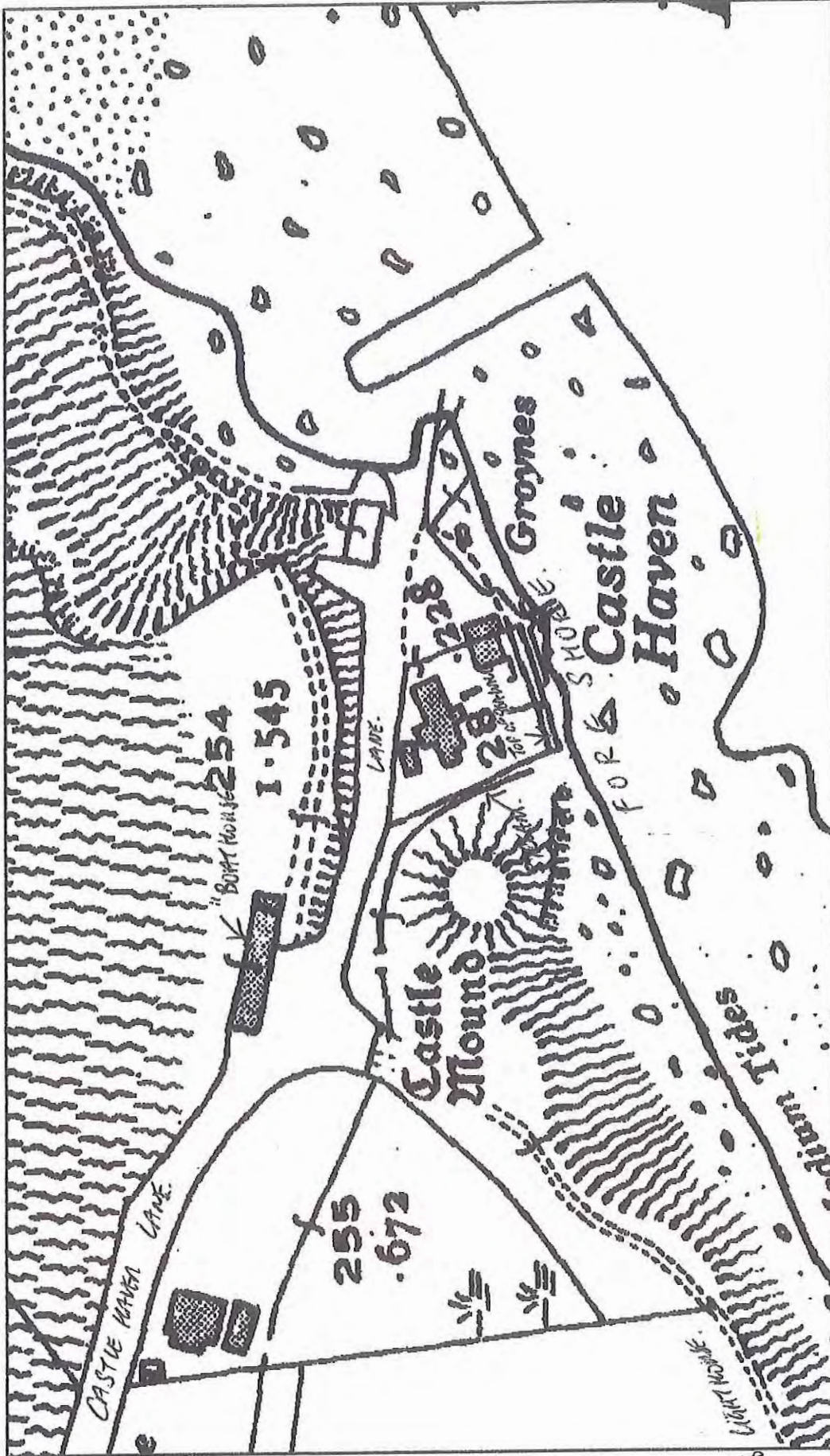
FORE SHOULDER (BETWEEN MLW AND MLW.)

MODIFICATION TO REPRIEVING STATEMENT REFUSED IN APRIL 2011 IS NOW APPLIED FOR AGAIN WITH ADDITIONAL EVIDENCE

MLW

O.S. 1946


6



Date 30 August 2012



Ordnance Survey 1946 (CURRENT WHEN PLANT RECORDED IN 1951/2.)

