

Section 16 Commons Act 2006 Application
Appendix E

MYNYDD MAEN WIND FARM
COMMON LAND REPORT TO SUPPORT AN APPLICATION
UNDER SECTION 16 OF THE COMMONS ACT 2006



DATE OF REPORT: 28th June 2024

Prepared on behalf of:
Renewable Energy
Systems Ltd, Beaufort
Court, Egg Farm Lane,
Station Road, Kings
Langley, Hertfordshire,
WD4 8LR

Prepared by:
Watts & Morgan LLP
55A High Street,
Cowbridge,
Vale of Glamorgan,
CF71 7AE

Contents

1.0	Introduction	4
2.0	Policy Guidance	6
3.0	Mynydd Maen Wind Farm	8
4.0	The Common	13
5.0	Common Land Considerations	16
6.0	Suitability of The Replacement Land.....	18
7.0	Conclusions	19

Appendices

- Appendix 1 Plan of Mynydd Maen Common incorporating CL25, CL26, CL27, CL28
- Appendix 2 Welsh Government Guidance
- Appendix 3 Photographs of Turbine Locations and Substation
- Appendix 4 Photographs of Coed Cae Watkin Dafydd
- Appendix 5 Photographs of Cwm Lickey
- Appendix 6 Photographs of Gelli Gravog
- Appendix 7 Ecology Technical Note for the Replacement Land
- Appendix 8 Hefting Plan

1.0 Introduction

- 1.1 This report has been prepared by Watts & Morgan, on behalf of Renewable Energy Systems Ltd (RES) to support applications for secondary consents as part of an application for a Development of National Significance (DNS) to construct and operate Mynydd Maen wind farm.
- 1.2 As part of these proposals, RES (the Applicant for the DNS) has land that is currently designated common land at Mynydd Maen common (which encompasses CL25, CL26, CL27 and CL28). A plan showing the extent of the common is included in Appendix 1.
- 1.3 The commons at CL25, CL26, CL27 and CL28 have been described in the report as Mynydd Maen Common both for ease of reference and because this is how they are known locally. Their Common names in accordance with the commons register are as outlined below:

CL25 – Mynydd Maen and Mynydd Llwyd

CL26 – Edlogan Common

CL27 -Magna Porta Common

CL28- Mynydd Henllys Common

The wind farm comprising 13 wind turbines with associated access tracks, substation and turbine bases are proposed on common land and, therefore, in line with the DNS criteria set out in Regulations 4 of The Development of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 as amended. Applications for secondary consents will be made to Planning and Environment Decision Wales (PEDW).

- 1.4 Applications will be submitted under Sections 16 and 38 of the Commons Act 2006. The Section 16 application will seek to deregister a small area of common land required for turbine bases, crane pads, tracks and substation and to register the appropriate replacement land. The Section 38 application will seek consent to fence off the works during construction. This common land report is commissioned to cover the following (which supports the information included in the application forms under Section 16 of the Commons Act 2006):
 - 1.4.1 To review and describe the condition and quality of the release land (being the existing common land that is to be taken out of common);
 - 1.4.2 To review and describe the condition and quality of the replacement land (being the land to be provided to replace any common land which is to be deregistered as a result of the development);
 - 1.4.3 To advise whether the replacement land is suitable to compensate for the release land taking into consideration the type and quality, its location in the context of the existing common, use of the land (for the public and livestock);
 - 1.4.4 To comment on how the replacement land will be managed to avoid disruption to existing grazing patterns.
 - 1.4.5 To advise on what potential impact could arise for current users of the common (commoners, landowners and public) as a result of the construction and operation of the proposed wind farm.

- 1.4.6 To provide details of the use of the common by commoners and the public – the report needs to consider how the common land to be released is currently used and whether its loss affects access and use. To also consider how commoners and the public will be able to use the replacement land if the exchange was agreed; and
- 1.4.7 To conclude whether the exchange of the release land for the replacement land will adversely affect the interests of the commoners, landowners and the public.
- 1.5 The extent of the common land to be released or deregistered (the release land) amounts to 11.80 Hectares (ha), which is as shown on the plan at Appendix 1. The area of replacement land to be provided to compensate for the loss totals 14.50 ha in three separate enclosures and is also shown on the plan attached at Appendix 1.
- 1.6 This report considers the appropriateness of the replacement land to be included to compensate for the loss of the release land and to ensure there is no adverse impact as a result of the proposals on the exercise of the rights of the commoners or public. The replacement land will become common land with full rights of access and amenity and therefore will not require any reduction in stocking numbers and the change will not be detrimental to the interests of the commoners, landowners and the public.

2.0 Policy Guidance

Full details of the relevant policy guidance relating to common land applications is included in Appendix 2.

2.1 Section 16 Commons Act 2006

- 2.1.1 Where there is a need to deregister and exchange common land (in this case to deliver the development of a wind farm) an application is required under Section 16 of the Commons Act 2006.
- 2.1.2 The generating capacity of the proposals will exceed 10MW and, as such, the application qualifies as a DNS. As part of the application for DNS consent, RES is required to secure secondary consent (under Section 16 of the Commons Act 2006) to deregister and exchange the extent of common land to be used or taken out of common for the development proposed as Mynydd Maen wind farm.
- 2.1.3 The application under Section 16 includes any land on the common required for the proposed turbine foundations, crane pads, substation and access tracks to the turbines.

2.2 Welsh Government Guidance

- 2.2.1 Guidance on the determination of common land applications was published by the Welsh Government in August 2014. The document is titled 'Common Land Consents Guidance' and it gives helpful advice on how such applications will be assessed and determined. It is a helpful guidance tool for those preparing applications to be considered and determined by Welsh Ministers.
- 2.2.2 Guidance states that key to the determination of the application under Section 16 are the following considerations:
 - (a) The interests of persons having rights in relation to, or occupying the land (and in particular, persons exercising rights of common over it);
 - (b) The interests of the neighbourhood;
 - (c) The public interest; and
 - (d) Any other matter considered to be relevant.
- 2.2.3 Paragraphs 3.9.1 to 3.9.4 state that the following matters are important to the use of common land by those with rights in relation to it or occupying the land (commoners in particular) and should be considered by the decision maker when determining applications:
 - (a) What effect do the proposals have on the ability of commoners or other rights holders (including the landowner) to exercise their rights?
 - (b) What alternatives have been explored that might reduce the impact of the proposals on the exercise of commoners' rights?
 - (c) What effect will the proposals have on other rights holders, such as those with rights of access across the land?

2.2.4 In response to guidance and to expand on the questions posed in the application forms to support this application, this report covers the following:

- (a) The proposed works on the common;
- (b) The existing rights over the common and the extent to which they are exercised;
- (c) The total amount of land to be released from the common and its location;
- (d) The replacement land - amount, location and appropriateness;
- (e) Whether there will be any loss of grazing;
- (f) The potential disturbance during the construction period and measures to mitigate any disruption; and
- (g) The effect of the loss of the release land on the overall amount of common land available.

3.0 Mynydd Maen Wind Farm

3.1 The Proposed Scheme

- 3.1.1 The application proposes a wind farm development at Mynydd Maen, consisting of thirteen wind turbines, each with a three-bladed rotor and maximum height to blade tip of 149.9 metres (m). The application also comprises associated infrastructure including:
- (a) Access works – improvement to the existing access together with new and improved internal wind farm tracks within the common;
 - (b) Crane pads at each turbine location;
 - (c) Turbine foundations;
 - (d) Underground power cables linking the turbines and the on-site substation;
 - (e) Temporary construction compounds, laydown areas and storage areas;
 - (f) Temporary borrow pits;
 - (g) Grid connection infrastructure including the on-site substation, control building and overhead lines linking the substation to the distribution network.
- 3.1.2 As set out above, the proposals qualify as a DNS. The application is supported by an Environmental Statement (ES) covering a variety of environmental and technical information, including an assessment on noise, landscape and visual impact, ecology, drainage, shadow flicker and heritage.
- 3.1.3 All of the turbines and infrastructure are proposed to be constructed on Mynydd Maen common.
- 3.1.4 The extent and location of the proposed works and land which is proposed to be released from the common is as shown colored red at Appendix 1.
- 3.1.5 Once construction has completed, the access tracks and areas immediately around the turbines will be available for use by commoners and other users of the common. All areas required for temporary uses, for example construction compounds, lay down areas, borrow pits will be fully reinstated and made available to all users of the common.
- 3.1.6 It is proposed that the release land will be restored once decommissioning has taken place and the development site is fully reinstated.
- 3.1.7 Once constructed, the access tracks and turbine hard standings will be used by maintenance staff for the wind farm. Crane pads will remain in situ for the duration of the operational life of the wind farm for use in the event of any specific maintenance or repair requirements.

