



Nant Mithil Energy Park, Powys.  
PEDW DNS Application Ref: DNS CAS-01907-D7Q6Z1.

CPRW-RE-think Chapter 18 on

## **Secondary Consents**

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 PEDW DNS Application Ref: DNS CAS-01907-D7Q6Z1.

Evidence by CPRW-RE-think on:

## Secondary Consents

This chapter considers the validity of the secondary consents applications and discusses the effects of the proposals.

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### Table of Contents

1. Introduction .....	3
2. Secondary Consents Written Statement .....	3
3. Application Form: Applicant Responses to Questions .....	3
4. s16 Application plan .....	6
5. S38 Application Form: Applicant Responses to Questions .....	6
6. Common Land Report .....	6
7. Interests of the Commoners .....	7
8. Interests of the Neighbourhood and Public .....	8
9. Replacement Land .....	8
Biodiversity .....	10
10. Conclusions .....	11

## 1. INTRODUCTION

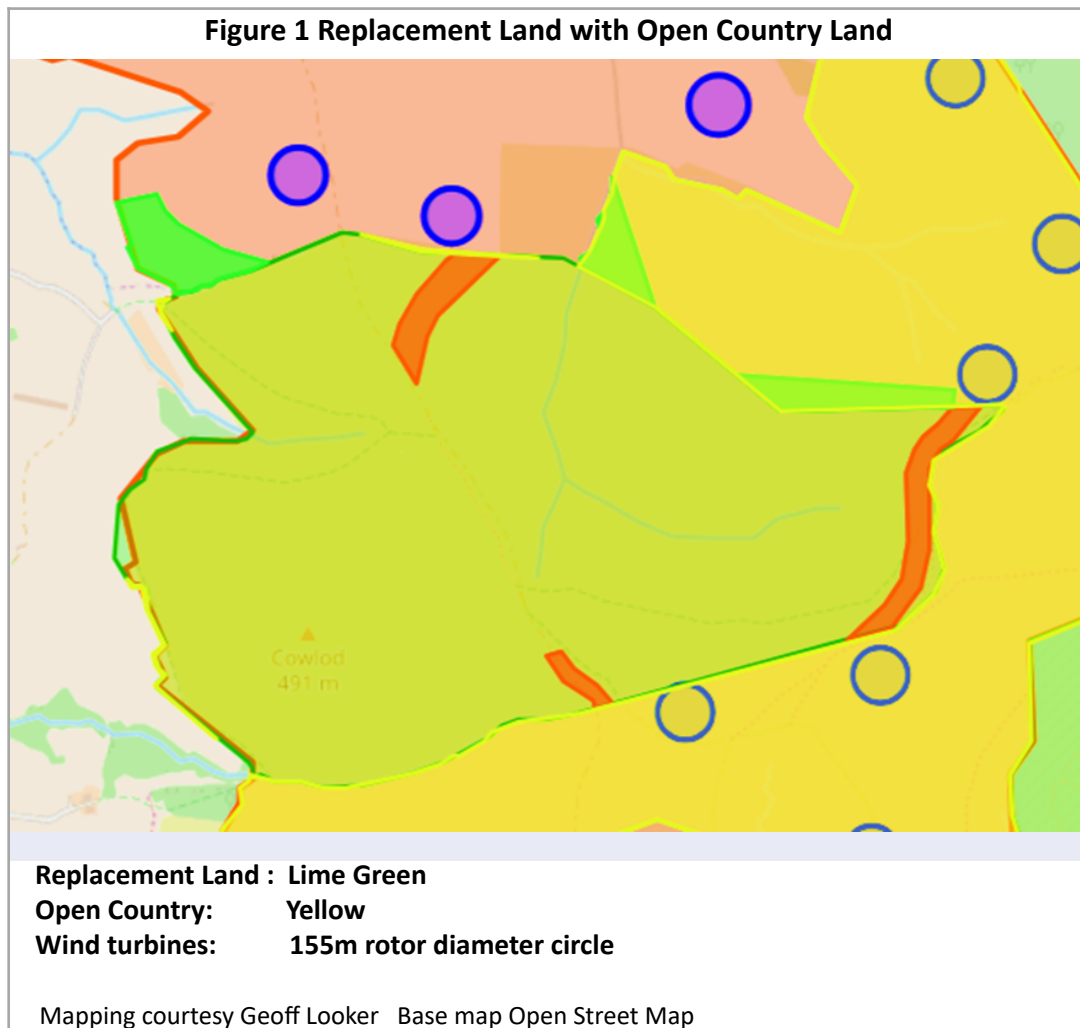
- 1.1. The validity of the secondary consent applications was questioned by CPRW in their response to the PAC. It seems that the applicant failed to address them as there is no evidence in the DNS application PAC documents or the secondary applications to suggest otherwise.
- 1.2. This assessment considered the following documents:
  - ES Volume 1 Chapter 4, Project Description;
  - ES Volume 2 fig 4.13;
  - Welsh Government Common Land Consents Guidance;
  - Secondary Consents Written Statement;
  - S16 Application;
  - S16 Application plan;
  - S38 Application;
  - S38 Application plan;
  - Common Land Report (CLR).

