

MYNYDD LLANHILLETH WIND FARM  
COMMON LAND REPORT TO SUPPORT APPLICATIONS UNDER  
SECTIONS 16 AND 38 OF THE COMMONS ACT 2006



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## 1.0 Introduction

This report has been prepared by David James, on behalf of Pennant Walters Limited, to support secondary applications to accompany a Development of National Significance (DNS) to construct and operate Mynydd Llanhilleth wind farm.

As part of these proposals, Pennant Walters Limited (the Applicant) is including land that is currently designated common land at Mynydd Llanhilleth common (as part of common CL 17). A plan showing the extent of the common is included at Appendix 1.

The application site for the proposed wind farm development extends to 267.59ha (as shown in the plan at Appendix 2), two of the wind turbines and associated access tracks, as well as tracks for turbines 1, 2 and 5 are proposed on common land and, therefore, in line with the DNS criteria set out in Regulations 4A of The Development of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) (Amendment) Regulations 2016, secondary applications will be made to Planning and Environment Decision Wales (PEDW).

A secondary application will be submitted under Section 16 of the Commons Act 2006 to deregister the common land and to register the appropriate replacement land. Secondary consent is also proposed under Section 38 of the Commons Act 2006 to allow the Applicant to carry out works on the common. A common land report is commissioned to cover the following (which elaborates on the information included in the application forms under Sections 16 and 38 of the Commons Act):

- To review and describe the condition and quality of the release land (being the existing common land that is to be taken out of common);
- Review and describe the condition and quality of the replacement land (being the land to be provided to replace any common land disturbed as a result of the development);
- Advise whether the replacement land is suitable to compensate for the release land taking into consideration the type and quality, its location in the context of the existing common, use of the land (for the public and livestock);
- Comment on how the replacement land will be managed to avoid disruption to existing grazing patterns;
- To advise on what potential impact could arise for current users of the common (commoners, landowners and public) as a result of the construction and operation of the proposed wind farm. This relates to the area that is to be taken out of common (the release land);
- Use of the common by commoners and the public – the report needs to consider how the common land to be released is currently used and will its loss affect access and use. To also consider how commoners and the public will be able to use the replacement land if the exchange was agreed; and
- Conclude whether the exchange of the release land by the replacement land will adversely affect the interests of the commoners, landowners and the public.

The common of Mynydd Llanhilleth is designated as common land CL 17 – the extent of which is shown at Appendix 1 (the hatched area).

The extent of the common land to be released or deregistered amounts to 6.7 acres (2.7 ha) and is shown red on the plan. The area of replacement land to be provided to compensate the loss totals 10 acres (4ha) and is shown outlined and hatched in light green on the plan.

This report takes into account the appropriateness of the replacement land to be included to compensate the loss of the release land and to ensure there is no impact as a result of the proposals on the exercise of the rights of the commoners or public. The land will remain as common land with

full rights of access and amenity and therefore will not result in any loss in stocking numbers and will not be detrimental to the interests of the commoners, landowners and the public.

## 2.0 Policy Guidance

Full details of the relevant policy guidance relating to common land applications is included in Appendix 3.

### **Sections 16 and 38 Commons Act 2006**

Where there is a need to deregister and exchange common land (in this case to deliver the development of a wind farm) an application is required under Section 16 of the Commons Act 2006. To allow works to take place on the common, an application must also be submitted under Section 38 of the Commons Act. Works cannot commence on a common in Wales without the permission of the Welsh Government.

As set out above, the generating capacity of the proposals will exceed 10MW and, as such, the application qualifies as a DNS. In accordance with criteria set out in Regulations 4A of *The Development of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) (Amendment) Regulations 2016*, an application will be made to PEDW. As part of this application, Pennant Walters is required to apply for secondary consents (under Sections 16 and 38 of the Commons Act 2006) to deregister and exchange the extent of common land to be used or taken out of common for the development proposed as part of Mynydd Llanhilleth wind farm. An application will also be submitted to allow works to take place on the common.

The application under Section 16 relates to the extent of land that will be taken out of common as a result of the development. This includes any land on the common disturbed to deliver the proposed turbines and foundations, crane pads, cabling and access tracks to the turbines.

Consent under Section 38 of the commons act is required to allow works to take place on common land once it has been deregistered.

### **Welsh Government Guidance**

Guidance on the determination of common land applications was published by the Welsh Government in August 2014. The document is titled 'Common Land Consents Guidance' and gives helpful advice on how such applications will be assessed and determined. It is a helpful guidance tool for those preparing application to be considered and determined by Welsh Ministers.

Guidance states that key to the determination of the application under Section 16 are the following considerations:

- 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; and
- Any other matter considered to be relevant.

Paragraphs 3.9.1 to 3.9.4 state that the following matters are important to the use of common land by commoners and should be considered by the decision maker when determining 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 will the proposals have on other rights holders, such as those with rights of access across the land?

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

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

### 3.0 Mynydd Llanhilleth Wind Farm

#### The proposals

The application proposes a wind farm development at Mynydd Llanhilleth, consisting of a maximum of eight wind turbines, each with a three-bladed rotor, with a diameter of up to 150m, a hub height of up to 122m and maximum height to blade tip of 180m. The application also comprises associated infrastructure including:

- Access works – improvement to the existing access together with new and improved internal wind farm tracks off the main internal road;
- Crane pads at each turbine location;
- Turbine foundations;
- Underground power cables linking the turbines and the on-site substation;
- Temporary construction compounds, laydown and storage areas; and
- Grid connection infrastructure including the on-site substation, control building and underground cables linking the Site to the distribution network.

As set out above, the proposals qualify as a DNS. The application is also Environmental Impact Assessment (EIA) development and is, therefore, supported by an Environmental Statement (ES) covering a variety of environmental and technical information, including an assessment on noise, landscape and visual impact, ecology, drainage, shadow flicker and heritage. This information has been prepared by Environmental Dimension Partnership (EDP) and WSP.

Mynydd Llanhilleth wind farm includes proposals for up to eight turbines with two of the turbines (T3 and T4) to be constructed on Mynydd Llanhilleth common. The remaining six will be constructed within the freehold land holdings adjoining the common. A small portion of the access tracks to turbines 1, 2 and 5 also fall within the common – this land has been accounted for in the total amount of release land quantified for the application.

Use of the common will be limited to avoid disturbing land unnecessarily. As such, common land is only required for the turbines and foundations, crane pads, cabling and new and improved access tracks to the turbines.

The existing access tracks will be improved and widened by approximately 1m. Also, new access tracks and passing places inter-linking the turbine locations and sub-station will be constructed which will provide access to T3 and T4 off the existing track which will be improved. The new tracks will provide sufficient passing for vehicles during the construction period and thereafter.

The extent and location of these works have been considered to minimise the potential impacts on biodiversity and livestock grazing over CL 17.

The extent of the area that is proposed for construction and is, therefore, proposed to be released from the common is shown in red at Appendix I.

Once constructed, the access tracks and areas around the turbines will be available for use by commoners and other users of the common. Mynydd Llanhilleth wind farm is proposed to be operational for 30 years and, following decommissioning, the site will be restored and the land will become available again for users. The replacement land will also remain available for use following decommissioning of the wind farm.

Once constructed, the access tracks and turbine hard standings will be used intermittently by maintenance staff. Crane pads will remain in situ for the duration of the operational life of the scheme for use in the event of any specific maintenance.

The proposed replacement land would be available for immediate use once construction commences on site.

### **The site**

The site of the Mynydd Llanhilleth wind farm proposals lies west of the settlements of Llanhilleth, Brynithel, Aberbeeg and Six Bells, and west of Pontynewydd and Pontypool. It falls within the administrative boundaries of two local authorities – Torfaen County Borough Council (TCBC) and Blaenau Gwent County Borough Council (BGCBC).

The site is accessed from an existing tarmac road called British Road which is accessed from the B4246 to the east of the Site in the settlement of Talywain. The site encompasses an area approximately 267.59ha and is shown in Appendix 2. It comprises a former quarry and associated area of coniferous woodland across its southern extents and intensively managed species-poor grassland, located within the high ground between the Afon Valley to the east and the Ebbw Fach Valley to the west. A number of public rights of way cross the site, and an area of Open Access Land is located immediately to the west. The northern slopes of the site are characterised by coniferous and non-coniferous woodland.

### **Mynydd Llanhilleth common**

The common at Mynydd Llanhilleth is designated as common land CL 17 – the extent of which is shown at Appendix 1. The plan shows that the common is split into three distinct areas, but all connected. The northern portion is the largest, accounting for approximately half of the total common. The middle and southern parcels form the other half of the land – approximately two-thirds within the central area and another third to the south.

The total area of Mynydd Llanhilleth common extends to approximately 1,402 acres (567ha).

Users of the common are set out in the next section of this report. However, in terms of biodiversity, the Extended Phase 1 and botanical surveys carried out on the site demonstrated that five principal habitats are present across the common where it overlaps with the application site: heather-dominated dwarf shrub heath on the areas of highest elevation; a crowberry-dominated community on elevations slightly below the heather-dominated areas; a bilberry-dominated community below that; a relatively species-poor acidic grassland; and species-poor rush pasture. A sixth habitat type, a bracken-dominated area over a sward of acid grassland and both crowberry-dominated and bilberry-dominated communities, is also present but covers a limited area. No rare or scarce plant species were recorded during the surveys, however. Further information is included in the accompanying 'Ecology Technical Note' prepared by EDP to support the application – this report is included at Appendix 4.

### **Release land**

The total area of common land required to be released to deliver the wind farm proposals, including wind turbines together with new and improved access tracks (existing tracks to be widened by 1m), totals 6.7 acres (2.7ha). In terms of location, the release land is to be taken from the western edge of the central area and a very small amount to be taken from the northern portion of the central area to deliver the access tracks to turbines 1 and 2 with a small portion of access track also to turbine 5. While the access tracks are on common land, the turbines are located on land in private ownership. The existing access track through Tir Pentwys, which is included in the application, is also included within the overall calculation of land released from common.

The release land parcels amount to 6.7 acres/2.7ha and predominantly comprise unimproved acid grassland and marshy grassland/rush pasture habitat as previously described above. Areas of semi-improved acid grassland, tall herbs and bracken are also present along the access route between turbine 4 and turbine 8 which traverses through the former forestry plantation and quarry area.

### **Replacement land**

To compensate the loss of the release land, 10 acres (4ha) of land, which includes two field parcels, adjacent to the common (to the north west of the southern parcel of common land) is to be provided as replacement land.

The replacement land to be included in the common is currently part of Maesycnyw Farm owned by Mr M. Bowen and is accessed directly off Blaen y Cwm Road. This comprises of pasture land which is currently being grazed by livestock and, therefore, would be considered suitable replacement land. To the north western boundary there is a stream providing natural water supply for livestock. The topography of the replacement land is steeper than the release land. However, it remains suitable for the use proposed with the release land required to be relatively flat to accommodate the proposed turbines and access tracks.

The report prepared by EDP sets out that, of the two field parcels proposed as replacement land, the larger field to the west comprises a large area of rough ground on the steep, lower slopes of the Cwm Cnyw valley. Spoil tips, indicative of a history of extractive industry (likely from past coal mining activities) occur here, dominated by dense bracken. A species-poor acid grassland sward is otherwise supported beneath the dense bracken layer and mostly comprises common grasses such as brown bent, sweet vernal-grass, sheep's fescue, red fescue and Yorkshire fog, along with common bird's-foot trefoil, creeping buttercup, field woodrush and ribwort plantain. Both European gorse and western gorse are locally common amongst this bracken-dominated community, along with some marsh thistle. Scattered shrubs and trees are also present along the western boundary of this field in association with Nant y Cnyw, including hawthorn, silver birch, grey willow and beech.

There are limited areas with a more species-rich unimproved acid grassland flora, mainly on those parts of the spoil tips not dominated by bracken, together with a small area to the north of the spoil tips. Here there is pill sedge, early hair-grass, heath bedstraw, slender St John's-wort, mat grass, mouse-ear hawkweed, bilberry and heath speedwell.