3.2 The Site

- 3.2.1 The application site is situated on a plateau overlooking the larger settlements of Cwmbran to the east and Newport to the south. It is surrounded by various settlements and farms with the Cwmcarn Forest and scenic drive situated immediately adjoining the western boundary. The site is situated within the administrative boundaries of Caerphilly County Borough Council and Torfaen County Borough Council.
- 3.2.2 The site is accessed via an unnamed public highway to the west of the site, known locally as the Mountain Road. The highway connects via Old Pant Road and Central Avenue to the A467 near Newbridge.
- 3.2.3 The application site comprises an area of approximately 11.80 hectares as shown at Appendix 1 which is wholly within Mynydd Maen common.

3.3 Mynydd Maen Common

- 3.3.1 Mynydd Maen common is the name used to describe common land areas CL25, CL26, CL27 and CL28.
- 3.3.2 Mynydd Maen common extends to 1128.28 hectares situated in a single block as shown on the plan at Appendix 1.
- 3.3.3 The common comprises a significant area and is mostly situated on a plateau up to 472 metres above sea level overlooking Cwmbran to the east and Newport to the south.

3.4 Release Land

- 3.4.1 The total area of common land required to be released to deliver the wind farm proposals, including wind turbines together with new and improved access tracks, associated infrastructure and substation extends to 11.80 hectares. The release land is situated centrally within CL25 and extends partially into CL26.
- 3.4.2 The release land comprises predominantly poor unimproved grassland which is covered partly in fern, heather, whinberry and rush with areas of self-sown trees which have grown as a result of reduced grazing. The turbine and substation locations have all been inspected with photographs attached in Appendix 3. The areas are further described below: -
 - 3.4.2.1 Turbine 1 Situated on a gentle northerly facing gradient, comprising an area of thick heather. Very difficult access by foot. Close to an existing fire break.
 - 3.4.2.2 Turbine 2 Situated on a gentle south easterly gradient, mostly very thick heather with some whinberry situated close to an area of fern, difficult access by foot.
 - 3.4.2.3 Turbine 3 Mostly level or gently northerly facing gradient, thick heather with difficult walking access, close to an area which has been mown by the commoners.
 - 3.4.2.4 Turbine 4 An open area close to a public footpath with easy access by foot. Rough grazing with part whinberry, small areas of heather and some light rush.
 - 3.4.2.5 Turbine 5 A level area with some heather, difficult walking access.
 - 3.4.2.6 Turbine 6 An open level area with whinberry and grass cover, easy access by foot.

- 3.4.2.7 Turbine 7 An open level area comprising some heather, whinberry and patches of rough grazing, easy access by foot.
- 3.4.2.8 Turbine 8 An open level area which appears to be mown by the commoners, the access to the turbine is through an area of heavy heather with difficult walking access.
- 3.4.2.9 Turbine 9 A level area with small areas of heather, rough grazing and rush, close to an existing track.
- 3.4.2.10 Turbine 10 An open level area situated on the edge of a mown part of the common, the area appears to be grazed by sheep and cattle.
- 3.4.2.11 Turbine 11 An open level area of the common, situated close to an existing track, mostly rough grazing with some patches of heather and whinberry.
- 3.4.2.12 Turbine 12 An open level area comprising mostly heather and whinberry
- 3.4.2.13 Turbine 13 The most southerly turbine, situated in an area of mostly heather and whinberry, difficult walking access
- 3.4.2.14 Sub-Station An open level area of grassland which appears to be grazed with an area of heavy heather close by, situated near overhead electricity pylons which cross the common.

3.5 Replacement Land

- 3.5.1 The proposed replacement land to replace the release land is situated in three separate areas known as Coed Cae Watkin Dafydd, Gelli Gravog and Cwm Lickey which comprise in total 14.50 hectares as shown on the plan attached at Appendix 1.
- 3.5.2 The replacement land adjoins the common at three separate locations. The three parcels of land comprise pastureland and ferny bank which is currently being grazed by livestock and in that respect is suitable replacement land. The three parcels of land vary in topography and land quality. The three areas are further described.

3.5.2.1 Land at Coed Cae Watkin Dafydd

The land at Coed Cae Watkin Dafydd comprising 7.47 hectares is an area of mostly level and northerly facing gently sloping pastureland which is covered substantially in rush. The land is bordered to the south and east by the common with enclosed pastureland to the west and woodland to the north. The land is currently grazed by sheep and appears for the most part to be very similar in quality and topography to the common which is adjoining. There is a significant difference in quality between the land at Coed Cae Watkin Dafydd and the enclosed land to the west which is a hay meadow. Photographs attached to Appendix 4 clearly show the differential in quality.

The boundaries to the land comprise walls which are for the most part in disrepair with separate fences erected inside the boundary wall to the west, south and east. The boundary to the north is fenced against a woodland albeit outside the original wall boundary. This fence appears to have been erected as part of the works to fence the woodland plantation. The wall along the northern boundary will become the new boundary of the common.

Access between the common and the land at Coed Cae Watkin Dafydd is currently via two field gates which could be opened to allow easy access for livestock and the public.

There is some wind blow onto the land from the adjoining woodland to the north which means that intermittent fencing runs along the northern boundary fence. The westerly boundary with the adjoining enclosed pastureland appears to be in good condition. There is a gateway into the adjoining pastureland from the land at Coed Cae Watkin Dafydd which would enable easy access from the adjoining land onto the new area of common.

3.5.2.2 Land at Cwm Lickey

The land at Cwm Lickey comprising approximately 1.58 hectares is an area of sloping easterly facing land which adjoins the common along its western boundary. Some of the land is quite steep which is similar to the common which adjoins it. Photographs of the land are attached at Appendix 5.

The land is narrow in shape and is situated between the common to the west and enclosed agricultural fields to the east. It is covered for the most part in very heavy overgrown fern with some tree growth including large beech trees.

The land is currently separated from the common by a stockproof fence. The fence is difficult to follow due to the thick fern but appears to be open to the common in places with sheep accessing the land from the adjoining common. The land is very similar in quality, vegetation cover and topography to the common which adjoins it and is easily opened to the common for access by livestock and the public by removing the existing fence boundary. The boundary fence between the enclosed fields to the east and the land at Cwm Lickey appears to be mostly stockproof and could easily form a new boundary between the common and the land adjoining.

3.5.2.3 Land at Gelli Gravog

The land at Gelli Gravog comprising 5.45 hectares is partly situated in two adjoining enclosures with a separate open area of ferny bank all situated on an easterly facing slope. Photographs of the land are attached as Appendix 6.

The land comprises partly clean pasture which is used for the grazing of horses and sheep and a steeper ferny bank suitable for rough grazing only. The land is bordered to the west by the common which similarly comprises a steep easterly facing ferny bank,

The land is bordered to the north by woodland and to the south by a steep bank into what appears to be former quarry workings. The land is fenced against the common albeit the fence is outside the original wall boundary which is in disrepair. The fence against the common appears for the most part to be in a good stockproof condition. The land is fenced to the north against woodland with a good stockproof fence. There does not appear to be any fencing to the east or the south.

There does not appear to be any current access between the land at Gelli Gravog and the common and it will be necessary therefore for gates to be installed between the land and the common to allow access both by livestock

and the public.

3.5.3 The three areas of replacement land are further described in the Ecology Technical Note attached to this report at Appendix 7.

4.0 The Common

- 4.0.1 To support the secondary applications, RES has consulted with the commoners and users of the common and undertaken survey work to understand the use of the common and to assess the quality of the release and replacement land to ensure it is suitable.

4.1 Consultation

- 4.1.1 Prior to the formal process of statutory pre-application consultation, RES has been consulting on the proposals for development on the common at Mynydd Maen. Early engagement included consultation with a number of public and private organisations, including the commoners. The wider public, including all residential properties within 2km of the proposed site, were consulted and invited to share their thoughts on the proposals.
- 4.1.2 The applicant has sought to consult with those currently using the common to gather feedback on the proposals – to understand any concerns and to minimise impact and maximise any potential benefits through the process. The statutory pre-application consultation process will support the ongoing consultation on this aspect of the proposals and a separate consultation report will be prepared to support the final submission.
- 4.1.3 The applicant has consulted and engaged with a range of statutory and non-statutory consultees, local communities, organisations and individuals on the application proposals. Early engagement with the local planning authorities, community and interested parties began in November 2021 and is ongoing, through a range of consultation activities. An online public exhibition was held on the dedicated Mynydd Maen project website in March 2022 and in-person public exhibitions were held in the local area, in June 2023. In addition, the applicant has established a Community Liaison Group comprising a number of locally elected representatives.
- 4.1.4 Meetings were held with members of the Mynydd Maen Commoners Association in August 2021, May 2022, January 2023 and August 2023. Further consultation will take place as part of the statutory consultation process.

4.2 Surveys

- 4.2.1 The extent of the common, which includes all release and replacement land, has been inspected over a number of years as part of the ecological survey work undertaken to support the application. The survey work was undertaken on foot, looking at physical features, biodiversity and topography.

4.3 Landowners

- 4.3.1 The freehold owners of the common at Mynydd Maen (CL25, CL26, CL27 and CL28), including the release land and the replacement land that is the subject of this application are Llanover Estate and Pontypool Park Estate and RES is in discussion with them regarding the areas of land that are required for the infrastructure, release land and replacement land which will be secured with the landowners.