## 2. SECONDARY CONSENTS WRITTEN STATEMENT

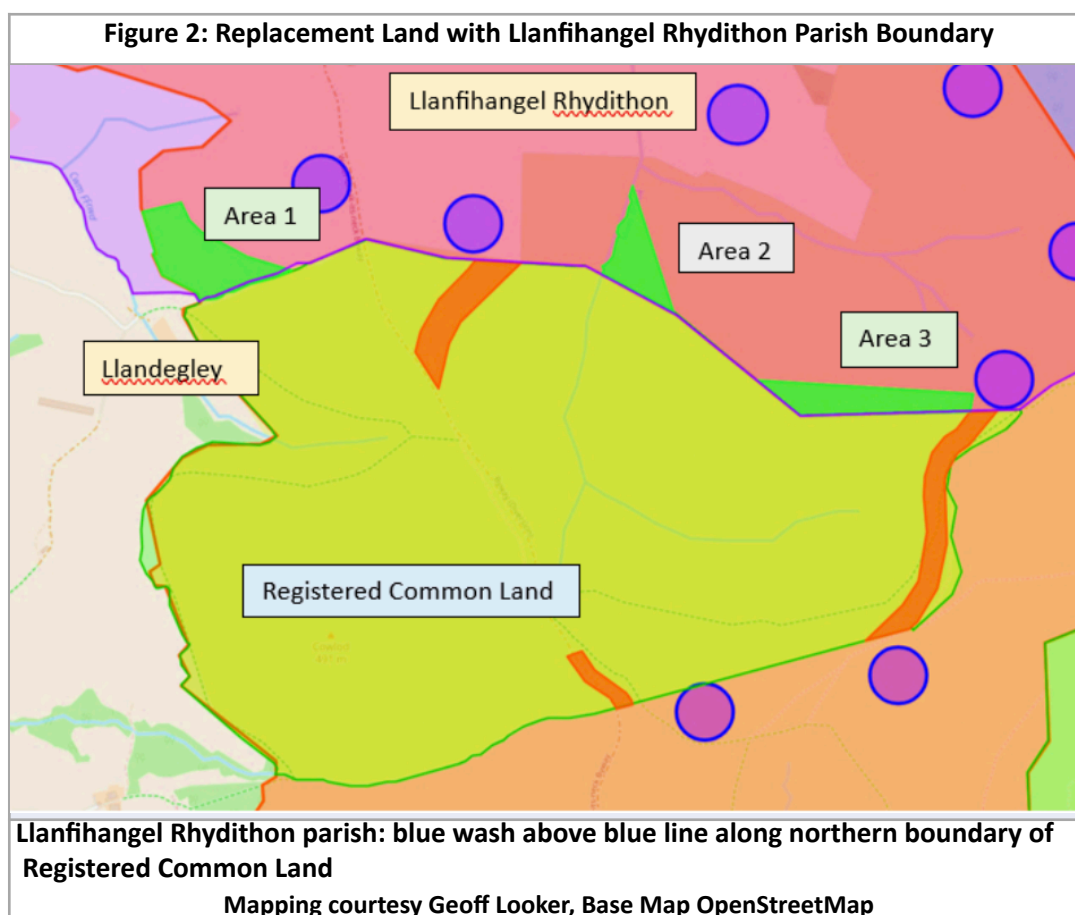
- 2.1. *“The inclusion of these elements has been addressed in full throughout the suite of accompanying technical work which supports the DNS application, including the Environmental Statement.”*

