

Application to deregister and exchange common land or town or village greens

Commons Act 2006: Section 16

Return completed application to:

Planning Inspectorate Wales
Cathays Park
Cardiff
CF10 3NQ

Tel: 0303 444 5958

E-mail: dns.wales@planninginspectorate.gov.uk

Application to deregister and exchange common land

- Answer all the questions on this form in full and only use a separate sheet where there is insufficient space for your answer.
- Refer to the separate **“Notes for completing an application to deregister and exchange common land or town or village greens”** (the “Notes”) when applying.
- Consult informally and widely about your ideas before developing a formal proposal.
- References throughout this form to ‘Common Land’ apply equally to ‘town or village green’

SECTION A – The common land (or village green) – to be deregistered – the “release land”

(see Notes 1, 2, 3, 4 and 5)

SECTION A1 – The Common:

1. Name of Common

Mynydd Llangeinor Common

CL/VG No.

CL26

2. Located in the:

(a) Community/Town of

Garw Valley and Ogmore Valley

(b) Borough/County Borough/City/County of

Bridgend

3. Commons Registration Authority

Bridgend County Borough Council

Section A2 – The owner (see Note 1):

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

Mr

(a) Forename (s)

[REDACTED]

(b) Surname

[REDACTED]

(c) Position/Organisation
(if appropriate)

Head of Rural

5. Full Postal Address

[REDACTED]

Postcode

[REDACTED]

Telephone number

N/A

Mobile No

Fax Number

E-mail address

I prefer to be contacted by

☐

Email

☐

Post

***Please note that all correspondence regarding the common land application should be directed to RES Ltd, Cedar House, Greenwood Close, Cardiff Gate Business Park, Cardiff, CF23 8RD or chris.jackson@res-group.com.**

Please note that unless you tell us otherwise, we will send all correspondence to the person named above – not to the owner of the replacement land shown in Section B2.

Please tick as appropriate:

Please send all correspondence to the owner above in question 4.....

Please copy all correspondence to the person named in question 15...

☐

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Section A3 – Area of common and common rights:

6. What is the total area of common as registered?
(see Note 2)

2,597 acres

7. What common rights, if any, are registered (e.g. number and type)? If the land is a town or village green, to what recreational use is it put?

A full copy of the Register for CL 26 is included with the application (see Appendix 1).

Details of the rights are set out in the register. These are given in terms of rights of pasture for the numbers of cattle, sheep or horses specified and the right to cut and take away bracken, to take stone from the common surface. The Common is used predominantly for the grazing of sheep, cattle and horses.

Lawful recreational use of the common is not extensive and generally consists of ramblers and horse-riders.

The Register of Common Land rights includes a total of 6104 animals grazing on CL 26.

The rights are shown to be distributed between 22 rights holders.

The register also reveals rights to shoot, fish and keep poultry.

Non-grazing rights are also detailed in the summary indicating that certain graziers have the right to take fern and bracken for bedding.

The rights to graze are exercised by active graziers and over the last four years these have amounted to 13 regular active graziers. There is no recent use for taking bracken or stone from the common.

8. If common rights are registered, are they ever exercised?.

Yes

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No

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

The register and summary we have produced records the allocation of grazing rights over the common. Through regular liaison with the active graziers over a number of years, consultation and regular site visits we have built up a very good picture of how these rights are used in practice over any one grazing season. The consultation has allowed us to determine to a reasonably accuracy the number and classes of livestock grazing the common during a specific grazing season.

The majority of the common area is under-grazed. This is confirmed by the flora and fauna and the condition of the upland dry and wet heath habitat. The southern part of the common has been overgrazed by horses and has been periodically and regularly burned resulting in a lesser extent of heath material and lesser diversity of upland heath species in this area. An area of the common being a central strip from north to south is adversely affected by joyriding with surface erosion and effect on habitat as a result.