4.4 Land occupiers

- 4.4.1 The occupiers of the common land are the registered commoners of CL25, CL26, CL27 and CL28. The registered commoners are members of the Mynydd Maen Commoners

Association. The commons register is maintained by the Local Authority with there being currently registered grazing rights to 55 separate holdings.

These rights are set out below: -

CL25 – 4692 units over 19 holdings where one ewe and her lambs count as one unit and one horse or head of cattle counts as five units.

CL26 – over 15 holdings. The right to graze 2310 sheep, 128 cattle, 45 horses/ponies, 16 pigs, 34 geese, 50 poultry and 5 rights to cut rush and bracken.

CL27 – over 10 holdings. The right to graze 1170 sheep, 45 cattle, 17 horses/ponies, 1 right of piscary and 1 right to shoot.

CL28 – over 11 holdings. The right to graze 2780 sheep, 16 cattle.

- 4.4.2 The consultation process highlighted that grazing rights have been, and are being, exercised on Mynydd Maen on a regular basis either as periodic or active graziers. The livestock are hefted over the large area of common land as there are no physical boundaries.
- 4.4.3 Consultations with the active graziers have indicated that grazing rights have been actively exercised on the common in previous years and they will continue to use the grazing rights in the future. The number of graziers and the volume of stock that graze the common varies on an annual basis and within any grazing season.

4.5 Public access

- 4.5.1 The Countryside and Rights of Way (CROW) Act 2000 provides rights of access to public areas defined as access land which includes registered common areas.
- 4.5.2 To compensate for the loss of the release land, the replacement land will be registered as common land and will be subject to the rights that are currently in place on the common. As noted above and shown at Appendix 1, the replacement land is located immediately adjacent to the common. These areas, which comprise 11.80 hectares, will be available for use by the public - areas that were not previously available but will become part of the common. These areas of land provide more than sufficient compensation – with a total of 11.80 hectares being taken out and replaced by 14.50 hectares. The provision of this additional land, which can be used by the public, increases the overall land available for public access.
- 4.5.3 If required during construction, for safety reasons, the areas where development is to take place will be temporarily fenced off. From our own observations and various discussions, the main public uses on the common are for rambling, horse riding and mountain biking. The proposed access tracks will provide enhanced access to parts of the common within the site area. These tracks could be used by commoners for access and could also be used by riders, ramblers and mountain bikers.
- 4.5.4 There are Public Rights of Way within the site area – these are shown on the plan in Appendix 1. Where construction of the turbines and access tracks affects these rights of way then applications may be made to the relevant local authorities for the rights of way to be diverted on a permanent or temporary basis. These applications would be assessed on their own merits.
- 4.5.5 Use of the common for equine use is limited to amenity use under a permissive right

granted by the landowners. Having visited the site on several occasions, the use of the common for equine purposes is minimal and spread out across the whole common without any defined areas of use.

- 4.5.6 Use of the common by mountain bikes is commonplace albeit appears to be more prevalent to the south of the common on CL28 where the common adjoins the Cwmcarn scenic drive and Cwmbran areas. The impact of the wind farm upon mountain bike use is likely to be minimal/beneficial
- 4.5.7 The proposed replacement land will be registered as common land and will be subject to the same rights as the existing common land. The public will also be able to access the 14.50 hectares of replacement land which was not previously available to the public increasing the overall volume of land available for recreation, walking and other public use.

5.0 Common Land Considerations

5.1 Mynydd Maen Commoners Association

- 5.1.1 The occupiers of the common land are the registered commoners of CL25, CL26, CL27 and CL28. The majority of registered commoners are members of the Mynydd Maen Commoners Association. Regular consultations have been carried out with the officers of the Commoners Association since August 2021.
- 5.1.2 The Commons Register as overseen by the Local Authority has been inspected. Rights are currently registered to 55 separate holdings on the Register for CL25, CL26, CL27 and CL28. The rights exist as shown under paragraph 4.4.1

5.2 Current Grazing Patterns/Use of the Common

- 5.2.1 Conversations and consultations since August 2021 have identified nine main active graziers of the common land areas who are regularly using the common for the grazing of livestock.
- 5.2.2 The majority of the active graziers are currently grazing the common subject to the terms of a Glastir Agreement which has been entered into by the active graziers with the Welsh Government whereby the common is left vacant between 1st January and 1st April in each calendar year. Livestock return to the common on 1st April and the common is usually grazed during the summer months. Stocking levels are normally reduced in October when ewes are brought onto in bye land and put to the ram. All livestock are then removed from the common on 31st December to comply with the Glastir conditions.
- 5.2.3 The Common is managed as a hefted common both in respect of cattle and sheep. A heft is an area of the common which has been used by the respective flock/herd for generations and flocks/herds tend to graze the respective areas that they are hefted to without straying onto other hefts and mixing with other flocks. The hefted areas are as shown on the hefting plan which is attached to this report at Appendix 8.
- 5.2.4 As shown on the hefting plan the main proposed construction area for the wind farm is within the hefted areas of Howard Vicary, Annette Davies and Andrew Taylor. Howard Vicary is by far the largest grazier on the common and either rents or owns grazing rights from up to twelve different holdings adjoining the common. In addition, he manages Annette Davies' heft on her behalf as she is unable to do so herself. Andrew Taylor who is also listed on the hefted plan is a part time farmer and grazier and intermittently grazes the common with up to sixty ewes.
- 5.2.5 Howard Vicary grazes the common in accordance with the terms of the Glastir Agreement. This has been in situ since 2011. At present under the terms of the Glastir Agreement Howard Vicary keeps approximately 800 ewes on the common during the grazing year. These grazing levels are not consistent throughout the year with approximately 400 yearlings being brought onto the common on 1st April with the ewes and lambs to follow normally in late April when the lambs are strong enough.
- 5.2.6 The commoners usually gather in the first week of July for shearing and again in mid August to wean the lambs following which the ewes are returned to the common. The ewes are normally gathered in mid October to return to in bye land to put them to the ram. They are not normally returned to the common until 1st April the following year. Some dry ewes may remain on the common until 31st December at which time the

common is fully vacated. Howard Vicary keeps approximately 70 cattle on the common with two other graziers namely Rob Tunley keeping approximately 25 cattle and Mark Stokes approximately 12 cattle.

- 5.2.7 The grazing of the common is currently restricted by the terms of the Glastir Agreement and should the Glastir Agreement end or expire without renewal then stocking levels may increase. The terms of the Glastir Agreement have currently been extended to December 2023 and an application has been made to the transition Habitat scheme for 2024 under which the same grazing restrictions apply.

5.3 Impact of Construction of the Wind Farm upon use of the Common

- 5.3.1 It is accepted that disturbance from the construction works and vehicle movements may be caused to existing farming patterns on the common. Partly due to Glastir and partly due to a long term decline in the number of active graziers on the common, the common has been undergrazed for a number of years. The construction areas are situated centrally with significant peripheral areas either side and whereas there will be disturbance to hefts on the common it is considered that the impact upon the existing grazing patterns will be limited.

- 5.3.2 It is accepted that construction works on the common will interfere with existing public access on the common albeit there is substantial peripheral land either side of the proposed working areas which will not be impacted upon by the construction works and will be available for users of the common to include all forms of public access notably walking, horse riding and mountain bike riding. It is considered therefore that current use of the common may be maintained by all users whilst the construction works are ongoing.

5.4 Impact upon the Common following completion of Construction and Commissioning of the Wind Farm

- 5.4.1 If consented 11.80 hectares of land will be de-registered from Mynydd Maen Common as a result of the construction of the wind farm. Thirteen turbines will be centrally located on the common. The location of the access tracks will provide easy access through the common both for commoners to assist with their grazing of livestock and for other users of the common to include walkers, horse users and mountain bikers. All areas with the exception of the turbine bases and the substation will be available for public use.

- 5.4.2 The release land comprises 11.80 hectares. This equates to approximately 1.04% of the overall area of the common. The replacement land comprising 14.50 hectares is more than the release area in addition most of the release area will become available for use by the commoners and other users of the common during the operational period of the wind farm. There will therefore be a net gain of land available to the common throughout the operational period of the wind farm. This is in addition to other benefits, most notably improved access which will be available to all users of the common by the creation of the wind farm access tracks.

6.0 Suitability of The Replacement Land

6.1 The land and its Use

- 6.1.1 The replacement land is situated in three separate parcels of land which adjoin the common. The land is owned by the Pontypool Park Estate who own part of the adjoining common. The three parcels of land are currently fenced off from the common and let under Grazing Agreements to local farmers who are also commoners.
- 6.1.2 As referred to above, the land at Coed Cae Watkin Dafydd is level or gently sloping land situated adjoining with the northern boundary of the common. The land at Cwm Lickey is a narrow steep area of land which is situated along the northeastern boundary of the common. The land at Gelli Gravog is part clean grazing land and partly steep marginal land situated alongside the eastern boundary of the common.
- 6.1.3 Whilst the replacement land is currently fenced off from the common, access arrangements will be put in place to enable access between the common land and the replacement land so that it can be incorporated into the common. The incorporation of the replacement land into the common has been agreed with the Commoners Association and individual commoners who heft their sheep in those locations. Livestock will be able to access the replacement land directly from the adjoining common.
- 6.1.4 The replacement land at Cwm Lickey and Gelli Gravog is steep in places with some mature tree growth which will provide shelter for livestock during inclement weather.

