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### Common Land Report

On behalf of: -

Renewable Energy Systems Ltd,  
Beaufort Court,  
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WD4 8LR.

A consideration of the potential impact of the Upper Ogmere Wind Farm upon  
common land at Mynydd Llangeinor Common (CL26)

Signed: -

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Dated: -

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## Part 1

### Instructions

SYRFEWR JED CYF received instructions on the 24<sup>th</sup> February 2017 from Renewable Energy Systems Ltd (RES).

To: -

- 1.1. Consider and provide your opinion on what impact there would be on grazing rights and public access to the common land during construction and operation of a proposed wind farm. Please consider this in terms of the maximum working area that will be used during construction and the post-construction footprint of the development.
- 1.2. Consider and provide your opinion on how the construction phasing proposed in the typical Construction Method Statement will impact on grazing and access to the common generally.
- 1.3. Identify and describe the type and quality of the existing common land that will be **removed from the common (the "release land")**.
- 1.4. Identify and describe the type and quality of the parcel of land to be provided by RES **in exchange for the land to be removed from the common (the "replacement land")**.
- 1.5. Identify and describe the way in which the commoners and public use the existing common land.
- 1.6. Describe how you consider the commoners and public will be able to use the common land after the exchange of land has taken place. Hypothetically, consider the way in which the land would be used if all those commoners with rights over the land exercised those rights. Consider how this might impact upon the existing common land and how this might impact upon the common land after the exchange has taken place.
- 1.7. Assuming an exchange of land is implemented; explain how the measures proposed will impact on the common land (including the replacement land) in terms of public and livestock access, and grazing potential.
- 1.8. Concerns have been raised in previous schemes on common land; by both the local authorities concerned and commoners that the opening up of improved grassland will cause difficulties with hefting or result in sheep overgrazing the improved grassland and ignoring the unimproved grassland. In the event that the exchange of land takes place, explain how the incorporation of the proposed replacement land into the existing common can be successfully managed so as to cause minimal disruption to existing grazing patterns.

- 1.9. Explain whether the proposed replacement land is suitable for inclusion within the common land in exchange for those parts of the existing common that will be removed. Please consider the type of land, the location of the land, public and livestock access to the land and the grazing potential of the land.
- 1.10. Please provide your opinion on whether the replacement land would be detrimental to the interests of all or any of the following – the commoners, landowners and the public.

#### Qualifications

- 1.11. The instruction was received and report compiled by John Eirian Davies MRICS (0089138): Chartered Surveyor born and brought up in the Amman Valley. Graduate in 1990 from The Royal Agricultural College Cirencester in Rural Estate Management with twenty nine years post qualification experience.
- 1.12. John Eirian Davies MRICS currently practices as a Director of Syrfewr JED Cyf at Llwynyrynn, Capel Isaac, Llandeilo, Carmarthenshire. John previously practiced as a Land Agent in the South Wales area for British Coal Opencast and as an Independent Chartered Surveyor for firms in West Cumbria, Herefordshire, Powys and Carmarthenshire.
- 1.13. John Eirian Davies MRICS has extensive previous experience of properties and land in areas where energy production installations are proposed or in operation, in particular: -
- Opencast Coal Sites in South Wales,
  - Sellafield Nuclear Regeneration Plant, West Cumbria,
  - Wind Farms in North Powys,
  - Mynydd Y Betws Wind Farm,
  - Blaengwen Wind Farm,
  - Mynydd Y Gwair Wind Farm,
  - Llandinam Wind Farm,
  - Garreg Lwyd Hill Wind Farm,
  - Prospective wind energy generation sites in Mid and South Wales.
- 1.14. John Eirian Davies has specific expertise of providing expert reports on suitability of land to be exchanged for common land for the construction of wind turbines on common land at Mynydd Y Betws, Mynydd Y Gwair, Llandinam Repowering, Bryn Llywelyn and Lluet Y Gwynt Wind Farms.
- 1.15. John Eirian Davies has expertise of specific management of land to be converted from improved grassland to extensively managed heathland. Also of land parcels to be utilised for heather transplantation and similar conservation techniques having steered **the 'Heather Trial Project' at Brynhenllys Opencast Site, Cwmtwrch 1990-1993:** restoration of a former working opencast coal site to a Nature Park at Park Slip, Bridgend and in assessing payments made to Landowners and occupiers for

disturbance and restoration costs as a result of the construction of Betws and Garreg Lwyd Wind Farms.

## Introduction

- 1.16. This report is prepared to accompany an application to construct and operate a **development of national significance ("DNS") for the Upper** Ogmore Wind Farm. The application includes supporting environmental information (ES). Part of the application site is situated on common land and therefore, in accordance with the DNS regime, a secondary application will be submitted alongside the DNS application, under s16 Commons Act 2006 (for the de-registration of common land and the registration of replacement land).
- 1.17. A Wind Turbine Electricity Generation System is proposed on Mynydd Llangeinor along with adjacent privately owned, enclosed land to the north east. The application site is partially located within the Llangeinor Common, on a hill between the Garw Valley and Ogmore Vale in the Bridgend County Borough.
- 1.18. The common of Mynydd Llangeinor is designated as common land unit 26 (CL 26). The application site is shown edged red on the plan at Appendix 1 and comprises an area of common land with adjacent agricultural land.

## Executive Summary

- 1.19. The application under S.16 Commons Act 2006 will be submitted with the DNS application for the Upper Ogmore Wind Farm project.
- 1.20. This report considers the suitability of an area of land adjacent to the common for inclusion into the common land areas as replacement land to ensure that there is no overall reduction in the level of common land, no detriment to the level of grazing available to the common land occupiers and no loss of public access to those utilising the common land area as a result of the Upper Ogmore Wind Farm project. It also identifies any benefits or drawbacks of inclusion of this land parcel to the common area and considers whether the replacement would be detrimental to the interests of the commoners, landowners and the public.
- 1.21. The replacement land to be included within the common area is almost identical in topography, drainage and soil types to the respective adjacent common land areas with the aspect a mirror image of the common area. The replacement land can be immediately incorporated to the common with full access for grazing and public amenity, along with utilisation by rights holders for claiming the Single Farm Payment (SFP) (see paragraph 2.53).
- 1.22. The replacement land can be immediately incorporated to the common with no effect on the grazing pattern of livestock using the common. The majority of the flora and fauna within the replacement land immediately adjacent to the common land area is identical to the adjacent common; which is a steep sided mountain stream valley. Part of the land has a mainly water retentive peat soil with high incidence of moorland grass species and will quickly revert to a similar habitat to the adjacent common on cessation of agricultural husbandry and management which will be implemented on granting of the de-registration order which is likely to be 12 months ahead of commencement of works. This process will include exclusion of livestock, cessation of agricultural inputs including farm yard manure and stopping up any historic drainage fixed equipment encountered on site. These actions will mitigate any effect on the adjacent common of the inclusion of the said semi improved grassland area.
- 1.23. Incorporation of the replacement land will provide a benefit for the common of improved animal welfare. The steep banks on both sides of the mountain stream forming the

boundary between the common land area and the replacement land area will provide shelter from the east wind and a running water supply for this part of the common. A more diverse landscape is also provided to those using the area as a whole for access and amenity.

- 1.24. The incorporation of the replacement land into the adjacent common will be achieved by moving back the current boundary fence at the base of the mountain stream valley; which is the current boundary between the common land area and the replacement land, to the eastern boundary of the replacement land. Animals and the public will be able to access the replacement land from the common land area at any point along this former boundary. This is important as constricted movement through gates can cause trafficking damage to land and erosion. There will as a result be no constriction of trafficking livestock between the common land area and the replacement land area and no localised effect of **'poaching' of soil and resultant damage to flora and fauna. The risk of any poaching by** trafficking livestock is most prevalent in the wet winter months. The majority of grazing livestock are removed from the northern common area in winter by active graziers. Poaching<sup>1</sup> of the soil at the intersection of the replacement land and adjacent common land area by trafficking livestock in winter months is therefore unlikely.
- 1.25. Incorporation of the replacement land into the common will provide for increased public access to areas of land previously inaccessible under the CROW 2000 legislation. There will be no stiles or gates which could otherwise be deemed a barrier to public access with the existing boundary fence taken back to the eastern boundary of the replacement land. The replacement land is level, easily accessed from the northern highway adjacent to the common and provides panoramic views over the existing common land area.
- 1.26. As a result it is considered that the land proposed to be incorporated into the common is wholly suitable as replacement land. Furthermore due to the nature of the topography of the land providing improved shelter for livestock and access to running water for the same, the incorporation of the land to the common will provide a major benefit to the adjacent common and common land area as a whole.
- 1.27. As a result of the scheme there will ultimately be no reduction in the land available for all users. There is no detrimental impact on the commoners, landowners or public as a result of incorporation of the replacement land to the common areas.

## Part 2 - The Legal Framework

### S.16 Commons Act 2006.

- 2.1 Works cannot be carried out on a common in Wales without the express permission of the Welsh Government. An application to deregister and exchange common land can be made under S.16 of the Commons Act 2006.
- 2.2 A S.16 application will be submitted for the release land area required for turbine bases, new access tracks, drainage works, swales and drainage ditches, underground cabling, footpath diversion marker posts, fencing communication masts, working areas, track diversions and export cable telegraph poles and their micro-siting areas. The area of common land to be deregistered amounts to 16.81 Ha.
- 2.3 The replacement land is offered in exchange for the land to be deregistered (the release land) and the amount of replacement land provided (namely 16.81Ha) takes this into account. This ensures that there is no impact of the proposals on the

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<sup>1</sup> physical breakdown of the soil structure under load which causes soil compaction

exercise of the rights of the commoners or public during this time. It will remain common with full rights of access and amenity resulting in no loss in the overall stock of common land.

- 2.4 This report has been commissioned to confirm the suitability of the replacement land for inclusion to the common, to identify any benefits or drawbacks of inclusion of the land to the common area and to consider whether the exchange would be detrimental to the interests of the commoners, landowners and the public.