## 3. APPLICATION FORM: APPLICANT RESPONSES TO QUESTIONS

- 3.1. Section B, Q13: the applicant has ticked “yes” for replacement land however they have not adhered to Guidance Notes 7 and 8.
- 3.2. Guidance Note 7 reads: *“The replacement land must not already be registered as common land or as a town or village green (see section 16(5)(b)) of the 2006 Act, **or be subject to a statutory right of access**”* and Guidance Note 8 states, *“We would not expect to see the stock of public access land diminished by **an offer of replacement land that was already subject to some form of public access.**”*(our bold emphasis)
- 3.3. Areas 2 and 3 of the replacement land are on Open Country land which has statutory access rights on foot. See fig SC.1. Indeed, at Section C1, Q22b, the applicant states: *“The public currently have access to Replacement Land Areas 2 and 3 under the Countryside and Rights of Way Act 2000”*. The proposal to offer land contrary to the guidance was queried at PAC, when CPRW asked *“How do these two parcels comply with the expectation in Note 8 above?”*



- 3.4. Section B, Q14: At PAC, CPRW queried the statement that the replacement land is in the community of Llandegley. Figure 2 shows all the replacement land lies wholly in the community of Llanfihangel Rhydithon. It is unclear why the applicant believes the land to be within Llandegley Community when at CLR, p40, Area 3, it states *“The land can be accessed from the Common by grazing livestock and amenity users on removal of the Parish boundary stock proof post and wire fence”*



- 3.5. Section B3, Q17: Is 12.96ha of replacement land the correct area? The CLR consistently refers to 13.5ha of replacement land, eg, paras 3.3, 3.63. See Table 1 below:

Table 1: S16 Land Areas		
Replacement Land	S16 Application Form Section B3 Q17	Common Land Report app. 5
Area 1 Lower Cwm	5.22ha	5.22ha
Area 2 Cwm Merwys	2.67ha	2.67ha
Area 3 Dolau Hill	5.07ha	5.61ha
<b>Total Area</b>	<b>12.96ha</b>	<b>13.5ha</b>

- 3.6. **Section B, Q18:** Area 1 description, *“The land is to the north of the Lower Cwm Public Footpath.”* There is no public footpath at this location on the definitive map. The nearest PROW is in fact a bridleway as can be seen in Vol 2, fig 4.13. The Area 2 description states, *“a useful extension to open access to this mountain stream valley side.”* This land already has Open Access rights by virtue of being Open Country.

- 3.7. **Section C1, Q22a:** The description fails to include the bridleway that will be within the release land for the access track between T17 and T18.
- 3.8. **Section C2, Q25b:** The applicant appears to confuse release and replacement land.
- 3.9. **Section C2, Q29:** “NO” box is ticked. We wonder if any landowner or historic estate shooting rights have been considered.
- 3.10. **Section D, Q30:** This section has not been updated since PAC because it still refers to “up to 31 wind turbines”.
- 3.11. **Section D, Q31:** This section has not been updated to reflect the present status of the application.

#### 4. S16 APPLICATION PLAN

- 4.1. We note CLR 1.13 *A separate section 16 application has been submitted for the Release Land required for the new access tracks, drainage works, working areas and their micro-siting areas.* We therefore question different widths of the release land and wonder why this is. If the northern release land needs to be that width to allow construction of a new track, how can the developer construct the same width of new track within the narrower widths of land, especially at the southern boundary of the common land.

