

Adroddiad

Ymchwiliad a agorwyd ar 16/02/16
Ymweliad â safle a wnaed ar 15/02/16

**gan Clive Nield BSc(Hon), CEng,
MICE, MCIWEM, C.WEM**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 31/03/16

Report

Inquiry opened on 16/02/16
Site visit made on 15/02/16

**by Clive Nield BSc(Hon), CEng, MICE,
MCIWEM, C.WEM**

an Inspector appointed by the Welsh Ministers

Date: 31/03/16

Commons Act 2006

Applications under Sections 16 and 38

Common at Mynydd y Gwair, Swansea

Applications for Deregistration and Exchange of Common Land

and for Restricted Works on Common Land

in connection with

Proposed Mynydd y Gwair Wind Farm

Cyf ffeil/File ref: APP/B6855/X/2015/516138 - 516144

CONTENTS

Preamble	1
Procedural and Background Matters	2
<i>Proposed Wind Farm Scheme</i>	2
<i>Site and Surrounding Area</i>	6
<i>Planning History</i>	9
<i>Current Commons Applications</i>	14
Legislation and Policy	23
Applicant's Case	29
<i>Section 16 Applications</i>	30
<i>Section 38 Applications</i>	49
<i>General Matters</i>	54
<i>Hydrological Concerns</i>	55
<i>Public Recreational Amenity</i>	61
<i>Nature Conservation</i>	64
<i>Conservation of the Landscape</i>	70
<i>Protection of Public Rights of Way</i>	74
<i>Protection of Archaeological Remains etc.</i>	77
<i>Renewable Energy Benefits</i>	81
<i>Socio-Economic Benefits</i>	87
<i>Overall Conclusions</i>	90
Objectors' Case for SOCME	93
<i>Applicant's Witnesses</i>	93
<i>SOCME's Witnesses</i>	101
<i>Glyn Morgan</i>	102
<i>Brigitte Rowlands, WGCA</i>	113
<i>Phil Thomas, Land Agent</i>	120
<i>Gareth Mulligan, Local Vet</i>	123
<i>Gwyn Davies, Local Grazier</i>	126

<i>Floyd Farthing, New Young Grazier</i>	129
<i>Cellan Jones, Local Grazier</i>	131
<i>David Francis, Local Grazier and Water Diviner</i>	133
<i>Clare Moseley, Local Resident & Open Spaces Society</i>	135
<i>Simon Meecham-Jones, Cultural</i>	145
<i>Paul Northcote, Local Resident</i>	148
<i>Barry Stewart, Local Consultant Ecologist</i>	151
<i>John Miles, Pontarddulais Town Council</i>	154
<i>Bunker/Hinton Family</i>	159
<i>Frank Jones, Guest House Owner</i>	161
<i>Alan Richards, Local Walkers' Groups</i>	165
<i>David Edwards, Banwen Miners Hunt</i>	169
<i>Ian Glendenning, Astronomy and Astrophysics</i>	171
Other Objectors' Cases	173
<i>Dr Altaf Hussain AM</i>	174
<i>Robin Kirby, The Gower Society</i>	178
<i>Jonathon Carter, Local Resident</i>	184
<i>Cllr Ioan Richard, Local Ward County Councillor</i>	185
<i>Charles Weiswall, Proprietor A1K9</i>	190
<i>Brian Humphreys, Local Resident and retired Commons Reg. Off.</i>	191
<i>Charles Hill, Local Resident and retired Archaeologist</i>	192
Written Representations	195
Conditions in Respect of Section 38 Applications	203
Conclusions	206
<i>Introduction</i>	206
<i>Section 16 Applications</i>	211
<i>Interests of Commoners</i>	212
<i>Interests of the Neighbourhood</i>	225
<i>Public Interest</i>	229

<i>Any Other Relevant Matters</i>	245
<i>Overall Conclusion</i>	249
<i>Section 38 Applications</i>	253
Recommendations	262
Appearances	
Inquiry Documents	
Plans Submitted at the Inquiry	

File Refs: APP/B6855/X/2015/516138 - 516144

Site address: Common Land at Mynydd y Gwair, Swansea

- The 7 applications were made under Sections 16 and 38 of the Commons Act 2006 on 11 September 2015.
 - The applications were made by RWE Innogy UK Ltd to the Welsh Ministers.
 - The development proposed is the Mynydd y Gwair Wind Farm.
 - The inquiry sat for 4 days on 16-18 and 23 February 2016.
-

Application A - File Ref: APP/B6855/X/2015/516138

- This application was made under Section 38 of the Commons Act 2006.
- The application was made for the surfacing and improvement of the proposed access route, including associated retaining structures, to allow delivery of turbine components and future maintenance of the proposed wind farm and installation of gates and cattle grids.
- The works would comprise 525 m of new track and 2,390 m of upgraded track and would occupy an area of 23,580 sq m on Common Land Unit CL68, Gopa Hill Common. The works are expected to take 14 months.

Summary of Recommendation: That consent be not granted.

Application B - File Ref: APP/B6855/X/2015/516139

- The application was made under Section 38 of the Commons Act 2006.
- The application was made for the erection of fencing to protect the Scheduled Ancient Monument GM202 for the duration of the works to provide an access track in close proximity to it.
- The works would comprise 120 m of fencing and would enclose an area of 900 sq m on Common Land Unit CL74, the Mynydd Pysgodlyn, Graig-y-Bedw, Pentwyn Mawr, Banc Myddfal, Garn Fach and Banc Darren Fawr Common. The works are expected to take 12 months.

Summary of Recommendation: That consent be granted

Application C - File Ref: APP/B6855/X/2015/516140

- The application was made under Section 38 of the Commons Act 2006.
- The application was made for the erection of fencing to protect the undesignated historic asset MG62 for the duration of the works to provide an access track in close proximity to it.
- The works would comprise 48 m of fencing and would enclose an area of 144 sq m of Common Land Unit CL77, the Mynydd y Gwair Common. The works are expected to take 12 months.

Summary of Recommendation: That consent be granted

Application D - File Ref: APP/B6855/X/2015/516141

- The application was made under Section 38 of the Commons Act 2006.
- The application was made for ditch improvement works alongside Rhydypanyd Road (Golden Mile) to deter vehicular access on to the common.
- The works would comprise 242 m of ditch and cover an area of 484 sq m of Common Land Unit CL77, the Mynydd y Gwair Common.

Summary of Recommendation: That consent be granted subject to a condition.

Application E - File Ref: APP/B6855/X/2015/516142

- The application was made under Section 16 of the Commons Act 2006.
- The application was made for an area of common land to be deregistered (the "release land") and for land to be given in exchange (the "replacement land").
- The release land comprises an area of 12.31 hectares of Common Land Unit CL77, the Mynydd y Gwair Common. The replacement land comprises an area of 12.5 hectares of land at Blaen yr Olchfa, Craig Cefn Parc, owned by the Trustees of the Somerset Trust.

Summary of Recommendation: That an order be made.

Application F - File Ref: APP/B6855/X/2015/516143

- The application was made under Section 16 of the Commons Act 2006.
- The application was made for an area of common land to be deregistered (the "release land") and for land to be given in exchange (the "replacement land").
- The release land comprises an area of 25.75 hectares of Common Land Unit CL74, the Mynydd Pysgodlyn, Graig-y-Bedw, Pentwyn Mawr, Banc Myddfal, Garn Fach and Banc Darren Fawr Common. The replacement land comprises an area of 17.42 hectares of land at Blaen Gerdinen and land adjacent to Blaen Nant Ddu, owned by the Trustees of the Somerset Trust.

Summary of Recommendation: That an order be made.

Application G - File Ref: APP/B6855/X/2015/516144

- The application was made under Section 16 of the Commons Act 2006.
- The application was made for an area of common land to be deregistered (the "release land") and for land to be given in exchange (the "replacement land").
- The release land comprises an area of 2.36 hectares of Common Land Unit CL68, the Gopa Hill Common. The replacement land comprises an area of 1.24 hectares of land adjacent to Cwmdulais Cottage, owned by Mr Alan Brayley.

Summary of Recommendation: That an order be made.

Preamble

1. This report includes brief descriptions of the proposed wind farm scheme, the site and surrounding area, the planning history, the current commons applications, and the relevant legislation and policy, as well as the gist of the representations made, my appraisal and conclusions and my recommendations. Document references are shown in brackets, and in my conclusions the numbers in square brackets indicate the relevant paragraphs of the report. Details of the people who took part in the public inquiry and comprehensive lists of documents are attached at the end of the report. Documents are denoted CD for core documents and INQ for inquiry documents.

Procedural and Background Matters

Proposed Wind Farm Scheme

2. The applications are made to facilitate the construction of the Mynydd y Gwair wind farm, which was granted planning permission by the City and County of Swansea Council on 10 March 2014 (Ref 2012/1221 – see CD1.17). The scheme is described as: “Installation of 16 wind turbines (maximum height to blade tip of 127 metres with a hub height of 80 metres), with a maximum generating capacity of 48 MW, associated tracks and ancillary infrastructure (including permanent and temporary anemometer masts, electrical substation compound, hardstandings, transformers and underground cabling) and construction of a new access track from the A48 (Bolgoed Road at Pontarddulais) (approximately 14.54 km in length) incorporating improvements to 3.9 km of an existing road across Mynydd Pysgodlyn”. The A4 size map at Document INQ5.1 provides a simple overview of the scheme with greater details shown on Plans B and C.
3. The large aerial photograph at Document INQ5.12 shows the areas of common land affected by the scheme. The first 330 m of new track from Bolgoed Road would be over ordinary farmland before it entered the Gopa Hill Common (Common Land Unit CL68). The track (partly new track and partly an upgrade of an existing length of track) would pass along the edge of CL68 and join the existing public highway, Heol y Barna (see Plan B). The public highway would then be improved and widened over Craig y Bedw, past the “Five Ways” junction and over Mynydd Pysgodlyn, passing on to Common Land Unit CL74 on the way.
4. The track would then leave the public highway at Heol Glyn Dyfel (near Blaen Nant Ddu Farm), and a new track would be constructed over Mynydd Garn-Fach to the wind farm site (see Plan C). The track would then continue over CL74 to link the 9 wind turbines on that common and the substation just outside its western edge and would then run eastwards and southwards to link the 7 wind turbines on Common Land Unit CL77. A final short stretch would then connect to the Rhydypany Road to the east (known locally as the Golden Mile). In total about 14.5 km of new access track would be built.
5. In addition to the access track and the 16 wind turbines, ancillary development would comprise a rectangular crane hard-standing (for construction, maintenance and eventual dismantling) and electricity transformer adjacent to each wind turbine, cabling and a permanent wind monitoring mast. A temporary construction compound would also be required close to the entrance of the wind farm site. The electricity generated would be exported from the substation to the existing 132 kV grid line that crosses CL74 (see Plan C).

Site and Surrounding Area

6. The majority of the common land affected is grazed moorland, registered as common land and owned by the Somerset Trust. The 3 commons affected are 85 ha (CL68), 837 ha (CL74) and 876 ha (CL77) in total area and are subject to grazing rights attached to a substantial number of properties. Approximately 120 graziers exercise their rights relating principally to grazing sheep, cattle, horses and ponies on the

commons. The flocks of sheep and cattle generally keep to the traditional areas they are accustomed to, known as "hefts", though there are no physical boundaries.

7. The main part of the wind farm site is on the south facing slopes of Mynydd y Gwair and Pentwyn Mawr on land rising up to some 360 m above sea level. It is part of a generally upland, open area between Ammanford and the northern outskirts of Swansea and lies about 5 km south west of the edge of the Brecon Beacons National Park. The whole of the site lies within the Banc Darren Fawr Site of Importance for Nature Conservation (SINC). The route of the proposed access road passes across a narrow strip of common (CL68) to the north east of Pontarddulais and then across an area that opens out on to open moorland. The Upper Lliw Reservoir (a public water supply reservoir) lies to the south of the proposed wind farm site, and the recently constructed Mynydd y Betws wind farm lies to the north of it.
8. Views from the proposed wind farm site are wide-ranging and extensive. Within the site views are varied, encompassing undulating uplands, the valleys of several small watercourses, the Upper Lliw Reservoir and its surroundings, and some isolated farmsteads and small communities. The site is crossed by several public rights of way, including the Gower Way and the St Illtyd Way (both long distance routes) and the Lliw Valley Walk, a local recreational route. There are also a number of heritage assets within and around the area of the proposed works. These various features may be seen on the figures included in Volume 3 of the Environment Statement (CD1.34-1.63).

Planning History

9. The proposed wind farm site lies within Strategic Search Area (SSA) E as identified in Technical Advice Note (TAN) 8, Planning for Renewable Energy. An application for planning permission for a wind farm (19 turbines) at Mynydd y Gwair was first made in 2008, and an appeal against the Council's failure to determine it was considered at a public inquiry in July/August 2010. 5 commons land applications under Section 147 of the Inclosure Act 1845 and Section 194 of the Law of Property Act 1925 were also considered. The planning appeal was refused on account of the effects of the scheme on the peat habitat, and the section 147 applications (for exchange of common land) were refused on account of concerns about arrangements for management of the exchange land and its distance from the areas of commons CL68 and CL74 affected by the proposed scheme. (See Inspector's report at CD1.16).
10. The scheme was then modified and a proposal for a 16 wind turbine scheme was submitted to and granted planning permission by the City and County of Swansea Council on 10 March 2014 (Ref 2012/1221 – see CD1.17). That permission is an important material consideration in many aspects of the current commons applications. The Council's committee report is at document CD4.10.
11. In December 2013 corresponding applications were made under the Commons Act 2006 (2 under Section 16 and 4 under Section 38), and these were considered at a public inquiry in March and November 2014. With the exception of the Section 38 application for the erection of a temporary meteorological anemometry mast and associated fencing, the applications were refused by the Welsh Government on 25 June 2015.