#### Welsh Government Guidance

- 2.5 The Welsh Government published guidance for the determination of common land applications in August 2014, entitled Common Land Consents Guidance (referred to as the "Guidance"). **A copy of the Guidance has been provided for ease of reference** at Appendix 6 of this report.
- 2.6 The Guidance explains that the Welsh Ministers and Planning Inspectorate Wales will follow the Guidance in processing and determining applications under S.16 of the Commons Act 2006. The Applicant is seeking to deregister the Common Land in order to implement the planning consent and to construct and operate the wind farm so consent under S.16 of the Commons Act 2006 is required.
- 2.7 The considerations which should be taken into account include, according to the Guidance:
- the interests of persons having rights in relation to, or occupying the land (and in particular, persons exercising rights of common over it)
  - the interests of the neighbourhood
  - the public interest
  - any other matter considered to be relevant
- 2.8 In this report, I cover the considerations set out in detail in paragraph 3.9 of the Guidance drawing upon my agricultural qualification, experience and expertise. The considerations in paragraphs 3.9.1 to 3.9.4 of the Guidance are also addressed.
- 2.9 As noted above, I will specifically be addressing the interests of persons having rights in relation to or occupying the land (and in particular persons exercising rights of common over it), which is the part directly related to my field of expertise.
- 2.10 As the Guidance specifies, the following matters relevant to the use of the common land by the commoners should be taken into account by the decision maker in determining the common land applications:
- What effect 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 the proposals will have on other rights holders such as those with access rights across the land?
- 2.11 In order to fully consider these questions, it is important to provide detail of the proposed works with specific regard to the following questions and relevant matters:

- What works are proposed on the common?
- What grazing and other rights exist over the commons and to what extent they are exercised?
- How much land will be released from common to enable the access to the proposed development to be constructed?
- How much land is to be released?
- How much Replacement Land is offered?
- Provide a description of the Release Land and its location
- How much actual loss of grazing will be involved?
- What potential disturbance might occur during the construction and operation of the access road, and if it does, what measures will be implemented to mitigate any disturbance?
- The effect of the proposals on the overall stock of common land and the areas of land that graziers will have access to for their animals and the public to take access.

2.12 I will address each of these questions below.

#### The Site

- 2.13 The development will require temporary and permanent works to be completed on land within CL26 as shown in the planning Application Boundary plan within Appendix 1. The total land area for CL26 is 1,049.162 hectares. The site is on land which forms a plateau between the Garw Valley and Ogmore Vale; with the villages of Pontycymmer and Blaengarw to the west; Ogmore and Nantymoel to the East; with Llangeinor and Blackmill to the south. Bounding the site are various settlements, farms and smallholdings on the steep inclines to the generally level common.
- 2.14 The infrastructure layout plan of the site can be found at **Appendix 2** and shows the areas of land affected by the S.16 application. The total area of common land required for provision of the wind farm including wind turbines with access tracks, fixed equipment with fenced off areas amounts to 16.81 Ha. There will be a loss of common land of up to 16.81Ha as a result of the development. It is proposed to offer land adjacent to the common on the north eastern boundary of the application site to replace the land which will be de-registered as a result of the S.16 application. This is **referred to as the 'replacement land'.** It comprises an area of currently privately owned land amounting to 16.81Ha which will be opened up to the common. This area of land is shown on the common land swap plan in Appendix 4.
- 2.15 The common land within the application site is primarily level and situated at the northern periphery of the larger grazeable common land area. This area of the common has been historically overgrazed by sheep in the long term past. The fauna primarily comprises moorland and dry upland heath grass species. There is virtually no evidence of heather or cross leaved heath within the proposed application site or common area as a whole. The lack of heather, cross leaved heath and bilberry which are the most desirable dry upland heath species is as a result of the adverse effect on the site area and the majority of the larger common land area of being



extensively and regularly burnt along with being overgrazed by sheep, cattle and horses in the long term past.

- 2.16 Changes to farming practice and government support measures in 1995 and again in 2005 resulted in a large decrease in the volume of stock on the common and an end to the detrimental impact of overgrazing. The majority of the common area and especially the proposed application site is now under grazed. There is a large volume of moorland grass especially *Molinia* within the heathland sward which has been promoted by a lack of burning of the majority of the common in the recent past. The southern common area has been continuously and illegally burnt in the recent past. The volume and diversity of heathland grass species within the sward in the south of the common is far less than that to the north of the common land area with the short, new growth of grass as promoted by annual burning heavily grazed especially by the herd of horses and ponies that use the common. In general the diversity of moorland and heathland species within the application site is increasing slowly as a result of under grazing and reduction of burning with higher diversity of desirable heath plants noted. This is particularly the case on the steep sided eastern and western peripheries of the common. The land immediately to the south of the application site area has been illegally burnt in the spring of 2019. This is the first instance of burning in the northern end of the common in recent years. The track across the common from the northern entrance to the south western corner of the application site has acted as a fire break and a barrier to the spread of the fire to the application site area. The tracks proposed for access to the turbines will similarly act as breaks against the spread of illegal fires in the future.

- 2.17 The replacement land to be annexed to the common is part of Nantymoel Farm and immediately adjacent to CL 26. This comprises part of an enclosure of mainly unimproved grassland with some semi improved grassland. This is more particularly described in paragraph 2.23 below. This report demonstrates that the replacement land is recommended for inclusion within the common land area.

#### Consultation

- 2.18 Full details of the consultation that has been carried out in respect of this project are set out in the consultation report accompanying this application as shown in Appendix 5. The consultation report contains full details of the landowners and land occupiers, that have been contacted since 2014 as part of the consultation process.

#### Landowners

- 2.19 The freehold owner of Common CL 26 is [REDACTED]. Agreements to lease areas of land required for the construction of turbines have been secured with the said landowner. The landowner has consented to management of heathland and grassland vegetation on the Common within the lease agreements.
- 2.20 The project also includes freehold land within Nantymoel Farm which is adjacent to CL26. The freehold of this land is owned by [REDACTED]. [REDACTED], as freehold owner, is also a signatory to an option to lease the various tracts of land required for the project and he is also providing the replacement land.

#### Land Occupiers

- 2.21 The occupiers of the common land are the registered commoners of CL 26. The Registered Commoners are members of the Mynydd Llangeinor Commoners

Association which formed in November 1967. Regular consultations have been carried out with the officers of The Commoners Association since June 2014.

- 2.22 The commons register as updated by the Local Authority has been inspected on a regular basis since June 2014. Rights are currently registered to 22 separate holdings on the register for CL26. Rights currently exist for 5665 Sheep and 4801 lambs or followers; 395 Cattle and 149 Calves or followers and 44 Horses with 13 Foals.
- 2.23 The entry for Tynton Farm provides a right for timber, water and fish, to shoot, to exercise and trek Horses and to keep 1 sow and 50 hens as amended. This right is not currently exercised.
- 2.24 My local knowledge of the common and the surrounding holdings and my conversations and consultations since June 2014 have identified local commoners with grazing rights thought to be using the common land areas on a regular basis. I initially identified ten main active graziers of the common land area of CL26; as regularly using the common throughout the grazing period or as periodic graziers using the common land for grazing of dry stock in late summer and early autumn. In 2017 my site inspections and consultations identified a further three active graziers with herds and flocks recently re-introduced to the common. No further active graziers have been identified by my consultations in 2018 and in 2019 to date.
- 2.25 A detailed report of the annual grazing patterns of the active graziers ascertained as a result of this extensive consultation process can be found in Appendix 5.
- 2.26 The active graziers including the officers of The Commoners Association who are active graziers, have signed cooperation agreements with RES with a view to promoting the scheme and the development. These agreements are confidential but a redacted sample can be provided if required.
- 2.27 The consultations with the active graziers have indicated that grazing rights have been exercised on the common in the summer of 2018 and previous summers in the following numbers: - 3,115 ewes, 225 cattle and 20 horses. The horses owned by Mr John Lever and Kirrin Lever graze the common land area all summer. Only a proportion of the cattle and sheep indicated will be in occupation of the common land area at any one time as the sheep flocks are gathered periodically for shearing, weaning of lambs, dipping etc. The Commoners Association implement a clearance regime for the common at the end of every summer grazing season to ensure flocks are treated for sheep scab. Only a small proportion are returned to the common thereafter; these are mainly in the southern common area and these sheep and cattle returned to the common are buffer fed concentrates and fodder on the common land area. Winter grazing of the northern common area is generally limited to sheep that remain un-gathered.
- 2.28 The bovine and equine herds of the respective main active graziers which occupy the common on a regular basis tend to graze the common generally and as a whole. Cattle and horses can be found in the various parts of the common area depending on season, weather and grass availability. The horses are especially prone to roaming the common as a whole.
- 2.29 The sheep flocks of the active graziers are hefted and tend to keep to their respective hefts/sheep walks. A heft is an area of the common which has been used by those respective flocks for generations and the flocks will tend to graze the respective areas that they are hefted to without straying to other hefts and mixing with other flocks. The active graziers on the southern area of the common buffer feed sheep and cattle in winter to ensure that the livestock remain within the hefts. This southern common area is also regularly burnt with the improved grazing, as promoted by burning, ensuring that hefted livestock remain in this southern area.