#### 5. S38 APPLICATION FORM: APPLICANT RESPONSES TO QUESTIONS

- 5.1. **Section D, Q15:** *“Suitable stone will be sourced from the borrow pit to minimise the volume of stone brought onto the Common from another location.”* This statement reads as though a borrow pit is planned on the common, with extra stone brought from elsewhere. The DNS application requests three borrow pits that are off the common land.
- 5.2. **Section D, Q20b:** the applicant has ticked the “NO” box. Three bridleways join the BOAT within the s38 application land; it is unclear how the developer would exclude them from the safety fencing.

#### 6. COMMON LAND REPORT

- 6.1. We wish to draw attention to the fact that App. 3, Schedule of Photographs was not available at PAC. However, now that App. 3 is available, the photographs are not fit for purpose, having been taken during inclement weather. *Nant Mithil Pre-Application Consultation Common Land Report 8 May 2024.*

- 6.2. CLR 3.56 states, *“The access track construction areas will not be fenced off during the works.”* This is in direct contradiction to the s38 application which states that Heras fencing *“will be used on a rolling basis, ie, only used where there are active works taking place”*, echoed at CLR 5.4. The public cannot be reassured that safety fencing will be used.
- 6.3. Para 3.56 states *“Horse riders and walkers/ramblers will also be able to access the Common to the south, west and north of the working areas by navigating around the active construction areas via the peripheral common land areas.”* And *“The Proposed Development will have an inconsequential effect on public/community amenity use of the Common as a result.”* This is incorrect. Construction works are planned to last a minimum 23 months (Vol 1, 1.9) during which time there will be considerable public inconvenience and loss of amenity.
- 6.4. Riders have no access rights to the common land or Open Country beyond the bridleways and BOAT. Particularly problematic would be where the new track between T17 and T18 meets the easternmost point of the common. Here there would be a bottleneck with groundworks, turbine erection safety distances, a bridleway, a SAM and the Radnor Forest SSSI.
- 6.5. The applicant has barely considered the rights of vehicle users on the BOAT which will become a haul road for the northern part of the site.
- 6.6. In reality, the BOAT and bridleways would require a Temporary Restriction Order during construction as happened at Hendy Wind Farm.

## 7. INTERESTS OF THE COMMONERS

- 7.1. Vol 1, Chapter 10, p10-33 PCC response: *“a. Temporary fencing may be required during construction work, whether to control livestock movement or for ecological reasons e.g. new fencing. If this is across the line of a public path, then separate authorisation is needed under section 147 of the Highways Act 1980 to install a new gate, even if temporary. This authorisation can only be given for the purpose of controlling the movement of livestock or horses. Please note that new gates cannot be authorised under this section of the Highways Act 1980 on the byway open to all traffic. As such, temporary fencing would need to be placed alongside, not across the byway.”*
- 7.2. 7.1 CLR 3.52 states *“The graziers considered the possibility of grazing animals being disturbed by works traffic as a minor adverse effect on the grazing pattern of livestock on the Common during the construction works.”* Nevertheless, construction disturbance could affect the hefting. Taking into account PCC’s response cited above, there are no details about the practicalities of gating 5.5m+ tracks during construction. We do not know how the applicant plans to keep stock from wandering onto or off the common, see CLR 3.37 for hefting patterns.

- 7.3. The matter of the existing and any proposed gates is not addressed. Is the plan for the new tracks to be gated or fenced? The current BOAT is vested in the local Highways Authority (HA). Again, bearing in mind the PCC response, how will the northern access of the widened BOAT be permanently livestock proofed? There is no evidence that there has been a conversation with them regarding how the upgraded BOAT will impact their legal responsibilities, whether the fully expanded BOAT would be vested in the HA, and if the applicant would be legally permitted to “obstruct” the additional width. The commoners and adjacent landowners need reassurance that the new accesses will be stock proof.