6.2 Drainage and Soils

- 6.2.1 The land at Coed Cae Watkin Dafydd is poorly draining land with obvious rush growth which is very similar in topography and quality to the common adjoining. It may therefore be integrated into the common with very little impact. The land at Cwm Lickey and Gelli Gravog is steeper freer draining land, very similar in quality and topography to the land adjoining. It may therefore be integrated into the common with little impact.
- 6.2.2 Based on our inspections of the land and our discussions with the Commoners Association we consider that the land is not at risk of flooding or excess drainage issues and may therefore be safely incorporated into the common. Likewise, our discussions with the Commoners Association indicate that the land quality is very similar to the common adjoining and may be incorporated into the common easily without impact upon existing grazing patterns.

6.3 Biodiversity

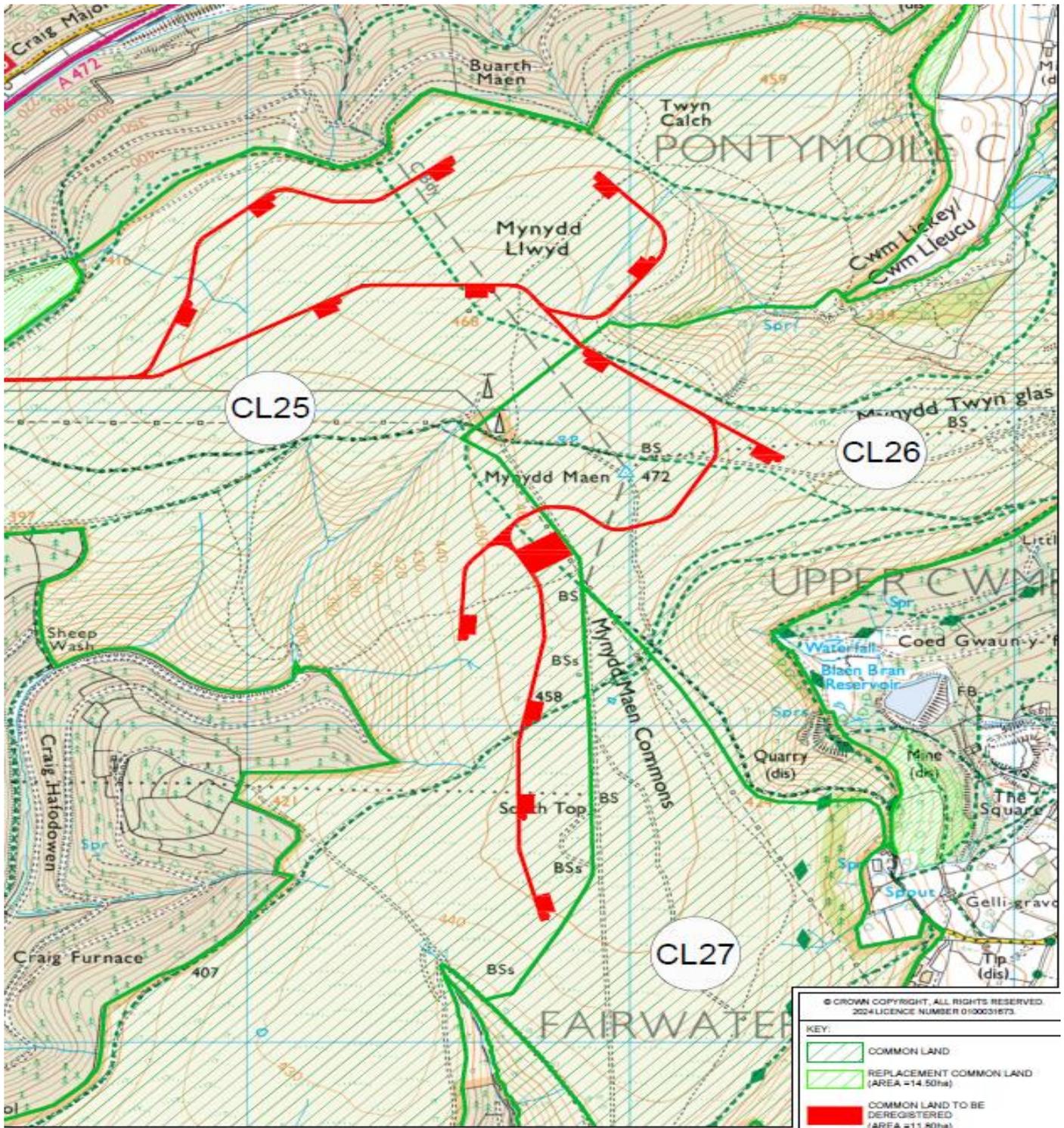
- 6.3.1 The biodiversity of the replacement land is as set out in the Ecology Technical Note attached to the report at Appendix 7. Based on the Technical Note the biodiversity of the replacement land areas is very similar to the common land adjoining.

7.0 Conclusions

- 7.1 The application under Section 16 of the Commons Act 2006 will be submitted seeking secondary consent to the main DNS application for Mynydd Maen Wind Farm.
- 7.2 This report assesses the release and replacement land and considers the appropriateness of the proposed replacement land, located adjacent to the existing common, to be included as part of the common to compensate for the loss of the release land. This exchange ensures there is no reduction in the overall volume of common land (with more replacement land than release land), no loss of public access and no disadvantage to the amount of grazing available as a result of the proposed development. This report concludes that the exchange of the release land for the replacement land would not affect the use of the common by the public, commoners and landowners.
- 7.3 The replacement land to be included within the common area extends to approximately 14.50 hectares and is located immediately adjacent to the existing common. It can therefore be easily integrated into the common whilst having a minimal impact upon the current hefting and grazing pattern of livestock using Mynydd Maen Common.
- 7.4 In summary we conclude the following:
- (a) The replacement land is suitable in terms of type, quantity, quality and location to compensate for the de-registration of the release land;
 - (b) The de-registration of the release land will not affect use of the common. 0.986 hectares of the common is proposed to be de-registered for the turbine bases and substation compound leaving a further 10.814 hectares including access roads available for use plus the replacement land comprising 14.50 hectares.
 - (c) The replacement land comprising 14.50 hectares is in excess of the release land. It is situated in three different locations offering a variety of topography compared to the release land with benefits which may include access to shade and shelter for livestock during inclement weather.
 - (d) Access to the replacement land will be provided to enable access both by livestock and the public.
 - (e) Construction of the wind farm may require some temporary fencing works to be carried out predominantly for health and safety purposes albeit for the most part access throughout the common will be unobstructed and available for use by the commoners and public. Fencing will be covered in the Section 38 application.
 - (f) Following construction, most of the release area including access tracks, crane pads will be available for use by livestock, commoners and the public. The only areas that will not be available for use will be the footprint of the turbines and substation and there will therefore be an additional net gain of land available to the common.
 - (g) Following decommissioning of the turbines, the release land will be fully reinstated and made suitable for re-incorporation into the common.
 - (h) The main public uses of the common are walking, horse riding and mountain biking and as the scheme will involve the construction of a new access road centrally within the common this will improve access arrangements for the users of the common particularly for walking and mountain biking.
 - (i) In conclusion the de-registration and exchange of the release land for replacement land will have a negligible impact and will not adversely affect the interests of the commoners, landowners and the public and will in some respects improve opportunities on the common particularly for public access and by offering shade and shelter to livestock.

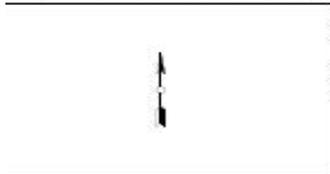
Appendix 1

Plan of Mynydd Maen Common
Incorporating CL25, CL26, CL27, CL28



© CROWN COPYRIGHT, ALL RIGHTS RESERVED
2024 LICENCE NUMBER 0100031673

KEY:	
	COMMON LAND
	REPLACEMENT COMMON LAND (AREA = 14.50ha)
	COMMON LAND TO BE DEREGISTERED (AREA = 11.80ha)