- 2.30 The northern common areas where the application site is located are grazed by three main active graziers. The application site is within the heft of [REDACTED]. The flocks of the occasional periodic graziers tend to be hefted to walks within the southern and eastern peripheries of the common which will not be affected by the proposed works or operational areas.
- 2.31 As a result of the hefted grazing pattern by sheep over the majority of the common with sheep flocks tending to stay within their respective hefted grazing areas; the works in the northern common land area will have a reduced impact on the sheep grazing the common area as a whole in comparison to a non-hefted grazing pattern.
- 2.32 The number and identity of periodic graziers and the volume of stock which they turn to the common varies on an annual basis and within any grazing season depending on a range of factors. In recent grazing seasons the incidence of active grazing has increased as a result of three separate holdings being sold or inherited by parties interested in turning stock to the common. The summer of 2018 has also seen an increased use of the common area especially by dry sheep (breeding ewes and ewe hoggs that have not lambed or had lambs weaned) in late summer. The drought of the summer weather conditions of 2018 resulted in an adverse effect on management of local livestock holdings. Grass growth and resultant fodder conservation was adversely affected and there was therefore an increased grazing pressure on the productive pastureland abutting the common. This resulted in an increase in the numbers and diversity of sheep and cattle being turned to the common. It is therefore evident that there has been an increase in periodic grazing of livestock during the months of August and September 2018 as a result of the drought conditions of the summer of 2018. This increased grazing has been mainly in the southernmost area of the common which was burnt in early spring 2018 with stock attracted to the fresh regeneration growth of the dry upland heath. Weather conditions in the spring and early summer of 2019 have been more conducive to grass growth with sustainable levels of precipitation. The grazing pattern on the common land area has returned to normal with the main active graziers turning out sheep cattle and horses in numbers and to hefts as in a normal year.
- 2.33 The southern common area is occupied by grazing livestock in early winter. This occupation is only possible as a result of extensive supplementary feeding of the livestock on the common with concentrate feed and fodder fed daily. This winter feeding on the common is causing localised effect of poaching (surface waterlogging) damage to the soil as a result of trafficking livestock along with the introduction of productive grass seeds to the dry heath habitat from the imported feed material. Normally grazing livestock would be removed from the common during the autumn and winter. The winter grazing of the dry heath vegetation at a time when normally that vegetation would be free from any grazing pressure is partly responsible for the southernmost common land area to appear to be overgrazed in parts.
- 2.34 There are various rights of estovers (the right to take wood), turbary (the right to cut **turf or peat for fuel**), piscary (the right of fishing in another's water) and pannage (the right of feeding pigs or other animals in a wood) over CL 26. There are nine registered rights recorded to take bracken and fern. There are only limited areas of bracken on the steep sides of the western and eastern peripheries of the common. These areas are unaffected by the proposed works and we are not aware of these rights being currently exercised as the very steep topography of the land is not conducive to using modern machinery for bracken removal for bedding.
- 2.35 There are two registered rights to extract stone and three rights to take wood and timber for specific fencing and building material use. The consultation confirms that these rights are not currently being exercised.

Inspection.

- 2.36 The Common land, including that which will form the application site and the adjacent replacement land was inspected at various times and during all seasons between June 2014 and May 2019, with a view to compilation of this report. The holdings of the various Commoners Association Officers and active graziers have been visited on many occasions and in varying seasons during the above time period. During these visits the various areas of the common used on a hefted basis by the active graziers were also inspected. The relationship between the holding location and heft location was identified in each case.
- 2.37 The Common area as a whole, the replacement land and the adjacent common area to be developed were inspected on foot with detail taken of topography, aspect, physical features, grassland/heathland species flora and fauna. Photographs taken during the various inspections are included in Appendix 7.

#### The proposed works

- 2.38 Seven turbines are proposed for construction within the Upper Ogmores Wind Farm Project. Four of these turbines (T1,T2,T3,T7) will be constructed within the Common land area. The remaining three turbines will be constructed within adjacent freehold land areas of Nantymoel Farm.
- 2.39 The common land area is also required for access tracks, micro-siting areas, cable trenches, crane assembly area, spoil storage bunds, clean water cut-off swales, undergrounding of existing cables, temporary diversion of tracks for excavations and the temporary diversion of the access track to the Werfa Mast.
- 2.40 The wind farm is requesting consent to be operational for 35 years. Following decommissioning the site will be restored and the land will once again be available to commoners and other users of the common.
- 2.41 The Common is traversed by an access track to the Telecommunication masts at its highest point within the northernmost area. The proposed construction works are located wholly within the northernmost area near to this telecommunication site on the level northern plateau of the common. The proposed construction area is as shown on the Plan within Appendix 4.
- 2.42 Adjacent to the common land areas proposed to be used for development is the freehold land forming part of Nantymoel Farm which will also be subject to working operations to construct turbines etc as above. Access to these working areas within the common land area and the adjacent freehold land will be provided by the proposed new access tracks shown on the drawing in Appendix 2.
- 2.43 Once the wind farm is operational the access tracks and turbine hard standings will be used periodically by maintenance staff. Crane pads will be left in situ during the operational life of the scheme for use in the event of any requirement for replacement of turbine components. The tracks and crane pads will also be retained in order to remove equipment at the end of the scheme.
- 2.44 The area of proposed replacement land to be annexed to the common under S.16 is suitable for inclusion within the common land area with immediate effect from commencement of works to provide common grazing and access land. The consideration of suitability of the replacement land within Part 3 of this report and the conclusion within Part 4 contains further details.

#### Effect on Common areas

- 2.45 I am instructed to consider the impact on the common of the proposed development for the Upper Ogmores Wind Farm. Up to 16.81 Ha of land will de-registered from the

common land area as a result of the construction of the wind farm. If the development proceeds, turbines are proposed for development on common land centralized on the main level plateau within the northernmost periphery of the common area with extensive peripheral land unaffected.

- 2.46 The construction area (i.e. the turbine locations and access tracks to the same) will be fenced off during the works. The centralized nature of the works within a single part of the common area with extensive peripheral land will allow unrestricted access for the livestock of the active graziers to the remaining and surrounding common areas with limited disturbance to normal grazing patterns. Horse riders and walkers/ramblers will also be able to access the common land areas to the south, west and north of the working areas by navigating around the same via the peripheral common land areas; thus having an inconsequential effect on public/community use of the common land area.
- 2.47 On completion of the construction works the fences will be removed and there will be little or no disturbance to grazing livestock and public access as a result of the turbines being in place and the access trackways to the same being greened over and open to the common as a whole.
- 2.48 Whilst the subject common land areas have been historically over grazed, changes in agricultural support and farming practice since 1995 have generally resulted in common land areas and the subject common land area being used on a more extensive basis by active graziers. This effect is especially evident within the subject common land areas but active grazer use of the northernmost common area is generally limited whilst only the southernmost area of the common has been subject to increased grazing pressure. This is partly because of the fresh regeneration of the sward subject to annual burning along with the effect of winter buffer feeding on the common land area.
- 2.49 As a result of the relatively small area of land being removed from the common area and the lack of grazing pressure on the relevant northern area of the common, there is unlikely to be any effect on the grazing potential and pattern of the active graziers as a result of the scheme.
- 2.50 As a result of the open and unrestricted nature of the grazing by cattle and horses within the respective common areas by a limited number of active graziers any restriction on use of the common as a whole as a result of the turbine construction works, will be minimal.
- 2.51 There is a possibility that the construction works and associated vehicle movements may disturb the hefted livestock (sheep) in the northern area of the common. The consultation with the active graziers has revealed that if hefted livestock from the northern areas are affected by and become disturbed by the works, they may move further south as a result. **This may have a 'knock on' effect on the hefted grazing pattern of the grazing sheep flocks of the common as a whole.** The active graziers are aware that certain time inputs have been required in similar development of **common land areas to 'shepherd'** disturbed livestock as a result. The northern common land area in which the site is located is under grazed by livestock. The density of grazing livestock in this area of the common is the lowest of any part of the common area. This lack of density of livestock means that it is less likely that grazing livestock within this area will be disturbed by the project especially as the turbine locations and access tracks will be fenced off during the works. As a result it is less likely that the grazing pattern of the common area as a whole will be disturbed by hefted sheep moving away from the northern common land area and it **is unlikely that there will be a requirement to 'shepherd' livestock by the active graziers of the common land area as a whole.**

- 2.52 Mr Lever, the owner of the horses grazing the common land area has intimated that the inquisitive nature of the horses will have the opposing effect and that they will be drawn to the working areas. It is envisaged that this area will be fenced to provide a suitable barrier to avoid adverse interaction between livestock and working machinery.
- 2.53 Common land areas have been apportioned to registered rights for the purpose of single farm payments (SFP) to registered commoners. This agricultural support payment is likely to be the only key benefit that the majority of commoners of CL 26 will consider relevant to their respective registered rights. A working land area of up to 16.81Ha will be removed from the common land area. To maintain the SFP area of the common and the **apportioned land area to each commoner's right the same level** of replacement land will be required. The land transfer proposed provides for 16.81Ha of replacement land thus ensuring that there is no change in the land area available to the commoners for SFP claims.
- 2.54 Commoners may wish to enter the Glastir Scheme at varying levels. The common land area will provide for the potential to achieve certain payments from that scheme. It is assumed that the replacement land could similarly be included in any respective commoner Glastir application. It should however be noted that uptake of this scheme by farmers in general terms is very limited.
- 2.55 The proposed replacement land would provide the same area of available grazing capacity and public access land as the land permanently lost to the common as a result of the scheme.
- 2.56 The common land area has been used for non-agricultural and industrial purposes over time and especially since the industrial revolution. There are various quarries and excavation pits used for winning stone on the eastern and western boundaries and also on the level plateau. Coal seams have been worked via surface shafts and adits into the steep valley sides wherever these outcrop. Deep mining of the coal seams from pits in the Ogmere and Garw Valleys was the main industry in this area. Other seams have been worked via opencast mining with land subsequently restored. Coal tips have been removed from the adjacent populated valleys, transported to, deposited and reprofiled within the common land area. The common land area is also traversed by a trackway to a variety of concrete plinths at a location on the south western periphery of the application area, which were bases for lattice wind turbines being part of an experimental wind farm as decommissioned. Very recently the common land area has been traversed by a 33KV powerline on twin telegraph poles being the fixed equipment for export of power from a nearby renewable energy generation scheme. The Landowners, Commoners and others historically using the common land area for public access, amenity and any other reason are therefore familiar with non-agricultural schemes within this common land area.

The hypothetical situation of all commoners exercising their rights to graze the respective common land areas.

- 2.57 As a result of the commons registration process and the number of rights registered, I consider it highly unlikely that this scenario would ever arise but I am however instructed to consider the hypothetical situation of all commoners exercising their rights to graze the respective common land areas. The respective total grazing rights on the common as described in the commons register for CL 26 is as follows: -
- 2.58 CL 26 – 5,665 sheep and 4,801 followers, 395 cattle and 149 followers, 44 horses with 13 followers (lambs, calves, foals and other youngstock).

