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Planning & Environment
Decisions **Wales**

Application for consent to construct works on common land

Commons Act 2006: Section 38

National Trust Act 1971: Section 23

Return completed application to:

Planning and Environment
Decisions Wales
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Phone: 0300 0604400

E-mail: PEDW.Infrastructure@gov.wales

Application for consent to construct works on common land

- Answer all the questions on this form in full and only use a separate sheet where there is insufficient space for your answer
- Refer to separate **Notes** on completing this form (the "Notes") and the 'Common Land Guidance - General Overview' note before, and when, applying
- Consult informally and widely about your ideas before developing a formal proposal

This application is made under (tick as applicable)

Section 38: Commons Act 2006

.....
(if there is a Scheme of Management or local Act applying to the land, see Section I and 'Common Land Guidance – Special Consent Provisions (other than National Trust Land)' note before applying)

Section 23: National Trust Act 1971

.....
(see Common Land Guidance – Special Consent Provisions (National Trust Commons)' note before applying))

SECTION A – The land (see Notes 1, 2 and 3)

1. Name of Common

Mynydd Maen* (this is the name used locally to cover all four commons)

CL NO: 25, 26, 27 & 28

(a) Community/Town of

Newbridge & Cwmbran

(b) Borough/County Borough/City of

Torfaen and Caerphilly

2. Commons Registration Authority

Torfaen CBC & Caerphilly CBC

3. Does owner of common consent to proposals

yes

SECTION B – The applicant

4. Title (e.g. Mr/Mrs/Miss/Ms/Dr)

Mr

(a) Forename(s)

Chris

(b) Surname

Jackson

(c) Position/Organisation (if appropriate)

Project Manager (Wales & England)

5. Full postal address

RES Ltd, Cedar House, Greenwood Close, Cardiff Gate Business Park, Cardiff

Postcode CF23 8RD

Telephone number +44 2920 021074 (incl national dialling code)

Mobile number +44 7500 058 463

Fax number N/A (incl national dialling code)

E-mail address Chris.Jackson@res-group.com

I prefer to be contacted by E-mail Post

Details of Agent (if appropriate)

6. Title (e.g. Mr/Mrs/Miss/Ms/Dr) Mrs

Contact Name Kee Evans

Organisation Foot Anstey LLP

7. Full postal address

2 Glass Wharf, Bristol

Postcode BS2 0EL

Telephone number +44 117 4038946 (incl national dialling code)

Mobile number

Fax number +44 5267 5500 (incl national dialling code)

E-mail address kee.evans@footanstey.com

SECTION C – Area of common and common rights (see Note 4)

8. (a) Is the land on which the works are proposed registered as common land? Yes No

(b) If **No**, why do you need to apply?

9. (a) What is the total area of the common as registered?

(b) What common right(s); if any, are registered? (e.g. number and type)

Full copies of the Common Land Registers (the "Registers") have been included with the application (see Appendix D). Details of the rights and who exercises them are set out in the Registers but summarised for ease of reference in Appendix B. Please also refer to Paragraph 4.4.1 of the Common Land Report (s38) for further details.

Are they ever exercised? Yes No

.....
If **Yes**, to what extent (e.g. which commoners are active, which rights are exercised and how frequently?)

Nine main active commoners have been identified and use the land for grazing between April and December each year in accordance with a Glastir Agreement, which was extended to December 2023 and has now been replaced by the Habitat Scheme for Wales for 12 months until the Sustainable Farm Scheme payments begin in 2025. The rights are set out in full in Appendix B and further detail on this is included in the Common Land Report (s38). The commoners have confirmed that it is unlikely that there will be any increase stocking levels as a result of the changing payment regime.

Please note the numbers being grazed are not consistent throughout the year. The common land report (s38) contains further details but overall the common is undergrazed and the introduction of the wind farm will not affect stocking levels in any way.

SECTION D – The proposal (see Note 5 and 6)

10. What works are proposed? (tick **all** that apply)

- (a) fencing
- (b) building/s
- (c) other structure/s
- (d) ditch/es, trench/es, embankments/s
- (e) other works

Please specify

Temporary works areas will be needed for use as a construction compound and borrow pits and for drainage ditches, soil storage, tracks and cabling. This will take in areas of approximately 15m width either side of the tracks, around the turbine bases / their hardstandings.

This area may need to be fenced off during construction for health and safety purposes and to protect livestock and users of the common during construction of the temporary construction compound, the temporary crane hardstandings, temporary tracks to the borrow pits, and drainage ditches.

11. Area and extent of works

(a) What area will be occupied by the works or enclosed by the fencing?

The total area is 39.67 ha but this will not be enclosed all at the same time

(b) What length of works/fencing is proposed?

A maximum of 2,500 m in total but not at the same time

12. Are the proposed works:

(a) permanent?