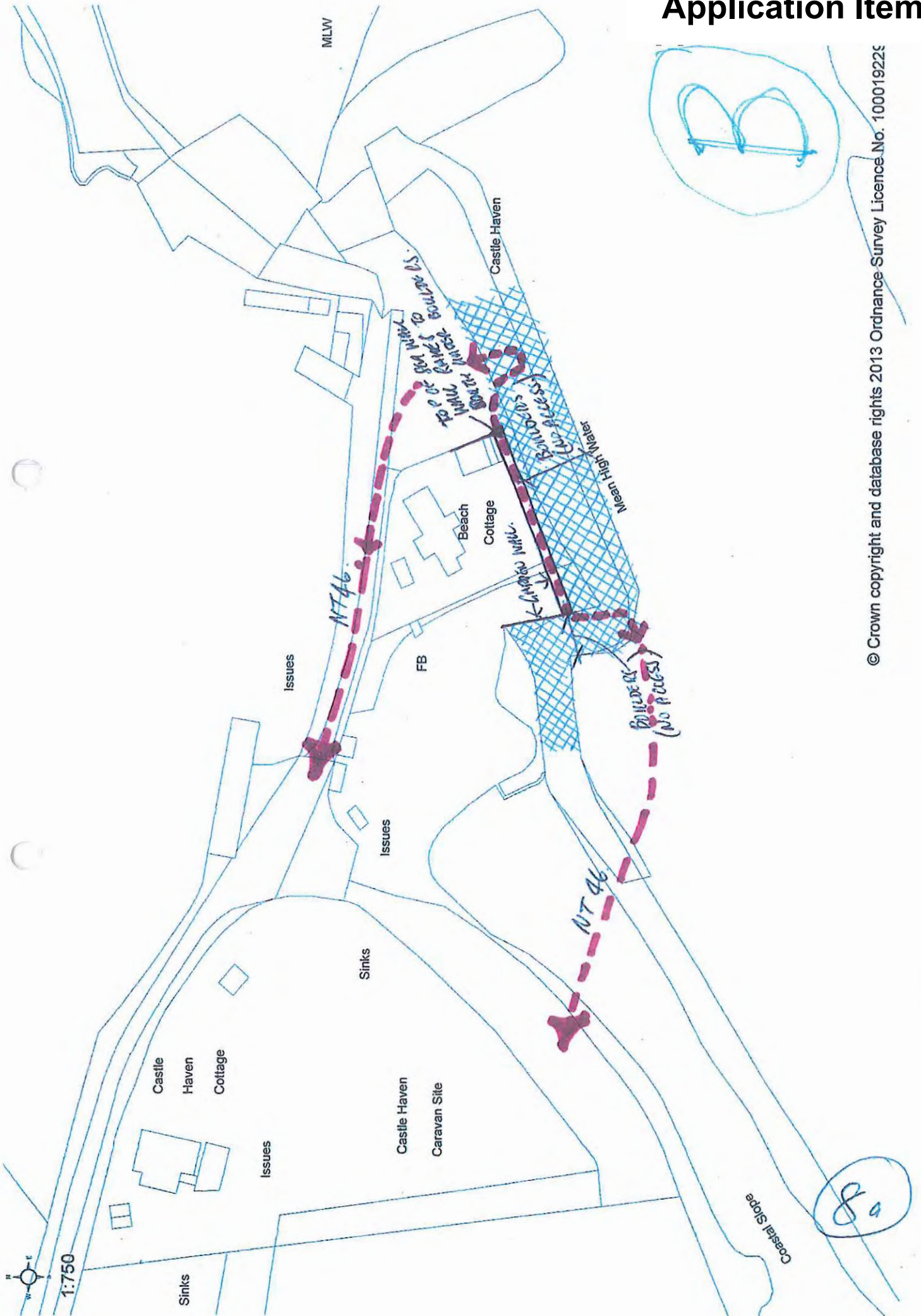


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ISLE OF WIGHT COUNCIL  
 Archaeology & Historic Environment Service  
 Tel/fax: 01983 823810  
 email: archaeology@iow.gov.uk