- 2.59 In the hypothetical situation that all rights were exercised the total number of livestock and followers occupying the common land areas in question would be 11,067 ewes, lambs, cows, calves, ponies and foals.
- 2.60 The above figures illustrate that it would be impossible for the common lands over which the above rights are registered to sustain the level of stocking set out in terms of grazing capacity of the common land areas. This would be the situation even if there was no release of common land for the development. Whilst this situation illustrates the general over registration of rights on common land. The actual grazing situation on the subject common and other commons in Wales, is that less use is being made of the available grazing by active commoners. This is confirmed by the fact that the majority of the common land area is under grazed.
- 2.61 Our consultations have identified that the actual grazing numbers over the common land area are only a small proportion of the registered rights as exercised by the active graziers at any one time. Our periodic inspections of the various hefts within the common area and the common land area as a whole to ascertain the actual numbers of livestock grazing the common land area indicate that the actual use by the active graziers is in fact far less than that indicated in the consultation process.

#### Public Access

- 2.62 I am also instructed to consider the effect of the wind farm proposal on access to the common land by the public and the neighbourhood. The Countryside and Rights of Way Act 2000 provides rights of access for open air recreation to the public to areas defined as access land which includes registered commons. Public access to the subject common land areas within the above site is also provided by s193 Law of Property Act (LPA) 1925.
- 2.63 It is proposed that the replacement land will be registered as Common Land and will be subject to the rights this currently affords. Access will be available to an area amounting to 16.81Ha in a single parcel adjacent to CL 26 that the general public did not have access to previously under the CROW 2000 legislation. The provision of this extra land area which the public can use will increase the land available for public access and it offsets any loss of common land incurred as a result of the de-registration.
- 2.64 The four turbine sites and access tracks including the diverted Werfa Mast access track will be fenced off during the temporary construction period in the interest of public safety and the safety of grazing livestock.
- 2.65 This fenced area will not prevent access to the peripheral land to the south, west and north of the working area, thus allowing public access whether on foot or on horseback for recreation and amenity use to all other parts of the common.
- 2.66 The access tracks will provide enhanced access to various parts of the respective commons by certain elements of the general public including disabled persons who otherwise would not be able to gain access on foot as a result of difficult walking terrain associated with heathland habitat. The tracks will also act as fire breaks as has been evident in the case of the track traversing the common from the northern site entrance to the south west corner of the proposed site area, this track which abated the spread of an illegal fire in the spring of 2019.
- 2.67 Following consultation with Bridgend County Borough Council the proposed development includes proposals for permanent diversions to Bridleway BW64GWV and footpath FP103GWV in order to ensure that the footpaths maintain a suitable distance from the wind turbines. The proposed diversions are shown in Appendix 3. The proposed diversions provide for an increase in length of approximately 250m



over the existing footpath and bridleway which will be an advantage to those using the bridleway and footpath for public access and amenity use.

- 2.68 Our consultations with local riding groups, the local hunt and farmers who ride horses have indicated that the common regularly supports equine use. Much of the local farmer use is for shepherding, with the hunt passing over the common area approximately four times in a hunting season. Certain active graziers are also active in the local hunting packs.
- 2.69 The main equine use of the common is for amenity riding/hacking use on an informal basis. This is either on an individual rider or small group basis. As mentioned at para 2.67, bridleway BW64GWV traverses the common land area, however it is evident that riders use large areas of the common and do not stay specifically on the route of any bridleway. Horse riders tend to avoid the steep sided peripheries of the common along with any low lying, wet, boggy areas within the common land area.
- 2.70 Consultation with local horse riders has revealed that they are concerned horses being ridden may be spooked by the turbines. Our consultation with horse riders using similar Common Land areas with established turbines has shown that once constructed the turbines have little effect on horses as long as the turbines are visible to them from a distance as the turbines are approached by rider on horseback. The British Horse Society has provided written advice on Wind Turbines and Horses which provides guidance for planners and developers. This confirms that **there have been no formal trials to establish horses' responses to turbines.** The positioning of the turbines on the northern plateau will mean that they are visible from the majority of the common area and visible to horses and riders from a distance. This will therefore ensure that there is no detrimental effect on use of the common by horse riders.
- 2.71 The grassed-over trackways will also facilitate inspection of livestock and shepherding of the common areas by the active graziers and will provide solid, dry riding terrain for horse riders following completion of the construction process.
- 2.72 The consultation process has identified the illegal vehicular access by third parties traversing the common area as being the greatest threat to the common. There is existing, extensive damage caused by this illegal access by motor vehicles; both evident from onsite inspections and as identified in all consultations with active graziers and the Landowner. It has been further intimated that increased usage and damage caused by illegal vehicular use could be facilitated by the constructed trackways to turbine sites.
- 2.73 Control measures at the site entrances are currently limited with access to the southern site entrance of the common required for bridleway use and for agricultural rights of access for the adjacent Landowner and other third parties. The northern site entrance has a barrier but vehicles are afforded access as a result of the open nature of the adjoining common land.
- 2.74 RES has agreed to provide improved control measures to avoid illegal vehicular access to the common land areas. It has been requested by officers of The Commons Association and by the active graziers that combination lock gates be provided at both the main entrances to the Common land area with further boulders/bunds at the northern entrance to abate the incidence of undesirable vehicular access to the common land area.

### Part 3 – Suitability of the replacement land parcel



### The Replacement Land.

- 3.1. The replacement land proposed to be annexed to the common area is shown on the Plans within Appendix 4. It comprises 16.81 Ha in a single block and a single enclosure within a ringfence and provides two different habitat types based on topography, drainage and previous use as described below. There is no overlap of proposed infrastructure within the replacement land and the whole of the replacement land area is available from the commencement of the scheme. The land is mainly steep in topography levelling off to a flat area at the eastern boundary. The land has a southerly and westerly facing aspect.
- 3.2. The replacement land is currently perimeter fenced to the adjoining common land and to the application site area boundary. The fence between the replacement land and the adjoining Common can be removed to allow livestock to pass freely between the land area and the adjoining common area. A new fence will be constructed to provide an eastern boundary between the replacement land and the retained land of Nantymoel Farm.
- 3.3. The replacement land area is immediately adjacent to the common with direct access to the same by livestock and general public available on removal of the boundary fencing currently in situ. The said existing boundaries to be removed provide a total of 490 metres of direct boundary to the adjacent commons and on removal of the fences in situ will provide unrestricted direct access from the common to the area of replacement land. Livestock can access the replacement land directly from the adjacent common land areas without the requirement of transporting livestock by vehicle.
- 3.4. There will also be unrestricted access available for the public either on foot or on horseback from the adjacent Common area to the replacement land area on removal of the fence between the respective land parcels. There will be no requirement for stiles, gates etc. and access will be unrestricted.

### Topography and Aspect.

- 3.5. The parcel of replacement land is directly abutting the common and provides an extension of the adjacent common land being almost identical in topography to the adjacent common areas and the aspect being a mirror image of the adjacent common area with the respective land areas being on opposite sides of the dividing valley. The factors creating the local landform are originally glaciation and subsequent erosional effects of the mountain stream found in this valley.
- 3.6. The land provides a steep slope to the mountain stream. This valley topography as mentioned between the land parcels provides excellent natural shelter from the prevailing, cold easterly winds for livestock to complement the adjacent common land areas and a good natural source of running water for livestock.
- 3.7. The eastern and northern peripheries of the replacement land are level and are easily accessed from the north via the trackway from the main highway to the common land area. This is conducive to access by disabled persons as discussed in paragraph 2.66 above.

### Drainage and Soils.

- 3.8. The drainage of the land is largely governed by the topography as mentioned above.
- 3.9. The replacement land is a block of mainly steep mountain stream valley side which is dry in nature as a result of the drainage provided by the sloping topography to a

mountain stream leading up to a level area of improved pasture on the eastern boundary lying wet in many areas. The soil type is a peaty loam over clay.

- 3.10. This steep sided area of enclosed land is historically unmanaged and not grazed extensively. The land is sloping to the west with the majority of the enclosure being adequately drained. The flora and fauna within the same is indistinguishable from the adjacent common.
- 3.11. A further area has been fenced off to provide an anemometer mast location. This area has not been managed in the recent past and has quickly reverted to heathland.
- 3.12. The level land to the east has poorly drained peat based soils which are of a poor productive capacity with only part of the land improved as a result of the peat based soil. In my view this will quickly revert to heathland on reduction in management.
- 3.13. A central area of the replacement land has very water retentive peat based soils which are occasionally waterlogged. There are similar areas of wet heath within the common land area. This area of replacement land upon ceasing direct management will revert to wet heath thus increasing the diversity of flora and fauna within the replacement land area as is evident within the common land area. The land as mentioned provides a direct extension of the adjacent common in terms of drainage and soils.

#### Flora and Fauna

- 3.14. The flora and fauna of the land can be split into two main types according to the respective topography, drainage and soil type of the replacement land.
- 3.15. The valley slope of the western area of the replacement land provides flora and fauna indistinguishable from the adjacent common with heathland species of rough grass and molinia. The remainder of the land to the east provides semi-improved pasture with grass species including meadow fescue, meadow foxtail and tall fescue.
- 3.16. Although semi-improved the sward supports mainly weed grass species with mosses, molinia and other white grasses within the more waterlogged areas as mentioned which also include rushes and reeds.
- 3.17. The area of the level land that has been fenced off to accommodate the anemometer mast for the site, has not been managed since the fencing at the beginning of 2017. This land has quickly reverted to moorland as a result of the lack of agricultural input.
- 3.18. It is recommended that the agricultural husbandry and management of the semi improved land be ceased as soon as possible with the said land allowed to naturally revert to upland pasture in the ensuing period prior to commencement of works. RES has agreed with the landowner that this can be ceased upon the granting of S.16 consent.

#### The Surrounding Common.

- 3.19. The replacement land differs in flora and fauna from west to east. The differences in habitat on corresponding areas are governed by historic agricultural practice being itself affected by topography and land drainage.
- 3.20. The majority of the available land area for replacement comprises steep valley slope which has no productive grass species and a dry heath habitat. The sloping area of the adjacent common being open to grazing by sheep and cattle has moorland grass with occasional heather and bilberry. Opening this area to the common will allow access by grazing livestock to traverse the banks and take advantage of the shelter and water

provided. Inclusion of these areas to the common will have no effect on the flora and fauna of the parcels themselves or to the adjacent common land.