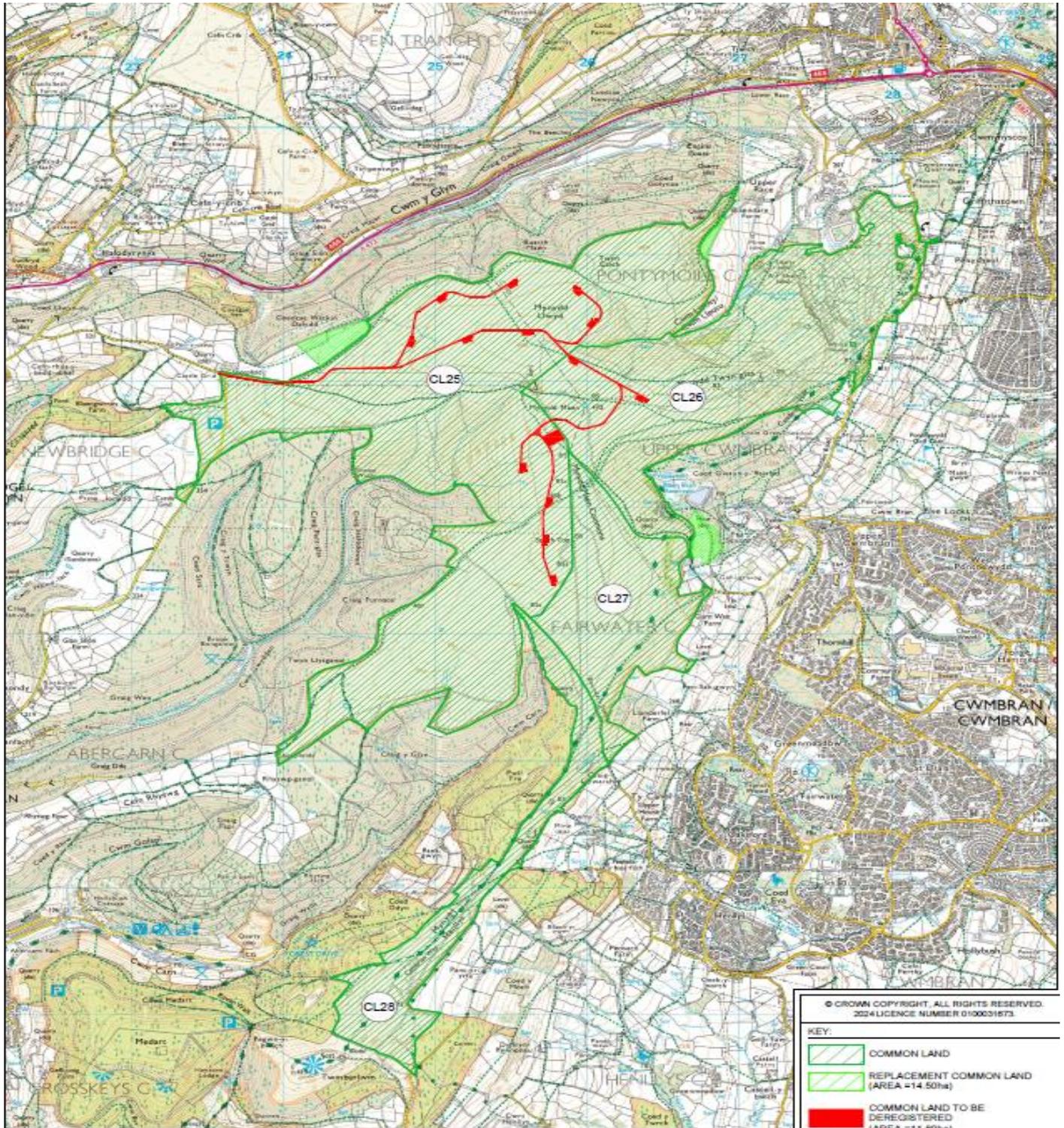
NO	DATE	BY	REVISION
1	2024-08-10	MM	ISSUED FOR PERMITTING
2	2024-09-14	MM	REVISED TO REFLECT COMMENTS FROM THE LOCAL AUTHORITY
3	2024-09-14	MM	REVISED TO REFLECT COMMENTS FROM THE LOCAL AUTHORITY
4	2024-09-14	MM	REVISED TO REFLECT COMMENTS FROM THE LOCAL AUTHORITY

PROJECT TITLE	Mynydd Maen Wind Farm	
DRAWING TITLE	DEREGISTRATION AND EXCHANGE OF COMMON LAND SECTION 15	
RES DRAWING NUMBER	04412-RES-LAY-DR-LE-017	REV
		5

PURPOSE	PERMITTING	PROJECTION	OSGB 1936
SCALE	1:10,000 @A3	DATUM	N/A
LAYOUT DRAWING	N/A	LAYOUT NO	N/A



RES CONSULTING
RIVER VALLEY
HEATH AVENUE
WALSLEY S18 2LQ
UK
TEL: +44 (0) 1922 388000
WWW.RES-CONSULTING.COM



© CROWN COPYRIGHT. ALL RIGHTS RESERVED.
2024 LICENCE NUMBER 0100031873

KEY:

- COMMON LAND
- REPLACEMENT COMMON LAND (AREA = 14.50ha)
- COMMON LAND TO BE DEREGISTERED (AREA = 11.80ha)

PURPOSE	PERMITTING	PROJECTION	OSGB 1936
SCALE	1:25,000 @ A5	DATUM	N/A
LAYOUT DRAWING	N/A	T/CAYOUT NO	N/A



RES PROJECT COLLECT
8000 PLYM LANE
PO BOX 100000
HEATHWATER BLK, UK
TEL: +44 (0) 1823 288200
WWW.RES-ORG.UK

ISSUE	DRAWN	CHECK	APPROV	DATE	REVISION/NOTES
1	JM	RS	MR	2024-08-12	UPDATED LAYOUT
2	MC	RS	CI	2024-01-14	Drawing complete. 2 errors (boundaries and designations) added
3	MC	CI	CI	2024-01-23	1:10,000 Scale Sheet added
4	JM	RS	RS	2024-08-02	AMEND REVISIONS FOLLOWING ADDITIONAL PUBLIC OPENING SURVEY

PROJECT TITLE:
Mynydd Maen
WIND FARM

DRAWING TITLE:
DEREGISTRATION AND EXCHANGE
OF COMMON LAND
SECTION 16

RES DRAWING NUMBER:
04412-RES-LAY-DR-LE-017

REV:
5

THIS DRAWING IS THE PROPERTY OF RESURABLE ENERGY SYSTEMS LIMITED AND NO REPRODUCTION MAY BE MADE IN WHOLE OR IN PART WITHOUT PERMISSION

Appendix 2

Welsh Government Guidance

Welsh Government – Common Land Consents Guidance

Introduction

The Planning Inspectorate in Wales (PINS Wales) is responsible for the procedural work for all of the Welsh Ministers' casework in relation to common land in Wales (including applications for exchange of land in respect of town or village greens) as well as determining, on behalf of the Welsh Ministers, applications for consent under section 38(1) of the Commons Act 2006 ("the 2006 Act"). PINS Wales' responsibility for procedural work also relates to the Welsh Ministers' consents, certificates and orders under various other statutory provisions in relation to common land and town or village greens identified in paragraph 4.15 below. The Deputy Minister for Agriculture and Fisheries retains responsibility for the Welsh Government's policy in relation to the management and protection of common land and greens.

1 The Guidance

1.1 This note sets out the Welsh Government's guidance in relation to the determination of such casework and is published for the guidance of the Welsh Ministers, PINS Wales, commons registration authorities and applicants for consent. It may also be of assistance to those interested in such applications (perhaps as supporters or objectors).

1.2 The Welsh Ministers and PINS Wales seek to adhere to this guidance in processing and determining applications under section 38(1) and section 16(1) and, so far as is relevant, in relation to other statutory provisions (see paragraph 4.15 below). Every application to the Welsh Ministers must, however, be considered on its own merits and a determination may, in exceptional circumstances, depart from the guidance if it appears appropriate to do so. In such cases, the decision maker will explain why it has decided not to follow the guidance.

1.3 This guidance must be read in conjunction with the 2006 Act, other legislation relevant to the type of application being considered, and the guidance notes published by PINS Wales in relation to particular types of application. The guidance notes are published on the website of PINS Wales, at:

<http://www.planningportal.gov.uk/planning/countryside/commonland/commonland>
[and](#)

2 Why is common land important?

2.1 The aim of the Welsh Government's Natural Resource Management Programme is to ensure that we make the most of Wales' natural resources while looking after natural systems and building their resilience and continuing to provide the benefits to people, communities and the economy in Wales in the long term. That is particularly relevant to common land as around 8% of

the land area of Wales is common land, with approximately 45% of common land lying within a National Park and approximately 45% included in Sites of Special Scientific Interest (SSSI).

2.2 Many commons form vital parts of the local economy by maintaining a living for commoners who use the areas to graze their stock; providing employment and generating income for sporting uses; providing an attractive backdrop to some of our most beautiful and popular tourist areas; and by preserving examples of the country's heritage, with internationally important archaeological sites and historic landscapes.

2.3 Individual commoners who still exercise their rights are maintaining a tradition that has been in existence for hundreds of years. This is particularly important in upland areas where commons form a vital element in the local agricultural economy.