Consultation by RES has identified the active graziers and provided details of their usage of the common. They have been extremely helpful in providing information and have all signed agreements supporting the proposed development and agreeing to co-operate with RES to bring the scheme forward. Of the 22 right holders shown on the Register, 13 active graziers have been identified who exercise their rights and/or the rights of others via rental rights or through the acquisition of land that has the rights attached. There is however no requirement for common land graziers to update the commons register to reflect what is happening on the ground. We have identified three new graziers in the last year, each of whom has acquired rights with the acquisition of their holding.

Consultation with active graziers has been extremely helpful and constructive and we have included details of this consultation report with the common land report (Appendix 2). This, and regular site visits has provided us with good knowledge of the exact usage of the common. We can confirm that 13 common land graziers are active and the common land is an important resource for these users and an integral part of their farming business.

The common land report prepared by John Eirian Davies included at Appendix 2 explains how the common is hefted and what impact the proposed development will have upon these hefts. We have taken this into account in seeking to minimise and mitigate potential disturbance to the hefted flocks that may occur during the development.

We have had extensive liaison with the active commoners over a long period of time. The information they have provided has enabled us to form a picture of how specific hefts are used by specific flocks from a specific holding. This information enables us to assess who uses which parts of the common and which graziers will be most affected by the proposed development and to have constructive discussions with them regarding the proposal.

Section A4 – Other rights over the common:

10. Give details of any relevant leaseholders, other occupiers, or those holding any relevant charges over the release land (**see Note 4**) and enclose copies of their written consent to this application (**see Note 3**).

The Duchy of Lancaster lease the Werfa Mast to BT (then known as HM Postmaster General). BT in turn sublet part of this to South Wales Fire & Rescue Service who in turn sublet to Bridgend County Borough Council. Written consent for RES to use the access track has been given by all parties and a copy of the agreement can be provided if necessary.

Section A5 – Description of the release land:

11. Area of release land (m² or hectares)

12. Description (including location) of release land (**see Note 5**)

The release land is part of common land CL26 shown shaded red on Figure 12.2 (Common Land Swap Plan). The release land shows the area to be removed from the common for the purpose of the development.

The release land is required to allow for the following components:

- Four wind turbine towers having a diameter at the base of 5.5m (an area of 23.8m²) which amounts to a total area of 95.2m² (or 0.00952h.a.) for four turbines;
- 2.33km of new site tracks between T1, T2, T3 and T7;
- drainage works;
- swales and drainage ditches next to the access tracks;
- on-site electrical network of underground (buried) cabling;
- marker posts and signposts for the permanent diversion of footpath;
- fencing of works;
- tracks to allow vehicular access;
- crane assembly areas;
- laydown areas;
- cable trenches;
- spoil storage;
- wooden poles carrying an electricity line connecting the development to the electricity network, west of turbine T1.
- diversion and undergrounding of existing 11kV overhead electricity line, south of turbine T7;

The area of release land (16.81 ha) is the same as the area which will be occupied by the wind farm infrastructure and the working areas required during construction.

Section B – The land to be given in exchange – the ‘replacement land’ (see Notes 6,7,8 and 9)

13. Are you proposing to provide replacement land in exchange for the release land?

☒

Yes

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No

If **Yes**, go to question 14. If **No**, please explain here why you are not providing replacement land (see note 6) and then go to Question 22

Section B1 – Location of the replacement land:

14. Name, if any of the replacement land

The replacement land is part of the holding of Nantymoel Farm which is comprised of title numbers WA134326 and WA124597 and is shown shaded light-green on Figure 12.2 (Common Land Swap Plan). The land adjoins CL 26.

The replacement land is located in the:

(a) Community/Town of

Garw Valley and Ogmore Valley

(b) Borough/County Borough/City/County of

Bridgend

Section B2 – The owner of the replacement land (see Note 1)

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

(a) Forename (s)

(b) Surname

(c) Position/Organisation
(if appropriate)

16. Full Postal Address

Telephone number

N/A

Mobile No

Fax Number

E-mail address

I prefer to be contacted by ☒ E-mail ☒ Post

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Please note that unless you tell us otherwise, we will send all correspondence to the person shown in Section A2.