7

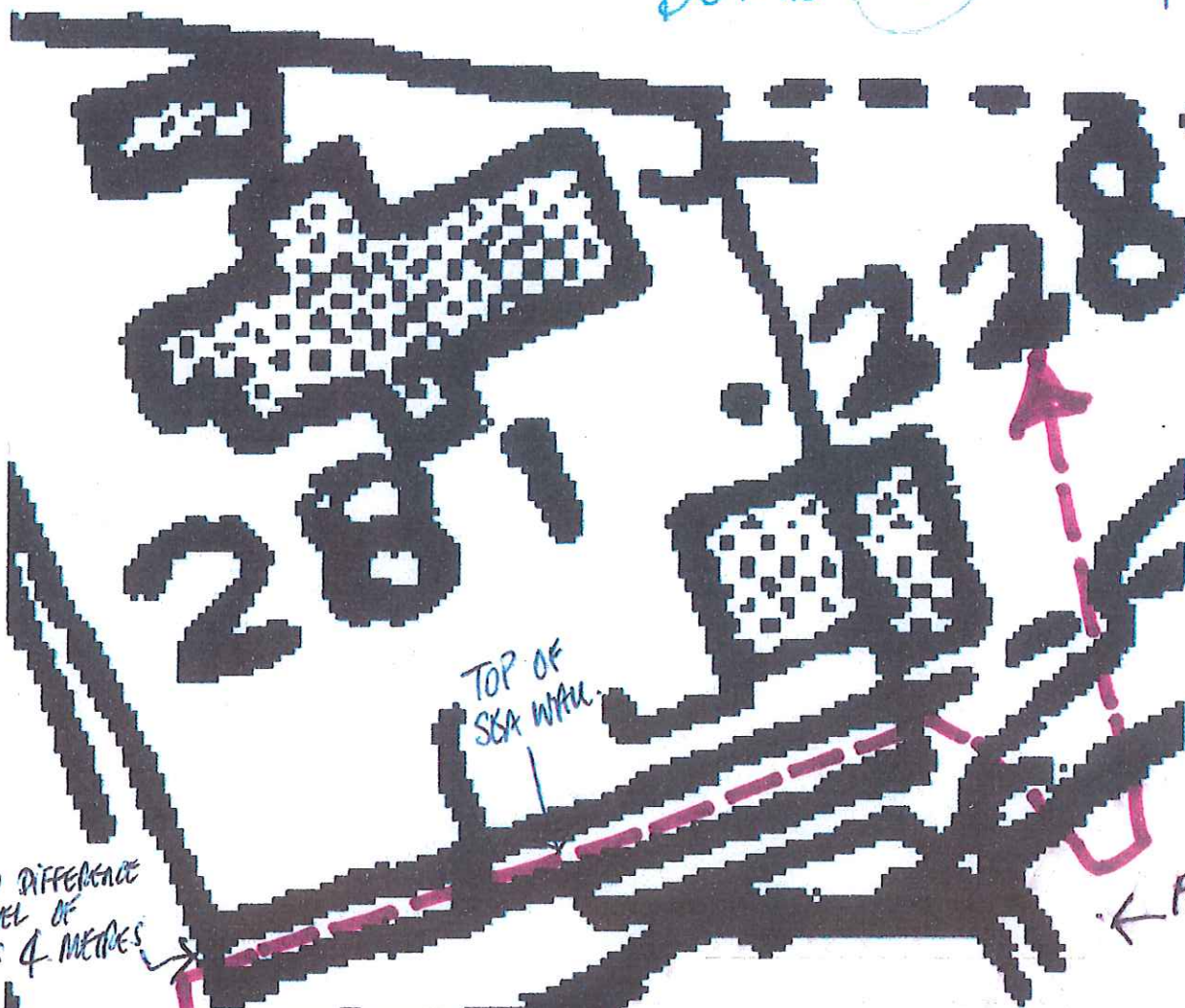


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1.545



DETAIL (B.)