2.4 Some of the varied benefits we wish to see our common land delivering are:

Economic

- maintaining a living for commoners who use common land to graze livestock, often with consequential benefits to the wider rural community;
- providing employment and generating income from sporting use
- providing aesthetic beauty in the landscape, which encourages tourism;

Agriculture

- ensuring upland farms can rely on the grazing of common land, which is a significant component of livestock production in Wales;
- maintaining local infrastructure and expertise capable of long term sustainable agricultural management;

Biodiversity

- maintaining natural vegetation rich in flora and fauna;
- protecting a diversity of habitat (on common land, the diversity reflects the lack of incentive to "improve" such land because of the absence of any single controlling interest);
- promoting Sites of Special Scientific Interest and the conservation of other nationally designated sites;
- sustaining grazing systems which are responsible for maintaining many landscape and environmental values on agriculturally-active commons;

Archaeological

- preserving landforms and features in unploughed soils (common land and greens have often been undisturbed for centuries);
- protection of important archaeological and historic sites;

Recreation

- enjoyment of the landscape by visitors and tourists;
- providing open space for surrounding communities;
- use for a wide range of organised activities and local traditional activities;
- commons which are sporting estates contributing to the local economy;

Cultural

- common land and greens providing focus of communities for ancient and traditional activities;
- long-standing traditions associated with the use of common land and greens; and
- increasing the value of open, unenclosed common land and greens as a *de facto* “communal” resource and providing a sense of belonging.

3 Protecting commons — our policy objectives

3.1 The Welsh Government’s desire to protect commons contributes to a number of its strategic objectives:

- reversing the decline of and securing the resilience of our biodiversity by focusing on ecosystems as a whole and their connection with our economy and our communities; and
- through sustainable use of our resources the opportunity to drive growth and exploit new markets, increase efficiency and improve the resilience, safety and prosperity of our communities, our economy and our environment.

3.2 Within those objectives the Welsh Government wishes to see:

- Soil and land managed sustainably;
- Biodiversity valued, safeguarded and enhanced;
- People enjoy, understand and care for the natural environment;
- Improved local environment quality;
- Designated sites either in good condition or improving; and
- Sustainable, living landscapes with best features conserved.

3.3 The 2006 Act, along with a suite of earlier legislation on common land, enables the Welsh Government to:

- Safeguard commons for current and future generations to use and enjoy;
- Ensure that the special qualities of common land, including its open and unenclosed nature, are properly protected; and
- Increase the number of Sites of Special Scientific Interest in favourable condition.

3.4 To achieve this we have a consent/approval process in place to ensure the following outcomes are achieved:

- our stock of common land and greens is not diminished — that, on balance, any deregistration of registered land is balanced by the registration of other land of at least equal benefit;
- works take place on common land only when they maintain or improve the condition of the common or, in exceptional circumstances, where they confer some wider public benefit and are either temporary in duration or have no lasting impact; and
- any use of the common or green is consistent with its status (as common land or green).

3.5 Sections 16(6) and 39(1) of the Act set out the criteria to which the Welsh Ministers must have regard when assessing an application. In applying the criteria the Welsh Ministers will look at the application not only as it is, but will consider whether the application proposes the best possible outcome. It may be that a more acceptable outcome could be achieved by adopting a different approach.

3.6 For example, an application relates to works at point A, and the evidence suggests the works would have a reduced impact on public access and nature conservation if erected at point B (and there is no reason why the works could not be erected at point B). In cases where the Welsh Ministers are satisfied that there is a better approach it is open to them either to impose conditions to improve the outcome or to refuse consent for the application before them, where they are satisfied after applying the statutory criteria that there are good grounds for doing so.

3.7 Similarly, if an application proposes the erection of permanent fencing, but the purposes of the fencing will be achieved within a reasonably predictable timescale, or the utility of the fencing should be reviewed from time to time because of its impact, the Welsh Ministers may decide to impose a condition requiring the works to be removed after a period of time, or refuse consent for the works.

3.8 Equally, if an application proposes the erection of temporary fencing to prevent livestock from wandering on to a road running through a common and causing accidents, the Welsh Ministers might want to know whether the applicant has explored the option of asking for a temporary speed limit to be introduced on the appropriate stretch of road to mitigate the risks of an accident whilst preserving the open nature of the land, or for warning signs to be introduced (e.g. warnings of cattle on road) that would have the effect of

slowing traffic down. If these were considered and rejected by the applicant as being ineffective, the Welsh Ministers might want to know why.

3.9 Looking at each of the criteria some of the considerations which should be taken into account include:

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

- What effect will the proposals have on the ability of commoners or other rights holders (including the landowner) to exercise their rights?
- What alternatives have been explored that might reduce the impact of the proposals on the exercise of commoners' rights?
- What effect will the proposals have on other rights holders, such as those with rights of access across the land?

3.9.2 the interests of the neighbourhood

- Does the proposed replacement land or outcome intended by the proposed works add something that will positively benefit the neighbourhood?
- Does the loss of the release land or the construction of the works mean that local people will be prevented from using the common or green in the way they are used to? For example, will the loss of the release land reduce the area of the cricket pitch below a viable threshold, or the works interfere with a regular riding circuit (particularly if any replacement land cannot mitigate the loss)?
- Does the construction of the works or, in relation to any exchange, will the removal of the release land from its status as common land or green, interfere with future use and enjoyment (whether by commoners, the public or others) of the land as a whole (e.g. will fencing sterilise part of the land, rendering it practically inaccessible)? Is it likely or possible that the release land could cease to be available as a means of access between other parts of the land as a whole (e.g. the removal of a vehicular access way from a green would enable the owner to fence off the access way from the green on either side, or otherwise exclude access to it)?

3.9.3 the public interest

The public interest is defined at sections 16(8) and 39(2) of the Act as including the public interest in nature conservation, the conservation of the landscape, the protection of public rights of access to any area of land, and the protection of archaeological remains and features of historic interest:

- What effect will the proposals have on those wishing to use the common for recreation and access? (In the case of any exchange, it should be assumed that the release land will cease to be available for recreation and access, unless a legally binding provision is intended to be made to assure continued use)
- Are there potential benefits to nature conservation from carrying out the proposals? Does Natural Resources Wales or any other competent person agree with the assessment of any proposed benefits? It may be appropriate to consider indirect benefits - for example, if the works will facilitate the continuation of sustainable grazing systems, which in turn deliver environmental benefits.
- In relation to any exchange, what will be the impact of the replacement land in relation to nature conservation compared with the release land? Does Natural Resources Wales or any other competent person agree with the assessment?
- What will be the impact on the landscape if the proposals proceed? Is the landscape in a specially designated area, such as a National Park or Area of Outstanding Natural Beauty? Will the impact include an adverse effect on the enjoyment of the remaining part of the common or green (e.g. if development of any release land might spoil the view or impair the conservation of wildlife on the remaining part)? What consideration has been given to minimising any impact by good design (e.g. in relation to a fencing scheme, minimising the extent of new fencing by utilising the existing boundaries of the common)?
- Will the proposals help protect archaeological remains and features of historic interest (particularly if there are such features on any land being deregistered)?
- How do the proposals fit into the historical context? For example, in relation to an ancient common, uniformly described in historical documentation with well-defined boundaries, what effect would they have on the local heritage?

3.9.4 any other matter considered to be relevant

This criterion allows other issues to be taken into account when assessing an application. It may include looking at the wider public interest, which may arise, for example in a major infrastructure project.

3.10 In assessing these considerations, the Welsh Ministers will take into account any matter which is relevant. They will not necessarily rely on the applicant, supporters and objectors to bring all such matters to their attention, but will also rely on their own experience and insight to draw appropriate conclusions. For example, they will not assume that, because no one objects to an application, that there are no adverse impacts, but will consider what impacts might arise, taking into account these criteria, and applying their

knowledge and experience, together with information available in representations, to make a judgement. If necessary, if there is doubt about the extent of any impact, they will consider using their powers to require a site visit or public inquiry, or to seek professional advice, in order to improve understanding of the merits of the application.

4 Other Policy Considerations

Exchange land in applications to deregister or exchange common land under section 16 of the 2006 Act

4.1 Applicants must propose replacement land if the area of the release land is over 200m² (see section 16(2)). Even in cases where the land to be deregistered is less than 200m² the Welsh Government expects land to be offered in exchange for the land being deregistered as our policy is not to allow our stock of common land and greens to diminish. The Welsh Government does not see the purpose of section 16 being to facilitate the deregistration of “unwanted” or “useless” pieces of common land or green; but to enable registered land to be released in exchange for replacement land of equal value.

4.2 In considering an application which does not propose replacement land, section 16(7) requires that the Welsh Ministers have “particular regard to the extent to which the absence of such a proposal is prejudicial” to the interests specified in section 16(6)(a) to (c) (*i.e.* the “private” interests, the interests of the neighbourhood, and the public interest referred to in paragraphs 3.9.1 to 3.9.3 above). In general, the Welsh Ministers will grant consent where no replacement land is offered only in exceptional circumstances. Such circumstances are most likely where a wider public interest is being served by the deregistration which may mitigate the prejudice caused by the loss of the release land. An example is the creation of a slipway for a lifeboat station, or the provision of a disabled access ramp to a village hall. Even in such cases, land should be offered in exchange unless there is a compelling reason why this is not possible (*e.g.* the registered land is surrounded by development, and it is not practicable to provide replacement land which would be integral to the site). It follows that an application for deregistration where no replacement land is offered is most unlikely to be granted if no public interest is served by the deregistration.