12. One application, under Section 38, was in respect of the construction of the proposed access track on CL68. That was refused because of concerns about effects on hefting and public rights of way, the possible impact on drainage in the Gopa Hill area, shortcomings in proposals to reinstate the land to its current condition after construction of the track, and failure to explain why an alternative access closer to the wind farm site would not be feasible. The 2 applications for deregistration and provision of replacement land for CL74 and CL77 were refused on account of potential adverse effects on grazing rights during construction, inappropriate replacement grazing land, adverse effects of fencing on the landscape and public access, and the change in the character of the commons. The 2 applications under Section 38 (for temporary fencing around historic monument sites) were considered acceptable but were refused because they were dependent on the other applications being successful. The Welsh Government's decision and the Inspector's report are at document CD1.18.
13. Returning to the planning permission, in November 2015 applications were made to discharge many of the planning conditions: C6 and C10 (Construction Traffic Management Plan); C7 (Construction Method Statement); C12 (water mains); C15 (Habitat Management Plan); C16 (Species Monitoring Plan); C17 (Invasive Plant Species Method Statement); C21 (Building Control); C22 (Enclosure); C23 (Grid Connection Method Statement); C24 (shadow flicker); C25 (television reception); C26 and C27 (archaeology); C29 (Scheduled Ancient Monument fencing); C30 (Hydological Monitoring Plan); C31 (SUDS design); and C32 (watercourse buffer). This application pack is in 3 volumes at CD3. They were put out to consultation, and details of the comments received up to the date of the public inquiry are included in a folder at INQ6. The Applicant's responses to those comments are reproduced at document INQ7. One of the aims of submitting the conditions applications at the time was to ensure the decision maker on the current commons applications was more fully informed on these matters than for the previous applications.

Current Commons Applications

14. On the whole, the applications are adequately described in the bullet points above. However, several matters are worth further explanation. Firstly, there are 2 applications for CL68. Application A, under Section 38, is for construction of the access track through the common. Application G, under Section 16, is to deregister the strip of common land needed for construction of the track (some 10 metres wide to construct a track 5 m wide) and to provide replacement land in exchange. No further consent would be needed to construct the access on deregistered land. Approval of either of these applications would enable the track to be constructed.
15. The locations of the proposed replacement land for the 3 commons may be seen on the A4 map at INQ5.1 or on the larger plans, Plans B and C. The CL68 replacement land at Cwmdulais Cottages is numbered "1" on the A4 map; the CL74 replacement land at Blaen Gerdinen and Blaenant Ddu is numbered "8" and "7" respectively; and the CL77 replacement land at Blaen Yr Olchfa is numbered "10".
16. All applications are made with the support of the owner of the 3 commons, the Somerset Trust. The Somerset Trust also owns 3 of the parcels of land proposed as replacement land. The fourth, at Cwmdulais Cottages, is owned by Mr Alan Brayley, who is also party to that application. Application A, for construction of the access track

through CL68 under Section 38 of the Act also involves a section of the public highway, which for the purposes of the Commons Act is owned by the Highway Authority. The City and County of Swansea Council has agreed to join the application in its statutory capacity (letter at INQ5.2).

17. The 7 applications have been publicised in accordance with the Deregistration and Exchange of Common Land and Greens (Procedure) (Wales) Regulations 2012 in respect of the Section 16 applications, and the Works on Common Land, etc. (Procedure) (Wales) Regulations 2012 in respect of the Section 38 applications. In response, a large number of objections and comments were submitted to the Planning Inspectorate (document pack CD2.1), and the Applicant prepared a formal response to the representations (CD2.2).
18. The applications are accompanied by a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990, which aims to provide for certain measures to be implemented in connection with the commons applications. The Undertaking is at INQ34, and its measures are as follows:
 - the establishment of a Management Group to address issues in connection with the management of the replacement land and to manage payments from the fund set up by the Applicant;
 - the establishment of a fund to be managed by the Management Group to make payments to registered commoners in respect of Replacement Land Applications, Shepherding Applications and Basic Payment Scheme Shortfall Applications; the fund will comprise £40,000 for the Replacement Land Applications, £300,000 for Shepherding Applications during the construction period, £100,000 for Shepherding Applications during the decommissioning period, and €95,000 for the Basic Payment Scheme Shortfall Applications (an EU based payment in Euros);
 - the provision of pedestrian access to the Replacement Land, the grant to the public in perpetuity of the right to pass over the land released after the construction period, and the grant to commoners in perpetuity of rights to use the access tracks and crane hardstanding areas and to graze animals to the extent of their present rights over the release land;
 - the cessation of use of rights of common enjoyed by the Somerset Trust, as owner of several adjoining farmsteads, until the decommissioning has been completed;
 - the cessation of construction works on 8 Saturdays each year to avoid conflict with the Banwen Miners Hunt's use of the commons;
 - the commitment by the landowner and developer to try to rededicate the release land under the Commons Act 2006 on completion of decommissioning of the scheme if the law permits rededication at that time (it does not at present); and
 - implementation of the Rhododendron Eradication Scheme detailed in the Appendix to the Undertaking.
19. The Commons Act 2006 makes no provision for additional requirements to be imposed on a successful Applicant, and there is no provision for conditions to be applied to a

Section 16 application. Section 106 of the Town and Country Planning Act 1990 enables covenants to be given to local planning authorities not only in the context of planning applications but at any other time, provided they are for a planning purpose. The principle that they may be used in the context of commons applications has been established for similar applications in Lancashire (see CD13.7), and the previous set of Mynydd y Gwair commons applications considered at the 2014 public inquiry also included such an Undertaking. The Unilateral Undertaking is a material consideration for these applications.

20. The current applications are different from those considered at the previous public inquiry and determined by the Welsh Government in 2015. The main differences may be summarised as: an increase in the area of Release Land from 34.5 ha to 40.4 ha; an increase in the area of Replacement Land from 19.4 ha to 31.2 ha, of which the area suitable for grazing is increased from 14.4 ha to 30.9 ha; an increase in the equivalent grazing from suspension of the Somerset Trust's grazing rights from 19.1 ha to 41.3 ha, raising the overall grazing benefit from 29.5 ha to 64.2 ha; an increase in the Replacement Land sum from £20,000 to £40,000; and the new introduction of a Basic Payment Scheme Shortfall sum of €95,000 (see INQ5.10). In addition, considerably more information has been provided on how the scheme would be implemented and on the safeguards that would be included through the submissions to the Council for the discharge of planning conditions.
21. The power to determine applications under Section 16 of the 2006 Act rests with the Welsh Ministers. For consistency and to enable all matters to be considered together, jurisdiction for the applications made under Section 38 have been recovered by the Welsh Ministers. I held a pre Inquiry meeting in Swansea on 16 December 2015, which was attended by the Applicant and their representatives, by representatives of the Save Our Common Mountain Environment community group (SOCME) which has coordinated the objections of the commoners and most other local objectors, and by several independent local objectors.
22. The public inquiry itself sat for 4 days: 16–18 and 23 February 2016, and I carried out a comprehensive site visit with representatives of the main parties on 15 February 2016. The A4 map at INQ5.1 illustrates the itinerary for the site visit. At the close of the inquiry I allowed a 10 day period for the completion of the final signed Unilateral Undertaking, which was submitted on 4 March 2016 (INQ34).

Legislation and Policy

23. Section 16(6) of the Commons Act 2006 specifies that the decision maker shall have regard to:

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

(b) the interests of the neighbourhood;

(c) the public interest; and

(d) any other matter considered to be relevant."

24. Section 16(8) further clarifies that “the public interest” in 16(6)(c) includes:

“(a) nature conservation;

(b) the conservation of the landscape;

(c) the protection of public rights of access to any area of land; and

(d) the protection of archaeological remains and features of historic interest.”

25. Sections 39(1) and (2) specify the same matters in respect of Section 38 applications. In addition, Section 39(3) says that consents given under Section 38 may be “*in relation to all or part of the proposed works*” and “*subject to any modifications and conditions relating to the proposed works as the appropriate national authority thinks fit*”. Sections 16, 17, 38 and 39 of the 2006 Act are reproduced at document CD10.1.

26. The Welsh Government’s policy and guidance on commons applications is contained in “Welsh Government – Common Land Consents Guidance” published in August 2014 (CD6.1). It explains why common land is important and that the Welsh Government wishes to see common land delivering economic, agricultural, biodiversity, archaeological, recreational and cultural benefits. It identifies policy objectives: to reverse the decline and secure the resilience of biodiversity by focusing on ecosystems as a whole and their connection with the economy and local communities; and through the sustainable use of resources, to drive growth and improve the resilience, safety and prosperity of local communities, the economy and the environment.

27. The Guidance says the 2006 Act 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.

28. The Guidance also provides further advice that, in considering applications under Sections 16 and 38, the Welsh Government will take into account whether the application proposes the best possible outcome. It also provides guidance on the matters to be taken into account under the 4 headings in Sections 16(6) and 39(1) of the Act.

Applicant’s Case

29. The Applicant’s main case is presented in the statements of evidence of Mr Hadley (interests of commoners – CD5.1), Mr Denney (landscape character, visual amenity and access matters – CD5.3), Mr Woodfield (nature conservation – CD5.5), Ms Jeans (hydrology – CD5.7), Mr Cradick (general explanation of scheme, planning considerations, policy and need – INQ5.10 & CD5.9), Mr Kimber (archaeology – CD5.11) and Mr Oxtoby (veterinary matters, particularly liver fluke – CD4.7). Several additional notes were presented at the inquiry, and the case is summarised in Mr Trinick’s closing submissions (INQ33).

The material points are:

Section 16 Applications

30. RWE acknowledges that disturbance to users of the common would occur during the construction stage but various measures are proposed to minimise this and to compensate graziers of the commons for any implications for them. In recognition of likely additional shepherding costs during the construction stage (and decommissioning stage), provision has been made in the Unilateral Undertaking (INQ34) for a sum of £300,000 to be made available (plus £100,000 during decommissioning) to compensate for the extra costs. That provision may also be used to support other work on the farms to release the graziers themselves to attend to their flocks on the common. The Undertaking also includes provision to ensure that any shortfalls in payments under the Basic Payments Scheme (a major source of income for the graziers) would be reimbursed. These would be administered by a Management Group set up under the Unilateral Undertaking and comprising representatives of the West Glamorgan Commoners Association (WGCA) and commoners from each of the 3 commons as well as the developer, landowner and a professional Surveyor.
31. One of the objectors' particular concerns is the passage of stock and walkers through the construction works and the risks of ewes becoming separated from their lambs. These are matters that might lead to extra shepherding costs. However, the construction method would also aim to minimise such problems by providing regular secure crossing points for sheep and people. The access track would be constructed within a working corridor generally 10 metres wide (wider at bends), and over Commons CL74 and CL77 it would be built with crossing points every 300 metres. Using a combination of gates and cattle grids (see Plan C) these would provide free access for sheep and walkers throughout the construction period, except on the infrequent occasions when abnormally large loads were passing along the track (for delivery of wind turbine parts). The temporary construction fencing would be kept in place for up to 12 months after completion of construction to allow ground and habitat restoration to become established and would then be removed completely to allow unlimited access for walking and grazing.
32. On Common CL68 there is less grazing pressure and there would be no need to fence the area for restoration. Over that common the track would be constructed in 100 metre lengths, and only that 100 metres would be fenced at any time. Access for the A1K9 dog training centre (see Plan B) would be maintained at all times.
33. Graziers have expressed concern about disturbance to stock due to vehicle movements during construction. However, these would not be particularly frequent. Peak vehicular activity would be between months 10 and 13 of the construction period (see Table 12.4 in the Environmental Statement, document CD1.25) and would amount to some 3-4 vehicles per hour over an 11 hour working day. However, some of these would be workers' cars and other light traffic, and they would generally only be on part of the site. In other months of the construction period traffic levels would be less, considerably less during most of the period. In addition, all site traffic would be limited to a speed of 15 mph.
34. It is not considered that these patterns of traffic would represent a significant disturbance to the grazing stock, which would soon become used to the movements, as they no doubt have to the faster traffic along Rhydypanyd Road through CL77. Since

- the previous applications were considered at the 2014 public inquiry the Construction Method Statement has been submitted to the Council for approval (as part of the conditions discharge pack, document CD3 Volumes 1-3) and contains comprehensive details of how the construction process would be managed. Consequently, considerable weight can now be attached to RWE's evidence on construction disturbance.
35. Concern has also been expressed about the quality of restoration experienced on the commons following a gas pipeline project a few years ago and for the recent Mynydd y Betws Wind Turbine scheme on an adjacent common. These do not appear to have been well managed and have resulted in poor restoration of the grassland and substantial growth of reeds. RWE has extensive experience of wind farm construction and is confident that the proposed Construction Method Statement and restoration proposals contained in its recent conditions discharge pack submitted to the Council would ensure restoration of a suitable standard. This would be further assured by appropriate supervision. An Ecological Clerk of Works would be employed, as required by a condition attached to the planning permission, who would have the power to stop construction if the approved construction processes were not carried out. In addition, RWE has entered into a Planning Performance Agreement with the Council to fund a dedicated Council enforcement officer for 50% of the time to ensure compliance with the planning conditions would be actively monitored and enforced.
36. In the recent decision on the Circuit of Wales scheme (CD13.12, paragraph 34) the Welsh Ministers accepted that such matters could be adequately addressed through the planning system, and it is submitted that the provisions in the Unilateral Undertaking and the recent conditions pack submitted to the Council would ensure that construction disturbance to the graziers would be satisfactorily minimised.
37. During the long-term operational phase of the wind farm there would be very little traffic movement, and there appears to be far less concern about any effects on commons rights. The main one seems to be about access for unlawful off-road vehicular activity. This is an existing problem on the commons, and the commoners have been working with the police to manage it, reportedly with some success. The new access tracks proposed for the wind farm would not encourage these unlawful activities, as entrances from the public highways would be gated and controlled (see Plans B and C). In addition, Section 38 Application D, for improvements to a ditch alongside Rhydypanyd Road, is aimed at making access to that part of Common CL77 more difficult. The advent of the wind farm would not make such unlawful activities any worse.
38. Turning to the proposals for areas of replacement land themselves, provision would be made for them to be managed by the WGCA and the commoners themselves, as clearly that would be the only way they could be managed once registered as common land. To support that management, the Unilateral Undertaking makes provision for a Replacement Land Sum of £40,000 to be used as necessary for those new parcels of common land. Although the operational infrastructure of the wind farm would only occupy a very small area of each common, RWE felt compelled to provide replacement land because of the terms of the 2006 Act.
39. Whilst most of the release land (32.39 ha of 40.42 ha Release Land over the 3 commons) would be relicensed for grazing and access during the operational period of

the wind farm on terms comparable to present rights of common, users of the commons would benefit from an additional 31.16 ha of replacement land. In addition, on CL74 and CL77 the suspension of the Somerset Trust's own grazing rights would be equivalent to some 41.33 ha of land, and on CL68 the rhododendron clearance would bring a significant area of land back into grazing use. Thus, overall there would be a substantial gain in the area of land available as common land or equivalent. These figures are detailed in INQ5.10.