- 3.21. The eastern area being a level area of pasture provides agricultural grazing being historically enclosed and cultivated. Grass species as mentioned are evident, promoted by occasional fertiliser use and historic cultivation.
- 3.22. If we had productive land areas within the replacement land then opening of this enclosure to the common might attract local livestock in the very short term due to the presence of grassland species suitable for agriculture. The level areas of the enclosure could then become overgrazed in the short term and may attract sheep from other walks within the common thus affecting shepherding of the local walks. However it is evident that other parcels of land bounding the common area have been available for grazing by livestock from the adjacent common areas for a period of years as a result of the dilapidation of the boundary fences between the said land areas and the adjacent common. There has been no evidence of any adverse effect on the livestock passing periodically between the said land bounding the common and the adjacent common areas and no effect on the shepherding of other local walks. The lack of effect on the surrounding common is therefore evident even under the current level of agricultural management.
- 3.23. As detailed above, it is recommended that the agricultural husbandry and management of the semi improved land within the replacement land be ceased upon the granting of the de-registration order with the said land allowed to naturally revert to upland pasture in the ensuing period prior to commencement of works. The available grazing areas of the enclosure will quickly revert, within two/three grazing seasons, to a moorland grass ecosystem as fertility levels drop and the more palatable grasses are **'grazed out' by sheep. It is likely that the area will revert to dry heathland with interspersed wet heath based ecosystem** as found on the corresponding Common land area.

#### Part 4 - Conclusion.

- 4.1 In my opinion the Applicant has a full knowledge of the interests of the commoners and how they exercise their grazing rights. They have sought to consult with all registered graziers on the Common Land Register and with the commoners association to better understand their views and any concerns, regarding the suitability of the replacement land which will be provided in exchange.
- 4.2 The area of replacement land provided is equal to the area of the release land. The commoners with grazing rights will not be disadvantaged by the proposals.
- 4.3 They will have the same amount of land over which to graze their livestock as they currently enjoy and they will still be able to continue to use the common as they currently do throughout the construction period. The replacement land will provide the same level of common area available for Single Farm Payment.
- 4.4 For all the reasons cited in this Report I conclude that the Applicant has identified the relevant interests and activities on the common land, and ensured that the commoners will not be disadvantaged
- 4.5 With regard to public access, access rights over the open replacement land will be identical to the common land. The construction works will only require temporary fencing and access will be available around this.
- 4.6 Full replacement land is provided to ensure that there is no detriment to the public or the commoners during construction or operation of the wind farm.

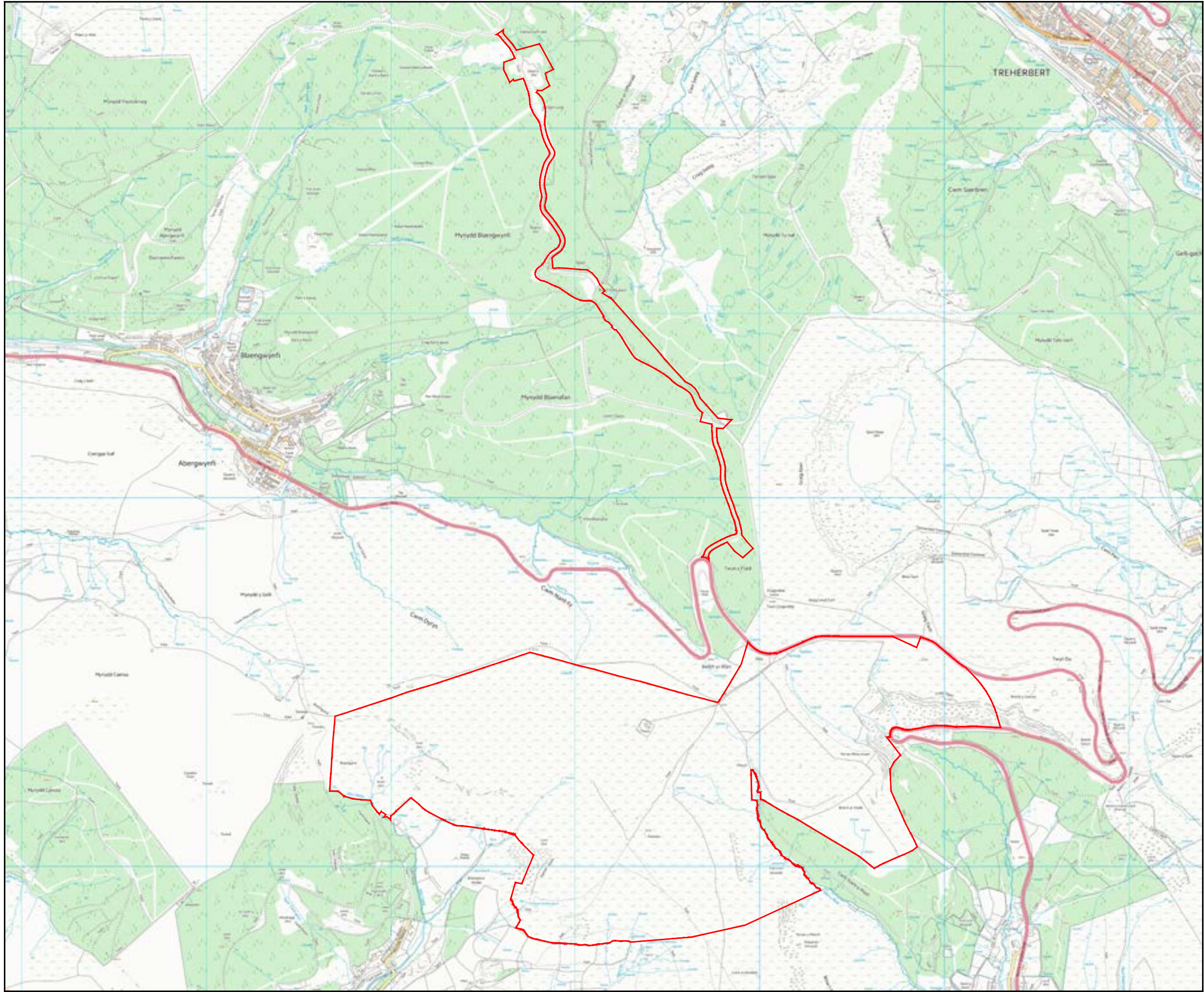
- 4.7 I conclude that subject to management proposals over the area of semi-improved grazing within the replacement land to allow the same to revert to rough pasture as detailed in the summary above; that the replacement land as detailed for inclusion into the common land area would not be to the detriment of the common or the users of the common and that this includes those using the common for public access, horse riding, grazing by livestock or claiming Single Farm Payments.

Signed: -

John Eirian Davies MRI CS  
SYRFEWR JED CYF,  
Llwynyrynn,  
Capel Isaac.  
Llandeilo.  
Carms.  
SA19 7TP

[            ]





**UPPER OGMORE  
WIND FARM**

**FIGURE 1.2**

**PLANNING APPLICATION  
BOUNDARY**

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2020 LICENCE NUMBER 0100031673.

**KEY:**

— PLANNING APPLICATION BOUNDARY



LAYOUT DWG	N/A	T-LAYOUT NO.	N/A
DRAWING NUMBER			
02959D2405-03			
SCALE - 1:20,000 @ A3			
ENVIRONMENTAL STATEMENT			
2020			
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## UPPER OGMORE WIND FARM

FIGURE 3.1

### INFRASTRUCTURE LAYOUT

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2018 LICENCE NUMBER 0100031673.

#### KEY:

- PLANNING APPLICATION BOUNDARY  
(TAKEN FROM RES DRAWING 02959D2405)
- WIND TURBINE LOCATION
- NEW SITE TRACKS
- WATERCOURSE
- CRANE HARDSTANDING AREA &  
TRANSFORMER
- TEMPORARY CONSTRUCTION  
COMPOUND / ENERGY STORAGE  
AREA
- CONTROL BUILDING & SUBSTATION  
COMPOUND WITH HARDSTANDING  
AREA
- WIND FARM COMMUNICATIONS MAST
- DNO COMMUNICATIONS MAST
- POTENTIAL BORROW PIT
- SITE ENTRANCE LOCATION



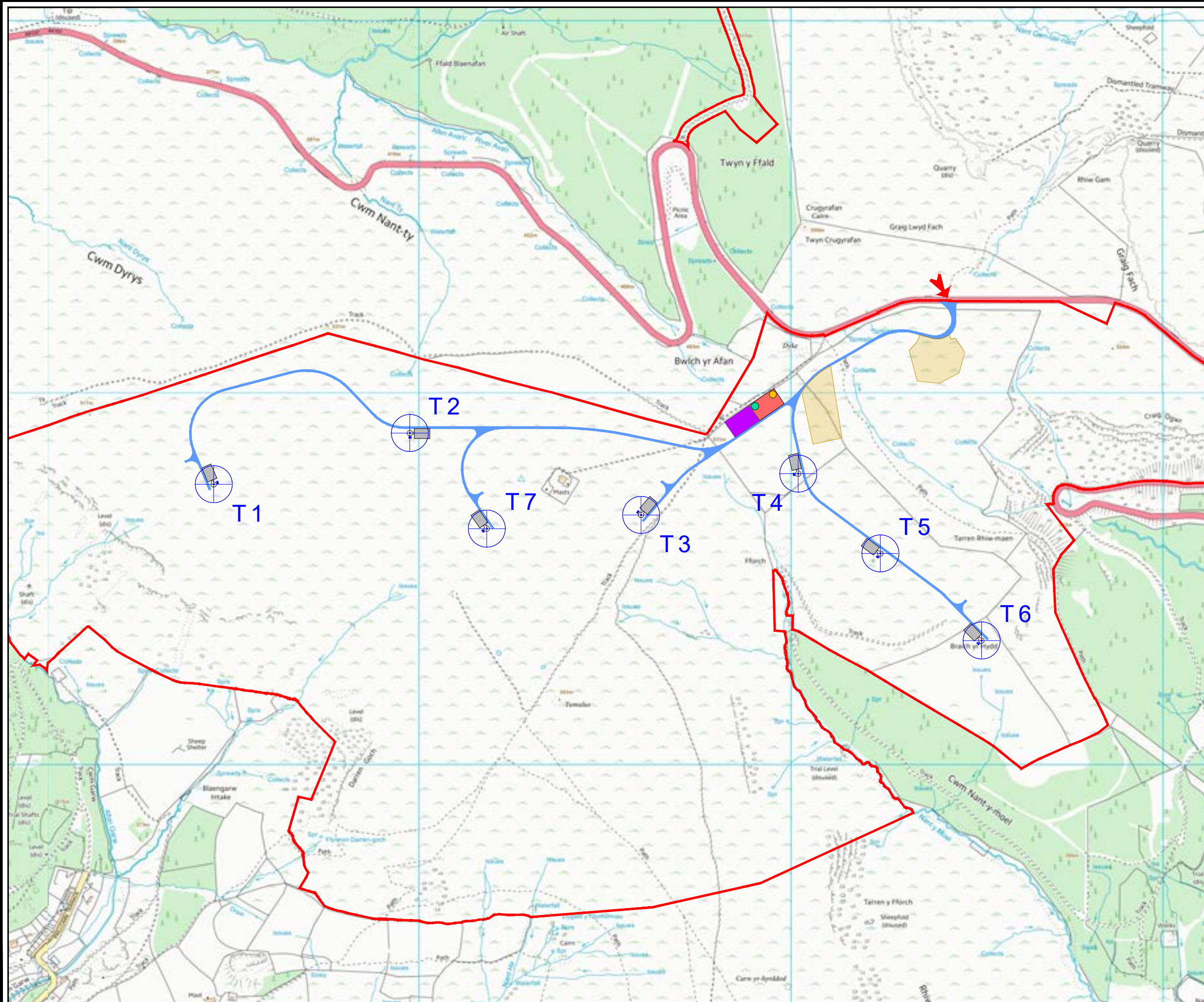
LAYOUT DWG 02959D0001-08 T-LAYOUT NO. PWALuog033