4.3 Nor does the Welsh Government see the purpose of section 16 as enabling the deregistration of land which is claimed to have been wrongly registered: other provision is made for that specific purpose in the 2006 Act.

4.4 In considering an application under section 16, the Welsh Ministers will assume that the release land is correctly registered. Where access to the release land is limited by inclosure (*e.g.* by a fence or hedge), or the release land is occupied by buildings or other works, they will assume that such inclosures or works are unlawful (unless the contrary is shown, *e.g.* by reason of a consent granted under section 194 of the Law of Property Act 1925) and that they will not endure. Accordingly, in those circumstances, they will

consider the proposed exchange as if the release land were an integral part of the common and properly available for public use.

4.5 Where it is proposed to offer land in exchange which is not contiguous with the common in which the release land is situated, the Welsh Ministers would expect to be provided with information on the following issues where applicable:-

- what rights or easements exist which would enable animals to be moved from existing common land to that offered in exchange eg how would access across private land be obtained?;
- how would the movement of animals over different commons affect the rights and usage of those with existing rights on different commons? There could be the danger of interfering with existing rights eg overgrazing, prevention of those persons with existing rights from grazing animals etc, and information would be required as to how those risks would be avoided;
- where animals would be moved over private land and/or different commons, what steps would be taken to avoid the risk of any diseases spreading to/from the other land and/or from one flock or herd to another?

Works on commons under section 38 of the 2006 Act

4.6 Commons should be maintained or improved as a result of the works being proposed on them. The Welsh Government sees Part 3 of the 2006 Act, and its predecessor provision in section 194 of the Law of Property Act 1925, as conferring additional protection on common land, rather than enabling common land to be used for purposes inconsistent with its origin, status and character. In other words, consent under section 38 should be seen as a gateway, which enables the construction of works which are sympathetic to our policy objectives for common land, but reinforces controls on development which are inappropriate or harmful.

4.7 In deciding whether to grant consent to carry out works on common land, the Welsh Ministers (and Inspectors) will wish to establish whether the proposed works are consistent with the use of the land as common land. For example, an application for works which facilitate grazing of a common by a rights holder will be considered to be consistent with the future use of the land as common land, whereas an application for works to extend a private dwelling onto common land will be considered not to be consistent with the future use of the land as common land, and will normally be refused.

4.8 Where it is proposed to construct or improve a driveway across a common, consent will be required under section 38 if the works involve the “laying of concrete, tarmacadam, coated roadstone or similar material” (other than for the purposes of repair of the same material). Such an application

may be consistent with the continuing use of the land as common land, even where the driveway is entirely for private benefit, because the construction will not in itself prevent public access, or access for commoners animals. By its very nature, however, paving will have an impact on the enjoyment of the common by reducing the area available for recreation and grazing, by removing habitat, perhaps by affecting drainage, and introducing an urbanising feature into what will normally be an essentially open and natural setting. Nevertheless, the Welsh Government takes the view that, in some circumstances, a paved driveway may be the only practical means of achieving access to land adjacent to the common or green. Moreover, where an existing unsurfaced means of access is already in use, a sympathetic paving proposal may be aesthetically preferable.

4.9 The Welsh Government also notes that the alternative of deregistration of the land covered by a drive, and the substitution of replacement land elsewhere, may be undesirable in that the release land ceases to be subject to statutory protection, and may cease to be available to the community (the potential impact of deregistration may be greater where the release land is core or integral to the enjoyment of the common or green as a whole). These issues will vary according to the particular circumstances and no general rule can be formulated.

4.10 The Welsh Ministers generally have no power to grant consent to construct or improve a driveway across a town or village green, and the construction and subsequent use of such a driveway may well be illegal. Where it is intended to construct a vehicular means of access across a green, the Welsh Government notes that an application may be required under section 16 to deregister the affected land, but where such an application relates to an area of the green which is not more than 200m² in area, the principles set out in paragraph 4.1 to 4.5 above (in relation to the provision of exchange land) will apply.

4.11 Consent will not normally be granted under section 38 for permanent buildings on common land, because such development is normally incompatible with the future use of the land as common land. Where such buildings are intrinsically related to the enjoyment or management of the common, however, such as a cricket pavilion, lambing shed or a keeper's hut, the giving of consent under section 38 may be considered appropriate.

Underlying public benefit

4.12 Some proposed works on common land do not benefit the common but nevertheless there is a potential underlying public benefit, for example works for the generation of sustainable energy (wind farms).

4.13 The Welsh Government wishes to promote sustainable energy generation in an appropriate setting but, equally, its policy is to ensure that the stock of commons is not diminished, that works on common land must maintain or improve the condition of the common, and the use must be consistent with its status as common land. To balance these issues the

Welsh Government's expectation is that applications for such infrastructure projects on common land are more likely to be successful under section 16 of the Act, so that an exchange of land is proposed and can be taken into account. An application for consent to such works under section 38 will rarely be granted unless there are convincing reasons why an application under section 16 cannot be pursued.

4.14 Similarly, works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community, such as minor works undertaken by a statutory undertaker (e.g. a water utility) to provide or improve the public service to local residents and businesses. In such cases, the Welsh Government's expectation is that applications for such purposes on common land are more likely to be successful under section 16 of the Act, so that an exchange of land is proposed and can be taken into account. An application for consent to such works under section 38 will rarely be granted unless there are convincing reasons why an application under section 16 cannot be pursued. Exceptionally, however, consent may be appropriate where the works are of temporary duration (such as a worksite) or where the works will be installed underground (such as a pipeline or pumping station), and the proposals ensure the full restoration of the land affected, and the works confer a public benefit.

Applications not within scope of section 38

4.15 Applications which are not appropriate to proceed under section 38 may often be eligible to be considered under section 16. In certain cases, however, it may be possible or more appropriate to make application under other provisions:

- Powers of compulsory purchase or (in relation to a local authority) appropriation, for which purposes the Welsh Ministers' certificate is required under the Acquisition of Land Act 1981, section 19 or paragraph 6 of Schedule 3 — these powers may be exercised only by a local authority or other body on which such powers are conferred (such as under an Act of Parliament), and may also be used to acquire rights over common land (e.g. a right to bury a pipeline in the land and to confer enduring rights of access for maintenance) instead of a right to acquire the land itself.
- National Trust Act 1971, section 23: in relation to works on common land owned by the National Trust.
- Countryside Act 1968, section 9: facilities and buildings undertaken by local authorities on common land or neighbouring land in interests of promoting public access.
- Dyfed Act 1987, sections 42 and 65; access over greens and rights over Kingsmoor Common

4.16 Applications under these other statutory régimes are subject to the same policy considerations set out in this guidance in so far as the considerations are compatible with the requirements of the specific legislation.

General policy in relation to consent

4.17 This guidance explains the Welsh Government's policy in relation to consents generally. It should not be assumed that, where this guidance indicates that a consent might be appropriate in the circumstances specified, that an application in those circumstances will necessarily be granted. Such applications will be considered on their merits in relation to the context, this guidance, and specifically that any works proposed should maintain or improve the use of the land as a common or town or village green and the criteria set out in the relevant legislation. Although many proposals are linked to, or are a central part to, a related consent for planning permission, the issues that need to be considered are quite different, as what may be perfectly reasonable from a planning perspective, may, or could, have an adverse impact on the traditional use of the land as a common or green. The Welsh Government, where possible, wishes to protect and conserve the stock of common land and greens and where appropriate to promote its protection and its continued use for traditional activities.

Matters to be taken into account

4.18 In considering any application for consent (or for a certificate), the Welsh Ministers will have regard to the following matters:

- Their duty to conserve biodiversity (see section 40 of the Natural Environment and Rural Communities Act 2006), and their duty to further the conservation of the section 41 list of features of principal importance for conserving biodiversity;
- Their duty (in relation to land designated as a site of special scientific interest), "to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest" (see section 28G of the Wildlife and Countryside Act 1981);
- Their duty to have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions; in particular, it may be necessary for an appropriate assessment to be carried out before a consent may be granted for works which are likely to have a significant effect on an area designated as a special area of conservation under the Habitats Directive or as a special protection area

under the Wild Birds Directive (see The Conservation of Habitats and Species Regulations 2010 (SI 2010/490));

- Their duty (in relation to a National Park) to have regard to the purposes for which National Parks are established, and if it appears that there is a conflict between those purposes (of the national park), the requirement to attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park (see section 11A of the National Parks and Access to the Countryside Act 1949); and
- Their duty (in relation to an area of outstanding natural beauty) to have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty (see section 85 of the Countryside and Rights of Way Act 2000).

5 Enforcement against unlawful works

- 5.1 Any person (including an incorporated body or local authority) may seek enforcement action against unlawful works by application to the county court under section 41 of the 2006 Act. The Welsh Government has published guidance on taking such action. Unlawful works means works which require consent under section 38, but which have not received such consent.
- 5.2 Responsibility for the enforcement of the requirement for consent set out in Part 3 of the 2006 Act lies with the local community. Enforcement action may be taken by any local authority (including a community council and a National Park authority), as well as by members of the public and persons representing civic, amenity and recreational bodies. The Welsh Ministers will take enforcement action in the case of any breach in exceptional circumstances only as, in their view, it is more appropriate for action to be taken by those persons whose rights have been affected.