The proposed replacement land parcel also extends eastwards to connect to Mynydd Llanhilleth Common, traversing a large, agriculturally managed field with a gentle north-westerly aspect on the upper slopes of the Cwm Cnyw valley. More generally, agriculturally-favoured grasses dominate this poor semi-improved grassland field. Typical species encountered include common bent, sweet vernal-grass, soft brome, crested dog's-tail, red fescue and Yorkshire fog. Other commonly occurring grasses include perennial rye-grass, smooth meadow-grass and roughmeadow-grass. The herb component is dominated by an unusual combination of yellow rattle, lesser trefoil, bulbous buttercup and white clover. Pignut, red clover, common sorrel, common mouse-ear and ribwort plantain are also frequent here. This field appeared shut up for hay during the June 2021 survey, but several sheep were also present and may have been unintended grazers. A small area on the north-western side of this field has several hay rounds within it and a slightly less agriculturally improved sward than the rest of the field.

## 4.0 The Common

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

### Consultation

Prior to this formal process of statutory consultation, Pennant Walters, through its specialist planning communications company (Thirty4/7), has been consulting on the proposals for development on the common at Mynydd Llanhilleth. Early engagement included consultation with a number of public and private organisations, including the graziers. The wider public were consulted and invited to share their thoughts on the proposals including; Open Spaces Society, Brecon Beacons National Park Authority, Cadw, Natural Resources Wales, Torfaen County Borough Council, Blaenau Gwent County Borough Council, Pontypool Community Council, Abertillery and Llanhilleth Community Council, Natyglô and Blaina Town Council, South East Wales Resilient Upland Project, Gwent Wildlife Trust, Torfaen Local Access Forum, Ramblers Association, Pontypool and District, Pontnewynydd Community Association, Torfaen Voluntary Alliance, Tirpentwys Mountain Bike Trails, British Horse Society, Young Farmers Wales and RSPB.

The applicant has sought to consult with those currently using the common to gather feedback on the proposals – to understand any concerns and to minimise impact and maximise any potential benefits through the process. The statutory consultation process will support the ongoing consultation on this aspect of the proposals and a separate consultation report will be prepared to support the final submission.

The applicant has consulted and engaged with a range of statutory and non-statutory consultees, local communities, organisations and individuals on the application proposals. Early engagement with the two local planning authorities (Torfaen County Borough Council and Blaenau Gwent County Borough Council), community and interested parties took place from 1 July to 6 August 2021 through a series of meetings. Public exhibitions were held on 15 (at Llanhilleth Miners Institute) and 17 July 2021 (at Garndiffaith Community Centre) and a virtual exhibition was hosted on the project website from 1 July to 6 August 2021.

Consultation workshops were also held on 6 and 8 July 2021 with members of Llanhilleth Commoners Association and those with an interest in the common land. Further consultation will take place as part of the statutory consultation process (spanning over 7 weeks). A further two public exhibitions are to be held on 8 and 9 December with a further common land specific workshop to take place on 15 December 2022.

### Surveys

The extent of the common included with the red line boundary for the main wind farm application, which includes all release and replacement land, has been inspected over a number of years as part of the ecological survey work undertaken to support the application. The survey work was undertaken on foot, looking at physical features, biodiversity and topography.

### Landowners

The freehold owner of the common at Mynydd Llanhilleth (CL 17), including the release land that is the subject of this application, is Peakman Limited and agreements to lease the areas of land that are required for the construction of turbines and associated access tracks (the release land) have been secured with the landowner.

In terms of the wider application site boundary, beyond the common, the development proposals for Mynydd Llanhilleth wind farm also includes freehold land within Ty Mari Hari Farm (Mr R. Morgan), Blaenant y Caws (Ms S. Jenkins), Maesycnyw Farm (Mr M. Bowen), Gilfach Wen Farm (Mr R. Parker), Ty Dafydd Farm (Mrs M. Day) and Hafodarthan Farm (Messrs G M & R Davies), who are all landowners of land adjacent to the common (CL 17).

The above freehold owners have entered into a statutory option leases – the freehold owners include Mr M. Bowen, who is the landowner of the replacement land.

### **Land occupiers**

The occupiers of the common land are the registered commoners of CL 17. The registered commoners are members of Llanhilleth Commoners Association. The commons register is updated on a regular basis by the Local Authority with there being currently 40 registered rights to separate holdings. These rights exist for 9627 sheep; 645 cattle and calves or followers and 299 horses with foals.

The majority of local commoners are active graziers with the consultation process highlighting that grazing rights have been, and are being, exercised on Mynydd Llanhilleth on a regular basis either as periodic or active graziers. The livestock are hefted over the large area of common land as there are no physical boundaries.

Consultations with the active graziers have indicated that grazing rights have been actively exercised on the common in previous years and they will continue to use the grazing rights in the future. The number of graziers and the volume of stock that graze the common varies on an annual basis and within any grazing season.

### **Public access**

The Countryside and Rights of Way (CROW) Act 2000 provides rights of access to public areas defined as access land which includes registered common areas.

To compensate the loss of the release land, the replacement land will be registered as common land and will be subject to the rights that are currently in place on the common. As noted above and shown at Appendix 1, the replacement land is located immediately adjacent to the common. This area, which totals 10 acres, will be available for use by the general public - an area that was not previously available but will become part of the common. This area of land provides more than sufficient compensation – with a total of 6.7 acres being taken out and replaced by 10 acres. The provision of this additional land, which can be used by the public, increases the overall land available for public access.

If required during construction, for safety reasons, the areas where development is to take place will be temporarily fenced off. However, the remaining parts of the common (the remaining 1,395.3 acres) will be available for public use. From our own observations and various discussions, the main formal public uses on the common are for rambling or horseriding. However, from our observations having visited the site on many occasions, the area where the two turbines are proposed within the common, were not being frequently used – users seemed more inclined to remain close to the existing tracks. The proposed access tracks will provide enhanced access to parts of the common within the area where the two turbines are proposed. These tracks could be used by commoners to better monitor stock in the area where they are proposed. There are currently no formal tracks that cover this part of the common. The tracks could also be used by riders and ramblers – providing more formal, solid and dry ground for use. The access track for Turbine 4 provides access across the central area of the common, providing better access provision for users.

There are Public Rights of Way in the area where the two turbines within the common are proposed – these are shown in Appendix 5. Construction of the turbines and access tracks will not affect use of these rights of way. Moreover, the access track for Turbine 4 that would cross the central part of the common could add an additional opportunity for walkers in the area.

The main equine use of the common is for amenity riding on an informal basis. Our evidence from visiting the site on numerous occasions is that riders use large areas of the common and do not necessarily stick to the routes of the bridleways.

Visitors to the blue lagoon, located south of the central area of common land where the two turbines and access tracks are proposed, do not use this part of the common to access the informal beauty spot. From our observations and discussions with users, the majority who visit the spot tend to drive to the area and park on the road immediately adjoining the forestry (within which is the blue lagoon). However, visiting the area is restricted where signs make it clear that anyone accessing the land is trespassing. Access to the area has also been severely limited in recent months with the felling of the trees within the forestry area. Any visitors to the beauty spot would be doing so on an informal basis and would be illegally accessing the area.

Consultation with commoners has also identified illegal vehicular and motorbike use by third parties. Issues arising from such use include damage to the land and channels forming in the land caused surface water drainage issues.

The proposed replacement land will be registered as common land and will exercise the same rights as the existing common land. In accordance with the CROW Act 2000 the public will be able to access the 10 acres of replacement land which was not previously available to the public increasing the overall volume of land available for public use.

## 5.0 Common land considerations

If consented, 6.7 acres (2.7ha) of land will be deregistered from Mynydd Llanhilleth common as a result of the construction of the wind farm. If the application is successful, up to two of the eight proposed turbines will be located on the common – within a small portion of the northern area of the central section of common, through the central area of this central section and a small portion to the east of the central section. This includes a very large open area of land that is relatively level. The location of the turbines safeguards extensive peripheral land in the area to allow unrestricted access to be maintained for the livestock of the active graziers to the remaining and surrounding common areas with limited disturbance to normal grazing opportunities. The location of the proposed turbines also ensures that horse riders and walkers/ramblers will also be able to access the common land areas with very limited disturbance. The vast openness of peripheral land would provide more than sufficient an area for users to navigate around the working areas. Once construction is complete, these areas will again be available for grazing and users to access.

During the construction period, areas will only be fenced off where there is a potential hazard or a potential risk to ensure no users of the common or livestock can enter the area to maintain safety during construction. Upon completion of construction any fencing used, if required, will be removed. Where it is not required or assessed as being a hazard or risk, no fencing will be used to make sure that there is minimal or no disruption to livestock and public access. The access track will be widened and improved which will benefit all parties.

The extent of the area of land being removed from the common is relatively small (only 0.47% of the entire common) and is, therefore, not considered to impact upon the loss of grazing. Furthermore, more than enough replacement land (totalling 10 acres) is proposed to be provided to compensate for the temporary loss of the release land (totalling 6.7 acres). Once constructed, the majority of the area released from common (the access tracks and crane pads) will be available for use. The only areas that will not be available for use will be the footprint of the turbines. Therefore, the proposal would result in an overall increase in common land. Following decommissioning of the turbines, the release land that was previously part of the common will be reinstated for use as part of the common, further adding to the overall amount of common land available for use.

Put into context, if approved, the application would see the removal of 6.7 acres from a total of 1,402 acres of common land available for use – this equates to 0.47% of the overall land.

With regard to potential disturbance from construction works and vehicle movements to hefted livestock and hefting patterns, the wind turbines are proposed be located in an area which is not as intensely grazed compared to other parts of the common. On the basis that this part of the common is not heavily stocked together with the open and unrestricted nature of the grazing, impact from construction works will be minimal.

As part of the Basic Payment Scheme (BPS) an applicant is eligible to claim BPS on common land if;

1. A right to graze which is registered under the Commons Registration Act 1965 or Part I of the Commons Act 2006
2. A right to graze shared grazing

The eligible area of the common land claimable is allocated against the rights declared on the common and will be apportioned in accordance with the assigned areas which is known as an individual farmer's 'notional area'. This is considered to be a benefit to the commoners and the replacement land area will give commoners the opportunity to claim a slightly larger land area therefore not putting any of the commoners at a disadvantage as a result of the land which will be lost to the scheme.

The applicant must exercise their rights by turning out animals on the common land on 16<sup>th</sup> May 2022 together with complying with the cross-compliance rules. An applicant must comply by;

1. Turning out stock on the common land for grazing purposes
2. Participate in Environmental Stewardship or Countryside Stewardship agreement
3. Managing the common

As a result of the very small amount of land to be temporarily released from the common, the lack of grazing in this part of the common, the open and unrestricted nature of the grazing and the location of the main area of release land with the vast openness of peripheral land, any potential impact on graziers and users of the common will be minimal.

The proposed replacement land will also provide more land available for grazing and public access land compared to the area being released – resulting in an overall increase of land available as part of the common as a result of the application proposals.

## 6.0 Suitability of the replacement land

### **The land and its use**

The replacement land comprises of approximately 10 acres (4.05ha) through the provision of two adjoining parcels of land. This land is currently in private ownership, fenced off from the common and being grazed by the freehold landowner, which confirms it would be suitable for use as replacement land.

The land is relatively steep but levels off to a flatter area to the north eastern boundary. A stream runs along the north western boundary.

While the replacement land is currently fenced off from the common, this will be removed with new fencing to be erected to delineate a clear boundary between the common land (which will include the replacement land) and the freehold land retained as part of Maesycnyw Farm. The replacement land will be available for use from the start of construction. Livestock will be able to access the replacement land directly from adjacent common land areas and will not require vehicles to transport livestock from one area of the common to the other.

The replacement land will be open to the public on foot or horseback. It is not proposed that any gates, stiles or other forms of access will be required onsite. The replacement land will have unrestricted access at all times, as per the current use of the common land.

### **Topography**

The replacement land slopes to the west towards the stream, which will provide a natural water supply for livestock. The topography of the site will also provide an alternative environment for grazing, providing an area of land as part of the common that will provide shelter for livestock in the valley.

### **Drainage and soils**

As noted above, the replacement land is steep sloping to the west with a stream running along the valley bottom and therefore drainage of the land is mainly controlled by its topography. Any surface water run-off will naturally channel towards the stream as such no additional drainage measures are required.