40. Several commoners have raised doubts about how the areas of replacement land would be used as they would not be very conveniently located to serve the flocks temporarily displaced from parts of their hefts. Some people have also suggested that sheep would be particularly attracted to the sweet grass offered by some of the replacement land. However, it seems to have become generally accepted during the course of the public inquiry that there would be a ripple effect with sheep from hefts closest to the replacement land tending to move to use that land, thus allowing sheep further away to use land vacated by that flock. There is no evidence to suggest the ripple effect would be dramatic or would extend over a lengthy distance, but the natural pressures between adjoining flocks would be adjusted to accommodate the disruption caused to some hefts directly affected by the construction works. Even on CL74, where the rights of some graziers only apply on parts of the common, there is no evidence that the ripple effect could not be acceptably accommodated. The commoners themselves maintain that the 3 commons are not overgrazed. Thus it is submitted that the areas of replacement land, supported by the suspension of the Somerset Trust's rights, would provide adequate compensation for the areas of grazing temporarily lost.
41. The quality of some of the replacement land has been criticised, particularly that it is wetter land likely to give rise to increased problems with liver fluke, which relies on wet conditions for part of its lifecycle. However, this is already described as "prevalent" or "endemic" by the veterinary expert witnesses, as the commons already contain substantial areas of wetter land which cannot be fenced. It is also generally accepted that sheep on the commons already drink water from ponds and other wet areas, thus inevitably already coming into contact with the potential for liver fluke. Hence the stock kept on the commons are already subject to a robust treatment programme against liver fluke, and the inclusion of some wetter land in the Replacement Land offered would not make the risks of liver fluke any worse.
42. Some mention has been made of the principle of equivalence between release land and replacement land. The Welsh Government's Guidance 2014 (CD6.1) advises that "*on balance any deregistration of registered land should be balanced by the registration of other land of at least equal benefit*". However, Section 16 of the 2006 Act does not specify any such equivalence. It is noteworthy that in the recent Circuit of Wales decision (CD13.12) the Welsh Ministers accepted the Inspector's assessment that in practice the replacement land in that case did not provide equal benefit but was probably the best that could be secured, and that the benefits of the scheme more than outweighed the disbenefits, including the failure to provide equivalent land.
43. There will always be challenges in finding replacement land of equivalent quality and convenience to the release land, and it will never provide benefit to all commoners equally. Thus the policy aim in the Guidance presents an impossibly purest approach,

and it is submitted that it should be acceptable for an applicant to have genuinely provided the best replacement land package available, particularly as the 2006 Act itself simply requires the provision of replacement land.

44. Finally, comments are made in respect of the particular circumstances of each of the 3 Section 16 applications. For CL68 the applications under Sections 16 and 38 are alternatives. The Section 16 application is made purely to comply with the advice in paragraphs 4.13 and 4.14 of the Welsh Government's Guidance 2014 (CD6.1) that applications for energy generation proposals on common land "*are more likely to be successful under section 16 of the 2006 Act, so that an exchange of land is proposed and can be taken into account*" and that "*An application for consent for such works under section 38 will rarely be granted unless there are convincing reasons why an application under section 16 cannot be pursued*". The logic behind this policy is not clear. In this case the loss of grazing potential on the common would be minimal and would be more than replaced by the increased grazing potential offered by the proposed rhododendron clearance and management measures. RWE would be able to carry out the proposed works whichever application were approved.
45. The replacement land for CL68 (see Plan B or INQ5.1) is not ideally situated for the commoners of CL68 and is overgrown and would need work to make it usable for grazing (using funds from the Replacement Land Sum). The objectors have been highly critical of its potential. However, it is the only land that is available adjacent to that common, and it is put forward to meet the policy detailed above.
46. Two areas of replacement land are proposed for CL74: Blaen Gerdinen and Blaen Nant Ddu (see Plan C or INQ5.1). The land at Blaen Gerdinen is partially improved land and would provide better grass than is generally available elsewhere on the common, leading some graziers to express concern that sheep would be attracted to it from far afield. However, the gate between this land and the adjoining common appears to have been left open for some time, and the land has been used by sheep belonging to the grazier of the adjoining heft, who has rented the land. Clearly, this provides evidence that the ripple effect on hefts would be more likely to occur than sheep being attracted to the sweet grass from further afield.
47. The land at Blaen Nant Ddu is well placed for some commoners and, although not of particularly good quality (it is quite wet), has been used for grazing during the drier months of the last 2 years, and the rushes and grass have recently been topped-off. The Replacement Land Fund may enable improvements to be made, and it would provide some benefit for replacement grazing.
48. Replacement land for CL77 is proposed at Blaen yr Olchfa (see Plan C or INQ5.1). This land is currently rented to the grazier of the adjacent heft who, based on the ripple effect, would be the same commoner likely to benefit from its registration as common land. Thus arguments that the land is wet and likely to increase risks of liver fluke become somewhat academic. The adjoining common land is similar in character and some is equally wet. The area of land proposed in this location is considerably more than in the application considered at the 2014 public inquiry (see Plan A for the comparison) and much of it is relatively dry. It is well placed for CL77 and would provide useful replacement common land.

Section 38 Applications

49. The works proposed under the 4 No. Section 38 applications are all within the definition of "restricted works" in Section 38(2) of the 2006 Act and so require consent. The application for construction of the access track through CL68 is an alternative means of achieving this rather than through the application for deregistration of the strip of land concerned under Section 16 of the Act. Thus the Applicant's case is similar to its case for the Section 16 application in almost all respects. However, two matters not dealt with above are the clearance of rhododendron on CL68 and an explanation of why the access track from Pontarddulais would be needed. On the latter, access via the A48 Bolgoed Road is the only feasible route for the exceptional loads involved in transporting the wind turbine parts. They would be too heavy to gain access via Rhydypany Road due to the presence of 2 old bridges on the route which would not be able to carry the load. When they leave the site the vehicles would be shorter and lighter and able to use Rhydypany Road.
50. The Unilateral Undertaking includes proposals to clear and maintain clear for the duration of the operational life of the wind farm a substantial area of common currently subject to widespread rhododendron growth (see map in Appendix 2 of the Unilateral Undertaking – INQ34). The WGCA has not been particularly supportive of this benefit as it is currently undertaking this work itself with the benefit of funding under the Glastir scheme. However, that funding only lasts for 5 years and there is no guarantee of further funding beyond that. The Undertaking would provide that guarantee and help to ensure the cleared area became available as grazing land for the benefit of the commoners, including its eligibility for increased claims under the Basic Payment Scheme.
51. Two of the Section 38 applications are for the provision of temporary fencing around sites of archaeological interest to ensure they would not be damaged during construction works. One would protect the Scheduled Ancient Monument, Penlle'r Bebyll Cairn (Monument GM202 on Plan B) close to Heol y Barna on CL74. The other would protect an undesignated heritage asset close to one of the wind turbines on CL77 (MG62 on Plan C). The fences would still allow access for grazing by sheep and would be removed on the completion of construction of the wind farm.
52. Finally, Application D is for ditch improvement works alongside Rhydypany Road on CL77. Although the wind farm could be constructed without these works, they are proposed in order to provide a benefit to the common by deterring unauthorised off-road vehicular access. The works would restore the ditch to its previous apparent depth. Although not included in previous applications for works on the common as it was considered to fall within the definition of maintenance rather than "restricted works", on this occasion a more cautious view is being taken and an application is being made under Section 38.
53. The only potential environmental effects of the proposed ditch works relate to the private water supply to Lygos Farm to the east (see Plan C), which takes its water supply from a spring fed by a small watercourse, the catchment of which includes the area of the ditch. The proposed Construction Method Statement (CMS) for the ditch improvements (CD4.5) includes measures to contain silt and avoid other pollution, and the water supply to Lygos Farm would be adequately protected. The scale of the works

proposed are illustrated by the plans in the CMS, which indicate the ditch would be deepened by only about 0.25 m.

General Matters

54. The 2006 Act specifies that, in addition to the interests of commoners, the decision maker shall have regard to the interests of the neighbourhood (in this case comprising hydrological concerns and public amenity in connection with access to the common), the public interest (including nature conservation, conservation of the landscape, the protection of public rights of access to land, and the protection of archaeological remains and features of historic interest) and any other matter considered to be relevant (in this case the need for and the benefits of generating renewable energy, and socio-economic benefits). Each of these matters is considered below.

Hydrological Concerns

55. Four particular matters were raised under this heading: private water supplies, public water supplies, flood risk and effects on peat. Each of these has been addressed by RWE's hydrology witness, Ms Jeans (CD5.7), and in various studies contributing to the Environmental Statement. The conditions discharge pack (CD3.1 Volumes 1-3) also includes a series of relevant proposals relating to water mains, hydrological monitoring, sustainable drainage design and protection of watercourses, demonstrating RWE's thorough attention to these matters. The objectors have not presented any expert evidence on these topics.
56. Several properties are served by private water supplies with catchment areas that include land affected by the proposed wind farm construction works. Although the works would only affect a small part of any catchment, these have all been investigated and the proposed construction methods have been designed to minimise any potential for disturbance. These include detailed mitigation proposals and proposals for regular monitoring of each water supply and catchment so that, in the unlikely event of any effects, they would be identified early to allow corrective measures to be taken. However, RWE's studies have indicated that the works would be most unlikely to affect any of the private water supplies on the areas of common concerned.
57. Dŵr Cymru Welsh Water (DCWW) has been consulted about the proposed scheme as part of the wind farm would be within the catchment area of the Lliw Reservoirs, which are public water supply reservoirs. Subject to suitable controls over the construction methods DCWW was satisfied there would be no material effects on public water supplies, and the proposed Construction Method Statement provides appropriate safeguards.
58. Some objectors raised concerns about increased risks of flooding at Pontarddulais due to the construction of the new access route from Bolgoed Road (A48) and over Gopa Hill. This area has been the subject of a flood risk study, which included a drainage strategy (see Appendix to the SUDS Design Statement submitted as part of the conditions discharge pack – Part 15 in CD3.1 Volume 3). The drainage of the access track has been designed to ensure there would be no impact on risks of surface water flooding in Pontarddulais or anywhere else on the route.

59. Mention has been made of coal seams at Gopa Hill but these are at least 60 metres below the level of the proposed track. A disused underground reservoir has also been mentioned but that is some distance over the brow of the hill. Neither of these features would be affected by the proposed works, and the drainage of the proposed track would not give rise to any increased risks of flooding via subsurface routes.
60. As for disturbance of peat deposits, an updated Carbon Balance Report has been produced (INQ5.4) in response to comments on behalf of the Open Spaces Society but the carbon payback period for the scheme would still be only marginally over a year. The layout of the wind farm scheme has been designed to avoid deep peat deposits.

Public Recreational Amenity

61. This matter has been addressed in the evidence of Mr Denney (CD5.3), RWE's expert witness on landscape and visual impact assessment. It is accepted that there would be landscape and visual changes, and the presence of the wind turbines may diminish some peoples' enjoyment of the commons. However, there would be a range of responses, and some people may find it a positive experience, or at least neutral. Furthermore, the opportunities for recreation and enjoyment would not be physically diminished. This was reflected in the conclusions of the 2010 Inspector (Report at CD13.4) who said *"In terms of the rights over "urban common" for the public to enjoy the open space, I do not consider that these rights would be significantly reduced by the wind farm. An individual's pleasure in enjoying the open space may be diminished by the presence of turbines, but they would not physically prevent persons roaming across the commons for recreational purposes"*.
62. Recreational surveys for Mynydd y Gwair (see most recent at INQ5.5) show that the commons are not extensively used for recreational purposes and that walkers tend to use the footpaths. The numbers involved are quite modest, even though several long distance routes cross the commons. Thus even if all recreational users were to find their enjoyment diminished (which RWE does not accept), it would be a matter to take into account in the balance of arguments rather than sufficient reason in itself to refuse the commons applications.
63. The Banwen Miners Hunt uses the commons several times each year (one of several areas used), and it is acknowledged that construction activities would have the potential to disrupt it. To avoid this, provision is made in the Unilateral Undertaking to cease construction activities on up to 8 Saturdays per year (the number of times the Hunt usually visits Mynydd y Gwair) if notified in advance by the Hunt. Once construction is complete, normal operation of the wind farm would not materially affect the Hunt's activities. Thus, the scheme would not interfere with the activities of the Banwen Miners Hunt.

Nature Conservation

64. RWE has carried out a series of ecological surveys of the commons concerned since 2004, and the Environmental Statements produced in 2008 and 2012 include thorough assessments of potential implications for nature conservation. The area is a designated Site of Importance for Nature Conservation (SINC), and this was taken into account in the Environmental Statements and in the Council's decision to grant planning

permission for the wind farm. Further surveys have been carried out in 2015, and the conditions discharge pack submitted to the Council in late 2015 included a Habitat Management Plan, a Species Monitoring Plan and an Invasive Plant Species Method Statement as well as provisions in the Construction Method Statement. Taken together, these proposals to minimise effects and to include appropriate mitigation measures provide a high level of safeguard against the possibility of significant harm to nature conservation.

65. Mr Stewart appeared as an expert witness on behalf of SOCME and raised several particular matters, though it was clear he had not taken into account the latest information provided by RWE in the conditions discharge pack submitted to the Council, including the Habitat Management Plan, Species Monitoring Plan, etc listed above. All of the matters he raised have been refuted by RWE's expert witness.
66. One objector, Mr Northcote, expressed concern about possible impact on his apiary of British Black Bees. However, given the foraging territory available to the bees, neither the construction nor the long-term operation of the proposed wind farm would materially affect the bees. The incidence of rushes on the common was raised but it is clear sheep still graze these areas and that their presence does not affect claims under the Basic Payment Scheme.
67. Several objectors have referred to the poor reinstatement of land at the nearby Mynydd y Betws Wind Farm, including the treatment of peat deposits. RWE shares that criticism and should not be held accountable for the failings of that developer. RWE has demonstrated by the evidence in its conditions discharge pack that it takes these matters very seriously and would go to great lengths to ensure the reinstatement of land and habitats was successfully achieved. Its commitment to the use of an Ecological Clerk of Works and to the Planning Performance Agreement with the Council (to fund overseeing of the works by a planning enforcement officer) further demonstrates this commitment and provides reinforced confidence on nature conservation matters.
68. Several other particular matters have been raised by objectors. Firstly, RWE's bat surveys have been criticised. However, although some bat roosts were found, none would be affected by the proposed works. Mr Stewart claimed that RWE's surveys had missed Bog Notchwort, an important species, but that was not the case. The area containing Bog Notchwort was identified but it lies outside and to the south of the proposed wind farm site and is not well hydrologically connected with it, and so it would not be affected. He also drew attention to the presence of Yellowhammers on CL68. The Applicant's Environmental Statement identified these and said they were on a part of the common not affected by the proposed works. On all of these matters the impact of the proposed works would be negligible.
69. Finally, the role of peat as an important natural habitat also needs to be considered. It has been submitted that Mynydd y Gwair is a valuable upland peat habitat. However, most of it is shallow, localised and degraded as a result of intense grazing over many years. The wind farm scheme now proposed and granted planning permission in 2014 has been designed to avoid any deeper areas of peat and would not materially affect the peat resource. The Construction Method Statement and Habitat Management Plan (submitted as part of the conditions discharge pack (CD3)) provide a combination of

protection and mitigation measures and reflect RWE's experience of developing similar upland sites for wind farms. Conditions 7, 15, 30 and 31 of the planning permission provide adequate protection for the peatland habitats.