Appendix 3

Photographs of Turbine Locations & Substation

Turbine 1



Turbine 2



Turbine 3



Turbine 4



Turbine 5



Turbine 6



Turbine 7



Turbine 8



Turbine 9



Turbine 10



Turbine 11



Turbine 12



Turbine 13



Substation



Appendix 4

Photographs of Coed Cae Watkin Dafydd

Boundary Between Coed Cae Watkin Dafydd & Adjoining Improved Land



North Eastern Boundary of Coed Cae Watkin Dafydd



Northern Boundary of Coed Cae Watkin Dafydd







Land at Coed Cae Watkin Dafydd



Southern Boundary Coed Cae Watkin Dafydd





Appendix 5

Photographs of Cwm Lickey

Cwm Lickey









Appendix 6

Photographs of Gelli Gravog

Gelli Gravog











Appendix 7

Ecology Technical Note for the Replacement Land

Section 16 Report: Ecology Input

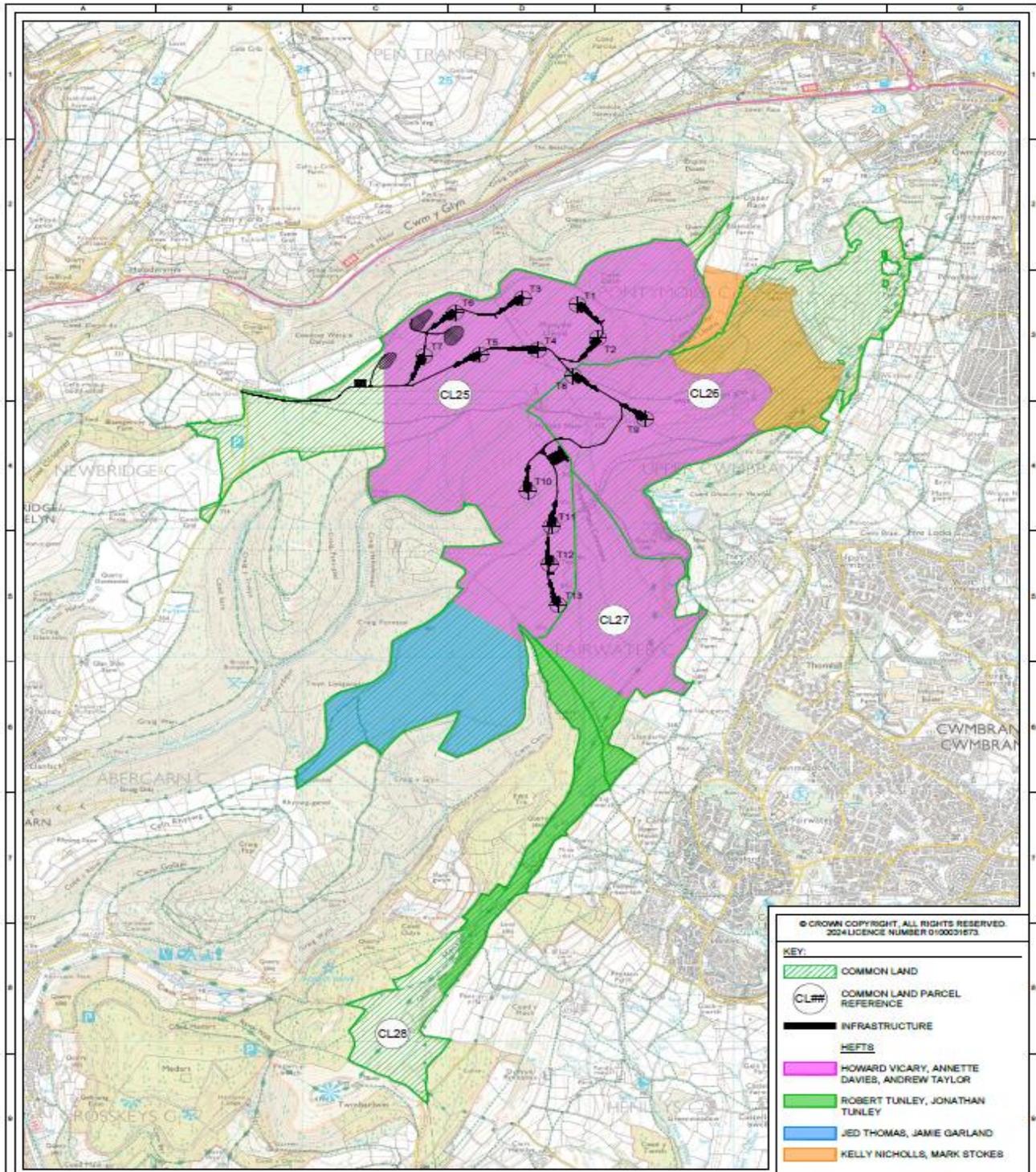
The land at Coed Dafydd Watkin comprised poor semi-improved pasture dominated by soft rush *Juncus effusus*. The sward was heavily sheep-grazed (1-2 cm in height) and showed acidic influences, with both bilberry *Vaccinium myrtillus* and sheep's sorrel *Rumex acetosella* present. Adjacent areas of common land are similar in nature (acid grassland), and with a slight relaxation in grazing intensity the land is likely to become indistinguishable from these areas over time.

The land at Cwm Lickey consisted predominantly of continuous bracken *Pteridium aquilinum*, a habitat typical of the eastern fringes of the wind farm site. Mature beech trees *Fagus sylvatica*, some showing signs of historical coppicing and laying, form a boundary around most of the land parcel. Small patches of species-poor acid grassland occurred in the field where the bracken cover was less dense. These patches were sparsely distributed throughout the field and dominated by common bent *Agrostis capillaris*. Perennial [rye-grass](#) *Lolium perenne*, heath bedstraw *Galium saxatile* and foxglove *Digitalis purpurea* were also present, and soft rush occurred in damper areas. Towards the southern boundary, hawthorn *Crataegus monogyna* and downy birch *Betula pubescens* occurred close to a small gully which supported a more diverse acid grassland community. Here common bent was most abundant, with mouse-ear hawkweed *Pilosella officinarum*, red fescue *Festuca rubra*, heather *Calluna vulgaris*, heath bedstraw, sheep's sorrel and tormentil *Potentilla erecta* also present. Narrow buckler fern *Dryopteris carthusiana*, brittle bladder fern *Cystopteris fragilis* and lady fern *Athyrium filix-femina* were found on shaded sides of the gully.

The land at Gelli-gravog predominantly comprised of semi-improved neutral grassland that was heavily grazed by sheep and horses and had a sward length of 1-2 cm. Common species were present, with common bent, field wood-rush *Luzula campestris* and sweet vernal grass *Anthoxanthum odoratum* prominent in the sward. Surrounding land was dominated by stands of bracken and beech woodland. In the event stock presence is reduced sward length will increase and, in the absence of stock, become tussocky, improving its potential for foraging kestrel and owls as well as habitat quality for reptiles and invertebrates. Over time the area is likely to be invaded by bracken, increasing the extent of moorland edge habitat and making it indistinguishable from other areas of common close by.

Appendix 8

Hefting Plan



© CROWN COPYRIGHT. ALL RIGHTS RESERVED.
2024 LICENCE NUMBER 0100031673

KEY:

- COMMON LAND
- COMMON LAND PARCEL REFERENCE
- INFRASTRUCTURE
- HEFTS
- HOWARD VICARY, ANNETTE DAVIES, ANDREW TAYLOR
- ROBERT TUNLEY, JONATHAN TUNLEY
- JED THOMAS, JAMIE GARLAND
- KELLY NICHOLLS, MARK STOKES

NO	ORIGIN	CHG	APPR	DATE	REVISION NOTES
1	MC	RR	CU	2024-03-11	Final Issue
2	JM	RR	CU	2024-07-02	UPDATED TURBINE AND INFRASTRUCTURE LAYOUT

PROJECT TITLE: **MYNYDD MAEN WIND FARM**

DRAWING TITLE: **HEFTING PLAN**

THIS DRAWING NUMBER: **04412-RES-LAY-DR-LE-022**

REV: **2**

THIS DRAWING IS THE PROPERTY OF ANEMWYLEN ENERGY SYSTEMS LIMITED AND NO REPRODUCTION MAY BE MADE IN WHOLE OR IN PART WITHOUT PERMISSION.

PURPOSE: PLANNING	PROJECTION: OSGB 1936
SCALE: 1:25,000 @A3	DRTM: N/A
LAYOUT DRAWING: N/A	FLATLAYOUT NO: PWAL.mym035

ANEMWYLEN ENERGY SYSTEMS LIMITED
2024 PARK LANE
10008 LUXFORD
HARTFORD, HANTS, UK
TEL: +44 (0) 1823 386000
WWW.RES-GROUP.COM