Technical Advice Note (TAN)15: Development Advice Maps confirm that the replacement land is not at risk of flooding or concern relating to surface water drainage.

The land has been classified as freely draining acid loamy soils over rock with low fertility. The land is classified as grassland and rough grazing being most suited to livestock grazing much like the adjacent common land, which is classified as restored soils mostly from quarry and open cast soil being loam with a low to moderate fertility. Again, this land is most suitable for livestock grazing.

### **Biodiversity**

The report prepared by EDP sets out that, of the two field parcels proposed as replacement land, the larger field to the west comprises a large area of rough ground on the steep, lower slopes of the Cwm Cnyw valley. Spoil tips, indicative of a history of extractive industry (likely from past coal mining activities) occur here, dominated by dense bracken. A species-poor acid grassland sward is otherwise supported beneath the dense bracken layer and mostly comprises common grasses such as brown bent, sweet vernal-grass, sheep's fescue, red fescue and Yorkshire fog, along with common bird's-foot trefoil, creeping buttercup, field woodrush and ribwort plantain. Both European gorse and western gorse are locally common amongst this bracken-dominated community, along with some marsh thistle.

Scattered shrubs and trees are also present along the western boundary of this field in association with Nant y Cnyw, including hawthorn, silver birch, grey willow and beech.

The replacement land is already being used for grazing. However, given the current absence of habitat management, the introduction of additional grazing will impact upon semi-improved acid grassland and bracken mosaic habitats supported across the replacement land. The action of grazing and physical disturbance by livestock would facilitate the break-up and control of bracken encroachment and thatch build up. Such impacts are considered to be positive and necessary to enhance and maintain the areas of acid grassland supported.

The EDP report concludes that, whilst the granting of the sections 16 and 38 applications will facilitate the future development of the site, resulting in some losses/impacts to habitats and species supported therein, this will be sufficiently addressed through the implementation of avoidance, mitigation and compensatory measures detailed for the wind farm development, which encompasses the release and replacement land parcels. As such, the granting of the sections 16 and 38 applications will enable the delivery of net biodiversity benefits by the Site in respect of the wind farm development.

## 7.0 Conclusions

The application under Sections 16 and 38 of the Commons Act 2006 will be submitted seeking secondary consent to the main DNS application for Mynydd Llanhilleth Wind Farm.

This report assesses the release and replacement land and considers the appropriateness of the proposed replacement land, located adjacent to the existing common, to be included as part of the common to compensate for the loss of the release land. This exchange ensures there is no reduction in the volume of common land (with more land replaced than is released), no loss of public access and no disadvantage to the amount of grazing available as a result of the proposed development. This report concludes that the exchange of the release land for the replacement land would not affect the use of the common by the public, commoners and landowners.

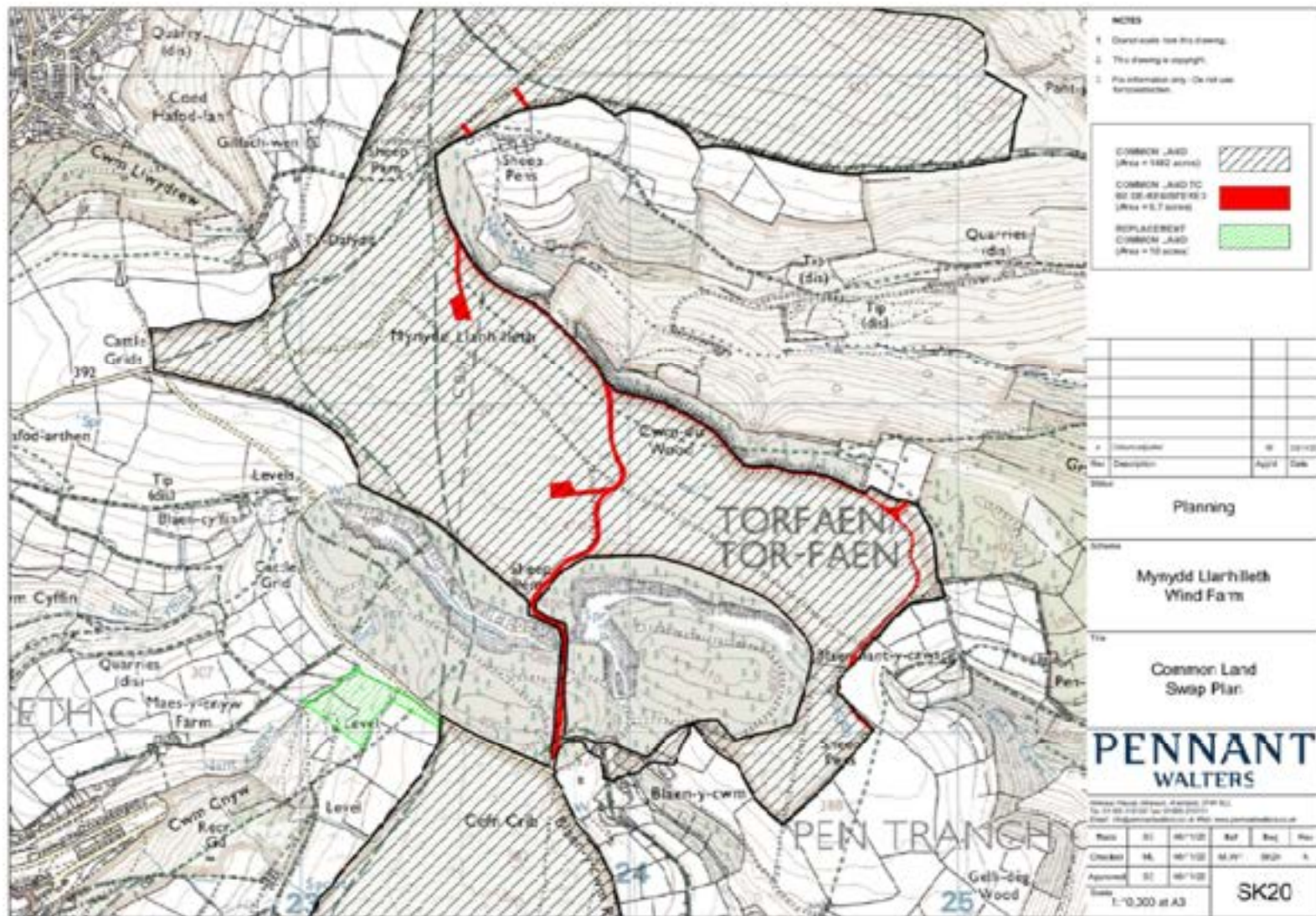
The replacement land to be included within the common area extends to approximately 10 acres (4.05ha) and is located immediately adjacent to the existing common and, as such, can be instantly integrated to the common whilst having no effect on the current grazing pattern of livestock using Mynydd Llanhilleth common. The replacement land will be available on commencement of construction of the proposed wind farm, if overall approval is forthcoming.

In summary and going back to the key questions raised at the start of this report, we conclude the following:

- The replacement land is suitable in terms of type, quantity, quality and location to compensate for the loss of the release land;
- The loss of the release land will not affect use of the common – 6.7ha (0.47%) of the common is proposed to be lost for development, leaving a further 1,395.3ha available for use;
- More than sufficient compensation is proposed by the replacement land (which totals 10ha). It offers a slightly different topography to the release land – the benefit being that the replacement land offers excellent natural shelter and access to a good source of running water for livestock;
- The replacement land is currently fenced off from the common – fencing will be amended to incorporate the land into common for open access and use;
- During construction some areas may need to be fenced off, but this will only be where there may be a hazard or a safety concern. Otherwise, the land will be unobstructed and free to use by commoners and the public;
- Once constructed, the majority of the area released from common (the access tracks and crane pads) will be available for use. The only areas that will not be available for use will be the footprint of the turbines. Therefore, the proposal would result in an overall increase in common land;
- Following decommissioning of the turbines, the release land that was previously part of the common will be reinstated for use as part of the common, further adding to the overall amount of common land available for use;
- From our own observations and various discussions, the main formal public uses on the common are for rambling or horseriding. However, from our observations having visited the site on many occasions, the area where the two turbines are proposed within the common, were not being frequently used;
- The replacement land is adjoining the common and will overall provide more land for use;
- In conclusion, the exchange of the release land by the replacement land will not adversely affect the interests of the commoners, landowners and the public.

## APPENDIX 1

### Common Land Swap Plan



## APPENDIX 2

### Site Boundary Plan



## APPENDIX 3

Welsh Government  
Guidance

# **Welsh Government – Common Land Consents Guidance**

## **Introduction**

The Planning Inspectorate in Wales (PINS Wales) is responsible for the procedural work for all of the Welsh Ministers' casework in relation to common land in Wales (including applications for exchange of land in respect of town or village greens) as well as determining, on behalf of the Welsh Ministers, applications for consent under section 38(1) of the Commons Act 2006 ("the 2006 Act").

PINS Wales' responsibility for procedural work also relates to the Welsh Ministers' consents, certificates and orders under various other statutory provisions in relation to common land and town or village greens identified in paragraph 4.15 below. The Deputy Minister for Agriculture and Fisheries retains responsibility for the Welsh Government's policy in relation to the management and protection of common land and greens.

## **1 The Guidance**

- 1.1 This note sets out the Welsh Government's guidance in relation to the determination of such casework and is published for the guidance of the Welsh Ministers, PINS Wales, commons registration authorities and applicants for consent. It may also be of assistance to those interested in such applications (perhaps as supporters or objectors).
- 1.2 The Welsh Ministers and PINS Wales seek to adhere to this guidance in processing and determining applications under section 38(1) and section 16(1) and, so far as is relevant, in relation to other statutory provisions (see paragraph 4.15 below). Every application to the Welsh Ministers must, however, be considered on its own merits and a determination may, in exceptional circumstances, depart from the guidance if it appears appropriate to do so. In such cases, the decision maker will explain why it has decided not to follow the guidance.
- 1.3 This guidance must be read in conjunction with the 2006 Act, other legislation relevant to the type of application being considered, and the guidance notes published by PINS Wales in relation to particular types of application. The guidance notes are published on the website of PINS Wales, at:  
<http://www.planningportal.gov.uk/planning/countryside/commonland/commonland>  
and

## **2 Why is common land important?**

- 2.1 The aim of the Welsh Government's Natural Resource Management Programme is to ensure that we make the most of Wales' natural resources while looking after natural systems and building their resilience and continuing to provide the benefits to people, communities and the economy in Wales in the long term. That is particularly relevant to common land as around 8% of the land area of Wales is common land, with approximately 45% of common land lying within a National Park and approximately 45% included in Sites of Special Scientific Interest (SSSI).

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

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

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

#### **Economic**

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

#### **Agriculture**

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

#### **Biodiversity**

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

#### **Archaeological**

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

#### **Recreation**

- enjoyment of the landscape by visitors and tourists;
- providing open space for surrounding communities;
- use for a wide range of organised activities and local traditional activities;

- commons which are sporting estates contributing to the local economy;

### **Cultural**

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

## **2 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 in closure (*e.g.* by a fence or hedge), or the release land is occupied by buildings or other works, they will assume that such in closures 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 *e.g.* 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 regimes are subject to the same policy considerations set out in this guidance in so far as the considerations are compatible with the requirements of the specific legislation.

### **General policy in relation to consent**

4.17 This guidance explains the Welsh Government's policy in relation to consents generally. It should not be assumed that, where this guidance indicates that a consent might be appropriate in the circumstances specified, that an application in those circumstances will necessarily be granted. Such applications will be considered on their merits in relation to the context, this guidance, and specifically that any works proposed should maintain or improve the use of the land as a common or town or village green and the criteria set out in the relevant legislation.

Although many proposals are linked to, or are a central part to, a related consent for planning permission, the issues that need to be considered are quite different, as what may be perfectly reasonable from a planning perspective, may, or could, have an adverse impact on the traditional use of the land as a common or green. The Welsh Government, where possible, wishes to protect and conserve the stock of common land and greens and where appropriate to promote its protection and its continued use for traditional activities.