Section B3 – Description of replacement land:

The replacement land is the land offered in exchange for and to replace land which is requested to be permanently taken out of the common after the construction phase for the Proposed Development is completed. It replaces the Released Land which will be removed from the common for the operation of the wind farm both in terms of grazing and public access.

17. Area of land proposed as replacement land

16.81 hectares

18. Description (including location) of land proposed as replacement land **(see Note 5)**

Part of the holding known as Nantymoel Farm shown cross-hatched in light-green on Figure 12.2a & b.

Part of the replacement land immediately adjacent to the common land area is rough grazing and heathland. The remainder consists of semi-improved grassland.

It is intended that the whole area will be accessible to the public and commoners for recreation and grazing. Please refer to the Common Land Report for further details of how this is intended to operate, the suitability of the land and confirmation that the introduction of semi-improved grassland will not cause any difficulties in respect of hefting or movement of livestock.

Given the re-location of the livestock fencing there will no requirement for stiles or gates to enable access.

19. Please confirm that the proposed replacement land is not already registered as common land or town or village green **(See Note 7)**

..... Yes

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No

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20. Is the proposed replacement land subject to any other formal designation (for example, as public open space)?

(See Note 8)

..... Yes

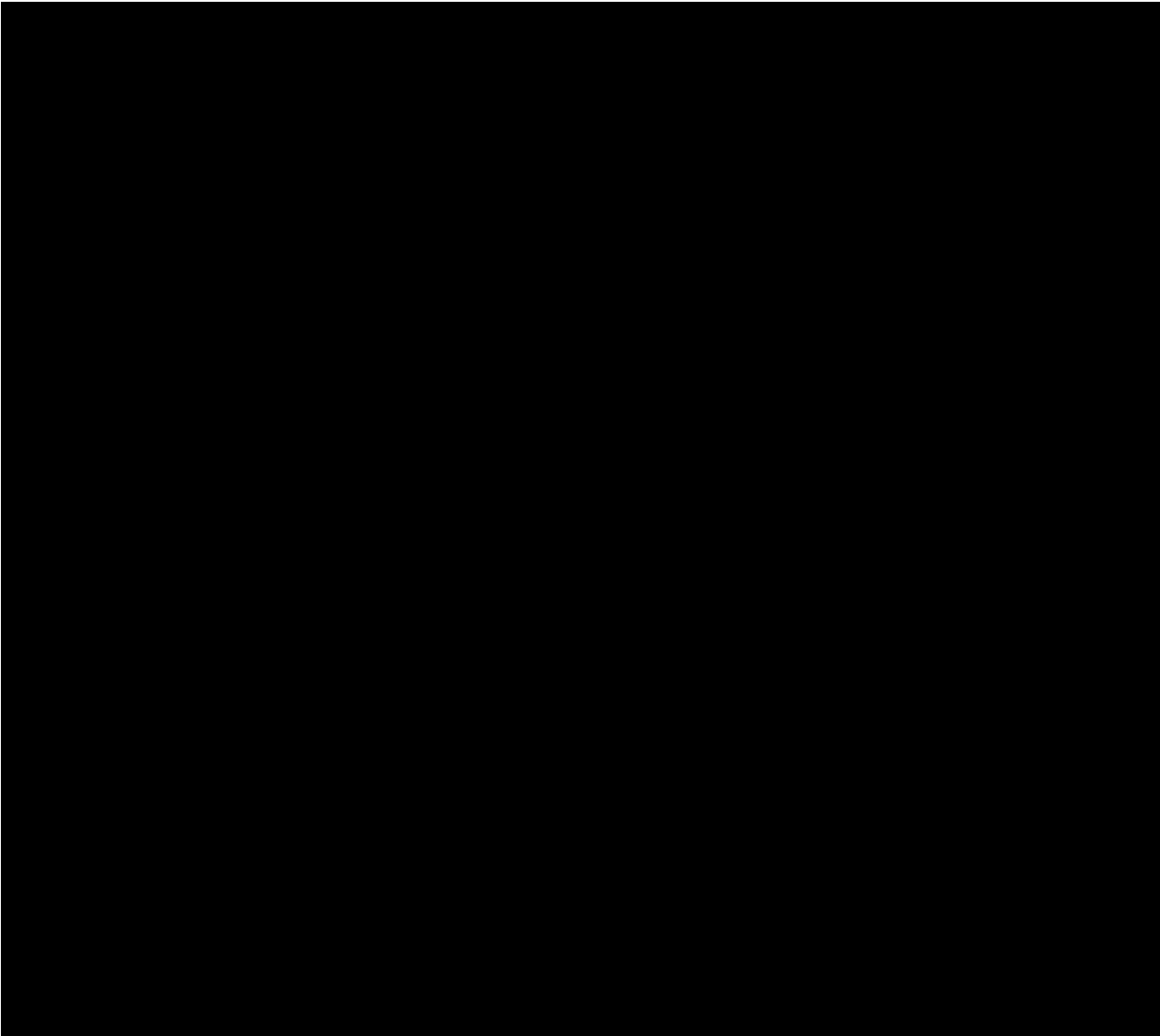
☐

No

☒

If **Yes**, give full details:

21. Give details of any relevant leaseholders, or other occupiers, or those holding any relevant charges over the replacement land: **(see Note 9).**



SECTION C – Access arrangements and current features of the lands (see Notes 10, 11 and 12)

For questions 22 to 28 complete both parts of each question if replacement land is being provided. If no replacement land is being provided, complete part (a) of each question.

Section C1 – Access to the lands:

22. To what extent is there public access over the lands to be exchanged?

(a) The release land

Public access is unhindered in this area but the overall public usage of the release land is low.

(b) The replacement land

None at present, this is fenced off from the common and used by the landowner for grazing.

23. What will the access arrangements be after the exchange?

(a) The release land

The release land will be closed off for the construction works. When construction is completed and subject to operational requirements it is envisaged to the extent possible that any land not taken up by permanent infrastructure will be made available for commoners and general public access.