Conservation of the Landscape

70. Objectors for both SOCME and The Gower Society have raised concerns about effects on the landscape, and it is accepted that in considering applications under the 2006 Act much of the assessment of landscape impact should relate to the ability to enjoy the commons. However, it should also be born in mind that the site lies within Strategic Search Area (SSA) E of Technical Advice Note (TAN) 8, Planning for Renewable Energy. Annex D of TAN8 says the SSAs were selected because they were considered to be areas that were technically, practically and environmentally better able to accommodate the landscape and visual impacts of wind farms than other parts of Wales, and that within the SSAs there is the implicit objective to accept landscape change. This was formulated and the SSAs selected in full knowledge of the presence of substantial areas of common land within them.
71. Landscape and Visual Impact Assessment has been carried out and concludes that the cumulative landscape effects of the Mynydd y Gwair Wind Farm, when viewed with that at Mynydd y Betws, would be acceptable in terms of conservation of the landscape of the commons. Whilst some users of the common may find the visual impact of the wind turbines harmful, the general impact would be acceptable. In addition, whilst the character of some of the individual areas of Replacement Land would differ from that of most of the commons, the broad similarities would be sufficient to make it of interest to users of the commons and thus acceptable for public access purposes.
72. Whilst it is argued that the effects of the scheme on the character and visual appreciation of the commons would be acceptable, it should also be appreciated that, even if it gave rise to some concern, then it would be outweighed in the planning balance.
73. Mention has also been made of site lighting being harmful to the darkness of the night sky in the area. However, although there would be some construction compound lighting during the construction period (and even then quite limited), during long-term operation the only lighting would be infra-red lighting on the top of several of the wind turbines for purposes of aviation safety. Such lighting cannot be observed by the naked eye and its effect on the dark sky would be negligible. Mynydd y Gwair is affected far more by glow from Port Talbot and Swansea than it would be by that. Furthermore, so far as the designated International Dark Sky of the Brecon Beacons is concerned, that is at least 5 km away with several settlements such as Ammanford and Glanamman in between. There can be no question of the wind farm diminishing the potential for astronomical observations to be carried out in the area.

Protection of Public Rights of Access

74. The only public rights of way affected by the proposed works would be footpaths LC80, LC81 and LC82 and bridleways MW28B and MW26A on CL68 (see Plan B), and these would only be closed temporarily while the access track was constructed through those parts of CL68. There would be no physical obstruction of any public rights of way within

CL74 or CL77. Under the Countryside and Rights of Way Act 2000 and Section 193 of the Law of Property Act 1925 members of the public can walk (and ride horses) over the commons and these rights would remain with the exception of being temporarily restricted to using the crossing points over the access track during the construction (and reinstatement) period and to the limited physical infrastructure during the operational period.

75. After the construction period most of the release land would again become available for public access, as provided for in the Unilateral Undertaking. They would also have access to the Replacement Land which would be registered as common land. All reasonable steps to protect public access to the common land have been taken.
76. The A1K9 dog training establishment on Gopa Hill would suffer very short-term disruption (estimated 2-3 weeks) whilst the access track was constructed along the short section of footpaths LC80 and LC81 used for access from Heol y Barna (see Plan B). However, the access would be maintained during that construction process, albeit with an element of inconvenience. RWE would work with the owner to ensure the arrangements were acceptable.

Protection of Archaeological Remains and Features of Historic Interest

77. Much fieldwork has been carried out to survey the archaeological remains and historic features on the commons in question and these are marked on Figures 1a and 1b in Appendix F of the Supporting Statement, CD1.1, as well as on Plans B and C. The results have been presented in the Environmental Statement and the Statement in Support of the current applications (CD1.1). These have been considered to be acceptable by CADW and by the local planning authority.
78. Section 38 applications B and C are for the erection of temporary fencing to protect the Scheduled Ancient Monument GM202 (Penlle'r Bebydd Cairn), which is close to the proposed access track improvements on CL74, and the undesignated historic asset MG62, which is close to a wind turbine location on CL77. These measures would provide adequate protection to these features during the construction period.
79. Within the commons the proposed works would cause low level disturbance of parts of old coal levels and tips and of an informal network of old tracks and paths. However, these impacts are not considered significant.
80. Some objectors have referred to Penlle'r Castell, some distance to the north of the wind farm site within CL77, and to the effect of the wind farm on its setting. Penlle'r Castell served a purely military purpose and was located on the north-facing scarp of the plateau to observe hostile movements over the mountains. The contribution the setting makes to its significance is derived from its location and the ability to see out over a wide area rather than from the details of what one can see. Although the Mynydd y Gwair wind farm would contribute towards a reduction in isolation felt at the Castell, that is only a small component of its significance, and the overall impact would be negligible.

Renewable Energy Benefits

81. The legislation specifies that "*any other matter considered to be relevant*" should be taken into account, and the Welsh Government Guidance (CD6.1) says this "*may include looking at the wider public interest, which may arise, for example in a major infrastructure project*" (paragraph 3.9.4) and "*Some proposed works on common land do not benefit the common but nevertheless there is an underlying public benefit, for example works for the generation of sustainable energy (wind farms)*" (paragraph 4.12). In addition, paragraph 4.13 says there is a balance to be struck between its policy to safeguard and improve the common and its wish to promote sustainable energy generation.
82. TAN8 set Welsh Government targets for each SSA which have subsequently been updated by Ministerial letter in July 2011. The operational development target for SSA E is 152 MW and, even with Mynydd y Gwair, there would still be a shortfall of 40 MW. There can be no doubt about the policy need for this development. Some projects fall by the wayside due to problems discharging conditions or gaining electricity contracts. However, this scheme has already been awarded a Contract for Difference, a grid connection is available and there is good evidence the planning conditions will soon be discharged. If commons consents under the 2006 Act are granted the Mynydd y Gwair wind farm will definitely be built.
83. There is extensive EU, UK and Welsh policy support for renewable energy development and an acknowledged need, and these have been reinforced in the past year. The Welsh Government's consistent and growing support for renewable energy was made clear in a letter from Carl Sargeant AM, the Minister for Natural Resources, dated 14 August 2015 (Appendix KC-2 to CD5.9). The letter refers to TAN8 and says that "onshore wind is currently the most commercially mature form of renewable energy" and that "the Welsh Government wants the people of Wales to benefit from the economic opportunities both through more job opportunities and commercial benefits presented by onshore wind".
84. At a local level, on 26 January 2016 the City and County of Swansea Council resolved to oppose hydraulic fracturing but continue to move towards a clean energy future. It resolved to take steps "to work to harness the abundant sustainable renewable energy resources available; such as our unsurpassed tidal range and windy hill sides. Council aims to work towards becoming fossil free by 2025 and aspires to be a leading provider of Tidal and Wind power within the UK".
85. The Welsh Government's Future Generations Act 2015 is also highly pertinent, setting the move to a low carbon society and adaption to climate change as prominent goals. In addition, the Environment (Wales) Bill 2015, which is expected to receive Royal Assent in spring 2016, explains the Welsh Government's intentions with respect to greenhouse gas emissions targets. It places a duty on the Welsh Ministers to meet emissions targets for 2050 and to set interim emissions targets and 5 yearly carbon budgets.

86. These recent policy and legislation enactments represent substantial new evidence of the fundamental need and legal and policy support for the development of Wales' renewable energy resources and should weigh heavily in favour of the current applications.

Socio-Economic Benefits

87. The socio-economic benefits of the proposed development have been assessed by economic consultants Regeneris (CD4.12). Construction of the scheme would be estimated to bring benefits of approximately £26M to the UK economy, of which £12M would be in Wales (£8.5 M in South and West Wales). Some 500 person years employment would be generated over the 22 months construction period, of which 255 would be in Wales and 190 in South and West Wales (104 per year on average).
88. During operation the wind farm would bring annual benefits of some £1.4M of which £1.2M would be in Wales (£0.6M in South and West Wales, representing a total of £16M over the life of the wind farm). 24 jobs would be supported per year, including 19 in Wales and 8 in South and West Wales. In addition, the economic value of the community benefit fund would be about £240,000 per year (£6M over 25 years). These figures take no account of the additional benefits now provided by the Unilateral Undertaking put forward in association with these commons applications (INQ34).
89. Thus, if the current commons applications are approved, the proposed wind farm would bring substantial investment into the local community, including investment that would contribute towards the aim of "maintaining a living for commoners who use the common land to graze livestock" prescribed in the Government Guidance.

Overall Conclusions

90. The Applicant has had proper regard to each of the matters set out in sections 16(6) and 39(1) of the 2006 Act and to the Welsh Government's Guidance on Common Land Consents (CD6.1) and has demonstrated that no unacceptable impacts would arise in terms of any of the matters to which the decision maker must have regard. The planning permission for the wind farm, granted in March 2014, warrants considerable weight and represents a public interest determination based on policy and thorough evaluation of local environmental impacts. None of the impacts of these commons applications go in scope beyond matters considered in the Environmental Statement submitted with the planning application, though additional consideration has been given to the specific interests of the commoners.
91. With regard to the Welsh Government aim of not diminishing the stock of common land and of maintaining or improving its condition (paragraph 4.13 of the Guidance), the proposals: would not diminish in substance the stock of common land or land subject to similar rights; would not reduce the condition of common land; and would be consistent with the continued use of the 3 commons units and their consideration as common land.
92. The Guidance (particularly paragraph 4.14) advises that there is a balance to be struck between impacts and benefits. In this case there are undoubted, substantial public benefits, and that balance falls handsomely in favour of the grant of consent on the terms of the applications.

Objectors' Case for SOCME

The material points are:

Applicant's Witnesses

93. In response to questions, RWE's own witnesses provided useful information or acknowledgement of a number of helpful matters. Firstly, the credibility of the 2009 report from which RWE has assessed stocking densities was questioned as on some parts of the hill sheep have started to breed smaller due to adverse climatic conditions. This would affect the stocking rate, and a more up to date report should have been commissioned. The benefits claimed from rhododendron clearance on CL68 were also questioned, as it could take 25 years or more before any benefits were seen.
94. On veterinary matters, RWE's expert acknowledged that exchange land that is wet would pose an increased risk of liver fluke and that it would be sensible to retain fences on the proposed exchange land at Blaen yr Olchfa and Blaenant Ddu. He also confirmed that liver fluke is becoming immune to certain standard treatments.
95. RWE's hydrology witness explained the proposed monitoring arrangements for the many private water supplies around the commons but could only suggest the provision of bottled water should a supply be disrupted. That would be completely inadequate for stock, bearing in mind for example that a cow typically drinks 18 gallons of water per day. There is also a concern that the monitoring equipment would be a hazard for walkers and animals on the common.
96. RWE's nature conservation witness provided contradictory evidence. He claimed that Mynydd y Gwair is severely overgrazed but acknowledged that the land had been accepted into the Agri Environmental Glastir scheme without any reduction in stocking numbers. He also said there would be no effect on any Site of Special Scientific Interest (SSSI), though when questioned accepted there is a SSSI very close to the exchange land at Blaen Gerdinen.
97. Finally, RWE's planning witness, when questioned about the height of the proposed wind turbines, listed a number of sites elsewhere in the Country where higher units had been approved. However, none of them were on common land sites. RWE's submission that the Somerset Trust's grazing rights over the commons would be suspended for the duration of wind farm operation was also questioned as some of their tenants have contracts for those rights, which not only provide grazing benefits for their stock but also contribute to their Basic Payment Scheme entitlement. It has not been explained how those rights could be relinquished without breaching contracts with the tenants concerned.
98. RWE submitted details of a recent recreational survey carried out on the commons between August 2015 and January 2016. However, this is misleading as for much of that period the weather was very wet. The number of people at the Lower Lliw Reservoir site on the day of the Inspector's site visit gave a more representative picture of the amount of public use of the Mynydd y Gwair area.
99. RWE has made several references to the Welsh Government's "Circuit of Wales" decision for development on a common on the outskirts of Merthyr Tydfil. However,

that is a quite different scenario and is situated in a known socially deprived area in South Wales. The circumstances are not comparable, and no weight should be given to that decision.

100. The final matter concerns reinstatement of the land, especially the peat. RWE has acknowledged the poor standard of reinstatement achieved by other developers for the National Grid pipeline and the Mynydd y Betws wind farm and promises a much better standard would be achieved at Mynydd y Gwair. Similar promises were made for those other developments but to no avail. RWE would not be able to guarantee continuity in its workforce, and there can be little confidence it would perform any better.

SOCME's Witnesses

101. SOCME's own witnesses are listed at document INQ3.0 and represent a range of interests and interested bodies: land use and agricultural; landscape, environmental and cultural; and walking, recreation and tourism. Although some additional evidence was submitted at the inquiry, their main evidence is at documents INQ3.1-INQ3.19 (loose-leaf folder).

Glyn Morgan

102. Mynydd y Gwair is a vast unenclosed common, the last remaining unenclosed common North of Swansea in the parish of Mawr. It is part of the old "Lordship of Gower" and has been known historically as the "Gower of the Hills", with the Gower being the first designated Area of Outstanding Natural Beauty. It is a haven for wildlife, a place of quiet contemplation and enjoyment, and most importantly a place of work for all the commoners who have rights to graze and earn a living from the common. The hefted flocks of sheep and herds of cattle on Mynydd y Gwair are sources of food production for the graziers. Mynydd y Gwair is also a valuable water source, not only for the farms and smallholdings around the common, but also as the catchment area for the Upper and Lower Lliw Reservoirs, which supply over 400,000 homes across South Wales.
103. Mynydd y Gwair is an important part of the agricultural system in the area with around 120 commoners using Mynydd y Gwair and the adjoining commons as their primary source of grazing throughout the year. The graziers depend on the common, and each flock of sheep and herd of cattle use their own unique area of grazing known as a "heft", "sheep walk" or "arosfa" in Welsh. These rights add value to the individual farms and are a financial asset as, without them, the viability of the farms would be gravely affected. These "rights to graze" go back centuries dating back to the Statute of Merton in 1235 when the Lord of the Manor was obliged to provide land for commoners' rights.
104. Similar applications were refused following public inquiries in 2010 and 2014. The only difference with the present applications is the addition of 2 pieces of unsuitable exchange land and a few small additional financial incentives. These do not warrant a different decision.
105. Graziers' concerns are mainly on 3 matters: disturbance during construction; effect on vegetation and water supply, especially doubts over successful restoration of the land; and the suitability and effects of the exchange land on the hefting system. The

access track would pass through several hefts, and stock would be disturbed by the passage of a large number of heavy lorries each day and would not graze in that area. In addition, the temporary fencing for the works would interrupt the normal animal movement routes and would cut them off from their natural sources of water (streams, ponds, bogs, etc.).