DRAWING NUMBER  
**02959D1001-03**

SCALE - 1:10,000 @ A3

**ENVIRONMENTAL STATEMENT  
2018**

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## UPPER OGMORE WIND FARM

FIGURE 12.1

### PUBLIC RIGHTS OF WAY DIVERSIONS

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2018 LICENCE NUMBER 0100031673.

#### KEY:

- PLANNING APPLICATION BOUNDARY
- 200m BUFFER FROM TURBINES
- EXISTING BRIDLEWAY
- PROPOSED PERMANENT BRIDLEWAY DIVERSION
- EXISTING FOOTPATH
- PROPOSED PERMANENT FOOTPATH DIVERSION
- PROPOSED TEMPORARY FOOTPATH DIVERSION
- INFRASTRUCTURE
- BP POTENTIAL BORROW PITS



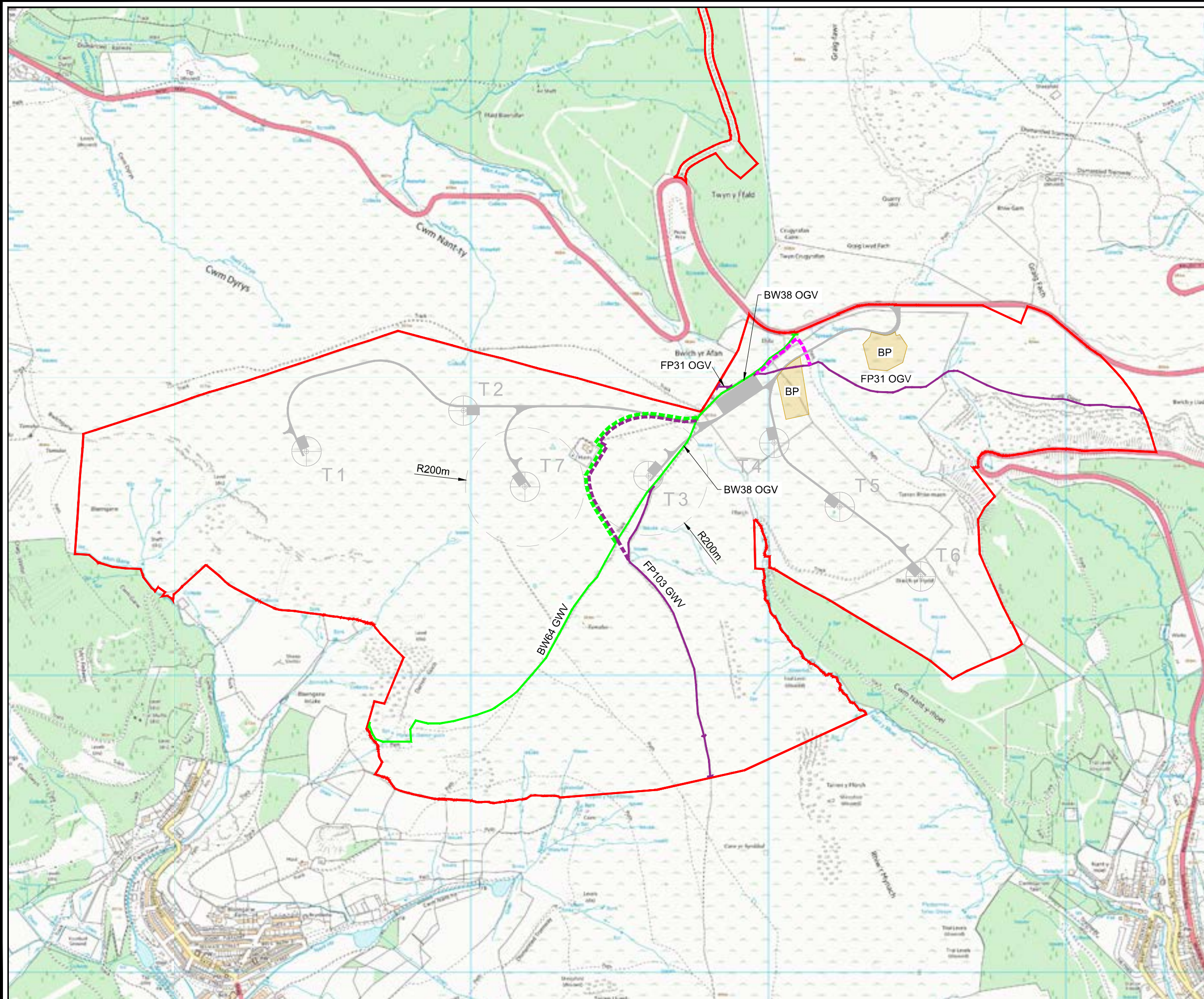
LAYOUT DWG N/A T-LAYOUT NO. N/A

DRAWING NUMBER  
**02959D2408-02**

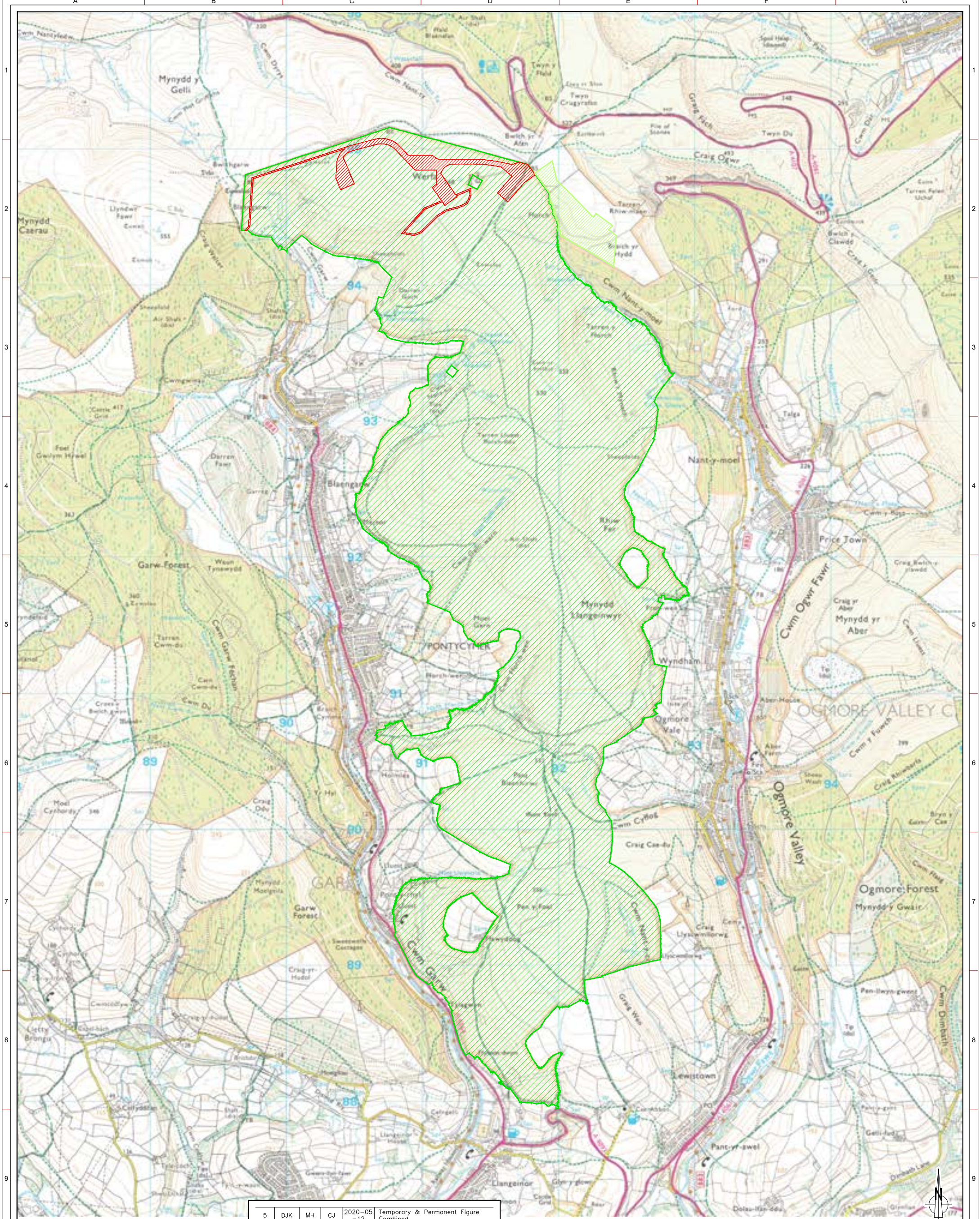
SCALE - 1:10,000 @ A3

#### PUBLIC RIGHTS OF WAY DIVERSIONS

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5	DJK	MH	CJ	2020-05-12	Temporary & Permanent Figure Combined
ISSUE	DRAWN	CHKD	APPD	DATE	REVISION NOTES