(b) The replacement land

The replacement land will be registered as common land and access will be available for commoners and the public.

Section C2 – Current condition of the lands:

24. Describe the current condition and use of the:

(a) release land

The release land is unenclosed upland moorland with dry and wet heath habitat dominated by rough grass species. There is very little or no heather and the steeper slopes are affected by bracken. The land is used for grazing by livestock and for open access.

(b) replacement land

The replacement land comprises unimproved and semi improved grassland dominated by rough and seed grass species. There is very little or no heather and the steeper slopes are affected by bracken. The land is currently used for grazing. The land is recommended as replacement land for the reasons set out on part 3 of the common land report at Appendix 2. The replacement land is currently used by the landowner for grazing.

25. What structures, (e.g. buildings, bridleways, footpaths, walls, fences or other constructions currently exist on the:

(a) release land

The summit of Werfa features an OS trig point and two communications masts within a fenced compound. The compound is accessed via a track from the A4107 and is serviced by a low-voltage overhead power line on wood poles which runs from the Garw Valley.

There are several public rights of way crossing the site, including a bridleway linking Cwmparc with the Garw Valley, and footpaths linking to the other surrounding valleys, and following the ridge of Mynydd Llangeinwyr south. Being unenclosed upland grazing, the release land is open access land.

Following consultation with Bridgend County Borough Council the proposed development includes proposals for permanent diversions to bridleway BW64GWV and footpath FP103GWV in order to keep them a suitable distance from the wind turbines. The proposed diversions are shown in Figure 12.1: Public Rights of Way Diversions. The permanent diversions represent an increase in length of approximately 250 m over the existing footpath and bridleway.

A temporary diversion, during the construction period only, to footpath FP31 OGV is proposed to maintain a suitable set back distance from the borrow pits. Details of the proposed diversion is shown in Figure 12.1. The temporary diversion represents an increase in length of approximately 120 m over the existing footpath. The permanent and temporary diversions proposed follow similar terrain to the existing routes and do not encroach into any environmental constraints

Should planning permission for the proposed development be granted, RES would lodge an application to divert the rights of way under the Town and Country Planning Act 1990, and any other consents that may be necessary, in consultation with Bridgend County Borough Council.