### **Matters to be taken into account**

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

- Their duty to conserve biodiversity (see section 40 of the Natural Environment and Rural Communities Act 2006), and their duty to further the conservation of the section 41 list of features of principal importance for conserving biodiversity;
- Their duty (in relation to land designated as a site of special scientific interest), “to take reasonable steps, consistent with the proper exercise of the authority’s functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest” (see section 28G of the Wildlife and Countryside Act 1981);
- Their duty to have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions; in particular, it may be necessary for an appropriate assessment to be carried out before a consent may be granted for works which are likely to have a significant effect on an area designated as a special area of conservation under the Habitats Directive or as a special protection area under the Wild Birds Directive (see The Conservation of Habitats and Species Regulations 2010 (SI 2010/490));
- Their duty (in relation to a National Park) to have regard to the purposes for which National Parks are established, and if it appears that there is a conflict between those purposes (of the national park), the requirement to attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park (see section 11A of the National Parks and Access to the Countryside Act 1949); and;
- Their duty (in relation to an area of outstanding natural beauty) to have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty (see section 85 of the Countryside and Rights of Way Act 2000).

## **5 Enforcement against unlawful works**

5.1 Any person (including an incorporated body or local authority) may seek enforcement action against unlawful works by application to the county court under section 41 of the 2006 Act. The Welsh Government has published guidance on taking such action. Unlawful works means works which require consent under section 38, but which have not received such consent.

5.2 Responsibility for the enforcement of the requirement for consent set out in Part 3 of the 2006 Act lies with the local community. Enforcement action may be taken by any local authority (including a community council and a National Park authority), as well as by members of the public and persons representing civic, amenity and recreational bodies. The Welsh Ministers will take enforcement action in the case of any breach in exceptional circumstances only as, in their view, it is more appropriate for action to be taken by those persons whose rights have been affected.

## APPENDIX 4

### Ecology Technical Note

**Mynydd Llanhilleth Wind Farm  
Ecology Technical Note: Common Land  
edp6367\_r033a**

**1. Introduction**

- 1.1 This Ecology Briefing Note has been prepared by The Environmental Dimension Partnership Ltd (EDP) on behalf of Pennant Walters (hereafter referred to as 'the Applicant') in relation to proposed wind farm development of land at Mynydd Llanhilleth, Blaenau Gwent (hereafter referred to as 'the Site').
- 1.2 EDP is an independent environmental planning consultancy with offices in Cirencester, Cardiff and Cheltenham. The practice provides advice to private and public sector clients throughout the UK in the fields of landscape, ecology, archaeology, cultural heritage, arboriculture, rights of way and masterplanning. Details of the practice can be obtained at our website ([www.edp-uk.co.uk](http://www.edp-uk.co.uk)).

**2. Background and Scope**

**Site Context**

- 2.1 The Site is located at approximate Ordnance Survey National Grid Reference SO 235 017 between Abersychan (within Torfaen County Borough Council (TCBC)) and Abertillery (within Blaenau Gwent County Borough Council (BGCBC)). It lies in the centre of a large, north-south trending ridge of high land between the Cwm Afon valley (including Abersychan and Pontypool) to the east, and the Ebbw Fach valley (Abertillery) to the west. This ridge comprises a series of plateaux typically between 400m and 550m above sea level and is characterised by much unenclosed land grazed by sheep, and to a lesser extent cattle and horses. There is much evidence of historic industrial activity on the slopes of the ridge, particularly in the Cwm Afon valley. Areas of plantation forestry are common elsewhere on the slopes of the ridge and dry stone walls augmented with post and wire fencing demarcate the edge of the unenclosed area from the surrounding enclosed pastures. These are managed in a relatively intensive manner and appear to be relatively species-poor.
- 2.2 A minor public highway, running north-east to south-west, from Abersychan to Llanhilleth, bisects the Site, with numerous unmetalled tracks otherwise crossing the area. A small stream/flush arises from the central block of coniferous woodland/former quarry area and flows southwards. Additionally, there are several waterbodies, including a number located within the former quarry and created from former quarry workings.

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- 2.3 The Site partly overlaps with Mynydd Llanhilleth Common totalling circa 1,402 acres/567ha, with an elevation between 489m in the north and 400m in the south, and with a minor col separating the two areas of higher ground within the Site: Byrgwm in the north and Mynydd Llanhilleth itself in the south. Some planted trees (typically Corsican pine *Pinus nigra* var. *maritima*) ring the eastern edge of the col and a series of unmanaged hedge banks that once defined the boundaries of a small sheep pen is present to the west of the pines. An open group of grey willow (*Salix cinerea*) are present in the south of the site and between these, and an adjacent plantation, are frequent young self-sown coniferous saplings. With the exceptions of a very limited number of small saplings no other trees or larger shrubs are present here.
- 2.4 The section of Mynydd Llanhilleth Common which overlaps with the Site is also designated as a Site of Importance for Nature Conservation (SINC) by TCBC (SINC reference T55). Mynydd Llanhilleth Common SINC is designated for its mosaic of upland habitat types including acid grassland, dwarf shrub heath, wet and dry heath and mire communities. Notable species supported include red grouse (*Lagopus lagopus scotica*), wintering short-eared owl (*Asio flammeus*), upland breeding birds, olive earhtongue (*Microglossum olivaceum*) and common reptiles.
- 2.5 The boundaries of the Site, Mynydd Llanhilleth Common SINC, and the broader Common area more generally are illustrated at **Annex EDP 1**.

**Relevant Legislation: Common Land**

- 2.6 Common land comprises 'land subject to the rights of common' as registered under the Commons Registration Act 1965 with respect to those rights exercisable over the land and a record of its ownership. The Commons Act 2006 replaced the registration system enacted by the 1965 Act but continues to use those registers prepared under that Act. The registration authorities in Wales include all Unitary Authorities and are responsible for compiling, maintaining and amending the commons registers.
- 2.7 To ensure the safeguarding of common land for current and future generations, the 2006 Act enables the Welsh Government to ensure the stock of common land is not diminished, with any deregistration of registered land being compensated for through the registration of other land of at least equal benefit, with its future use consistent with its status as common land. Works taking place on common land is also restricted to those works which 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.
- 2.8 Planning Environment Decisions Wales (PEDW) is responsible for Welsh Ministers' casework relating to common land in Wales. The determination of such casework requires Welsh Ministers to have regard to numerous criteria as set out under section 16 (6) of the Commons Act 2006, as defined at section 16(8) of the Commons Act 2006. This includes consideration of the public interest in nature conservation as outlined within the Welsh Government's Common Land

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Consents Guidance Note published in August 2014, as common land can deliver of a number of benefits to biodiversity, including:

- 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 (SSSI) and the conservation of other nationally designated sites; and
- Sustaining grazing systems which are responsible for maintaining many landscape and environmental values on agriculturally-active commons.

**Relevant National Policy: Planning Policy Wales**

- 2.9 Paragraph 6.3.18 of Planning Policy Wales 11 (PPW, February 2021) identifies common land as a finite resource which should not be developed unnecessarily, given its importance in agricultural terms as well as its value for leisure and environmental interests, particularly in respect of its significant role in habitat conservation. It further states that access to it should not be prevented or impeded unnecessarily to ensure its proper management.
- 2.10 Additionally, Section 2 of Technical Advice Note 5: Conservation and Planning (TAN5), require consideration of the following key principles regarding positive planning for nature conservation:
- Ensuring that the UK's international and national obligations for site, species and habitat protection are fully met in all planning decisions;
  - Ensuring development provides a net benefit for biodiversity conservation, with no significant loss of habitats or populations of species, locally or nationally; and
  - Adopting a step-wise approach to avoid harm to nature conservation, minimising unavoidable harm by mitigation measures, offsetting residual harm by compensation measures, seeking new opportunities to enhance nature conservation and be satisfied that reasonable alternative sites that would result in less or no harm have been fully considered.

**Development Proposals**

- 2.11 The Proposed Development comprises a wind farm consisting of up to eight wind turbines, each with a three-bladed rotor with a diameter of up to 150m, a hub height of 122m and maximum height to blade tip of 180m. The wind farm is expected to have an operational life of 30 years. The development proposals also require the construction of associated infrastructure, including:

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- Access works - improvements to the existing access route together with the construction of new internal wind farm tracks and upgrading of existing tracks off the main internal access road;
- Turbine foundations including crane pads at each turbine location;
- Temporary construction compounds, laydown and storage areas; and
- Grid connection infrastructure, including the on-site substation, control building and underground cables linking the Site to the wider distribution network.

2.12 The development proposals are illustrated within the Site Layout Plan provided at **Annex EDP 2**.

#### *Scope of Assessment*

2.13 Turbine 3 and turbine 4, together with access tracks to these turbines as well as to turbines 1, 2 and 5, are sited within Mynydd Llanhilleth Common. As such, their construction and operation over the lifetime of the development will result in the loss of common land amounting to 6.7 acres/2.7 hectares (ha). Such losses equate to 0.47% of the total area of Mynydd Llanhilleth Common.

2.14 To compensate for the loss of common land, hereafter referred to as the 'release land', an area totalling circa 10 acres/4ha is proposed as 'replacement land', located to the immediate south of the former quarry area, to the west of turbine 8.

2.15 The extent of release land proposed for loss is illustrated at **Annex EDP 3**. The location of the release land and replacement land in relation to the Site and wider common area is illustrated at **Annex EDP 4**.

2.16 To further inform the common land exchange proposed, a detailed botanical assessment of those habitats supported across the release and replacement land parcels was undertaken in 2020, 2021 and 2022, as further detailed below.

### **3. Methodology**

#### *Extended Phase 1 Survey*

3.1 The principal habitats within the Site, together with their dominant/characteristic plant species were identified during the Extended Phase 1 survey.

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3.2 The survey technique adopted for the initial habitat assessment was at a level intermediate between a standard Phase 1 survey technique<sup>1</sup>, based on habitat mapping and description, and a Phase 2 survey, based on detailed habitat and species surveys. The survey technique is commonly known as an Extended Phase 1 survey. This level of survey does not aim to compile a complete floral and faunal inventory for the Site.

3.3 The level of survey involves identifying and mapping the main habitat types (including priority<sup>2</sup> habitats) and identifying the dominant plant species present within each habitat type. In addition, any actual or potential protected or priority<sup>3</sup> species are identified and scoped.

3.4 An Extended Phase 1 survey was undertaken of the Site by a suitably experienced surveyor on 06, 07 and 08 April 2020.

#### *Limitations*

3.5 Full access was available during the surveys, during which weather conditions were good, being warm, dry and still. April is within the optimal period for undertaking an Extended Phase 1 survey and as such, the timings of the surveys are not considered a constraint to survey effort.

#### *Detailed Botanical Survey*

3.6 To further provide a robust assessment of those habitats supported by the Site, a targeted botanical survey was also undertaken on 22 May 2020, updated on 14 June 2021 and 08 May 2022.

3.7 The botanical survey sought to identify any distinct plant communities of note and to further assess their botanical value. The survey adopted the DAFOR methodology whereby all vascular plant species (and bryophytes where identifiable) were identified according to their abundance.

3.8 The botanical survey was undertaken by an experienced botanist, with full access available during the surveys. The May 2020 survey followed a two-month period of near-drought, during which, weather conditions were overcast, very windy, and with occasional light drizzle. Weather conditions were otherwise dry and sunny during June 2021 and May 2022.

3.9 The botanical survey followed the DAFOR methodology whereby each plant species was accorded a code relative to its frequency and abundance within the Site, as follows:

- D = Dominant;

<sup>1</sup> Joint Nature Conservation Council (2004) Handbook for Phase 1 Habitat Survey – A Technique for Environmental Audit (reprinted with minor corrections for original Nature Conservancy Council publications).

<sup>2</sup> Habitats which are considered to be of key significance to sustain and improve biodiversity in Wales, as listed under Section 7 of the Environment (Wales) Act 2016.

<sup>3</sup> Species which are considered to be of key significance to sustain and improve biodiversity in Wales, as listed under Section 7 of the Environment (Wales) Act 2016.



- A = Abundant;
- F = Frequent;
- O = Occasional; and
- R = Rare.

3.10 Where a species had a particularly localised status within a field it was noted with the prefix L (e.g. rare in the wider field but local occasional = R/LO).