(b) time-limited? (see Note 7)

(c) a mixture of both (a) and (b)

For time-limited works, how long will they be needed?

Approximately 12-15 months

months

13. Is this application, or any part of it, for works that have already been constructed? (see Note 8)

Yes No

14. Describe the proposed works below

Fencing will be standard stock-proof fencing. The fencing will be placed around the works as they are carried out and this will be done on a rolling basis so that only the areas currently being worked on will be unavailable for access. This aims to keep disruption to a minimum. The fencing will be the same as that currently found in the area and whilst preventing physical access it will not provide a visual barrier. The posts and wire would only be visible at reasonably close range.

The areas of temporary works which would be surfaced are the temporary construction compound, the temporary crane hardstandings and the temporary tracks to the borrow pits. These would be stripped of turves and soils, and stone placed to form a hard surface. At the end of construction period, the stone will be removed, and the soils and turves replaced reinstating the land to its former condition. Alongside these tracks for drainage purposes shallow drainage ditches will be created and these will also be reinstated at the end of the construction period.

As well as only fencing an area when works are being actively carried out, the fenced areas will be managed in accordance with the construction environment management plan provided as part of the DNS application. This needs to be approved in advance by the Local Planning Authority and this will allow crossing points in the fencing where it is safe to do so.

15. Say more about the nature and purpose of the proposal, and explain why the proposed works are needed on the common (**see Note 9**)

The temporary works are required in order to allow the development to proceed.

The Mynydd Maen Wind Farm scheme would be capable of generating enough clean, low-cost renewable electricity for approximately 55,000 homes based on the current design. With the rising cost of living and climate change emergency, it is imperative that we deliver electricity efficiently and at the lowest cost to the consumer. This proposal harnesses a free and inexhaustible resource which has an important role to play as part of a balanced energy mix. It increases energy security by reducing our reliance on imports and is not subject to sudden price fluctuations or the uncertainty of global markets. It will also help Wales meet its net zero carbon targets

Mynydd Maen Wind Farm has the potential to deliver approximately £3.6 million to the local area in the form of jobs, employment, and the use of local services during the construction period.

The proposed site lies within a Pre-Assessed Area for Wind Energy identified in Future Wales: The National Plan 2040 published by Welsh Government in February 2021. In Pre-Assessed Areas the Welsh Government has already modelled the likely impact on the landscape and has found them to be capable of accommodating renewable energy development in an acceptable way with a presumption in favour of large-scale wind energy development.

Consideration was given as to whether these works should be included as part of the s16 application but this was not pursued because the increased area of land being de-registered would result in a greater overall impact upon the common land. The temporary works will only have a negligible effect on the use of the common during construction and they will not affect the use of the common when they have been completed as the common will be fully reinstated.

The wind farm application sets out the consideration of alternatives and how the decision was reached to locate the project on common land.

16. It is strongly recommended that you consult **informally** on your proposals at an early stage in their development. **(See Note 10 and 'Common Land Guidance - General Overview' note)**

What **informal** consultation have you carried out? Give details below

Informal consultation has taken place with the Commoners Association and other stakeholders such as local authority, residents, community liaison group, commons registration authorities on a regular basis since May 2022. The common land applications have been consulted upon as part of the DNS regime and this includes consultation with the statutory consultees identified by the Commons Act 2006.

The Common Land Report (s38) paragraph 4.1 (Appendix E) contains details of the consultation that has taken place to date and this is supplemented by the Pre-application consultation report prepared for the DNS application (this can be found at <https://www.mynyddmaen-windfarm.co.uk/dns-application/>).

SECTION D1 – Additional questions where proposed works involve fencing

(If your proposal does not include fencing, go straight to Section E)

17. Please give details of:

(a) the type(s) of fence proposed

Stock-proof post & wire

(b) the height of fencing

The posts will be approximately 1.2m (4ft)

18. Please give **full** details of the need for fencing. This should cover: why fencing of this type is needed, what the aim of the fencing is, and why it is the length proposed.

The common is grazed by livestock and available to the public for recreation. The construction works for the wind farm will involve the creation of foundations, erection of large structures, laying of cables and various other works. In order to ensure the safety of the work site for the workers and the works and also to ensure that the public and any animals using the common remain safe, fences will be erected as and when required to prevent access for as short a time as possible. The fencing is stock-proof to keep out animals but crossing points will be installed where possible and banksmen or other suitable crossing methods used where necessary to minimise the amount of fencing required.

The fencing is easily removable and will have a negligible impact upon the common surface. It provides the safest and most practical temporary barrier for both the public and for livestock.

As noted above the fencing will proceed on a rolling basis to ensure active work areas are protected but free access is maintained as much as possible.

19.(a) What other measures (i.e. alternatives to fencing) have you considered? Why are these not available to you, or not considered to be practical?