- KEY:**
- REPLACEMENT COMMON LAND (AREA = 16.81ha)
  - COMMON LAND TO BE DEREGISTERED (AREA = 16.81ha)
  - COMMON LAND

FIGURE 12.2A

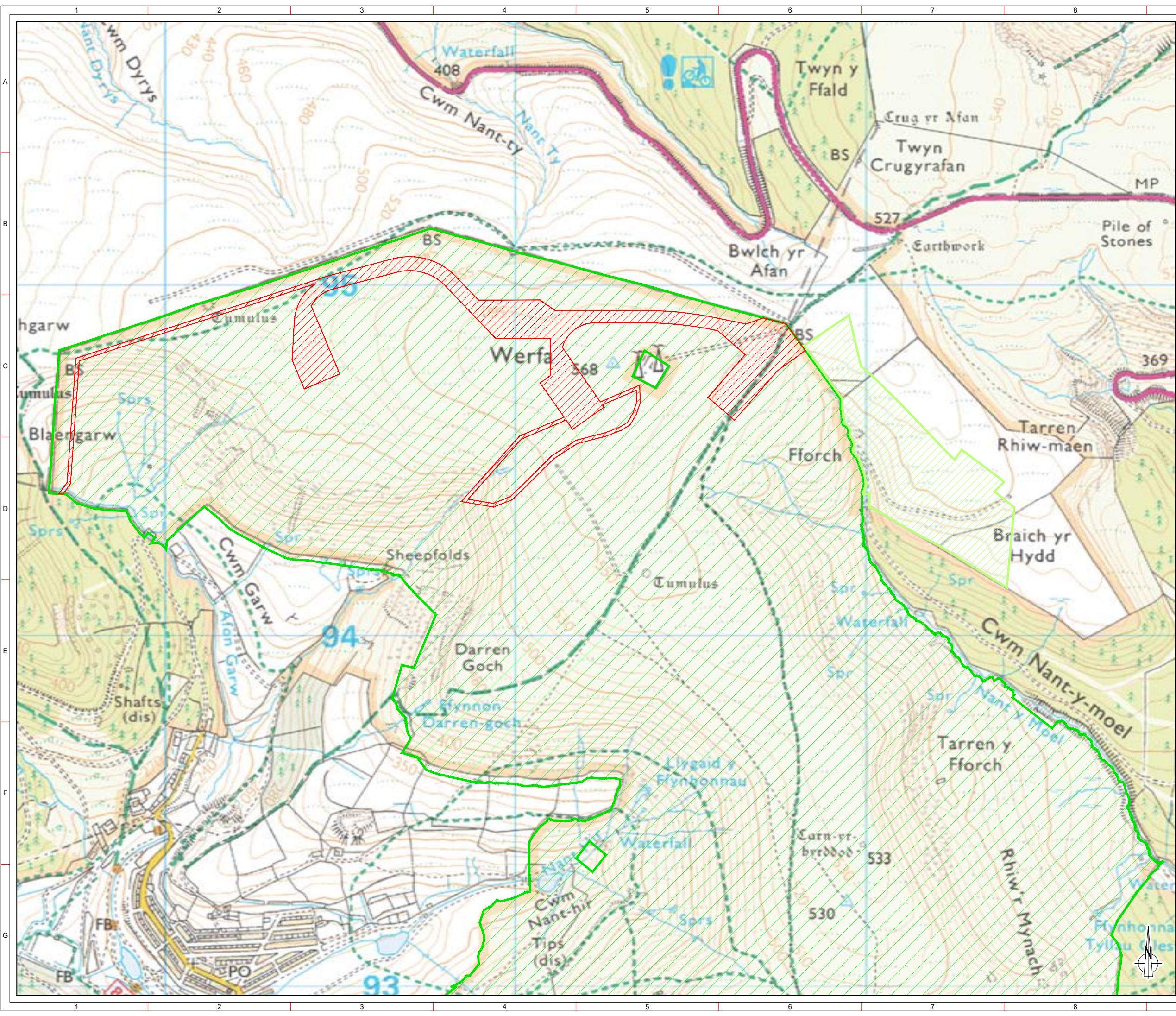
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2020 LICENCE NUMBER 0100031673.

PROJECT TITLE UPPER OGMORE WIND FARM	
DRAWING TITLE COMMON LAND SWAP PLAN	
RES DRAWING NUMBER 02959D2223	REV 5
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PURPOSE PLANNING	PROJECTION BRITISH NATIONAL GRID
SCALE 1:25,000 @A3	DATUM N/A
LAYOUT DRAWING N/A	T-LAYOUT NO N/A

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WWW.RES-GROUP.COM






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2020 LICENCE NUMBER 0100031673.

- KEY:**
- REPLACEMENT COMMON LAND  
(AREA = 16.81ha)
  - COMMON LAND TO BE DEREGISTERED  
(AREA = 16.81ha)
  - COMMON LAND

**FIGURE 12.2B**

5	DJK	MH	CJ	2020-05-12	Temporary & Permanent Figure Combined
ISSUE	DRAWN	CHKD	APPD	DATE	REVISION NOTES
PURPOSE				PROJECTION	
PLANNING				BRITISH NATIONAL GRID	
SCALE				DATUM	
1:10,000 @A3				N/A	
LAYOUT DRAWING				T-LAYOUT NO	
N/A				N/A	
PROJECT TITLE					
UPPER OGMORE WIND FARM					
DRAWING TITLE					
COMMON LAND SWAP PLAN					
RES DRAWING NUMBER					REV
02959D2223					5
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## Appendix 5

### Consultation Report

#### Upper Ogmore Wind Farm

##### Common Land Area and Active Grazier/Commoner Report

Further to instructions from Renewable Energy Systems Ltd (RES). The following is a report on inspections of the Common Land area of Llangeinor Common CL26 and consultation meetings with Active Graziers of the Common prior to application by RES for common land consent for wind farm development (the proposed development) under S.16 Commons Act 2006 on the said common land area.

#### Common Land Inspections: -

Inspections of the common land area were taken on foot on the following dates. The common land area was inspected to determine grazing livestock type, density and patterns. The flora and fauna on site was closely inspected during common land inspections to determine the level of grazing and if the common land area was grazed to varying degrees. Also the topography, aspect and drainage of the various areas of the site were considered.

17<sup>th</sup> September 2014 – Northern Common Land Area.

17<sup>th</sup> October 2014 – Southern Common Land Area.

25<sup>th</sup> September 2015 – Northern and Central Common Land Area along with area of land proposed as replacement land.

12<sup>th</sup> June 2015 – Northern and Southern Common Land Area.

21<sup>st</sup> June 2015 – Northern Common Land area adjacent to replacement land.

12<sup>th</sup> April 2016 – Northern Common Land Area along with specific assessment of drilling areas.

18<sup>th</sup> October 2017 – Northern and Southern Common Land Area to inspect clearance of livestock.

22<sup>nd</sup> June 2018 – Northern and Southern Common Land Area to assess effect of late spring and hot summer weather on grazing patterns.

1<sup>st</sup> October 2018 – Northern and Southern Common Land Area.

#### Local Authority Consultation.

24<sup>th</sup> June 2014 – Yvonne Witchell, Bridgend District Council.

#### Commoners Association.

Agent :-

Mr Jeremy Liley of John Jeremy + Partners.

9<sup>th</sup> February 2018 – Introductory visit.

27<sup>th</sup> September 2018 – Re Cooperation agreement.

Chairman: -

[REDACTED]  
12<sup>th</sup> June 2015 – Introductory visit.  
29<sup>th</sup> January 2016 – Update on progress of the scheme visit.  
26<sup>th</sup> April 2016 – Re Active grazing pattern.  
19<sup>th</sup> December 2017 – Re Drilling access and effect on grazing.  
24<sup>th</sup> April 2018 – Re Effect of late spring on grazing pattern.  
22<sup>nd</sup> June 2018 – Re Draft cooperation agreement.  
16<sup>th</sup> August 2018 – Collection of cooperation agreement.

[REDACTED] is an active grazier farming 800 breeding hill ewes and 40 cattle all with followers. Extensive use of the southernmost area of the hill is made especially in summer

Secretary: -

[REDACTED]  
10<sup>th</sup> June 2014 – Introductory visit Re Officers of Association.  
12<sup>th</sup> June 2015 – Re Active grazing pattern.  
23<sup>rd</sup> June 2015 – Re Active Graziers  
14<sup>th</sup> November 2015 – Re Surveys and Drilling access.  
14<sup>th</sup> June 2016 – Re Drilling Works.

[REDACTED] is not currently an Active Grazier.

Treasurer: -

[REDACTED]  
22<sup>nd</sup> June 2018 - Re Draft Cooperation Agreement.  
21<sup>st</sup> August 2018 – Re Collection of Cooperation Agreement.  
21<sup>st</sup> November 2018 – Re Transfer of interest in holding to successor in title.

[REDACTED] **is an active grazier** with 60 cows and calves grazed all year round. 450 sheep turned out with lambs in spring and gathered for shearing. Ewes with ewe lambs turned back to the hill and gathered in October.

Active Graziers.

██████████  
15<sup>th</sup> July 2016 – Re Active grazing pattern.

12<sup>th</sup> January 2018 – Re Effect on grazing pattern of new sheep flock being re-introduced.

24<sup>th</sup> April 2018 – Re Effect of late spring on grazing.

21<sup>st</sup> June 2018 – Re Draft cooperation agreement.

2<sup>nd</sup> August 2018 – Re Collection of cooperation agreement.