3.11 All vascular plant and bryophyte species were recorded to DAFOR level with species lists and DAFOR scores recorded separately per habitat type surveyed. Vegetation communities identified were subsequently mapped and described in accordance with standard survey protocol. Where possible, National Vegetation Classification (NVC) methodology was also utilised where appropriate to classify distinct plant communities and sub-communities supported with respect to their species composition and relative abundance, in addition to determining their botanical value and relative nature conservation value of the swards present.

#### Limitations

3.12 Full access was available to those areas targeted for survey, whilst weather conditions were sunny and dry during the survey visits. The botanical survey was also undertaken during an optimal period allowing for a high level of accuracy in determining the status of plant species on site. As such, no significant limitations were identified during the detailed botanical survey.

## 4. Results

### Mynydd Llanhilleth Common – Wider Area

4.1 The Extended Phase 1 and botanical surveys demonstrated that five principal habitats are present across Mynydd Llanhilleth Common where it overlaps with the Site: heather-dominated dwarf shrub heath on the areas of highest elevation; a crowberry-dominated community on elevations slightly below the heather-dominated areas; a bilberry-dominated community below that; a relatively species-poor acidic grassland; and species-poor rush pasture. A sixth habitat type, a bracken-dominated area over a sward of acid grassland and both crowberry-dominated and bilberry-dominated communities, is also present but covers a limited area. No rare or scarce plant species were recorded during the surveys, however. These communities are illustrated at Annex EDP 5 and further described below.

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#### Heather-Dominated Dwarf Shrub

- 4.2 In the higher parts of the northernmost extents of the Site, on the summit and south-eastern slopes of Byrgwm, there is a relatively dense community of old heather (*Calluna vulgaris*) bushes. Beneath them there is much crowberry (*Empetrum nigrum*) and some bilberry (*Vaccinium myrtillus*). Acidic grassland species such as brown bent (*Agrostis vinealis*), sheep's fescue (*Festuca ovina*), sweet vernal-grass (*Anthoxanthum odoratum*), mat grass (*Nardus stricta*), wavy hair-grass (*Deschampsia flexuosa*), heath rush (*Juncus squarrosus*), heath bedstraw (*Galium saxatile*), pill sedge (*Carex pilulifera*) and tormentil (*Potentilla erecta*) are also present to varying degrees.



Image EDP 1: Heather-dominated vegetation near the summit of Byrgwm.

#### Crowberry-Dominated Community

- 4.3 This occupies the upper slopes of Byrgwm below those areas occupied by heather. Apart from the paucity of heather, it is very similar to the community described above except that crowberry is often abundant here, and bilberry can be frequent, more so in the heather-dominated areas.

#### Bilberry-Dominated Community

- 4.4 This community is found on the mid slopes of Byrgwm, typically below the heather and the crowberry-dominated communities but above the grass and herb-dominated acidic grassland. It has many of the attributes of the crowberry-dominated community described above but is marked from that by a very high frequency of bilberry, another ericaceous species. Crowberry can be found here too but only in a small quantity. Where bilberry is less dominant, other species

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such as brown bent occur, alongside field woodrush (*Luzula campestris*), sweet vernal-grass, heath speedwell (*Veronica officinalis*), tormentil and creeping soft-grass (*Holcus mollis*).



Image EDP 2: Bilberry-dominated vegetation.

#### Acid Grassland

- 4.5 Unimproved acid grassland is present to the immediate north of the former quarry areas across Llanhilleth Common and across areas of Byngwm, occurring in the far northern and north-eastern extents of the Site which do not otherwise support the heather, crowberry and bilberry dominated communities. This grassland community is not especially species-rich, with typical species encountered including brown bent, sheep's fescue, sweet vernal-grass, heath rush, heath bedstraw, tormentil, mat grass, sheep's sorrel (*Rumex acetosella*), rough meadow-grass (*Poa trivialis*), cocks-foot (*Dactylis glomerata*), creeping cinquefoil (*Potentilla reptans*), pill sedge, annual meadow-grass (*Poa annua*) and common bird's-foot trefoil (*Lotus corniculatus*). Also present but much less common are species such as mouse-ear hawkweed (*Pilosella officinarum*) and common milkwort (*Polygala officinalis*).
- 4.6 Closer to the road which traverses Llanhilleth Common, areas of unimproved acid grassland demonstrate a slightly less acidic species composition with more meadow-grasses and less typical acidic grassland herbs. Overall, this community is not especially species-rich. This phenomenon is common in the uplands and is caused by sheep preferentially resting and grazing adjacent to roads and thus dunging and urinating there in a greater concentration than

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will be found elsewhere on an upland site. This increased nutrient input favours more nutritious generalist grass species at the expense of more distinctive but less nutritious acidic grassland grasses and herbs which in turn encourages sheep to graze there, thus furthering the input of nutrients.



Image EDP 3: Acid grassland with typically frequent presence of rush species.

#### Marshy Grassland

- 4.7 The southern and south-eastern extents of Llanhilleth Common, in addition to the lower levels of the northern half of the common, supports species-poor marshy grassland, often in a mosaic with smaller areas of species-poor acid grassland. This habitat supports a species-poor plant community dominated by soft rush (*Juncus effusus*), with localised frequencies of hard rush (*Juncus inflexus*) and compact rush (*Juncus conglomeratus*). Heath rush and field woodrush are also occasionally recorded, as is sphagnum moss (*Sphagnum* spp.). Where spring lines and flushes occur, additional species such as bog stitchwort (*Stellaria alsine*), cuckooflower (*Cardamine pratensis*), blinks (*Montia fontana*), marsh foxtail (*Alopecurus geniculatus*), small sweet-grass (*Glyceria declinata*) and marsh thistle (*Cirsium palustre*) are also encountered on occasion. Stands of common sedge (*Carex nigra*) are also present in places. No rare or otherwise notable plant species were recorded in this community.

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Image EDP 4: Marshy grassland – a typically dense and species-poor area dominated by soft rush.

#### Bracken

- 4.8 Across the north-eastern extents of the Site overlapping with the common, on lower slopes of Byrgam where it falls southwards towards farmed agricultural land, heather communities give way to bracken (*Pteridium aquilinum*). The bracken here does not have a deep litter and may be in the initial phase of colonisation. The sward beneath is relatively species-rich in places and is divided into the crowberry-dominated and bilberry-dominated communities previously described.
- 4.9 More generally there are few precise boundaries between the dwarf shrub heath, acid grassland, and bracken-dominated areas occurring onsite. Much of this is best seen as a complex mosaic of these plant communities. Further west, bracken habitat merges with small patches of dry heath, grassland and occasional rush (*Juncus* spp.).

#### Semi-improved Neutral Grassland

- 4.10 Semi-improved neutral grassland is limited to a single field to the north-west of the common area overlapping with the Site. Sweet vernal-grass is the dominant grass here, with common bent (*Agrostis capillaris*) and crested dog's-tail (*Cynosurus cristatus*) abundant and annual meadow-grass (*Poa annua*) frequent. Marsh foxtail, smooth meadow-grass (*Poa pratensis*) and rough meadow-grass are also locally frequent. Herbs frequently recorded include white clover

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(*Trifolium repens*), common sorrel (*Rumex acetosa*), creeping buttercup (*Ranunculus repens*), ribwort plantain (*Plantago lanceolata*), daisy (*Bellis perennis*), yarrow (*Achillea millefolium*) and common cat's-ear (*Hypochaeris radicata*). Frequent populations of eyebright (*Euphrasia* sp.) are notable here, a species typically associated with old, established pastures.

#### **Mynydd Llanhilleth Common SINC Assessment**

4.11 Habitat types supported across Mynydd Llanhilleth SINC where it overlaps with the Site have also been assessed against the Guidelines for the Selection of Wildlife Sites in South Wales by the South Wales Wildlife Sites Partnership (Gwent Wildlife Trust, 2004, this document is hereafter referred to as the GSWSSW\*), as follows:

- **Heathland and Grass Heath Communities (H10):** A minimum of 10% coverage of heath vegetation is required to satisfy the SINC designation criteria. Both the heather-dominated and crowberry-dominated communities have in excess of 10% coverage of these ericaceous species and thus this habitat type satisfies the SINC designation criteria;
- **Acid Grassland (H6):** The GSWSSW notes that "all examples of semi-improved dry acid grassland which retain a relatively high diversity of indicator species" should be considered for SINC designation, with a minimum of seven indicator species recorded to justify SINC designation. Whilst no species of particular note were recorded during the survey, 11 indicator species are confirmed present, such that areas of acid grassland supported by the Site satisfy SINC designation criteria with respect to species-richness;
- **Marshy Grassland (H7):** The GSWSSW states that a minimum of 12 indicator species are required to consider a marshy grassland to be a candidate for SINC status by virtue of species-richness. Marshy grassland habitat present onsite is typically dominated by soft rush and is species-poor. However, 13 indicator species were recorded here, although none of these 13 indicators are "quality" indicators as identified by the Guidelines. Furthermore, the marshy grassland community here most closely resembles the MG10 *Holcus lanatus*-*Juncus effusus* rush-pasture, an NVC community not included in the qualifying communities listed in the Guidelines;
- **Bracken Communities (H9):** Bracken occurring onsite is relatively open and does not form a dense litter. Furthermore, it overlies a relatively species-rich acid grassland community with localised abundances of bilberry and crowberry. As such, it is best considered as an extension of the Acid grassland (H6) and Crowberry-dominated Heathland and Grass Heath Communities (H10), rather than a community in its own right;

\* South Wales Wildlife Sites Partnership (2004). Guidelines for the Selection of Wildlife Sites in Wales. Available at: <http://www.sewobec.org.uk/content/attachments/SouthWalesWildlifeSitesCompleteDoc.pdf>

- **Other SINC Qualifying Criteria - Naturalness/Typicalness:** With regard to this criterion, habitats supported by the Site where it overlaps with these SINC are typical of upland plant communities, being unimproved, subject to traditional management and are locally species-rich, albeit partly degraded by over-grazing. The habitats and plant communities found here are thus relatively natural, being subject to only minimal management through the maintenance of traditional grazing regimes, albeit with historic over-stocking by sheep having possibly diminished the site's botanical diversity (a factor common to many IUK uplands); and
- **Other SINC Qualifying Criteria - Diversity:** With regard to this criterion, the ericaceous communities have a relatively high species diversity, whilst also exhibiting a natural gradation between acid grassland habitats through to the ericaceous communities through to marshy grassland habitat. Few hard demarcations are present between these communities, allowing for the development of habitat mosaics across this area.

4.12 Given the above, the majority of habitats/communities recorded across Mynydd Llanhilleth Common SINC where it overlaps with the Site are considered to satisfy the SINC designation criteria. The larger areas of locally very extensive marshy grassland are typically species-poor, however, and unlikely eligible for designation as a SINC in its own right. Nevertheless, there is an extensive intergrading of the marshy grassland with most of the other plant communities recorded here and with acid grassland in particular. As such, the inclusion of this habitat type within the SINC is justified, particularly when considering other SINC criteria such as Naturalness.

4.13 Plant species recorded during the botanical survey of Mynydd Llanhilleth Common SINC where it overlaps with the Site are further listed below in **Table EDP 4.1**.