Stock proof fencing is an efficient and accepted method of keeping animals in or out and it is tried and tested and will be familiar to them. It is equally effective for public use. It also lends itself to being used on a rolling basis (i.e. only where active works are being carried out) and it is sympathetic to the surroundings being commonly used in the area already. This is considered to be the optimum style of fencing for this location and one which best suits the nature of the works. Alternatives to fencing such as other barriers, tapes or flags are considered to be more obtrusive and less effective.

(b) Give details of any measures proposed to mitigate the visual effect of the fencing.

The height of the fencing will be kept as low as is safely possible. The wire and post construction has been chosen because it allows visibility and is not intrusive in this location. The fencing will only be required temporarily.

20.(a) How will you ensure that the public and others with rights (e.g. common rights holders) will have access to the land after the fencing is in place? Give details of the number, type and location of stiles and gates (see also question 17.(b)).

For reasons of health and safety certain areas will be temporarily inaccessible during the construction period. If this is the case, the public and those with common rights will be diverted around the works for the limited period required. Where possible, fencing will be carried out on a rolling basis thereby limiting it to those areas where active works are being carried out. This will enable access to remain as full as possible. Crossing points will be available where possible and may be managed manually or may incorporate gates in the fencing. Gates may be installed as a temporary part of the fence where it is safe to do so, but these will be moved in accordance with the fencing and managed in accordance with the construction environment management plan.

(b) Will the fencing cross any public right of way or road? (See 'Common Land Guidance - General Overview' note) ... Yes No

If **yes**, has the consent of the highway authority been given for any stile, gate or cattle grid and bypass which may be required? Yes No

Footpaths cross the common and are shown on the plan by dark green dashed lines. Where the fencing intersects with a public footpath the fencing will accommodate that route leaving it open so that no fencing will prevent usage of a public right of way unless/until the public right of way is formally diverted. The applicant will make an application for any such diversion as required.

Management of the public rights of way will be agreed with the local planning authority including any diversions, prior to construction commencing.

.....
If **Yes**, please enclose a copy.

Consent not yet sought

If **No**, but consent is needed please give:

Date of Application

Reference Number

Highway Authority Contact: Name

Tel

E-mail

Consent is not being sought at this time but will follow if/when a diversion is required.

Details of Application and stage reached

N/A at this stage

SECTION E – Other consents (see Notes 11 and 12)

21.(a) Is planning permission needed for your proposal? Yes No

If **Yes**, has planning permission already been obtained? Yes No

If **Yes**, please enclose a copy.

The DNS application can be viewed at <https://www.mynyddmaen-windfarm.co.uk/dns-application/>

If **No**, but application has been made please give:

Date of Application

Reference Number

Planning Authority Contact: Name

Tel

E-mail

Details of Application and stage reached

This application is submitted as an application for secondary consent alongside the application for the wind farm (a development of national significance). This will be determined by the Planning and Environment Decisions Wales (PEDW)---

(b) Has an Environmental Impact Assessment screening opinion been adopted? (See 'Common Land Guidance - General Overview' note)

Yes No

If **Yes**, has a screening application been approved by Welsh Government?

Yes No

If **Yes**, please enclose a copy.

Please see below.

If **No**, but an opinion is needed, please give details of application:

A screening application was not submitted because an Environmental Statement was required. A scoping request was approved by Welsh Government. A copy of the Environmental Statement can be viewed at <https://www.mynyddmaen-windfarm.co.uk/dns-application/>.

SECTION F – Designations

22.(a) Is the proposal in or near a Site of Special Scientific Interest (SSSI), a Special Area of Conservation (SAC) a Special Protection Area (SPA), a wetland listed in accordance with the Ramsar convention? (**See Note 13 and General Overview**)

Yes No

If **Yes**, please give details, identify on the map (see Section K), and provide evidence that you have consulted Natural Resources Wales

[Empty box for providing details of designations]

(b) Will the proposal affect a Scheduled Ancient Monument (SAM)?

Yes No

If **Yes**, please give details, identify on the map (see Section K), and provide evidence that you have consulted Cadw (**see Note 14**).

Impacts of the development (including those during construction) are set out in the environmental statement for the project (see DNS/ 3276725).

(c) Is the proposal in a National Park or Area of Outstanding National Beauty (AONB)? Yes No

.....

If **Yes**, please give details and provide evidence that you have consulted the National Park Authority or Natural Resources Wales.

SECTION G – Existing works and adjacent common land (see Note 15)

23.(a) Are there any existing buildings, roads, fences or other constructions on the common? Yes No

.....

If **Yes**, give details below (see Section K)

There are occasional fences and walls marking the boundary and informal tracks across the common.

(b) Does any area of common land or village green, of a different registration number, adjoin the common on which the works are proposed? Yes No

.....