106. RWE has offered funding to support additional shepherding costs associated with minimising these disruptive effects. However, animals that are consistently moved back and forth would not have time to graze in peace and would not thrive, regardless of increased shepherding. Furthermore, this disturbance would not be only to the stock in the immediate heft as, on an unenclosed common, adjoining areas would also be affected as sheep moved away from the source of disturbance. This affect was seen when the neighbouring Mynydd y Betws wind farm was constructed.
107. The nature of land restoration is of great concern as on both the Mynydd y Betws wind farm site and the National Grid gas pipeline site, which crossed the common, the original vegetation has not grown back, even after many years. Both areas of land are now dominated by rushes rather than the original vegetation, which was predominantly mat grass (*Nardus*) and purple moor grass (*Molinia*). Rushes have no grazing value and, even though RWE says most of the release land would be returned to common land use after construction, it would have little value if its grassed nature was lost.
108. Mynydd y Gwair is also vitally important as a source of private water supplies to local farms and other properties through springs. Most are entirely reliant on these springs with no prospect of a public water supply, and there is concern that they would be disturbed, or even lost, as a result of the construction activities.
109. As for the exchange land, it must be remembered that the commons serve twice as many sheep after lambing, as rights are for adult sheep. The replacement land offered is neither sufficient nor suitable to offset the disturbance that would be suffered. There are concerns that animals from different holdings would mix, increasing the risk of disease, and that they would be attracted by the "sweet grass" (higher quality grass) available at the replacement land at Blaen Gerdinen. Once sheep have enjoyed such grass they would tend to want to return there rather than graze the rest of the common.
110. An additional problem on CL74 is that some hefts are still defined by lines laid down in the Commons Registration Act 1975, which have subsequently been removed on most other commons. Thus animals could not be moved over other hefts to reach the replacement land at Blaen Gerdinen. The other replacement land for CL74, the newly proposed Blaenant Ddu, is of poor quality and very wet. Local graziers would not want their animals to graze there.
111. The replacement land for CL68, adjacent to Cwmdulais Cottages, is steep and covered with gorse, brambles, bracken and trees, and is only accessible via a narrow sheep walk. It is completely unworkable for the grazing of sheep and would replace land on the opposite side of the valley. Its provision is little more than a paper exercise.

112. Finally, the replacement land for CL77 at Blaen yr Olchfa would be too far away from the northern part of the common affected by the construction works and only of benefit to flocks not affected by the development. The land is very rough and of poorer quality than the land it would replace. Much of it is wet and covered in rush and its use would increase the risks of liver fluke in the sheep and cattle grazing it. Viewed as a whole, the 4 areas of replacement land proposed would be poor replacements for the common land lost.

Brigitte Rowlands, West Glamorgan Commoners Association

113. The West Glamorgan Commoners Association was established in 1962 to safeguard the wellbeing of the common land and is responsible for managing the common on behalf of its members. The development of the wind farm would disturb about 60 active graziers who rely on the common for much of their livelihood. Members' concerns are on: construction stage disturbance; the exchange land; effects on the Basic Payment and Glastir Schemes; and risks to private water supplies.

114. During construction animals would be pushed off their historic hefts, which would have a ripple effect over a wide area, even as far as the edges of the commons. The access roads would carry a large volume of traffic and interfere with grazing and with graziers' day-to-day activities. The new access track would also encourage antisocial behaviour on the commons, as has been seen at Mynydd y Betws. Mynydd y Gwair already experiences some problems with illegal off-road activities and the WGCA has been working with the police to try to deter this. The construction of the new access track would make control more difficult.

115. The vegetation on the commons belongs to the holder of the grazing rights, and the delicate soil structure is difficult to restore. The indigenous grass relies on the soil structure, and experience has shown that once this is disturbed the regeneration tends to be with hard rush rather than grass.

116. The 4 parcels of exchange land offered are no use to any of the graziers and are little more than a paper exercise. Exchange land is supposed to be on a "like for like" basis but none of them meet that requirement. The land at Blaen Gerdinen is in full agricultural use at present and has been improved with fertiliser to allow a summer crop of silage. The land at Blaenant Ddu is boggy and unusable at some times of the year, and that at Blaen yr Olchfa is also very boggy. Both of these are a haven for liver fluke. The area of land adjacent to Cwmdulais Cottages is also useless on account of its poor location and access and its steep slope. These 4 areas would not be used and would become overgrown and of no use to livestock. The commoners do not want any of these areas of land. However, if it was approved, it is the WGCA who would be tasked with their management.

117. The changes in common land would also affect the Basic Payment Scheme calculation, and some commoners would be out of pocket as a result. Provision is needed for compensation in this event. Recently, the 3 commons have also joined the Glastir Scheme, which is driven by stocking density. If livestock move hefts as a result of this development compliance with the scheme could be jeopardised. On CL68 it is the graziers' intention that work to eradicate the rhododendron would be included in

the Glastir Advance Package. RWE has ignored this in claiming the benefits for the clearance itself.

118. On water supplies, RWE's hydrology report is not up to date and gives very little reassurance that private water supplies to several holdings would be secure. These are vital in the absence of public water supplies, and insufficient attention has been paid to the risks involved.
119. In addition to providing a livelihood for the commoners, the commons attract people from all walks of life to enjoy walking, horse riding and many other interests. If the land were to become industrialised a wealth of natural beauty would be lost and no amount of effort at decommissioning would return the common to its present state. The present occupants and users of the land are custodians of it for the next generation.

Phil Thomas, Land Agent (for the WGCA)

120. Experience of past construction activities in the area has illustrated the likely effects on Mynydd y Gwair Common if this scheme were to go ahead. It is reported that since the Mynydd y Betws wind farm was constructed some 70 sheep have drifted on to CL77 to graze with a knock-on effect on sheep already on CL77. When the gas pipeline was built problems were experienced with split hefts, lambs separated from their mothers, attraction to newly seeded areas of "sweet grass", and pressure points on sheep walks. Considerable increased shepherding was needed to manage these problems.
121. During the 2 years construction period sheep on Mynydd y Gwair would be displaced from the construction areas with a ripple effect over a wide area of these and adjoining commons. Graziers would find it very difficult to control their flocks within the local areas. In addition, if lambs were born off the common, they would be unable to learn their hefting area and there would be a risk of such historical rights being lost for ever. The locations of the replacement land would be unsuitable for many of the graziers. Indeed, on CL74 many would be unable to access it due to the nature of their micro-hefting rights.
122. The likely difficulties caused to the graziers would have the potential for widespread serious knock-on effects: on flora and fauna due to change in the pattern of use; on viability and capital value of the farms; and on the local communities if farms become less viable.

Gareth Mulligan, Local Veterinary Surgeon (and authority on liver fluke)

123. There is concern over how the replacement land would be used. If the land at Blaen Gerdinen was kept enclosed and its use shared by all graziers on CL74 it would be a logistical nightmare with increased potential for the spread of disease from different flocks, e.g. sheep scab, Contagious Ovine Digital Dermatitis and roundworm. This would be unacceptable from an animal welfare point of view and would lead to increased drug use, which is contrary to good practice guidelines, as increased use of drugs increases the risks of resistance being developed.

124. The land parcels at Blaenant Ddu and Blaen yr Olchfa are wet and boggy and would provide only limited grazing. Their use would also increase exposure to the infective stages of liver fluke, a small snail that thrives in wet, boggy conditions. The incidence of liver fluke has risen considerably in recent years, and is now endemic in the area. Acute liver fluke infection can result in sudden death, and a chronic infection will cause loss of condition and irreparable damage to the sheep's liver.
125. As with roundworm management, an increase in flukicide treatments is not the long-term answer due to the development of resistance. A more holistic/preventative approach is now advocated, including better pasture management and reducing exposure to the risks. Thus the benefits of increased grazing land provided by all of these areas of replacement land would be negated by the increased risks to the health and welfare of stock using them.

Gwyn Davies, Local Grazier CL74

126. Waun Cathan Farm is dependent on a private water supply from the Nant-y-ci spring near the Blaen Gerdinen replacement land (see Plan C). It is a prolific spring and in dry periods it is the only local source for the Nant-y-ci. It is possible that the extensive excavations proposed for the wind farm might disrupt this supply or cause it to be diverted elsewhere (e.g. into old mine workings). It is vital this source is not lost.
127. The extensive length of newly constructed access road would tend to attract sheep as a dry lying area. They would also tend to follow its route, thus disrupting the traditional hefting patterns. By improving access to the more remote areas of the common the access road would also encourage fly tipping, joy riding and dog walking (with risk of livestock worrying).
128. As for the replacement land proposal at Blaen Gerdinen, this would be impractical as its shared use by numerous graziers of CL74 would lead to mixed animals and increased health risks as well as movement of animals outside their legal hefts. On a wider matter, the wind farm would lead to industrialisation of the landscape to the detriment of its character.

Floyd Farthing, New Young Grazier CL77

129. Mr Farthing is trying to establish a new flock of sheep on CL77, and this is taking some time and effort. It will take several years and a few crops of lambs to secure an established heft. This would be put at risk by pressures from adjoining hefts if those flocks were displaced during construction of the wind farm. A shift of this sort has occurred on land affected by the recently completed Mynydd y Betws wind farm, and additional shepherding is being required to mitigate effects on neighbouring flocks.
130. The replacement land offered for CL77 (at Blaen yr Olchfa) is 5 miles away from Mr Farthing's heft and would involve taking his flock through at least 7 other flocks to reach it. It is clearly not a viable option for his flock.

Cellan Jones, Local Grazier CL68

131. Blaen Nant Ddu Farm (see Plans B & C) enjoys grazing rights on both CL74 and CL68, and the proposed new access route would pass close to the farm and would cut

sheep walks in a number of places on the adjoining common. Concern about the fencing has been exacerbated by recent problems experienced with fencing at the nearby flood alleviation scheme, which was erected with no regard for the graziers and their animals and has caused mayhem with lambs separated from their mothers and severe disruption to animal movements. As a last resort the graziers had to cut the fences to allow passage for the animals. The risk of this problem would be greater on Mynydd y Gwair because of the larger number of animals grazing there.

132. Mr Jones currently rents the proposed replacement land at Blaenant Ddu and would like to continue to rent it. Although it is generally wet and boggy and unsuitable for grazing, he knows it can be used to graze cattle in a dry summer. However, it is not suitable for sheep.

David Francis, Local Grazier and Water Diviner

133. Mr Francis owns Ffynnon Sant Farm close to CL74 (see Plan B) and has land close to the Blaenant Ddu replacement land and the "concrete road" (see Plan C). That land is very wet and is too wet for grazing sheep. Attempts to improve the drainage of his land were unsuccessful, and even the excavator got bogged down. He is also concerned about noise and movement from the wind turbines affecting his wife's and daughter's horses and the safety of other horse riders.

134. As a water diviner, he is aware of the uncertainties of groundwater and is concerned that excavations for the scheme might disturb established water flows and lead to loss of vital water supplies. Every holding and dwelling in the village of Cwmcerdinen and the surrounding area is dependent on private springs or wells. These should not be put at risk.

Clare Moseley, Local Resident and Open Spaces Society

135. Grazing forms an integral part of the conservation management of Ms Moseley's holding which adjoins CL77 and has registered grazing rights over it. Whilst it is not disputed that grazing of the common land is crucial to the viability of many local farms, it is not as readily recognised that the common is also important to many other people. It is also doubtful that the Applicant has even identified everyone with rights over the common, never mind engaged in proper consultation with the commoners.

136. In order to minimise impact on the common, Ms Moseley's mother allowed the gas pipeline to pass through their land, even though it had been managed for conservation purposes for many years. That illustrated how important it is to conserve the peat habitats of the commons. The restoration carried out for that pipeline caused problems that could easily occur on Mynydd y Gwair common if the wind farm were to go ahead. A spring was lost due to ground disturbance, a previously dry area is now regularly waterlogged, a reinstated stream bed has been washed away after heavy rain, and rush growth persists along the route of the pipeline despite concerted efforts by an experienced farming contractor and an expert scientist. The latter suggests that sometimes mitigation measures just do not work, however much they align with best practice.

137. The Applicant relied on an out of date carbon calculator model for its 2012 planning application (though an updated version has now been submitted for the current

applications). No mention has been made of research that shows wind farms affect local weather in a way that is detrimental to peat habitat, and similarly no mention of informed academic viewpoints that climate mitigation technologies are as likely to hasten extinctions as protect wildlife. Biodiversity in Britain is declining, and there can be no confidence the proposed compensation and mitigation measures for wildlife would be adequate. There are shortcomings in some of the surveys, for example: the 2010 bat survey was not carried out under ideal conditions; there has been no assessment of fungi, even though they occur on the commons; and despite the presence of an indicator species (cotton grass) no consideration has been given to the well publicised discovery of the very rare Fen Puffball in Wales in 2014.

138. Nature conservation is tied in closely with the character of the landscape, and peatlands provide some of the most iconic landscapes in Wales. As well as providing Wales' largest terrestrial store of carbon, peat soils support a specialised and declining range of animals, plants and habitats.
139. Turning to other matters, the replacement land is different in character to the release land and is sited on the edges of the commons in disjointed parcels. It would be of use to very few people and certainly not those who currently enjoy the whole breath-taking uplands of the commons. It would not be a fair exchange and would not meet the criteria set out in the Commons Act 2006.
140. Furthermore, some of the Applicant's submissions on fencing, landscape and visual impacts, and public rights of way appear to be confused and inconsistent. The length of time the temporary fencing would be in place along the newly constructed access track is different in some documents (2 years or 3 years), and claims about continued free access across the common cannot be guaranteed.
141. In addition, RWE's assessment of visual impacts says that the visual amenity of people using the common is the key factor. It is contended that this would be unacceptable, and this is evidenced by growing numbers of people expressing a preference for landscapes without wind turbines. The Ramblers Walking Environment Officers Handbook (2011) notes that ramblers think very large wind turbines are often out of scale with local landscape features and multiple turbines can lead to industrialisation of tranquil areas. The Open Spaces Society agrees with that view.
142. A survey carried out by the Mountaineering Council of Scotland provides clear evidence that "mountain-goers do not want to pursue their activity, and spend their money, in areas they regard as spoiled by industrial-scale wind farms". A large majority also supported the principle of avoiding wind farms in National Parks, National Scenic Areas and Core Areas of Wild Land and a buffer zone around them, which is relevant to Mynydd y Gwair, lying between the Brecon Beacons National Park and the Gower AONB. There is also evidence that local residents now tend to avoid the Mynydd y Betws area since the wind farm was constructed.
143. It is also noteworthy that the 2014 Inspector recognised that "the noise created by the turbines may also detract from the enjoyment of access for some people", yet this has not been addressed by the Applicant in its current applications. There is also some evidence of health effects on birds.