TOP OF SEA WALL

MHW

FORESHORE

AGREED DIFFERENCE IN LEVEL OF APPROX 4 METRES

CONTONE LINE 4.2 M BELOW TOP SEA WALL

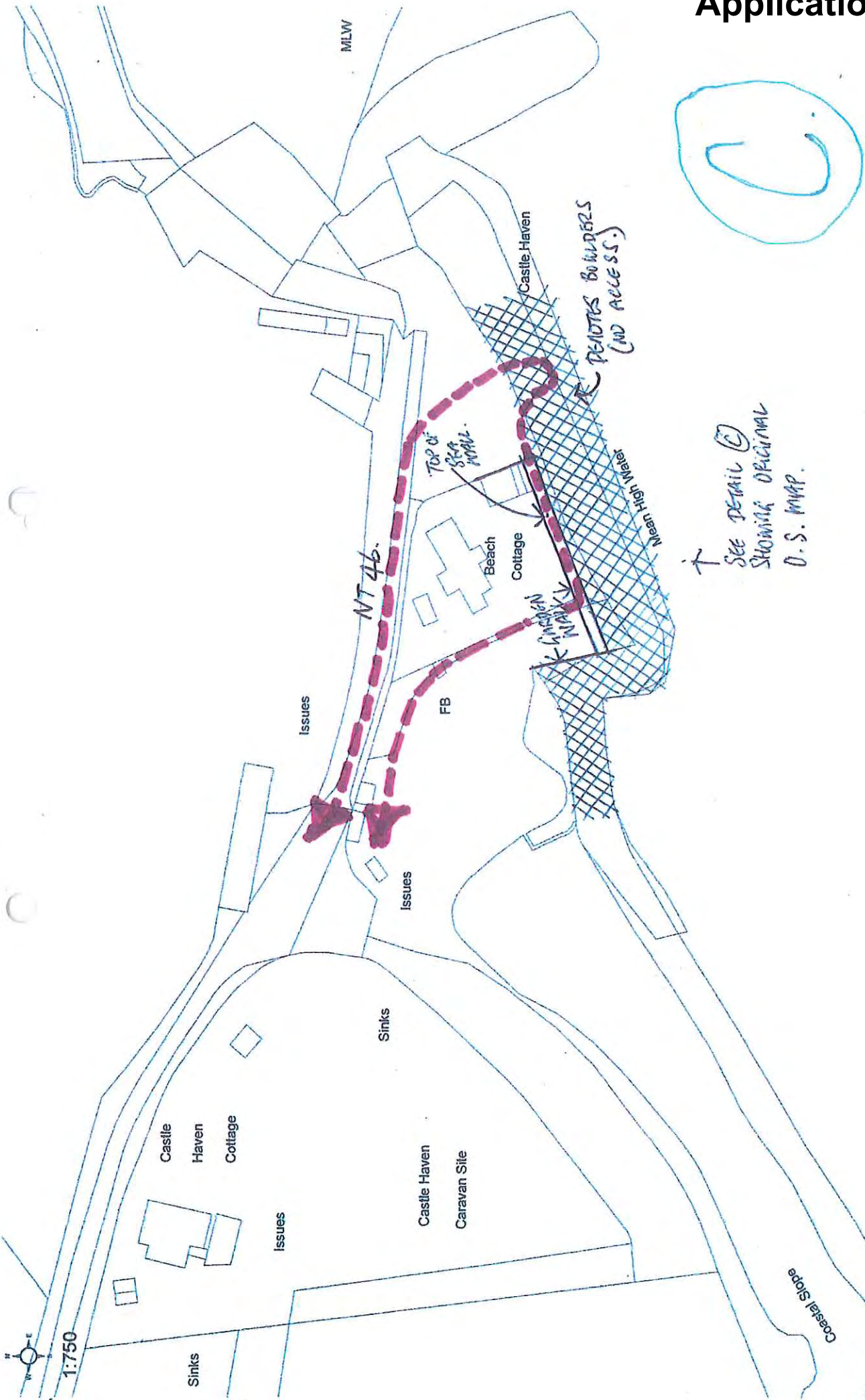
MHW

MODIFICATION TO ROUTE DESCRIBED IN DEFINITIVE STATEMENT AGREED IN APRIL 2011

D.S. 1966

86.