## **8. INTERESTS OF THE NEIGHBOURHOOD AND PUBLIC**

- 8.1. The Common Land consents cannot be assessed in isolation. They are necessary to permit enabling works for the construction of 13 out of the proposed 30 wind turbines, a further borrow pit, satellite construction compound and a major watercourse crossing between the common and T25.
- 8.2. The impacts of the development will irrevocably change the experience of the registered common and replacement land because of new and upgraded 5.5m running width tracks (the width of a two lane highway), plus cut and fill and drainage ditches, shadow flicker, wind turbine noise and overbearing wind farm views. These would make the whole Common Land unpleasant for commoners and visitors alike. There is also the possible over-sail from wind turbine T16.
- 8.3. Because bridleways have not been accounted for in the secondary consents there is no consideration of whether they will require permanent diversion because of turbine proximity and how this might take place on the common. Of particular concern is the Northern common land access gate where T21 is very close by and over sails the BOAT. This is an unhappy set of hazards for an equestrian, compounded by a stoney track. Neither do we envisage a rider wishing to exit between T21 and T22. The altered surface of bridleways is not considered. Grass bridleway surfaces changed to stone and route diversions are negative impacts on the neighbourhood and public interest.
- 8.4. We dispute the argument that the new access tracks will green over (3.57). One only needs to look at any local stoned farm access track to see this is not true. Indeed, the applicant’s own photographs in the Common Land Report and ES prove this.