If **Yes**, give details and identify the boundaries on the map (see Section K)

As the whole of the common is known as Mynydd Maen this application therefore refers to all of the commons within the boundaries shown on the Common Land Plan, namely CL 25, 26, 27 and 28.

SECTION H – Public access (see Notes 16, 17 and 18)

24.(a) Do the public have a right of access to the common for air and exercise under section 193 of the Law of Property Act 1925? Yes No

.....

(b) Is the common subject to an Order of Limitation made under section 193? Yes No

If **Yes**, give its date and other details, and send us a copy of the Order

A copy of the Order is attached at Appendix F. This is dated 16 February 1981. It is noted that the restrictions are imposed unless lawful authority has been given to carry out the act. The applicant is making this application to provide lawful authority for g(i) to erect any post, rail, fence, pole, tent, booth, stand, building or other structure.

SECTION I – Schemes of management and local Acts (see Notes 19 and 20)

25.(a) Is there a Scheme of Management for the common made under the Commons Act 1899?

Yes No

(b) Is there any other regulatory Scheme or Act for the common? (e.g. a Provisional Order Confirmation Act under the Commons Act 1876) Yes No

If **Yes** to (a) or (b), give its date and other details, and send us a copy of the Scheme or Act.

*The applicant is not aware of any scheme of management or other regulatory scheme or act. The Local Authority / Commons Registration Authority was asked to confirm this. Torfaen CBC was unaware of any Scheme of Management or other regulatory act affecting the land and Caerphilly did not respond.

SECTION J – Advertisement and consultation (see Notes 21, 22 and 23)

You must advertise your proposal in one main local newspaper and at the main points of entry to the common **within 7 days** of making your application. Use the draft notice at **Annex A** of **Notes**.

You must also send a copy of the notice (using the letter at **Annex C** of **Notes**) to the following:

- the owners of the land
- the commons council or association (if there is one)
- all known commoners
- others with a legal interest e.g. tenants, those with easements, or other rights over the land
- any relevant community/town, borough/county borough, city or county council
- Natural Resources Wales
- Cadw
- National Park authority (if the proposal is in a National Park)
- Open Spaces Society (**see Note 24**)

26. Which newspaper will the advertisement appear in, and on what date?

This will appear in the South Wales Argus on or before 10 July 2024.

27. Are you the owner of the land? Yes No

If **No**, does the owner support your application? Yes No

Provide written evidence of the owner's views.

Landowners letters are enclosed at Appendix G and as there are footpaths on the application site the consent of the Highway Authorities is provided at Appendix G.

SECTION K – Maps (see Note 25)

You must include with your application **two copies** of a map which fully meets the requirements set out in **Note 25**. The map must clearly show what you are proposing to do and where.

28. Two copies of the map that meets the requirements set out in **see Note 25** are enclosed

SECTION L – Public inquiry or hearing (see Note 26 and ‘Common Land Guidance - General Overview’ note)

29. Give the name and address of a suitable place in the locality for holding a public inquiry or hearing, should this be needed.

This will be considered as part of the DNS application (as a secondary consent).

Contact Name/Tel Number:

Chris Jackson / +44 2920 021074

Checklist (tick to confirm)

For all applications:

I have read the relevant **Notes** and 'Common Land Guidance - General Overview' note

For section 38 applications only:

• I am satisfied that:

.....

- the land is registered as common land or is otherwise within the scope of section 38

- the proposed works would prevent or impede access

For section 23 applications only:

• I have enclosed a letter from the National Trust confirming its view that the proposed works are "desirable" under section 23(1)

For all applications:

• I have:

•

- answered all the questions on this form in full

- enclosed two copies of the map that meets the requirements of Section K

- enclosed a copy of the commons register in respect of this common, where registered (i.e. details of land, rights, and ownership, and the register map)

- enclosed a copy of any document mentioned in answering the questions on this form (e.g. planning permission, scheme of management, written permission of the landowner, letters from informal consultees etc.)

- understood that any of the application papers may be copied to interested parties on request, and have informed people as necessary

I will within 7 days:

- advertise the proposal in one local newspaper

- post a copy of the notice at the main entry points to the common

- send a copy of the notice to all those listed at Section J

- place a copy of the notice, map and application at the inspection point

I will write to you as early as possible, using the letter at **Annex D** of the **Notes** to confirm that the advertising requirements have been met

SECTION M – Declaration

We apply under section 38 of the Commons Act 2006 to the Welsh Ministers for CONSENT to construct the works described in Section D of this form.

Signed 

Name (BLOCK letters)

Position (if applicable)

Organisation (if applicable)

Date

You must keep a copy of your completed form

Data Protection Act

Your application will be in the public domain. As such, all papers associated with it will be disclosed during the application process to others, including other Central Government Departments, public bodies, local authorities, other organisations and members of the public.