144. Overall, the current applications are not very different from the previous ones and do not address the Society's concerns on public interest grounds.

Simon Meecham-Jones, Cultural

145. Mr Meecham-Jones is an expert in medieval literature with a particular interest in the depiction of the natural world in medieval texts. Mynydd y Gwair is a valuable surviving old landscape that comes close to that ancient world and enables one to understand what it was like. Medieval writers accepted that the beauty or harshness of the physical environment had an immediate impact on men's hopes, aspirations and conduct, and that a farmed environment reflected the strengths or weaknesses of man's moral imagination, a fact now recognised in the legislation. The need to protect our historic landscapes is becoming better understood and there is a political will to do it.

146. On Mynydd y Gwair we see how the practices of agriculture have developed over the centuries, working with the opportunities of this particular environment. The harsh environment has produced breeds of sheep that are hardier, more resilient and better able to cope with the difficult conditions, and the care and patience needed to maintain this pattern of agriculture has sustained the local community with its own cultural identity. For example, the survival of Welsh as the first language of many people in the area makes Mawr the community within the Swansea area with the largest proportion of Welsh speakers.

147. Over the centuries the landscape has borne the consequences of man's actions lightly and has largely escaped the visible scars of economic progress. A journey on to Mynydd y Gwair gives one a remarkable feeling of space and expanse, high above the valleys below, and blows away one's mundane cares. Medieval writers were well aware of the values of visiting high places to clear their thinking. Mynydd y Gwair provides that opportunity not just for poets and scholars but for everyone. Refusal of these applications would protect the public interest in the conservation of a much valued landscape and would help to meet the Welsh Government's objective of protecting our historic environment.

Paul Northcote, Local Resident

148. Ty'r Darren Farm lies to the south-west of Upper Lliw Reservoir (see Plan C) and about 1 km from the nearest proposed wind turbine, and construction of the wind farm would disrupt its use of the common for grazing donkeys or other stock. The nearest area of replacement land is too far away and could only be reached by transporting stock by trailer. In addition, stock kept this far away would be difficult to care for and control, and their movement is subject to regulation. An apiary has also been started, and the construction works would affect the potential foraging area of the bees, which can extend over a wide area.

149. The farm is also dependant on a private water supply and there is concern this might be affected by the major excavation works required for the wind farm. The feasibility of a public water supply has been investigated, and its estimated cost is £18,000 + VAT. Alternatively, a new borehole supply would cost approximately £6,400 + VAT, though with no guarantee of long-term security.

150. The commons are also a haven for a wide variety of wildlife, including bats, lizards, newts, slow worms, red kites, buzzards, peregrine falcon, kestrel, raven, cuckoo, skylarks, curlew and several butterflies, including the Common Grayling. Many of these are becoming quite rare.

Barry Stewart, Local Consultant Ecologist

151. The most significant ecological effect would be harm to the peat resource on the commons. The 2008 planning application (for 19 No. wind turbines) was refused following the 2010 public inquiry on account of the harmful effects on the site's peat habitat. The peat land resource at this site has additional significance because of its location close to the geographical limit of the resource in Wales and the importance of conserving such an edge-of-range example. The 2010 refusal identified 3 wind turbines that would have been located on deep layers of peat. However, it is not just the deepest areas of peat that need to be conserved.

152. The value of peat as a carbon sink, wildlife habitat and store of heavy metal pollutants is continually being updated as our understanding improves. Peat is a complex substrate of global importance, as recognised in Scottish environmental guidance which refers to the effects of peat excavation and advocates the avoidance of waste peat production. At Mynydd y Gwair RWE has taken the approach of solution-finding rather than accepting the unsuitable nature of the site, which is one of the most extensive peat resources in the Swansea area. RWE has sought to concentrate its development on areas of shallower peat and has ignored the presence of deeper peat layers on the commons which are important for bog vegetation, such as locally scarce species Bog Notchwort. However, being down-slope of the proposed development locations, these areas are at high risk of being affected by modification of the natural slow-release system of an extensive blanket bog and by humic acid release. These risks have not been addressed by RWE, and mitigation measures provide little confidence that the wind farm development would not result in loss, fragmentation and reduced functionality of the most extensive blanket peatland in the County.

153. Two other matters are also worthy of comment. Firstly, the 2 largest areas of replacement land are quite different in character to the open common and support very different types of vegetation. Thus they would provide minimal ecological compensation for the loss of the existing commons areas. Secondly, the Habitat Restoration Plan produced in response to Condition 15 of the planning permission (see conditions discharge pack at document CD3) assumes that vegetation similar to that lost would be restored. However, experience has shown that rapid colonisation by Soft Rush is the norm where these soils are disturbed in upland areas, the removal of which can require extensive effort over a lengthy period of time if it is achievable at all. It should not be assumed that restoration of the existing vegetation would be achievable on Mynydd y Gwair.

John Miles, Pontarddulais Town Council

154. Pontarddulais already experiences flooding problems, and there is a real risk that the construction of the new access road over Gopa Hill would exacerbate this. It would involve a cutting into the hillside and a steep slope down to Bolgoed Road, effectively dividing the hillside into two and becoming a potential watercourse itself. RWE has

acknowledged the flooding problems in the town and is reported to have carried out a flood study. However, details of the study have not been made available to the Town Council. RWE has always claimed that its Construction Method Statement would deal with all hydrological issues in relation to the access route but there is no specific reference to the flood study.

155. The Applicant's Hydrology report correctly states that the track would not cross any watercourses. However, the watercourses at the foot of the hill flow constantly, indicating that the water contained in the caverns, former underground reservoir, old workings, natural springs and rock crevices flows out of the hill. As the deep-cut track would only be between 50 and 100 metres from these watercourses there is a possibility the excavations would cut through and divert these underground paths of flow. There is no clear confirmation that these flow paths have been identified and the risks been considered.
156. The proposed track would be constructed with compacted crushed graded stone which would provide a relatively impermeable surface along which the water would flow. It is indicated that the water run-off into ditches is designed with stepped sections to encourage water to soak into the ground and find its way into the watercourses. Thus, the track would become the main drainage route off the hill, probably culminating in water collecting in the old quarry, running all the way down to the road and the already overloaded highway drains, or into open watercourses towards the town.
157. RWE's hydrology report does not adequately address these risks, and entering into the unknown regarding the water shelf on the hill is too much of a risk. The scheme would inevitably increase the risks of flooding in Pontarddulais.
158. On different matters, the scheme would involve a substantial amount of heavy lorry traffic via the A48 Bolgoed Road in Pontarddulais. Until the connection to the Rhydypany Road was completed (about a year into the construction period) all traffic into and out of the site would be from the Pontarddulais end. In addition, construction of the new access route would lead to closure of several public rights of way on to Gopa Hill, particularly bridleway/footpath 82, which runs from The Fountain Inn, Bolgoed Road to Cwmdulais. This represents loss of amenity for people who walk or ramble over these ancient public footpaths.

The Bunker/Hinton Family, Local Residents

159. Mynydd y Gwair has a character that is good for the soul and for artistic inspiration. The openness of the landscape and the home it provides for wildlife makes it a majestic treasure, and spoiling it with industrialisation would be unforgiveable. In the past parts of rural Wales have been industrialised to produce coal and steel (in the industrial revolution), which produced considerable benefits. That justification does not exist for a wind farm which is inherently of low efficiency. There are many better ways of producing renewable energy without resorting to devastation of our heritage.
160. Mynydd y Gwair is home to a wide range of flora and fauna and these, together with the vast open spaces, are what attract people to the commons. The presence of a wind farm would be a deterrent to visitors, as it already is for Mynydd y Betws.

Environments of this type are rare in Great Britain and should be protected for future generations to enjoy. Once called "Old Gower", the area should be protected in the same way as the Gower Peninsula and the Brecon Beacons National Park.

Frank Jones, Guest House Owner

161. Coynant Farm lies adjacent to CL74 and close to the proposed replacement land at Blaenant Ddu (see Plan C). It is a popular guest house and guests enjoy walking out on to the open hills from the farm. These hills are the last unspoiled unrestricted open wilderness left in the Swansea area for the people and the wildlife to enjoy. Coynant Farm would be affected by the proposed scheme as wind turbines would be erected on the open commons to the north and east of the farm, which would detract from its attraction for tourists.
162. RWE has also said that the private water supply to the farm and guest house would be affected, though it does not seem to appreciate the significance of this. There is no prospect of receiving a public water supply in this location, and livelihoods would be completely lost if the private water supplies around the commons were not maintained. Mr Jones also owns a small holding at Blaen Fynnonau close to the main site entrance, and the spring there is reliable in the driest of years. In the long dry summer of 1976 many local farms relied on that spring when their own had dried up. The community has little faith in RWE as they have failed to properly consult with people affected by the proposed scheme, and the prospect of the water supply at Coynant being affected is a frightening prospect. Anything that might affect the supply should be avoided.
163. RWE's latest application introduces additional proposals for the provision of replacement land, but whatever is proposed does not affect the fact that such parcels of land would be impractical. Hefts for each farm have become established over many generations and if sheep are fed "sweet grass" at some other location they would tend to want to return there rather than stay on their own heft. The inherited commons grazing system would break down in chaos. The provisions for replacement land may look good on paper but in practice they are of no use or interest to the graziers.
164. One of the proposed replacement land areas is at Blaenant Ddu next to land owned by Mr Jones. However, it is poor land and unsuitable for grazing. The ground comprises a shallow layer of peat lying over solid deep clay and is incapable of being improved. It cannot possibly be described as replacement land on a like-for-like basis and, because it is so wet, farmers would want to keep their sheep away from it.

Alan Richards, Local Walkers' Groups

165. Three local walking groups regularly walk on Mynydd y Gwair: the Pontarddulais Walking Group, the Pontardawe Strollers Society and the Swansea Ramblers Association. The construction of 16 massive wind turbines and miles of associated service road would turn this unspoiled beauty spot into a scarred industrial landscape. The replacement land would be quite different in character to the open common land and no substitute for walking on the common. Mynydd y Gwair is an Urban Common with enhanced rights of access and ability for the general public to roam over it.
166. The new access road would have a damaging environmental impact on the mountain, comprising over 14.5 km (9 miles) of new road and 3.9 km (2.4 miles) of

widening of an existing quiet country lane. The impact of this on the upland landscape would be alarming. 2 public rights of way on Gopa Hill would also be affected; footpath LC82 and bridleway LC20 would become wide hardcore tracks for most of their lengths. The character and enjoyment of walking these ancient thoroughfares would be destroyed. In addition, the new road would run for much of its length above Cwmdulais, one of the prettiest valleys in the area, harming its present character.

167. The widened section of Heol y Barna would pass close to an ancient monument known as Penllerbebyll (Plan B) and would affect the character of the site. The access road would also pass close to another ancient monument at Mynydd y Garn Fach which at present is well away from any thoroughfare, thus compromising its character. The Groups are also concerned about the medieval platform houses at Henglawdd. These ancient monuments are popular attractions for walkers, and the proposed development would affect the character of all these important sites on the common.
168. Mynydd y Gwair is a fine walking destination and has been included in many walking guidebooks, and several long distance walks pass through the area: the Conwy to Gower walk; the St Illtyd's Way linking the Cefn Sidan and Margam Country Parks; the Gower Way from Rhosilli to Penllercastell; and the more recent Lliw Valley Walk. The appeal of these routes would be greatly diminished if the wind farm was built. The Mynydd y Betws wind farm has recently been completed to the north of Mynydd y Gwair. The same fate should not fall on these commons.

David Edwards, Banwen Miners Hunt

169. The Banwen Miners Hunt has hunted over West Glamorgan Common land since 1963 and generally rides over these commons on 8 Saturdays each season, which represents about 30% of total annual activity. Typically 30 riders attend these meets as well as many foot followers. The Hunt meets at local public houses and generates much useful income to these venues. The Hunt is also a registered fallen stock collection organisation, providing a useful service to local farmers.
170. The Hunt would not be able to use the Mynydd y Gwair commons whilst construction was in progress, but acknowledges RWE's offer to suspend construction on the Saturdays the Hunt is to take place. However, the commons would not be the same if the wind farm was constructed as the location would never be the same again. In addition, horses can be disturbed by the noise and movement of wind turbines which would affect riders' safety.

Ian Glendenning, Astronomy and Astrophysics

171. Concern is expressed about light pollution and the Dark Sky status of the Brecon Beacons National Park. The MOD has asked for infra-red aviation lights to be put on the top of some of the wind turbines, and that could jeopardise the Dark Sky status. In addition, some educational events are held at the Lliw Reservoirs or other nearby locations and these would be affected by the same light pollution. Even infra-red lights can pose problems for astronomy and wildlife photography. In addition, RWE's intentions for security lighting during construction are not clear and may give rise to further problems during that period.

172. The Dark Sky Wales 2010 Guide says there are 3 main types of light pollution: sky glow; glare; and light trespass. Each of these can be obtrusive and annoy stargazers and anyone wishing to experience darkness. The Inspector's report after the 2014 public inquiry said that no consideration had been given to the impact on Dark Sky tourism. This problem has not been resolved, and the scheme would have a detrimental effect on the local Dark Sky experience.

Other Objectors' Cases

173. A number of independent witnesses also appeared at the public inquiry as objectors to the wind farm scheme. The document references of their evidence are listed for each witness.

The material points are:

Dr Altaf Hussain AM (INQ10)

174. Similar proposals were considered at public inquiries in 2010 and 2014, and they were found to be unacceptable. The current proposals do nothing to overcome the solid grounds for those refusals and, if approved, would destroy the only common land to the north of Swansea. The change in character of the landscape would harm its enjoyment by the general public, and there would be no benefits to the community in terms of health, comfort or convenience.

175. The grazing hefts would be disrupted during construction, which is indicative of the lack of consultation between the developer and the farmers affected. The effects of fencing the deregistered land are not clear, and the disjointed parcels of replacement land would not compensate for the loss of tranquillity and wilderness of the open common. The lives of many local people would be irrevocably changed if this scheme were to go ahead.