**Table EDP 4.1:** Botanical Species List, Mynydd Llanhilleth Common.

Common name	Scientific name	DAFOR			
		Heather Community	Crowberry/Bilberry Community	Acid grassland	Marshy grassland
Yarrow	<i>Achillea millefolium</i>			R	
Velvet bent*	<i>Agrostis canina</i>				A
Brown bent	<i>Agrostis vinealis</i>	A	A	D	F
Sweet vernal-grass	<i>Anthoxanthum odoratum</i>	O	F	F	O
Lady fern	<i>Athyrium filix-femina</i>				R
Heather	<i>Calluna vulgaris</i>	A	R		
Pill sedge	<i>Carex pilulifera</i>	R		O	
Oval sedge*	<i>Carex leporina</i>				R
Black knapweed	<i>Centaurea nigra</i>				R
Common mouse-ear	<i>Cerastium fontanum</i>	R		R	

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Common name	Scientific name	DAFOR			
		Heather Community	Crowberry/Bilberry Community	Acid grassland	Marshy grassland
Creeping thistle	<i>Cirsium arvense</i>			R	
Marsh thistle	<i>Cirsium palustre</i>				R/LO
Crested dog's-tail	<i>Cynosurus cristatus</i>		R	R	
Cocks-foot	<i>Dactylis glomerata</i>	R		O	O
Wavy hair-grass	<i>Deschampsia flexuosa</i>	R		R	O
Forglve	<i>Digitalis purpurea</i>				F
Crowberry	<i>Empetrum nigrum</i>	F/LA	A		
Square-stemmed willowherb	<i>Epilobium tetragonum</i>				R
Field horsetail	<i>Equisetum arvense</i>			R	
Sheep's fescue	<i>Festuca ovina</i>	F	F	A	F
Heath bedstraw	<i>Gallium saxatile</i>	O	O	O	
Yorkshire fog	<i>Holcus lanatus</i>	O	O	O	F
Common cat's-ear	<i>Hypochaeris radicata</i>			R	
Jointed rush*	<i>Juncus articulatus</i>				R
Compact rush*	<i>Juncus conglomeratus</i>	R			O
Soft rush	<i>Juncus effusus</i>	R	R	F	D
Hard rush	<i>Juncus inflexus</i>				O/LF
Heath rush*	<i>Juncus squarrosus</i>	R	R	R	R
Bitter vetchling	<i>Lathyrus montana</i>			R	
Perennial rye-grass	<i>Lolium perenne</i>			R	
Bird's-foot trefoil	<i>Lotus corniculatus</i>			O	
Greater bird's-foot trefoil*	<i>Lotus pedunculatus</i>				O
Field woodrush	<i>Luzula campestris</i>	R	R	R	
Heath woodrush	<i>Luzula multiflora</i>	R		R	
Water mint*	<i>Mentha aquatica</i>				R
Purple moor-grass*	<i>Molinia caerulea</i>	O	R	R	R
Mat grass	<i>Nardus stricta</i>	R	R	F	
Moose-ear hawkweed	<i>Pilosella officinarum</i>			R/LF	
Ribwort plantain	<i>Plantago lanceolata</i>			F	
Annual meadow-grass	<i>Poa annua</i>			F	
Rough meadow-grass	<i>Poa trivialis</i>			F	
Tormentil*	<i>Potentilla erecta</i>	O	O	F	O
Creeping cinquefoil	<i>Potentilla reptans</i>	R	R	O	O
Snacken	<i>Pteridium aquilinum</i>	R	O/LA		
Meadow buttercup	<i>Ranunculus acris</i>		R	O	O

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Common name	Scientific name	DAFOR			
		Heather Community	Crowberry/ Bilberry Community	Acid grassland	Marshy grassland
Lesser spearwort*	<i>Ranunculus flammula</i>				R
Creeping buttercup	<i>Ranunculus repens</i>			O	F
Sorrel	<i>Rumex acetosa</i>	R	R	R	R
Sheep's sorrel	<i>Rumex acetosella</i>	R		R	
Clustered dock*	<i>Rumex conglomeratus</i>		O		O
Marsh ragwort*	<i>Senecio aquaticus</i>				R
Lesser stitchwort	<i>Stellaria graminea</i>			R	
Bog stitchwort	<i>Stellaria uliginosa</i>				R
Dandelion	<i>Taraxacum officinale</i> <i>off.</i>	R	R	R	R
Lesser trefoil	<i>Trifolium dubium</i>			R/LO	
White clover	<i>Trifolium repens</i>			O/LF	
Common milkwort	<i>Polygala vulgaris</i>			R	
Common nettle	<i>Urtica dioica</i>				O
<b>Bilberry</b>	<i>Vaccinium myrtillus</i>	O	F	R	
Thyme-leaved speedwell	<i>Veronica serpyllifolia</i>		R		

Note: Where the common name is listed in bold, this species is listed as an indicator species of acid grassland, with reference to the GSWSSW; where the common name is denoted with a '\*', this species is listed as an indicator species of marshy grassland, with reference to the GSWSSW. Where the common name is listed in both bold and with a '\*', this indicates this species is found in both tables of the guidance.

#### Mynydd Llanhilleth Common – Release Land

- 4.14 The release land parcels, as illustrated at Annexes EDP 3 and 4, amounting to 6.7 acres/2.7ha, predominantly comprise unimproved acid grassland and marshy grassland/rush pasture habitat as previously described above. Areas of semi-improved acid grassland, tall herbs and bracken are also present along the access route between turbine 4 and turbine 8 which traverses through the former forestry plantation and quarry area.

#### Replacement Land

- 4.15 Replacement land proposed in compensation for the loss of common land within Mynydd Llanhilleth Common, required to accommodate the Proposed Development, totals 10 acres/4ha and encompasses two field parcels located at approximate Ordnance Survey Grid Reference (OSGR) SO 231 011. These fields lie to the immediate west of a parcel of unimproved acid grassland at Cefn Cribb comprising Mynydd Llanhilleth Common. Together, these three fields comprise the southernmost extent of the Site, situated to the immediate south of the former forestry plantation and quarry area.

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- 4.16 Of the two field parcels proposed as replacement land, the larger field to the west comprises a large area of rough ground on the steep, lower slopes of the Gwm Onyw valley. Spoil tips, indicative of a history of extractive industry (likely from past coal mining activities) occur here, dominated by dense bracken. A species-poor acid grassland sward is otherwise supported beneath the dense bracken layer and mostly comprises common grasses such as brown bent, sweet vernal-grass, sheep's fescue, red fescue (*Festuca rubra*) and Yorkshire fog (*Holcus lanatus*), along with common bird's-foot trefoil, creeping buttercup, field woodrush and ribwort plantain. Both European gorse (*Ulex europaeus*) and western gorse (*Ulex gallii*) are locally common amongst this bracken-dominated community, along with some marsh thistle. Scattered shrubs and trees are also present along the western boundary of this field in association with Nant y Onyw, including hawthorn (*Crataegus monogyna*), silver birch (*Betula pendula*), grey willow and beech (*Fagus sylvatica*).
- 4.17 There are limited areas with a more species-rich unimproved acid grassland flora, mainly on those parts of the spoil tips not dominated by bracken, together with a small area to the north of the spoil tips. Here there is pill sedge, early hair-grass (*Aira praecox*), heath bedstraw, slender St John's-wort (*Hypericum puchrum*), mat grass, mouse-ear hawkweed, bilberry and heath speedwell.



Image EDP 5: Westernmost field comprising replacement land – view to south-west.

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Image EDP 6: Westernmost field comprising replacement land – view to north of one of the spoil tips.

- 4.18 The proposed replacement land parcel also extends eastwards to connect to Mynydd Llanhilleth Common, traversing a large, agriculturally managed field with a gentle north-westerly aspect on the upper slopes of the Cwm Onyw valley. This field has been subject to ploughing and reseeded in the recent past and the remains of hedge banks within the field indicate that it has been created from the amalgamation of three smaller fields. Small quantities of bluebell (*Hyacinthoides non-scripta* agg.) occurring on these relict banks suggest that hedgerows may once have occurred here.
- 4.19 More generally, agriculturally-favoured grasses dominate this poor semi-improved grassland field. Typical species encountered include common bent, sweet vernal-grass, soft brome (*Bromus hordaceus*), crested dog's-tail, red fescue and Yorkshire fog. Other commonly occurring grasses include perennial rye-grass (*Lolium perenne*), smooth meadow-grass and rough meadow-grass. The herb component is dominated by an unusual combination of yellow rattle (*Rhianthus minor*), lesser trefoil (*Trifolium dubium*), bulbous buttercup (*Ranunculus bulbosus*) and white clover. Pignut (*Conopodium majus*), red clover (*Trifolium pratense*), common sorrel, common mouse-ear (*Cerastium fontanum*) and ribwort plantain are also frequent here. This field appeared shut up for hay during the June 2021 survey, but several sheep were also present and may have been unintended grazers. A small area on the north-western side of this field has several hay rounds within it and a slightly less agriculturally improved sward than the rest of the field.

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Image EDP 7: View to north-west of agricultural field proposed as replacement land.

- 4.20 To the immediate east of the proposed replacement land parcel lies a field supporting unimproved acid grassland comprising part of Mynydd Llanhilleth Common where it overlaps with the Site. This field comprises a large expanse of relatively homogenous, free-draining and overgrazed moorland. Sheep's fescue is the dominant grass here, with brown bent abundant and mat grass frequent. Other grasses include purple moor-grass (*Molinia caerulea*), early hair-grass and smooth meadow-grass. Heath bedstraw is also abundant and heath rush frequent as well as being locally abundant. A small quantity of bilberry is also scattered throughout. An old bank and ditch feature runs along the western edge of this field, likely an old manorial or parish boundary, with the ditch supporting soft rush.

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**Image EDP 8:** Area of unimproved acid grassland comprising Myrdd Llanhilleth Common, located to the immediate east of the replacement land parcel – view to south.

4.21 Plant species recorded during the botanical survey of these three fields are listed below in **Table EDP 4.2**.

**Table EDP 4.2:** Botanical Species List, Replacement Land.

Common name	Scientific name	DAFOR		
		Replacement Land: Western field	Replacement Land: Eastern extension	Common Land: Field adjacent (east) of replacement land
Yarrow	<i>Achillea millefolium</i>			R/LO
Common bent	<i>Agrostis capillaris</i>		F/LA	
Brown bent	<i>Agrostis vinealis</i>	A		F
Early hair-grass	<i>Aira praecox</i>	O		R
Marsh foxtail	<i>Alopecurus geniculatus</i>			R
Sweet vernal-grass	<i>Anthoxanthum odoratum</i>		A	F/LA
Daisy	<i>Bellis perennis</i>		F	
Soft brome	<i>Bromus hordeaceus</i>		A	R

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Common name	Scientific name	DAFOR		
		Replacement of Land: Western field	Replacement Land: Eastern extension	Common Land: Field adjacent (east) of replacement land
Pill sedge	<i>Carex pilulifera</i>			R/LO
Spiked sedge	<i>Carex spicata</i>			R
Black knapweed	<i>Centaurea nigra</i>			R
Common mouse-ear	<i>Cerastium fontanum</i>		F	O
Creeping thistle	<i>Cirsium arvense</i>			R
Marsh thistle	<i>Cirsium palustre</i>			O
Pignut	<i>Conopodium majus</i>		O	
Beaked hawkbeard	<i>Crepis vesicaria</i>		R	
Crested dog's-tail	<i>Cynosurus cristatus</i>		A/LO	O
Cocksfoot	<i>Dactylis glomerata</i>		O	R/LO
Foxglove	<i>Digitalis purpurea</i>			O/LF
Sheep's fescue	<i>Festuca ovina</i>	O		F
Red fescue	<i>Festuca rubra</i>		A	F
Heath bedstraw	<i>Galium saxatile</i>	A		O/LF
Dove's-foot cranes-bill	<i>Geranium molle</i>			R
Yorkshire fog	<i>Holcus lanatus</i>		F/LA	F
Creeping soft-grass	<i>Holcus mollis</i>		R/LO	O
Slender St John's-wort	<i>Hypericum pulchrum</i>			R
Bluebell	<i>Hyacinthoides non-scripta</i>		R/LO	O
Common cat's-ear	<i>Hypochaeris radicata</i>		R	R
Soft rush	<i>Juncus effusus</i>	O/LF		O/LF
Heath rush	<i>Juncus squarrosus</i>	F/LA		
Perennial rye-grass	<i>Lolium perenne</i>		F	O
Common bird's-foot trefoil	<i>Lotus corniculatus</i>			F
Field wood-rush	<i>Luzula campestris</i>	R	R/LO	F
Purple moor-grass	<i>Molinia caerulea</i>	O/LF		R
Blinks	<i>Montia fontana</i>	R		
Field forget-me-not	<i>Myosotis arvensis</i>		R	
Mat grass	<i>Nardus stricta</i>	F		O
Mouse-ear hawkweed	<i>Pilosella officinarum</i>			O
Ribwort plantain	<i>Plantago lanceolata</i>	R	F	O/LF
Annual meadow-grass	<i>Poa annua</i>	R	O	O
Smooth meadow-grass	<i>Poa pratensis</i>	O	O/LF	O
Rough meadow-grass	<i>Poa trivialis</i>		F	R
Tommentil	<i>Potentilla erecta</i>	R		O
Selfheal	<i>Prunella vulgaris</i>		O	R/LO
Bracken	<i>Pteridium aquilinum</i>	R/LO	R	O
Meadow buttercup	<i>Ranunculus acris</i>		F	R