Given the relatively short length of the diversions, the similar nature of the terrain and the fact that no environmentally constrained areas will be affected, effects of the proposed development on public rights of way are not deemed to be significant. In order to ensure there is no detriment to the public or to commoners in respect of the fact that the footpath diversions will not take place until after the commons order is granted, if it is deemed necessary, RES is prepared to offer a unilateral undertaking, i.e. a binding document that the route of the footpath diversion will be secured on the terms set out in the environmental statement. accompanying the DNS application

(b) replacement land

The replacement land is currently boundary fenced with stockproof post and wire.

26. What boundary features e.g. fences, hedges, walls (and access points such as stiles and gates) currently exist on (or on land immediately adjoining) the:

(a) release land

There is a boundary fence of approximately 490m between the release land and the replacement land that will be removed in its entirety.

(b) replacement land

The existing boundary fence between the release land and the replacement land is to be removed to incorporate the replacement land area into the common. A new boundary fence will be constructed to form a boundary between the replacement land and adjacent freehold land to the south and east.

27. What, if any, boundary features are proposed to be removed or erected as part of the exchange?

(a) release land

Boundary fence to be removed.

(b) replacement land

Boundary fence to be moved back to allow replacement land to be incorporated into the common.

28. Are any works or other things to be done by any party as part of the exchange?
.....Yes ☒ No ☐

If Yes, give details

(a) release land

The release land will be used for the construction of the project and for the erection of four turbines and associated infrastructure. Following construction it is intended, to the extent possible, to allow public access subject to maintenance or safety requirements.

(b) replacement land

The only works to the replacement land are the relocation of the fence to allow access.

29. Are any of the lands subject to any other rights or easements not already mentioned on this form?.....

Yes

☐

No

☒

If **Yes**, give full details:

Full details of rights and easements are included in this form and accompanying documents.

SECTION D – Details of the exchange or deregistration, and any informal consultations (see Notes 13, 14 and 15)

30. What are the reasons for the exchange or deregistration and the circumstances surrounding it?

The de-registration is to allow the construction operation, maintenance and decommissioning of the proposed development. The replacement land is offered in exchange for the land to be de-registered to ensure that the overall stock of common land is not reduced. The location of the turbines on the site has been subject to several assessments: ecology, wind speed, geology, mining, landscape and visual impact, hydrology and several other criteria which are factored into the decision. Taking all of these elements into account reduces the area where the turbines can be located. In this case it has been necessary to site some of the turbines on the common. There were no viable alternatives in this area that used a smaller area of common land. In addition to this, the minimum areas are being taken out of the common. It is also relevant that the permission is temporary and will fall away after 35 years.

31. It is strongly recommended that you consult informally on your proposals at an early stage in their development see 'Common Land Guidance – General Overview' note. What **informal** consultation (e.g. with local inhabitants) have you carried out? Give details below and provide written evidence.

Please see attached consultation report at Appendix 2.

SECTION E – Designations (see Notes 16 and 17)

32. Are any of the lands subject to this application in or near a site of Special Scientific Interest (SSSI), a Special Area of conservation (SAC), a Special Protection Area (SPA), or Wetland listed in accordance with the Ramsar Convention?Yes ☐ No ☒

If **Yes**, please give details, identify on the map (**see section J**), and provide evidence of any consultation you have carried out with Natural Resources Wales (**see Note 16**).