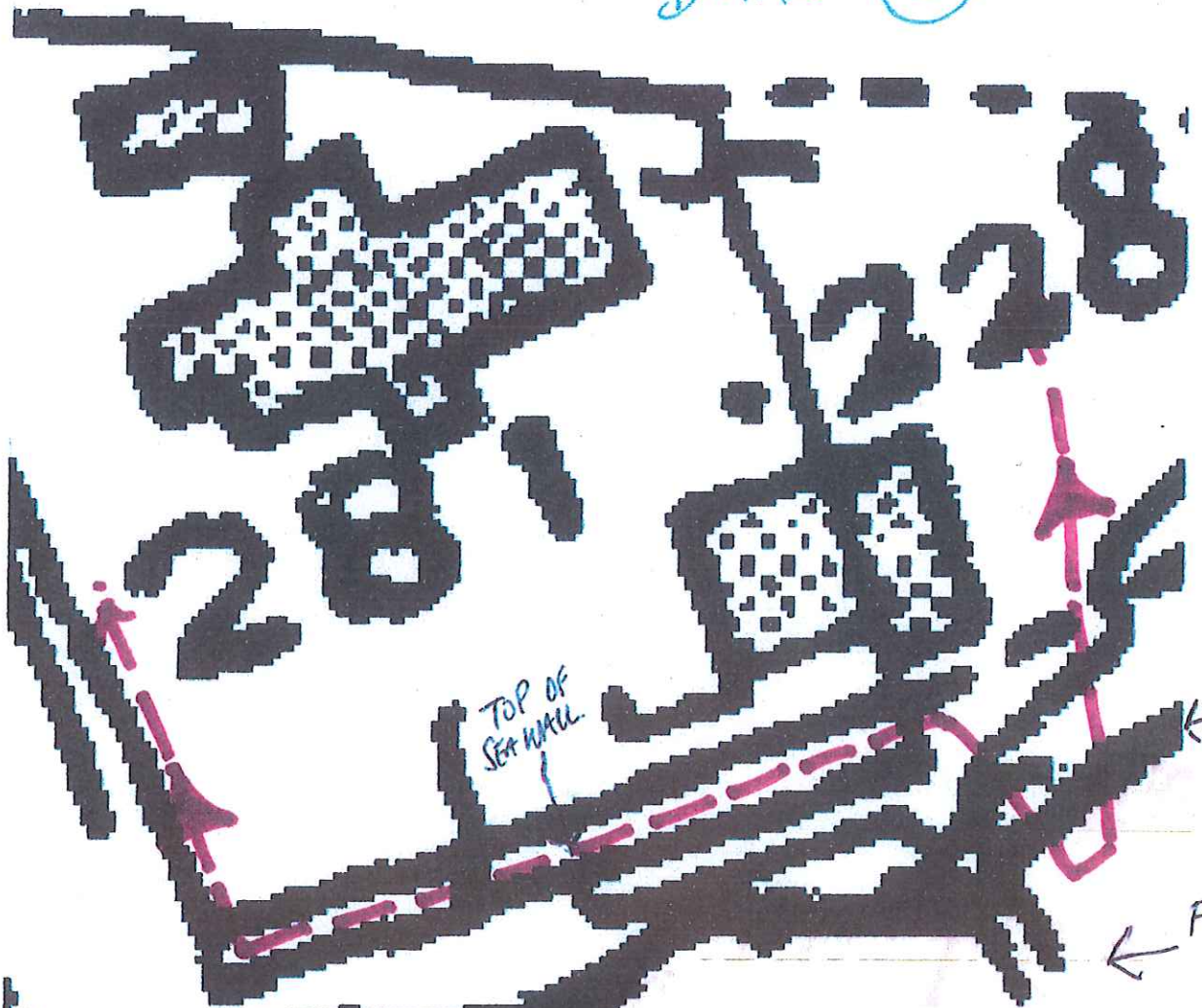


↑ SEE DETAIL (C)  
 SHOWING ORIGINAL  
 D.S. MAP.

L 545



DETAIL (C)




MHW →

← MHW

← FORESHORE

ROUTE DESCRIBED IN ORIGINAL DEFINITIVE STATEMENT.



O.S. 1946.

9b.

APPLICANT'S FINDINGS FOR THE ROUTE THE SURVEY SHOULD HAVE FOLLOWED:  
 - THE ONLY ROUTE USABLE WITHOUT CLIMBING A WALL OR TRESPASSING