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Common name	Scientific name	DAFOR		
		Replacement of Land: Western field	Replacement Land: Eastern extension	Common Land: Field adjacent (east) of replacement land
Bulbous buttercup	<i>Ranunculus bulbosus</i>		A/LD	
Creeping buttercup	<i>Ranunculus repens</i>			F
Yellow rattle	<i>Rhinanthus minor</i>		A/LD	
Common sorrel	<i>Rumex acetosa</i>		F	O
Sheep's sorrel	<i>Rumex acetosella</i>			F/LA
Curled dock	<i>Rumex crispus</i>		R	
Broad-leaved dock	<i>Rumex obtusifolius</i>		R	
Procrumbent pearlwort	<i>Sagina procumbens</i>			F
Lesser stitchwort	<i>Stellaria graminea</i>			O
Lesser trefoil	<i>Trifolium dubium</i>		A/LD	O
Red clover	<i>Trifolium pratense</i>		F	R
White clover	<i>Trifolium repens</i>	O	A	O
Common gorse	<i>Ulex europaeus</i>			O/LF
Western gorse	<i>Ulex galli</i>			O/LF
Bilberry	<i>Vaccinium myrtillus</i>	O		R
Germander speedwell	<i>Veronica chamaedrys</i>		R	
Heath speedwell	<i>Veronica officinalis</i>			O/LF
Thyme-leaved speedwell	<i>Veronica serpyllifolia</i>			R
Squirreltail fescue	<i>Vulpia bromoides</i>			O

## 5. Potential Ecological Impacts of the Common Land Exchange

### Release Land

- 5.1 In the absence of mitigation, the de-registration of common land comprising the release land parcels will prevent the continued exercising of Commoners' rights across this land in future. Such rights include the right of public access, the grazing of livestock and harvest of fern for bedding by commoners.
- 5.2 The reduction of common land will amount to only 6.7 acres/2.7ha, which equates to circa 0.47% of the total land area comprising Mynydd Llanhilleth Common. As such, the removal of Commoners' rights from only a small proportion of the wider common area is not considered likely to result in any ecological impacts of significance. Nevertheless, the de-registration of the release land parcels, should planning permission subsequently be granted, will facilitate the construction of the Proposed Development thereafter.

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- 5.3 In the absence of mitigation, the Proposed Development will result in habitat loss and fragmentation together with disturbance and damage of retained habitats, with such habitats currently providing suitable opportunities for a variety of protected and priority species, including bats, common reptiles, invertebrates and breeding birds. Impacts to such habitats are limited in extent, however, with only two out of the eight wind turbines sited within common land, and with access routes between turbines utilising existing tracks and surfaced highways as far as possible.

#### **Replacement Land**

- 5.4 The designation of the replacement land parcels as common land will potentially introduce habitat management to those existing botanical communities present, should the general public and registered commoners choose to exercise their rights over the land in future, following common land exchange. Additionally, minor works to facilitate grazing across replacement land (albeit subject to future consent) may also be required by the Applicant from the outset or in future, such as to provide/improve stock-proof fencing.
- 5.5 The replacement land parcels are currently subject to grazing. In absence of mitigation, impacts are therefore considered to be minor, though any increase in grazing pressure could impact upon semi-improved acid grassland and bracken mosaic habitats supported across the larger, western parcel comprising the replacement land. The action of grazing and physical disturbance by livestock could be beneficial however, facilitating the break-up and control of bracken encroachment and thatch build up necessary to enhance and maintain the areas of acid grassland supported. Indeed, successional habitats could be effectively managed over the long-term through the introduction of suitable levels of trampling, grazing and physical disturbance required to slow down habitat succession and encroachment, reduce shade, promote species diversity and maximise habitat structure, providing benefits to the replacement land parcel.
- 5.6 Should over-grazing arise as a result of overstocking however, severe poaching and trampling of the ground may result in ground disturbance and destruction of the sward, particularly within areas affected by impeded drainage. Such impacts across the replacement land will similarly apply to the release land parcels and wider common land area however. Additionally, the landowner of the replacement land may choose to increase/extend livestock grazing and/or introduce other agricultural activities across the replacement land parcels in future.
- 5.7 Overall, in absence of mitigation, minor habitat loss and fragmentation may arise together with some disturbance and damage to retained habitats across replacement land parcels following common land exchange. Increased grazing pressure could also result in additional habitat modification with respect to the extent of bracken cover and shade, the botanical and structural diversity of the swards affected, and ground disturbance arising from trampling and poaching by livestock. Such impacts could be beneficial rather than detrimental however, depending on the intensity of grazing and species of livestock present.

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#### Ecological Avoidance and Mitigation Measures Proposed

- 5.8 Ecological avoidance and mitigation measures proposed as part of the common land deregistration and exchange application include those overarching ecological mitigation measures proposed for the Proposed Development more generally, which encompasses the release and replacement land parcels. Such measures include: those inherent within the design; detailed design measures; sensitive working methodologies; and long-term ecological management measures.
- 5.9 Measures inherent within the design of the Proposed Development alongside detailed design measures have sought to ensure the avoidance and minimisation of ecological impacts. Specific to the common land exchange, only two out of the eight wind turbines are sited within common land, whilst proposed access routes between turbines utilise existing tracks and surfaced highways as far as possible. In addition, impacts of habitat loss and fragmentation will further be compensated and mitigated for through the restoration and enhancement of those ecological valuable habitats to be retained, together with the provision of new tree, hedgerow and shrub planting where necessary to compensate for proposed losses.
- 5.10 In addition to the above, should the common land deregistration and exchange application be granted in addition to subsequent planning consent being received, the preparation and implementation of an Ecological Construction Method Statement (ECMS) is capable of being secured through a pre-commencement condition attached to any future planning consent for the Proposed Development. The ECMS will set out in detail those measures that are to be implemented across the Site, including within the release and replacement land parcels, prior to and during the construction works to avoid, protect and minimise impacts on biodiversity.
- 5.11 In respect of long-term ecological management measures, Should the common land deregistration and exchange application be granted in addition to subsequent planning consent being received, the preparation and implementation of a Landscape and Ecological Management Plan (LEMP) is capable of being secured through a pre-commencement condition attached to any future planning consent for the Proposed Development. The LEMP will set out in detail the post-development, operational and management measures that will be implemented across the Site, including the release and replacement land parcels. Such measures will ensure that opportunities to maintain, enhance, restore and add to biodiversity through retained and created habitats are delivered.
- 5.12 In addition to the above, it should be noted that the common land deregistration and exchange application is wholly dependent upon the granting of planning permission regarding the Proposed Development, for which due regard to the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife and Countryside Act 1981 (as amended) and the Environment (Wales) Act 2016 must be given. As such, protected and priority habitats and species will be fully considered as part of the planning process, with the delivery of sufficient

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avoidance, compensation and mitigation measures necessary before planning permission can be granted.

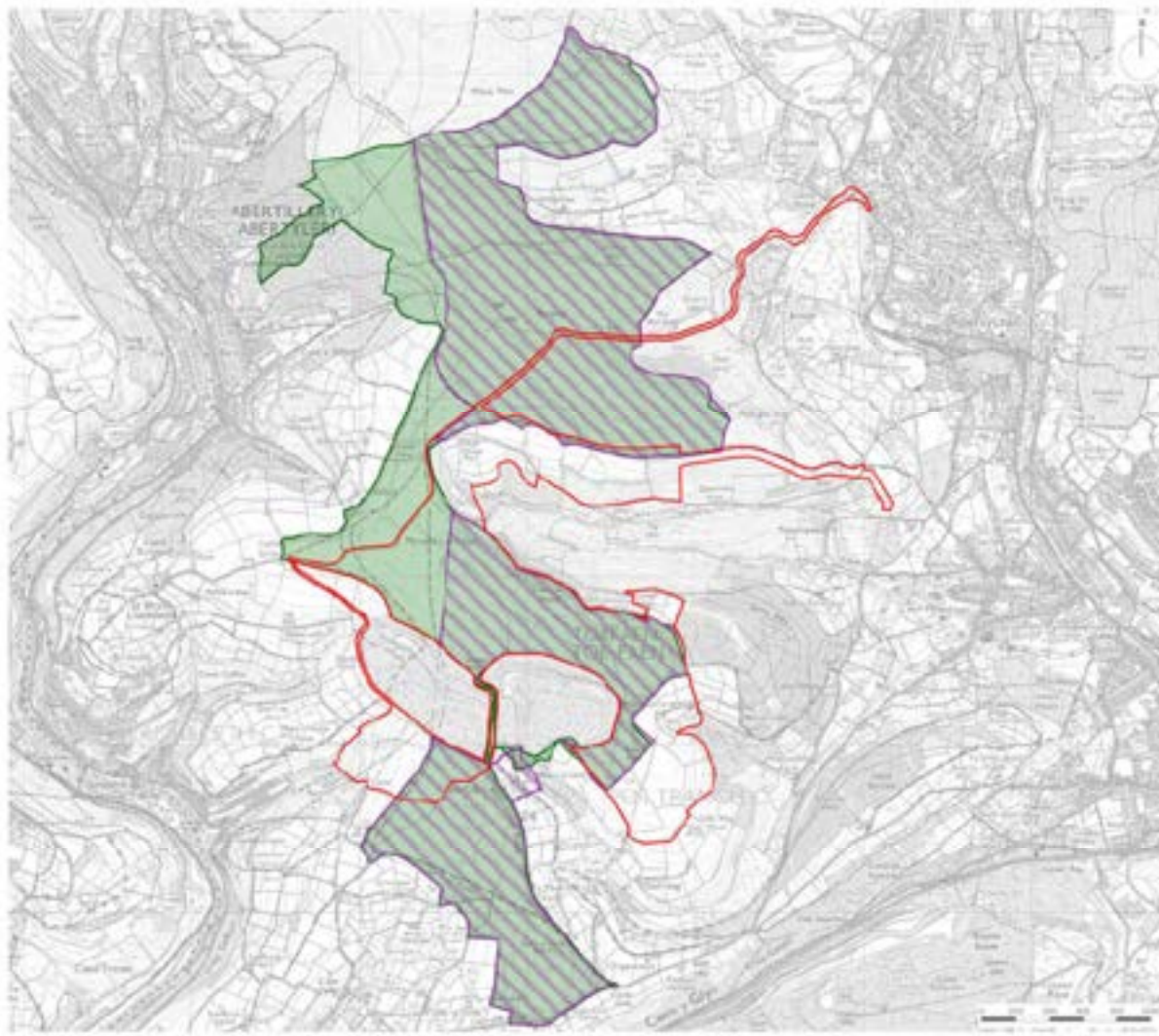
- 5.13 Whilst the granting of the section 16 application will facilitate the future development of the Site, resulting in some losses/impacts to habitats and species supported therein, this will be sufficiently addressed through the implementation of avoidance, mitigation and compensatory measures detailed for the Proposed Development which encompasses the release and replacement land parcels. As such, the granting of the section 16 application will enable the delivery of net biodiversity benefits by the Site in respect of the Proposed Development.