176. Little attention has been paid to the proposed route to the site, which would be along a busy main road (A48) which runs through the semi-rural communities of Pontlliw and Pontarddulais with potential concerns about increased traffic and traffic disruption, yet these communities have not been consulted. Overall, the proposal represents a threat to peaceful recreation and to the local way of life. Renewable energy provision has increased substantially over the past decade and will continue to increase, yet there is a growing awareness of the need to de-clutter valued landscapes. It is difficult to see how this scheme would do anything tangible to enhance future wellbeing.

177. Finally, there are broader concerns about the Council's decision to grant planning permission for the wind farm, and it is considered that the legality of the process may need to be looked at again.

Robin Kirby, The Gower Society (INQ17.1 & INQ17.2)

178. The Gower Society has over 1000 members and its aims include: encouraging an appreciation and love of Gower; safeguarding rights of way and open spaces; and promoting a sustainable rural economy. Gower is defined as including the whole of the

ancient Lordship of Gower, which extends from Worms Head in the south-west of the peninsula to Penlle'r Castell at the northern point of Mynydd y Gwair.

179. Whilst the Society supports individual small unobtrusive wind turbines, it objects to wind farm proposals as visually too intrusive in rural areas. For these applications, its objections are in respect of the interest of the neighbourhood and the public interest in conservation of the landscape. On the former, it is important that Mynydd y Gwair is a place of solitude and this would be lost if large moving wind turbines were introduced. The nearest tract of similar open hill land is the Black Mountains some 20 miles away. The Society supports SOCME but does not repeat the matters presented by SOCME, which is far better placed to appreciate and represent the implications for the people whose livelihoods depend on use of the commons.
180. On landscape matters, Mynydd y Gwair is by far the largest area of openness in Gower and it is vital to preserve its character and open space. Following the 2014 public inquiry the Inspector made a number of comments in her report on the effects on the landscape, which are as relevant to the current applications as to those before her at the time. Particular attention is drawn to paragraphs 19, 179, 181, 222, 226 and 229 of her report (see CD1.18). The comments include: "*the impact on the landscape would be likely to be considerable*"; "*there would nevertheless be a detrimental impact in terms of the landscape of the common*"; "*the introduction into the neighbourhood of the wind turbines and associated infrastructure would be likely to result in the landscape becoming less attractive to walkers*"; and "*It is, however, necessary for the replacement land to offer land of equal benefit to that being released, and in this context the replacement land falls significantly short*".
181. The replacement land offered is slightly different now but it is still of no benefit visually or to walkers or other visitors. It is fragmented, in lowland areas away from the mountain and does not change the landscape. However, Mynydd y Gwair would suffer from the intrusion of colossal wind turbines over a wide area (as represented on photomontages at INQ13), and walkers would no longer be attracted to the area because of the interrupted views and the domineering effects of the wind turbines when walking near them. The amenity value of the land to the general public would be significantly compromised as the present wild, natural landscape would become an industrial landscape, and the sight and sound of the turbines would change the character of the area. Its close association with the Mynydd y Betws wind farm would only serve to enlarge the area of the industrial landscape.
182. Some years ago (2005) the Society approached Natural Resources Wales' predecessor body about the possibility of extending the Gower AONB to include Mynydd y Gwair and it was given serious consideration. It got no further at that time as priority was being given to extending another AONB, and since 2008 the wind farm proposal has been under repeated consideration. The Society would still wish to pursue that possibility but there would be no prospect of designation if the wind farm was built.
183. Finally, the Society is concerned about restoration of the disturbed land once construction was complete. When flying over the commons the areas of rushes left after other developments can be clearly seen, which raises doubts over whether restoration of the present vegetation could ever be achieved once the natural soil

formations have been disturbed. It has certainly not been achieved at the Mynydd y Betws wind farm site.

Jonathon Carter, Local Resident (INQ11 & INQ12)

184. Lygos Farm lies just to the east of the proposed wind farm site on CL77 (see Plan C) and gains its private water supply from a spring which has its origins on the western side of Rhydypany Road (the Golden Mile). Disturbance of the ground in that area could cause contamination or interruption of the water supply. Lygos Farm was not included on the list of properties with private water supplies when the Council considered the planning application, and RWE has given little consideration to the possible implications for Lygos Farm. Photographs taken during the public inquiry show how rainfall can have a significant effect on the incidence of surface water on the road and land alongside it (INQ12).

Cllr Ioan Richard, Local Ward County Councillor (INQ27)

185. The success of common land grazing is finely balanced and there are local examples of areas of common land where grazing has fallen away and resulted in the land becoming overgrown and disused. This has occurred both on account of replacement land being unsuitable and because hobby farmers have not used their grazing rights on the common land in question. The continued open character of these commons is dependent on their continued use by the local farmers.

186. The exchange of land proposed for Mynydd y Gwair is substantial and could cause substantial changes to the remaining common land and the replacement land, as has occurred in the examples above. There would be potential for animals to be drawn towards grazing any better quality land, mixing of flocks, and increased risks of infection and spread of parasites. Lower quality land would be rapidly colonised by scrub growth. Land exchanges can change the balance that exists on the common with risks for the viability of farms grazing it. If traditional farmers cannot survive, the use and character of the commons would quickly change.

187. The Welsh Government's Technical Advice Note 20 (TAN20), Planning and the Welsh Language, supports the interest of the Welsh language and the communities where the language is a significant part of the social fabric. That is the case on Mynydd y Gwair where Welsh is the first language of most of the hill farmers. The Mawr community (in which Mynydd y Gwair lies) has the highest percentage of Welsh speakers in the Swansea area and is the living, beating heart of the Welsh language in all of post-industrial South Wales. If the wind farm led to a number of farmers retiring or selling-up, the Welsh language community would be at risk.

188. The wind farm would also affect the attractiveness of the area for tourism with implications for investment in the area and for the local economy. Consideration of the Applicant's claims of community benefits should take these negative effects into account.

189. Finally, the benefits claimed for renewable energy should also take into account that for much of the time the amount of energy generated would be substantially less than the claimed maximum capacity, typically an average of only about 25%. Wind turbines produce unreliable subsidised electric energy, and the amount produced by the

proposed wind farm would be so small as to have a negligible effect on global emissions of carbon.

Charles Weiswall, Proprietor A1K9

190. A1K9 is a small business but it is widely known and has customers worldwide. The maintenance of access to the business is vital at all times as customers regularly visit the premises, and on occasions training programmes are run on the premises for large numbers of people. RWE has not carried out any consultation with the business about the access, which has been most frustrating.

Brian Humphreys, Local Resident and retired Commons Registry Officer

191. Mr Humphreys raised queries over the adequacy of advertisement of the applications, the references to and accuracy of land ownership and commons rights, and whether or not data provided to RWE took into account the Commons Commissioner's decisions.

Charles Hill, Local Resident and retired Archaeologist (INQ28)

192. The question is raised as to whether or not the desk-based assessment of the historic environment submitted with these commons applications meets the nationally accepted standards for such an assessment. It relies on previous archaeological work carried out in connection with the 2012 planning application. The current applications under the Commons Act 2006 are under different legislation and encompass different issues. Is reliance on the 4 year old study sufficient to address these issues? There is also no mention of assessment of the proposed replacement land or of Lidar aerial survey work having been undertaken. Other omissions seem to be the investigation of old tithe map evidence, reference to checks for earlier estate maps, or consultation of nationally important records of ancient and historic monuments. On this basis the report falls short of what one might expect for a thorough assessment.

193. The other matter to mention is Penlle'r Castell, which was built in the 12th/13th century to stem the tide of attacks from the north. It is a border castle looking towards the north over an area of disputed land and acting as an advanced observation post. Despite this, RWE's report places undue emphasis on its chief purpose being to provide views to the north, thus playing down the effect of the proposed wind turbines which would be to the south-west of the castle. It is wrong to emphasise this restricted purpose as the castle would have enjoyed all-round vision, included views of a medieval road to the north and south of it and inter-visibility with 2 other castles, one of which was near Pontardawe to the south. Thus the castle was constructed in the round and designed to have visibility in all directions, and the proposed wind turbines would have a significant effect on its setting, visibility out and sense of space.

194. Finally, the construction of a second wind farm close to the castle would have a cumulative detrimental effect on both the castle and the wider historic environment and landscape. Enough is enough; the second wind farm should not be allowed.

Written Representations

195. A very large number of objections were submitted in response to advertisement of the applications, most being standard letters organised by members of SOCME. A large

number of letters of support were also submitted, again most being standard letters organised by Alliance4Wind. All of these are at document pack CD2.1. Whilst all relevant, they do not raise any issues not already covered in the evidence summarised above.

196. Three further letters of objection were also submitted at the public inquiry from: Dr David Waterhouse (a biologist), Ms G Gravelle and Mr E Davies (both local residents) (documents INQ4.1, INQ4.2 & INQ4.3). Mr Gordon Howe of the Gower Society submitted a set of detailed queries on the access track construction methodology and its drainage arrangements (INQ18), which RWE responded to in writing (INQ19). Two letters of support for the wind farm were also submitted from: Mr William Powell AM (Assembly Member for Mid and West Wales); and Councillor Sybil Crouch (member of City & County of Swansea Planning Committee at the time planning permission was granted) (INQ21 & INQ22 respectively).

The material points are:

197. Mr Waterhouse expressed particular concerns about effects of the wind farm on birds and bats. The area provides an outstanding habitat for Common Buzzards, Red Kites and Skylarks and is an important site for migrating birds such as the Northern Lapwing. Many of these are protected under the Wildlife and Countryside Act 1981 and would be subject to disturbance by the wind turbines. A number of species of bat are known to frequent the area, including the Pipistrelle Bat, Noctules, Grey Long-eared Bats and Brown Long-eared Bats. Bats are detrimentally affected by wind farms, and construction of the access track from Bolgoed Road would affect a number of ancient trees that provide roosts for bats. RWE's bat survey claimed there were no bats in the area but that is not the case.
198. Ms Gravelle pointed out that one of the proposed replacement land sites is close to a Site of Special Scientific Interest (SSSI) at Craig Fawr uplands and that there are inaccuracies in the locations of some properties on the map in RWE's hydrology report. Mr Davies made comments on the construction of an existing track on the common and on the proposed new access track.
199. Mr Howe raised a series of questions on the detailed design and method of construction of the access track and its associated drainage, essentially questioning the feasibility of constructing it within the (generally) 10 metres wide working width allowed for in the Section 16 applications.
200. Mr Powell AM expressed support for the wind farm scheme as it would help to meet Wales and UK targets for greenhouse gases and renewable energy and would bring economic investment and jobs to the area.
201. Councillor Crouch said that Swansea is in dire need of strategic projects that will generate opportunities for employment and for local and regional businesses. RWE has committed to work with the Council to ensure these benefits would be gained, and has already demonstrated its commitment by developing an innovative turbine technician apprenticeship which 21 young people have already taken. The community benefits associated with the scheme would also help to get people in Swansea into employment.

202. It is important to reduce carbon emissions and reliance on unsustainable energy sources, and there is clear evidence that most people are in favour of wind energy schemes and do not feel that the landscape value is compromised. The opponents are in the minority, though they are often more vocal.

Conditions in Respect of Section 38 Applications

203. The 2006 Act includes provision for consents under Section 38 to be granted subject to conditions relating to the proposed works if considered appropriate, and the Applicant submitted a set of conditions for each of the 4 applications made under Section 38 (INQ30). These were discussed at the public inquiry. No objections were made to them and no amendments or other suggestions were put forward.

204. With one exception, the proposed conditions effectively duplicate the conditions attached to the extant planning permission. The one exception is Condition 2 suggested for Application D, the application made for ditch improvements alongside Rhydypany Road (Golden Mile) on CL77. That condition would require the works to be carried out in accordance with a Construction Method Statement submitted to the Welsh Ministers for approval. The ditch works are not covered by the planning permission.

205. Notwithstanding the duplication of conditions already attached to the planning permission, the Applicant submitted that, if the Section 38 consents were granted subject to the suggested conditions, they would provide an extra safeguard to enable Welsh Ministers to provide support for the commoners if necessary.

Conclusions

[Numbers in square brackets indicate the relevant paragraphs of the report.]

Introduction

206. As specified in the Commons Act 2006, the main issues to be considered are: the interests of persons having rights in relation to, or occupying, the release land (and in particular persons having rights of common); the interests of the neighbourhood; the public interest (which includes 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); and any other matter considered to be relevant. [23, 24]
207. I first consider the 3 applications made under Section 16 of the 2006 Act for areas of common land to be deregistered (the "release land") and for land to be given in exchange (the "replacement land"). These are made so that the wind farm can be constructed on the "release land", and I consider the various objections to the wind farm itself in the context of these 3 applications. I then consider the 4 applications made under Section 38 of the Act in a less expansive way. The first is in respect of construction of the access track through Common Land Unit CL68, which is an alternative to the Section 16 application for that common, and I make a comparison between the 2 alternatives. The second and third are for the erection of fencing around 2 sites of historic interest, and the fourth is for ditch improvements alongside Rhydypany Road. The key issues for these are quite limited.
208. All parties have made reference to the previous decisions in respect of the planning and commons applications for the wind farm, and these are important material considerations. After a public inquiry in 2010 the Welsh Ministers accepted the recommendations of the Inspector and refused an application for a wind farm comprising 19 No. turbines and associated works, including an access track (and the commons applications that accompanied it). That Inspector reached the conclusion that the benefits of renewable energy were sufficient to outweigh conflicts with the development plan and all other considerations, with the sole exception of the effects on the peat. He concluded that the harmful effects on the peat habitat caused by 3 of the proposed wind turbines being sited on the deepest sections of peat could not be overcome and were sufficient to justify refusal of the application. [9, 104, 174]
209. RWE subsequently submitted a revised planning application to the Council for a scheme comprising 16 No. wind turbines, omitting the 3 criticised by the Inspector, and that is the scheme that was granted planning permission by the Council in March 2014. The Council was advised by the Countryside Council for Wales (now part of Natural Resources Wales, NRW) that the revised scheme overcame its previous concerns about impacts on the deep areas of peat. [10, 13]
210. New commons applications were considered at a public inquiry in 2014 in the light of the Council's grant of planning permission but were refused in line with the recommendations of the Inspector. She reached the conclusions that: the applications were lacking in detail as the information needed to discharge the planning permission conditions was not yet available; there would be significant disadvantages to the

graziers in terms of disturbance during the construction of the scheme and inappropriate replacement land for grazing, particularly as the mitigation measures were insufficiently developed to give confidence; there was a risk of adverse effects due to fencing requirements for both the release land and the replacement land; the public would be disadvantaged by the change in character of the common and the unattractiveness of the replacement land; the potential impact of the access road would be considerable, and there was no clear plan to return the land to its current condition after decommissioning of the wind farm; and there was no convincing explanation why access to the site could not be from the Rhydypany Road (the Golden Mile) rather than via a long length of new track over common land from Pontarddulais. The Applicant now submits that these criticisms have been overcome by the current applications. [11, 12]

Section 16 Applications

211. Although the circumstances of each common are different and the proposals for replacement land are different, most of the relevant matters are applicable to all 3 of these applications, and I consider them as a whole.