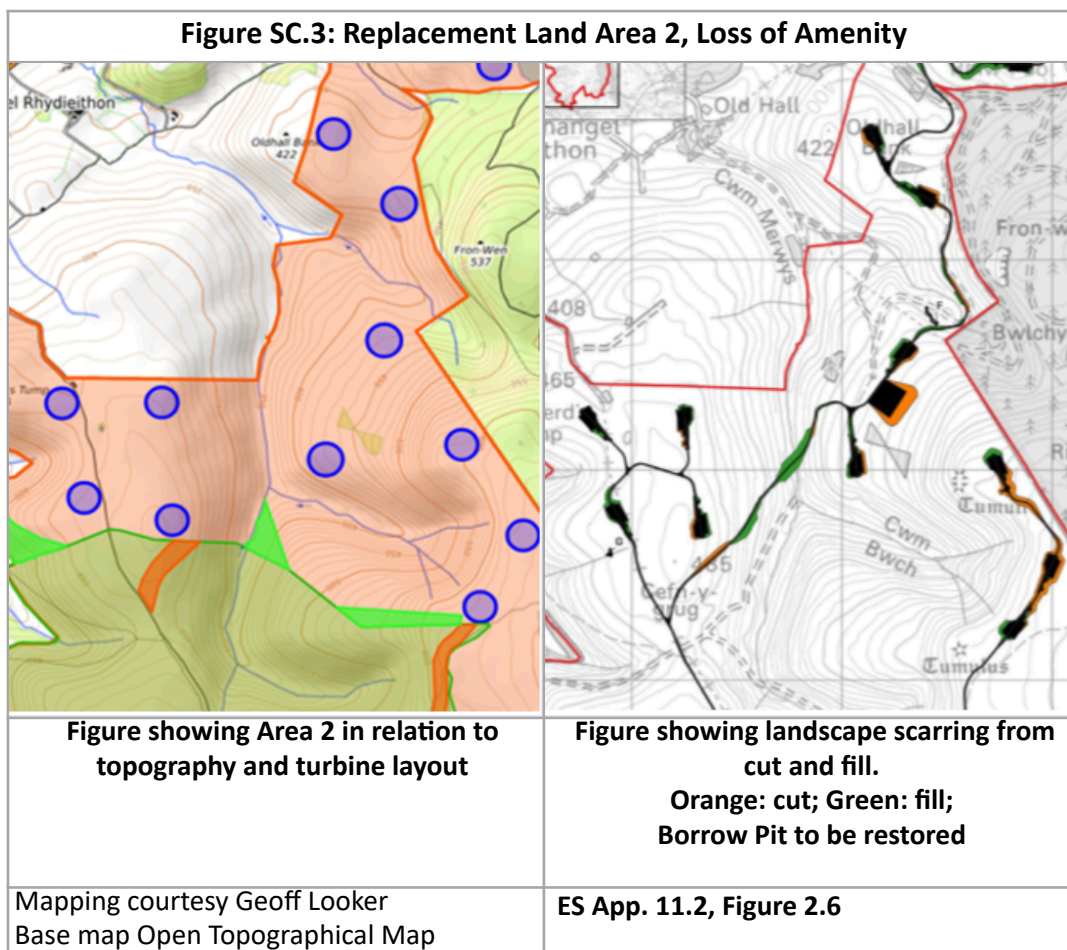
## **9. REPLACEMENT LAND**

- 9.1. We note that replacement land is a much steeper gradient than release land. All three areas are within the Nant Mithil red line boundary and will be significantly adversely affected by the proposed development, (including that proposed in the secondary consents). Replacement Land Area 2 and Area 3 are on land that is Open Country,



therefore there is no benefit for the purposes of access or amenity. This is an unjust exchange of traditional, peaceful Common Land for new Common Land which will be unpleasant to use.

- 9.2. Area 1 includes part of a steep bank, from which there are panoramic views. We consider that this replacement land has little public amenity value because it is an artificial projection of the existing common which would be closely bordered to the East by a 205m wind turbine. We do not believe people would wish to use this land when they can see the same panoramic view from the existing common without a wind turbine overhead.
- 9.3. CLR p39, Area 2, *"The land is to the north of the common adjacent to Cwm Merwys. It is identified in consultation with walking and other amenity groups as being an useful extension to open access to this mountain stream valley side. Those groups consider that inclusion of the land within the Common will have a significant benefit to walkers etc. wishing to stop on their travels over the adjacent common, enter the land to take in the views over the valley."* Walking groups may have said this based on what questions they were asked. As this land already has Open Access from which the views can be seen we believe the exchange is a false offer.
- 9.4. For the reality of Area 2 amenity post construction see Figure 3 below: One would be surrounded by turbines on three sides, each tower base the width of a small living room and each blade longer than a jumbo jet. If one stood halfway down Area 2 looking East, at about 1km away and on ground over 200m higher, 205m high T18, T19 and T20 would dominate. Looking north the *"views over the valley"* would be marred by a new access track and watercourse crossing engineered into both sides of a steep valley, all framed by towering wind turbines and a further engineered access track to the East T25 would be overbearing because of proximity and disconcerting because of its elevation relative to the other wind turbines. The proposed riverine enhancement planting will not mitigate any of this, (app. 7.10, Drawing 1). We seriously doubt anybody would choose to *"stop on their travels over the adjacent common, enter the land to take in the views over the valley"*.



- 9.5. Area 3: Any benefit of moving the common land boundary fence off the SAM would be negated by the new track and T18 being within the setting of the barrow. CADW guidance explains setting is about the surroundings in which an asset is experienced. The visual impact of a 205m turbine, plus moving blades and noise within a few metres of the SAM is a major adverse effect compared to that in which it is currently experienced.
- 9.6. Any person looking north will see an arc of 11 wind turbines with the hub of T25 at or below viewer height. T18 would be within fall over distance of the replacement land.

#### BIODIVERSITY

- 9.7. We believe that the secondary consent proposals will have a negative effect on the biodiversity of common land. There will be damage and loss to s7 upland heath habitats because of track construction. Long undisturbed soils, by their very definition, would be a permanent loss because of the construction activity. Welsh Government have a legal duty to protect and enhance these habitats and we do not think the

proposals align with that requirement or the stated biodiversity objectives in the Common Land Consents Guidance.

## 10. CONCLUSIONS

- 10.1. We believe that the **Secondary Consent Applications Forms are invalid** and that the replacement land **does not fulfil the guidance requirements**.
- 10.2. The applicant has **underplayed the effects** of the development on the common land and replacement land. The applicant has also **failed to pay due attention** to the neighbourhood and public interests, particularly on the rights to users of PROW.

CPRW/RE-think  
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