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**Annex EDP 1**  
**Location of Mynydd Llanhilleth Common in Relation to the Site Boundary**  
(edp6367\_d131 09 November 2022 GYo/KHe)

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- Site Boundary
- Myntid Llandiloch Common
- Myntid Llandiloch Common Site of Importance for Nature Conservation (SIN)

client  
**Pennant Walters**

project title  
**Myntid Llandiloch Wood Farm**

drawing title  
**Showing the Location of Myntid Llandiloch Common in Relation to the Site Boundary**

date	04 NOVEMBER 2020	drawn by	WJW
drawing number	WJW/0017_0023	checked by	WJW
scale	1:25,000 @ A3	or	WJW

**edp** the environmental design partnership

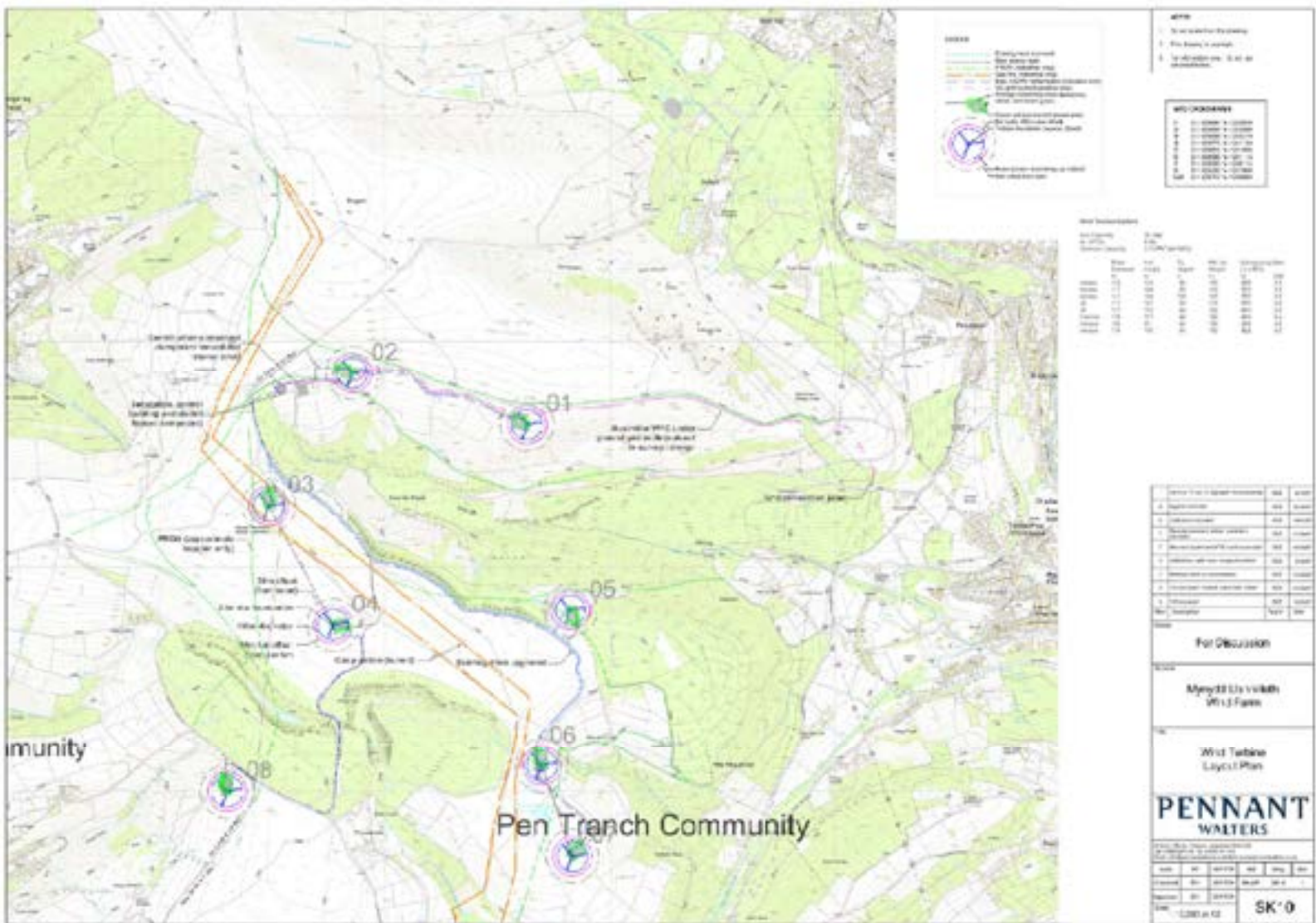
Registered Firm: 0200 700071 [www.edp.co.uk](http://www.edp.co.uk) [info@edp.co.uk](mailto:info@edp.co.uk)



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**Annex EDP 2**  
**Site Layout Plan**  
(Pennant Walters, MLWF SK10 Rev I, 26/11/20)

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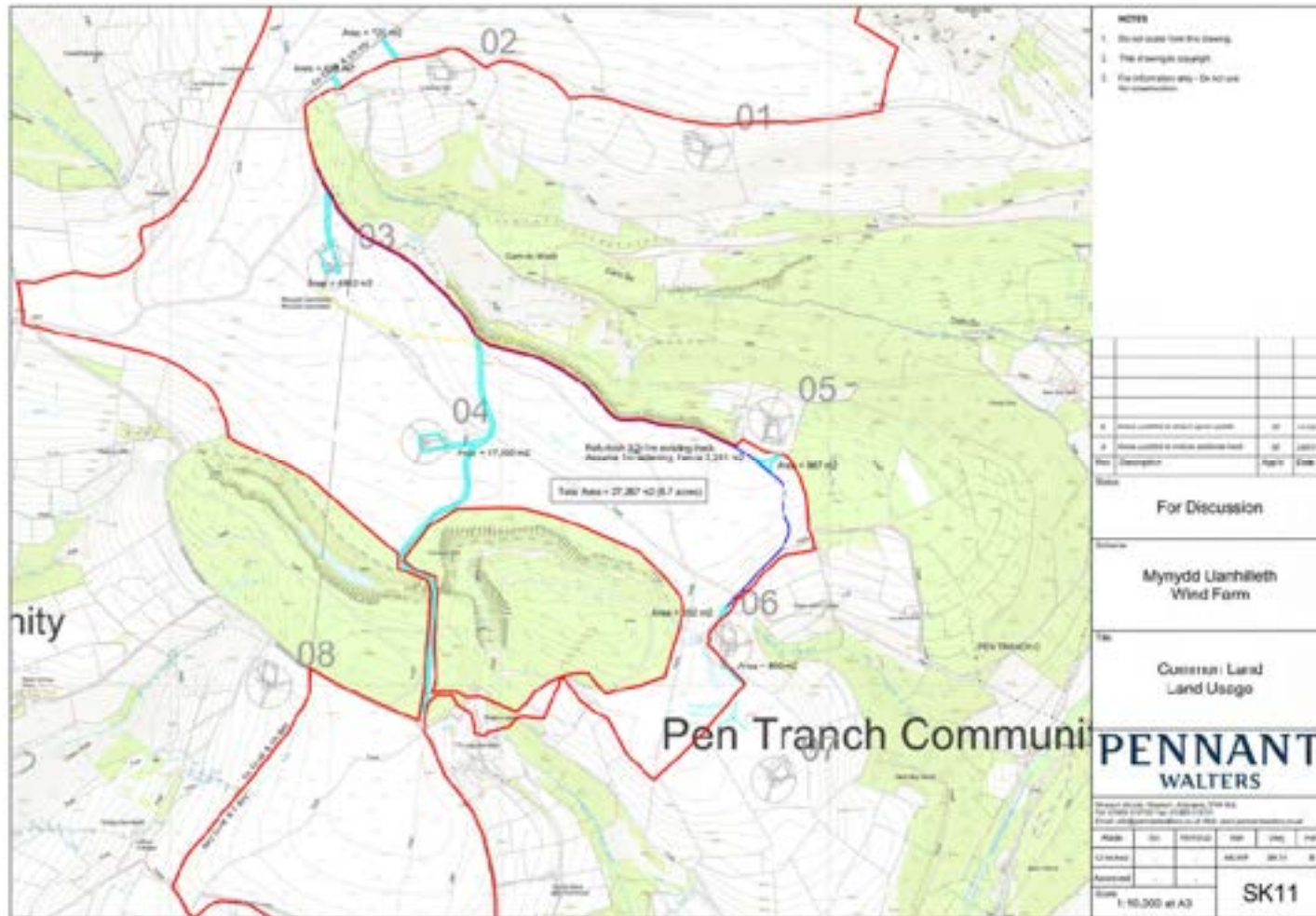




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**Annex EDP 3**  
**Common Land Land Usage Plan**  
(Pennant Walters, MLWF SK11 Rev B, 06/03/22)

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**Annex EDP 4**  
**Common Land Swap Plan**  
(Pennant Walters, MLWF SK19, 08/11/22)

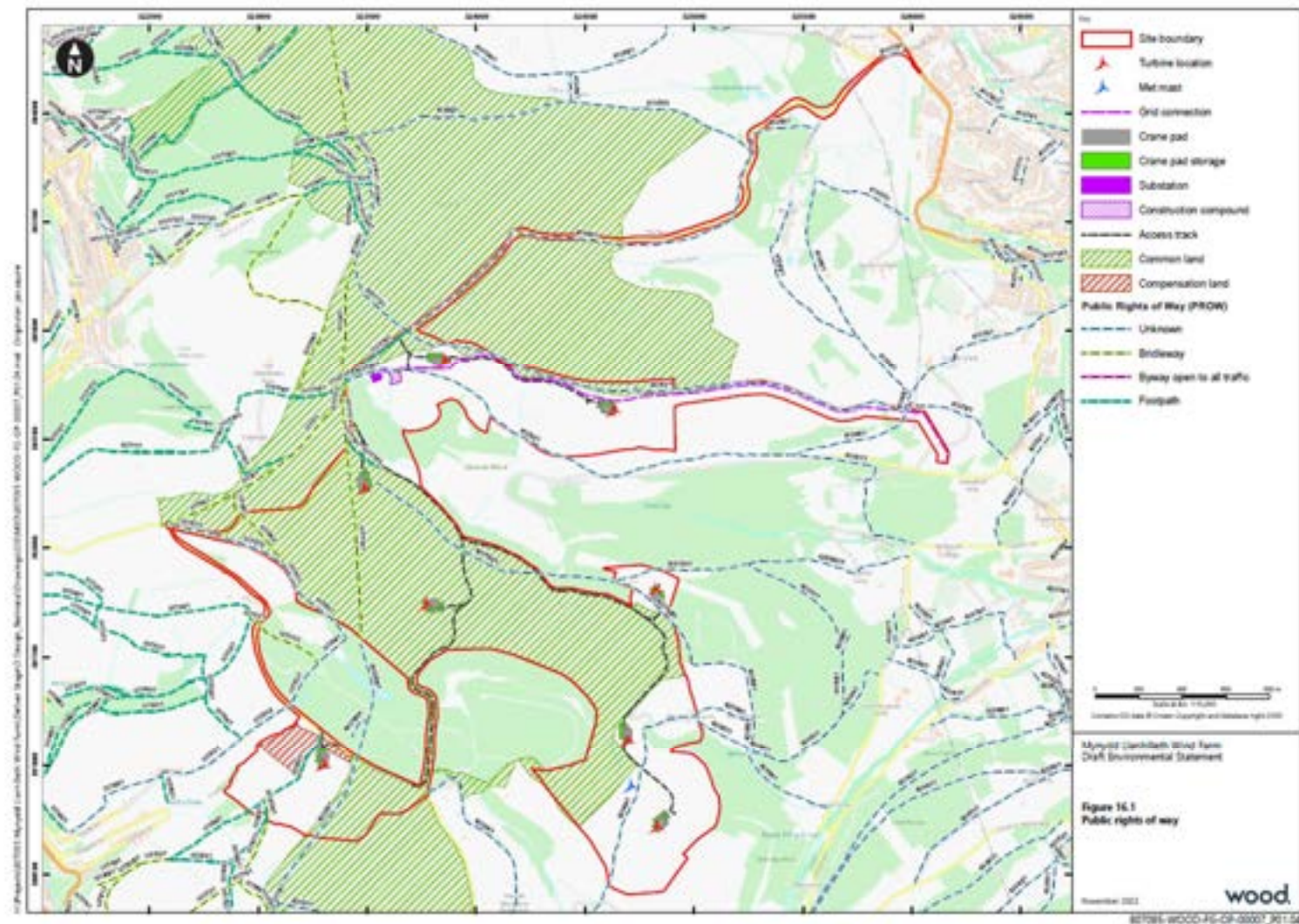
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APPENDIX 5  
Public Rights of Way



## APPENDIX 6

### Schedule of Photographs

## Photographs of Common Land



Photographs of replacement land