33. Do any of the lands contain a Scheduled Ancient Monument?
..... Yes ☐ No ☒

If **Yes**, give details, identify on the map (see section J), and provide evidence of any consultation you have carried out with Cadw (**see Note 17**)

34. Are any of the lands subject to this application in a National Park or Area of Outstanding Natural Beauty?..... Yes ☐ No ☒

If **Yes**, give details any consultation you have carried out with the National Park Authority or Countryside Council for Wales

SECTION F – Adjacent Common Land (see Note 18)

35. Does any area of common land or village green, of a different registration number, adjoin the common land or green subject to this application? Yes ☐ No ☒

If **Yes**, give details and identify them on the map (**see Section J**):

SECTION G – Public Access (see Notes 19, 20, and 21)

36. Do the public have a right of access to the release land for air and exercise under section 193 of the Law of Property Yes ☒ No ☐

37. Is the release land subject to an Order of Limitation made under section 193? Yes ☐ No ☒

If **Yes**, give its date and other details, and send us a copy:

SECTION H – Scheme of management and local Acts (see Note 22)

38. Is there a Scheme of Management for the release land, made under the Metropolitan Commons Act 1866 or the Commons Act 1899? Yes ☐ No ☒

39. Is the release land subject to any other regulatory Scheme or Act (e.g. a Provisional Order Confirmation Act made under the Commons Act 1876)? Yes ☐ No ☒

If **Yes**, to either question, give its date and other details below, and send us a copy of the Scheme or Act. Do you wish to seek any special arrangements to be made in relation to any of these provisions?

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

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

- the commoners council or association (if there is one)
- all known commoners
- others with an interest in the lands e.g. tenants, those with easements or other rights over the lands
- any relevant community/town, borough/country borough, city or county council
- Natural Resources Wales
- Cadw
- National Park Authority (if the lands are in a National Park)
- Open Spaces Society (**see Note 25**)

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

The advertisement will appear in the Rhondda Leader and the Glamorgan Gazette on Thursday 25 June 2020.

SECTION J – Maps (see Note 26)

You **must** include with your application **two copies** of a map which fully meets the requirements set out in **Note 26**.

41. Two copies of the map that meets the requirements set out in **Note 26** are enclosed

.....



The plans must be accurate because we are being asked to confirm this can be attached to the order if successful, and this will be used to amend the register.

Can we zoom in to the site to produce another map of no less than 1:2,500 if possible and not less than 1:10,000 if no other option is available (i.e. if the common has not been mapped by OS at 1:2,500). The measurements of the release and replacement land will be checked. Release land should be edged red and replacement land edged green. The common land boundary should be dark green. The maps should show at least two road names or other features to assist easy identification of the site.

SECTION K – Public inquiry or hearing (see Note 27)

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

It is anticipated that any inquiry would be held in accordance with the application for a development of national significance. If separate venues are required the applicant can provide details of suitable venues when approximate number sizes are known.

Checklist (tick to confirm)

I have read the **Notes** in full

☒

I have:

- answered all the questions on this form in full ☒
- enclosed two copies of the map that meets the requirements of Section J (electronic copy submitted) ☒
- enclosed a copy of the commons register in respect of this common (i.e. details of the land, rights, and ownership, and the register map) ☒
- enclosed a copy of any document mentioned in answering the questions on this form (e.g. scheme of management, written permission of any relevant leaseholders, letters from informal committees etc) ☒
- understood that any of the application papers may be copied to interested parties on request, and have informed people as necessary ☒

I will, within 7 days:

- advertise the proposal in one local newspaper ☒
- post a copy of the notice at the main entry points to the lands ☒
- send a copy of the notice to all those listed in Section 1 ☒
- place a copy of the notice, map and application at the inspection point . ☒

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

☒

SECTION L - Declaration

I/We hereby declare that:

- (a) I/We am/are the owner/s of the land/s to be deregistered/exchanged as detailed in this application.
- (b) No person is a relevant leaseholder, or holds a relevant charge, over any of the land/s to be deregistered/exchanged

Or

I/We enclose the written consent of every person who is a relevant leaseholder, or holds a relevant charge, over any of the lands to be deregistered/exchanged


- (c) The contents of this application are true and complete to the best of my/our knowledge and belief.

Signatures of the parties to the deregistration/exchange:

Release Land:

Signature of owner

Signature of co-owner
(if applicable)



Name
(in BLOCK letters)

Name of co-owner
(if applicable)



Date

1 October 2020

Date

Replacement Land:

Signature of owner

Signature of co-owner (if applicable)



Name
(in BLOCK letters)

Name of co-owner (if applicable)



Date

31-10-20.