██████████ is an active grazer with 25 cows and calves plus a variable number of sheep. The Common Land area was not used in previous seasons but the grazing flock was re-instated this year as a result of **the displacement of ██████████ son from another holding. Between 300 and 500 ewes and followers grazed at differing times during the summer of 2018.**

██████████  
18<sup>th</sup> May 2018 – Re Kirrin Lever taking over the management of the holding.

21<sup>st</sup> June 2018 – Re Draft cooperation agreement.

9<sup>th</sup> August 2018 – Re Collection of cooperation agreement.

██████████ has historically grazed 20 horses and 30 cows and calves. The cattle herd were sold in 2015 with sheep numbers increased by ██████████ to over 400 plus followers and further increases proposed in 2018. The horses roam generally over the common land area.

██████████  
22<sup>nd</sup> June 2018 – Re Draft Cooperation agreement.

2<sup>nd</sup> August 2018 – Re Collection of cooperation agreement.

Active grazer with 25 cows and calves plus 250 sheep. The cows were sold in 2015 with herd re-instated in 2017/18. Sheep numbers

increased recently to 350 with proposal for further increase to maximum right of 400 in 2019. Sheep turned out in spring with lambs and gathered for shearing. Ewes with ewe lambs returned until October with the hill cleared thereafter.

[REDACTED]

8<sup>th</sup> May 2018 – Re Effect of late spring on grazing.  
22<sup>nd</sup> June 2018 – Draft cooperation agreement.  
7<sup>th</sup> August 2018 – Collection of cooperation agreement.

Active grazier with 250 ewes with followers grazing periodically almost all year round.

[REDACTED]

19<sup>th</sup> December 2017 – Re Identification of new active graziers.  
24<sup>th</sup> April 2018 – Re Effect of late spring on grazing patterns.  
21<sup>st</sup> June 2018 – Re Draft cooperation agreement.  
31<sup>st</sup> July 2018 – Re Collection of cooperation agreement.  
1<sup>st</sup> April 2019 – Re Illegal burning

Active grazier with 40 cows and calves grazed periodically all year round. 650 sheep turned out with lambs in spring and grazed periodically in summer and winter. Extensive use of the southernmost area of the hill is made for periodic grazing of both cattle and sheep with winter feeding.

[REDACTED]

24<sup>th</sup> April 2018 – Re Effect of late spring on grazing patterns.  
15<sup>th</sup> August 2018 – Draft cooperation agreement.  
31<sup>st</sup> August 2018 – Collection of cooperation agreement.

Active grazier with 400 Hill ewes with ewe lambs turned out in spring with ewes returned to the common to dry off after weaning in summer. Yearling ewes turned to hefted southern common area in spring.

[REDACTED]

and relationship with adjacent common land area.

Mr [REDACTED]



Active grazier with recently established herd of pedigree Highland cattle increased recently to 40 head plus followers; grazing periodically almost all year round. The herd is currently being actively managed to keep to its prescribed hefted grazing area.

8<sup>th</sup> May 2018 – Re Active grazing pattern.

20<sup>th</sup> June 2018 – Draft cooperation agreement.

9<sup>th</sup> August 2018 – Further consideration of cooperation agreement.

16<sup>th</sup> August 2018 - Collection of cooperation agreement.

Active grazier with recently established herd of 8 cows plus followers and flock of 50 ewes plus followers; grazing periodically almost all year round. The herd and flock is currently being actively managed to keep to its prescribed hefted grazing area.

Signed: -

John Eirian Davies MRI CS

[Date TBC]





# **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/commonlandand>

## **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 200m<sup>2</sup> (see section 16(2)). Even in cases where the land to be deregistered is less than 200m<sup>2</sup> 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 200m<sup>2</sup> 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

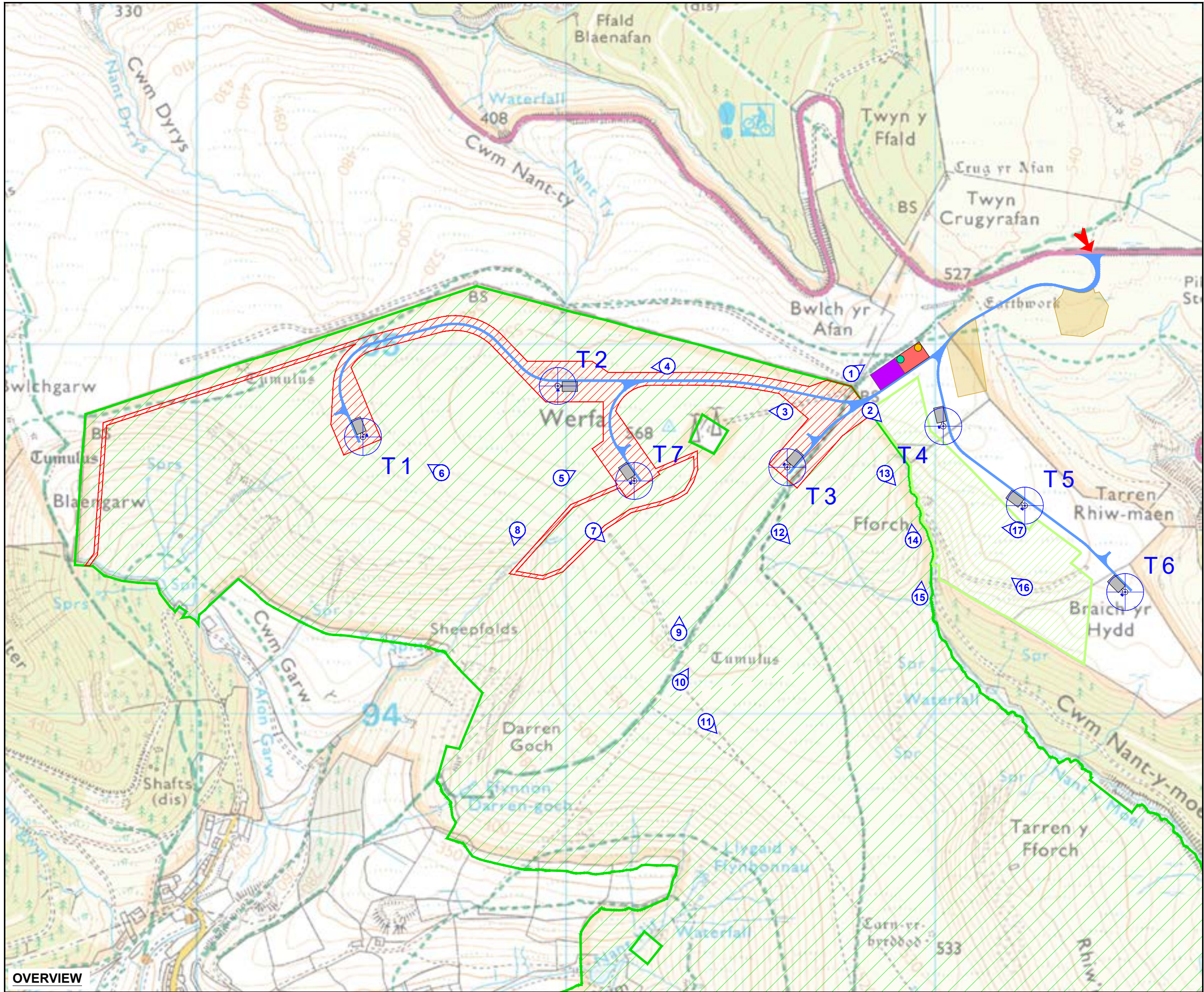
- Their duty (in relation to an area of outstanding natural beauty) to have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty (see section 85 of the Countryside and Rights of Way Act 2000).

## **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.





OVERVIEW

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- KEY:**
- REPLACEMENT COMMON LAND  
(AREA = 16.81ha)
  - COMMON LAND TO BE DEREGISTERED  
(AREA = 16.81ha)
  - COMMON LAND
  - PHOTOGRAPH LOCATION



1	JPB	CJ	CJ	05.06.20	First Issue
ISSUE	DRAWN	CHKD	APPD	DATE	REVISION NOTES
PURPOSE				PROJECTION	
PLANNING				N/A	
SCALE		1:10,000 @A3		DATUM	
				N/A	
LAYOUT DRAWING				T-LAYOUT NO	
N/A				N/A	
PROJECT TITLE					
UPPER OGMORE WIND FARM					
DRAWING TITLE					
COMMON LAND PHOTOGRAPHS					
RES DRAWING NUMBER					REV
02959D2244					2
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PHOTOGRAPH 1



PHOTOGRAPH 2



PHOTOGRAPH 3



PHOTOGRAPH 4



PHOTOGRAPH 5



PHOTOGRAPH 6

SHEET 2 OF 4

1	JPB	CJ	CJ	05.06.20	First Issue
ISSUE	DRAWN	CHKD	APPD	DATE	REVISION NOTES
PURPOSE PLANNING				PROJECTION N/A	
SCALE 1:10,000 @A3				DATUM N/A	
LAYOUT DRAWING N/A				T-LAYOUT NO N/A	
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RES DRAWING NUMBER  02959D2244					REV  2
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PHOTOGRAPH 7



PHOTOGRAPH 8



PHOTOGRAPH 9



PHOTOGRAPH 10



PHOTOGRAPH 11



PHOTOGRAPH 12

SHEET 3 OF 4

1	JPB	CJ	CJ	05.06.20	First Issue
ISSUE	DRAWN	CHKD	APPD	DATE	REVISION NOTES
PURPOSE PLANNING				PROJECTION N/A	
SCALE 1:10,000 @A3				DATUM N/A	
LAYOUT DRAWING N/A				T-LAYOUT NO N/A	
PROJECT TITLE  UPPER OGMORE WIND FARM					
DRAWING TITLE  COMMON LAND PHOTOGRAPHS					
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PHOTOGRAPH 13



PHOTOGRAPH 14



PHOTOGRAPH 15



PHOTOGRAPH 16



PHOTOGRAPH 17

SHEET 4 OF 4

1	JPB	CJ	CJ	05.06.20	First Issue
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PURPOSE PLANNING					PROJECTION N/A
SCALE 1:10,000 @A3					DATUM N/A
LAYOUT DRAWING N/A					T-LAYOUT NO N/A
PROJECT TITLE UPPER OGMORE WIND FARM					
DRAWING TITLE COMMON LAND PHOTOGRAPHS					
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