Date

You must keep a copy of your completed form

Data Protection Act

To process your application, we may need to disclose information we receive from you to others, including other Central Government Departments, public bodies, local authorities, other organisations and members of the public.

Summary

The application submitted pursuant to section 16 of the Commons Act 2006 is intended to facilitate the development of the Upper Ogmore Wind Farm and Energy Storage Facility (the "Proposed Development") for which an application is being made as a development of national significance.

The s16 application clearly sets out the extent of land to be removed from the common and provides details of the location and nature of the replacement land to be given in exchange. The provision of replacement land ensures that there is no net loss in the overall area of common land.

There is strong policy support at a national UK, European and international level for development of this kind which exploit renewable resources. The commons applications for the Proposed Development have been informed and guided by extensive consultation with appropriate statutory consultees and with those exercising rights of common. The Proposed Development and the works to be undertaken on part of CL26 to achieve a suitable site access for the construction and maintenance of the wind farm has been designed to have minimal impact on the common.

It is recognised that the erection of wind turbines and associated infrastructure is not directly in furtherance of the enjoyment of the common, notwithstanding the fact that the development addresses the impact of climate change which will, unless addressed, impact on the common. Consequently, an application has been made pursuant to section 16 of the Commons Act 2006 which provides for the provision of replacement land to compensate for the areas which will be removed from the common due to the construction and operation of the Proposed Development.

The land which is required for the operation and maintenance of the development will be removed from the common (de-registered). To compensate for land being taken out of the common the section 16 application proposes an area of replacement land located adjacent to CL26.

The common land report explains how this land swap will be managed in respect of potential disturbance to livestock and it will be noted that this will be negligible. Given the size and under-grazed nature of the common, the hefted grazing pattern and the location of the replacement land immediately adjacent to the common land area it is anticipated that any disturbance to grazing livestock as a result of releasing land from the common for the proposed works will be minimal.

There are other rights over parts of the common namely collecting bracken and firewood, for collecting of bracken for bedding and stone from the surface of the common, shooting and fishing. These rights are not affected to any material degree by the proposed development.

The land which is required for the development will be de-registered and released from the common. To compensate for that loss the section 16 application proposes an area of replacement land located adjacent to the common. The replacement land extends to 16.81 hectares. The replacement land will be subject to the grazing and public rights currently enjoyed on the common land. The fact that the replacement land contains a section of semi-improved grassland is not considered to cause any difficulties in respect of grazing stock gravitating to the improved grazing to the detriment of that land and to the common at large.

The replacement land will compensate for the area lost to the common as a result of the Proposed Development. Experience elsewhere has shown that sheep, cattle and horses will comfortably graze in the vicinity of wind turbines using the turbine bases as shelter in inclement conditions. The access tracks also facilitate stock movement by the registered commoners during the lifetime of the development.

There will be some temporary disruption during the construction of the wind farm. The construction period is estimated to last 10 months. Extensive consultation with those currently grazing at the common

will ensure that those temporary impacts are reduced as far as possible. The development will be undertaken in an incremental and sequential manner particularly in relation to the works to provide access and inter-connecting tracks. Fencing of the works will be kept to a minimum in relation to both extent and duration and suitable crossing points will be introduced to ensure that sheep and cattle are able to move from one part of the common to the other.

It is considered that the interests of those with rights of common and the general public will not be adversely affected to any significant extent.

In relation to other matters which are required to be considered by the Welsh Ministers pursuant to section 16 of the 2006 Act there has been consultation with relevant statutory consultees in relation to such matters as landscape impact, cultural heritage, ecology and archaeology. No specific concerns have been raised in relation to the commons application as a result of those consultations. The consultations overlap with the planning process and a full copy of the environmental statement is provided with the application for the development of national significance. If any specific concerns are raised in response to the consultation pursuant to the commons application then we will seek to provide such information as may be required.

The benefits of the wind farm development which have been recognised throughout the consideration of the planning application cannot be realised without the grant of this consent and orders pursuant to the 2006 Act.