Interests of Commoners

212. It is generally accepted that the wind farm would cause little disturbance during its normal day to day operations and that stock would be likely to happily graze around the individual wind turbines and associated structures. There would normally be minimal traffic involved during that period to disturb the stock, and the access tracks would have little effect on grazing behaviour on the commons. The critical part of the scheme would be the construction period of approximately 2 years (and to a lesser extent the decommissioning period in 25 years time). [30, 37]

213. During the construction period stock would be disturbed by the various construction activities and by the regular associated traffic movements, and their movement around the commons would be disrupted by the temporary fencing around the construction works. However, it must be appreciated that construction work would not take place over the whole site at the same time (indeed it would tend to be concentrated in only a small number of locations at any one time), that traffic would not necessarily be along all parts of the access track and that, even during the peak few months of construction activity, traffic on the site would be no more than 3-4 vehicles per hour (of which only some would be HGVs). [33, 34, 105, 106, 131]

214. The 3 Common Land Units affected support a considerable number of sheep and cattle and are a valuable resource for a large number of farmers with rights of common. Use of the commons is shared by a system of hefting whereby individual flocks graze certain areas of common to which they are attuned by their upbringing. Thus, even though there are no fences, the different flocks do not tend to mix. This raises the question of what would happen if construction activities led to a flock moving away to the edge or even beyond the boundaries of its normal heft. Although not accepted by everyone, there seems to be a general agreement that the flock would tend to exert pressure on the adjacent flock so that there would be a ripple effect causing informal adjustment of the hefts. Some objectors argue that this would extend over many miles until the last flock ran out of space but I do not consider that to be a

reasonable proposition. It is more likely that the ripple effect would gradually die out such that stock density actually became a bit tighter. [40, 103, 120, 121, 175]

215. The other potentially harmful effect would be due to the temporary fencing, particularly along the new access track. Through Common Land Unit CL68 RWE would propose to construct the track in discrete 100 metre lengths and, as that common is only lightly grazed, the temporary fencing would not be left in place once each section had been constructed. The restored working area along the side of the new track would be capable of restoration without protection from grazing animals. Thus, over that common, the temporary fencing would have little effect on animal movements. [32, 131]
216. However, over commons CL74 and CL77 grazing activity is higher and it would be necessary to continue to fence the route for some 12 months after restoration of the working area in order to exclude the sheep and ensure grass was able to become re-established before the fencing was removed. RWE's proposed working method would be to provide gates and cattle grids at 300 metre intervals along the route, which would allow stock to move across the track, except when there was traffic, but would exclude them from inside the working area. Whilst normal stock movement lines would inevitably be affected, the animals would not have to detour very far to find a way across the track corridor. The graziers say fences would lead to lambs becoming separated from their mothers, and there is no doubt that could occur. However, RWE has undertaken to fund the costs of additional shepherding during the construction (and restoration) period, and I consider that would substantially overcome, or at least mitigate, the problems that would be likely to occur. [18, 31]
217. The Section 16 applications are specifically in respect of the deregistration of the areas of common needed for the permanent works and temporary working areas and their compensation by the provision of replacement land. Four parcels of replacement land are put forward comprising some 31.16 hectares in compensation for some 40.2 hectares of release land. However, 32.39 hectares of the release land (the temporary working areas) would be relicensed for grazing during the operational period of the wind farm, and the owner of the commons, the Somerset Trust, would suspend its own grazing rights throughout that period too, equivalent to about 41.33 hectares of land. Thus overall, the graziers would benefit from the equivalent of some 64.2 hectares of additional grazing land during the 25 years operational period of the wind farm. [20, 39]
218. In numerical terms the graziers would appear to gain a substantial benefit over the 25 year period in comparison with temporary inconvenience and disruption over a 2-3 year period for which they would be able to claim the additional shepherding costs. In addition, RWE has made provision to make up any shortfalls suffered by farmers under the Basic Payments Scheme should these occur as a result of changes in the areas of land available and suitable for grazing. On the face of it, this combination of arrangements would not seem to be detrimental to their interests. However, there are doubts about the convenience and suitability of the areas of replacement land. [18, 30, 120]

219. The replacement land adjacent to Cwmdulais Cottages on CL68 is acknowledged as not being suitable for grazing, and RWE says it is put forward purely to comply with the advice in the Welsh Government's Guidance 2014 that applications in respect of renewable energy are more likely to be successful if made under Section 16 rather than Section 38. However, there is little grazing pressure on CL68, so I do not consider inability to rely on that land to be of any significance. [44, 111]
220. Two areas of replacement land are put forward for CL74. That at Blaen Gerdinen is grass land that has been partially improved and is a valuable farming resource. Some graziers say the quality of its grass would attract sheep from further across the common. However, it is apparent that the gate into it has been left open recently and it has been grazed by sheep off the adjacent heft belonging to the farmer who currently rents the land in question. It would be up to the West Glamorgan Commoners Association (WGCA) and the commoners themselves to manage the replacement land, and whether it was rented out to raise income for the commoners or integrated into the main common would be for them to decide. Either way, I consider it to be suitable and valuable replacement land. [38, 46, 109, 116, 123, 128, 163]
221. The other land at Blaen Nant Ddu is poor quality land and too wet for general grazing, though it would have some use in dry summers. Thus, whilst it might be useful replacement land in other respects (e.g. as rich habitat and as part of the common visually), its grazing benefits would be small. Finally, the replacement land for CL77 would be at Blaen yr Olchfa. This is a larger and better area of land than offered as replacement land in the previous commons applications and, although some of it is very wet, some is good quality grazing land and would provide a valuable benefit. Furthermore, even the wet areas are used by the farmer whose flock grazes the adjacent heft, some of which is itself very wet. Thus I consider that most of this area of land would be suitable as replacement land. [47, 48, 112, 116, 124, 132, 133, 164]
222. Viewed as a whole, whilst not all of the replacement land would be usable for grazing, at least half of it would, and if only half were accounted for in the numerical assessment, the net long-term benefit to graziers of the 3 commons would still be quite substantial. Arguments have been put about the replacement land increasing the risks of liver fluke on account of being too wet. However, it would be up to the graziers themselves (and the WGCA) as to how that land was managed. As I have concluded above, even if the wet land was not used for grazing, the replacement lands would still provide a useful benefit overall. Furthermore, as parts of the commons are already quite wet and liver fluke is prevalent in the area, treatment programmes are already needed for many of the stock on the commons, and use of the wet replacement areas would not significantly change this. [41, 94, 125]
223. Taken as a whole and on balance, I consider the interests of the commoners would not be unacceptably harmed. The mitigation and compensation factors now offered by the Applicant in addition to the improved provisions for replacement land are sufficient to overcome the concerns raised by the 2014 Inspector. [18, 117]
224. Some objectors have said the replacement land should be provided on a "like for like" basis but the legislation sets no such requirement. The Welsh Government's Guidance 2014 says that replacement land should be "of at least equal benefit", and I take that to provide some flexibility in what the benefits might be. If the release land is

in the middle of the common, as in this case, it is all but impossible for replacement land on the edge of the common to provide the same benefits. This problem was encountered in respect of the recent Circuit of Wales applications and in that case the Inspector concluded that the replacement land did not provide equal benefit but was the best available. That is also the case at Mynydd y Gwair, and I consider it to be a factor of limited weight against approval of the current applications but not a matter that leads to their automatic rejection. [36, 42, 43, 97]

Interests of the Neighbourhood

225. This heading covers matters such as hydrology and water supplies. A number of farmers and other local residents have expressed concerns about their private water supplies which are dependent on springs and small watercourses on the commons. RWE has carried out investigations of these (even though many people say they have not been consulted), and I am satisfied by their conclusions that the construction works would be so far away from and would affect only small parts of the catchment areas that they would be unlikely to have any impact on the security or quality of those supplies. However, that conclusion has now been reinforced by the inclusion of appropriate monitoring and mitigation proposals in the conditions discharge pack recently submitted to the Council. These would provide fallback reassurance in the unlikely event of some impact occurring. [56, 95, 108, 118, 126, 134, 136, 149, 162]
226. The second matter is the perceived risk that the proposed new access track (which would involve a length of cutting) would affect drainage arrangements in the Gopa Hill area and exacerbate flooding problems already experienced in Pontarddulais. I do not agree with that perception. The detailed design of the access track and its provisions for drainage are matters for approval by the Council under the conditions of the planning permission, and it is not for me to prejudge that approval. However, the SUDS design statement submitted as part of the conditions discharge pack follows good practice, and I have no reason to doubt that the surface water would be adequately controlled to ensure increased risks of flooding would be avoided. [58, 154, 156, 199]
227. Objectors have also expressed concerns about the construction affecting underground water flows but I am satisfied that the risks of this have been adequately investigated and would be negligible. [59, 155]
228. The 2010 Inspector had reservations on these matters and commented that there was no guarantee the measures provided would be successful. However, as a Chartered Civil Engineer with considerable experience in drainage matters and having the benefit of seeing the detailed proposals now put forward in the Construction Method Statement (as part of the conditions discharge pack), I am much better able to assess these risks than the previous Inspector.

Public Interest

229. Looking first at nature conservation, the application has been supported by numerous ecological surveys which have informed the Environmental Statement but which also include more recent updates. These assessments appear to be thorough and have provided the basis for the Applicant's submissions to the Council for the discharge

of planning conditions. These submissions include a Habitat Management Plan, a Species Monitoring Plan, an Invasive Plant Species Method Statement and a Construction Method Statement. It is not for me to assess the adequacy of the various submissions made to the Council but I have no reason to believe the Council will not ensure they would be entirely adequate. [64]

230. Several local residents and interested parties have questioned the possibility of effects on a range of flora and fauna, and I do not propose to address each one in detail. Suffice it to say that each has been addressed in the Applicant's assessments and considered in detail by the Council's expert advisers, including Natural Resources Wales, who have accepted that the proposed wind farm and associated infrastructure would not adversely affect nature conservation. No new evidence has been put to me to lead me to reach any other conclusion. [65, 68, 150, 160, 197]
231. The one particular matter worth mention is the conservation of the peat habitat. The works would cause some disturbance of that, and it was the reason the original scheme was refused in 2010. The scheme now proposed has addressed that shortcoming, and the works would now only affect areas of shallow peat of lesser conservation value. The Council acknowledged this in resolving to grant planning permission in 2014. Much has been made that Mynydd y Gwair is a valuable peatland resource but it is clear that agricultural use over many years has led to its degradation, and over much of the area the peat layer is now quite shallow. One grazier has explained that it is this shallow depth, underlain by clay, that has made it impossible to improve the drainage of some boggy parts of the common. [64, 136-138, 151, 152]
232. It is inevitable that any excavations on the commons would cause some loss of the peat resource and peatland habitat. However, the current proposals would adequately minimise that impact. There are justifiable doubts about how successful restoration of the working areas would be, particularly in the light of the poor results achieved in recent years for the gas pipeline over the common and the Mynydd y Betws wind farm. That would clearly be a challenge for RWE but it is an experienced wind farm developer and claims to have achieved effective restoration of similar land in Scotland. It is also clear that it is fully committed to minimising any detrimental effects on this and all other ecological matters, as demonstrated by its commitment to employ and give adequate powers to an Ecological Clerk of Works and to the Planning Performance Agreement with the Council to fund overseeing of the works by a planning enforcement officer. [35, 67, 100, 107, 115, 183]
233. The 2014 Inspector expressed reservations about the likely success of mitigation measures but, unlike her, I have had the benefit of detailed expert evidence on behalf of the Applicant and sight of the raft of measures included in the conditions discharge pack recently submitted to the Council. Although there can never be certainty in such matters, I have reached the conclusion that the effects on nature conservation would be minimised to an acceptable level.
234. I turn now to effects on the landscape. The construction of 16 very tall structures and a long length of access track over the commons would inevitably change its character from that of a wild, open expanse to a landscape with an element of industrial-style development, albeit occupying quite small footprints and directly affecting only a small proportion of the land surface. Visually, it would change people's

- perceptions of the landscape and, in the context of these applications, of the character and appearance of the commons. [102, 141, 142, 145, 147, 159, 161, 174, 179, 185]
235. However, the site lies within Strategic Search Area (SSA) E of Technical Advice Note 8 (TAN8), Planning and Renewable Energy, which reflects the Welsh Government's commitment to the provision of renewable energy in Wales. The SSA's were selected because they were considered to be technically, practically and environmentally better able to accommodate the landscape and visual impacts of wind farms than other parts of Wales, and their selection accepted the implicit objective of accommodating the inevitable landscape changes. The selection also took into account the presence of large areas of common land within them. These principles must be an important consideration when assessing the acceptability of the changes caused by the wind farm. [70]
236. The Council considered the balance of landscape and visual impact arguments when it resolved to grant planning permission. However, for the purposes of these commons applications, I have particularly considered the effects on the commons as such and on the users of the commons. I do not consider the structures and access tracks would materially affect the long-term use of the land for grazing purposes but I do consider they would affect the enjoyment of people using the commons for recreational purposes. It is generally accepted that different people have different perceptions of such structures; some accept them as simply elements in a changed landscape, whilst others take the view that they ruin an otherwise majestic landscape. It is likely that the majority of people who use Mynydd y Gwair are of the latter persuasion and, regardless of the principle of acceptance contained in TAN8, I conclude that the wind farm would be detrimental to the appearance of the commons and the majority of people's enjoyment of them. Of course, the weight to be attributed to that harm is tempered by the principles established by TAN8. [70-72, 119, 141, 165, 166, 168, 180]
237. As for the particular proposals for release and replacement land contained within the Section 16 applications, I consider these would have little further impact on the landscape than the construction works themselves. Although the replacement lands are currently fenced, 2 of them (Blaenant Ddu and Blaen yr Olchfa) are similar in character to the adjacent common land and appear integral with it, a third (Blaen Gerdinen) is not significantly different, and the fourth (adjacent to Cwmdulais Cottages) is quite small. [71, 139, 153, 181]
238. Possible effects on the dark sky have been raised in the context of astronomy but I consider these to be negligible. It seems likely that some of the wind turbines would have infra-red aviation lights on them but the effect of these would be limited. Whilst occasional amateur observations are carried out in the vicinity of the commons, the main concern would be the possibility of effects on the designated International Dark Sky of the Brecon Beacons. However, that is some distance away and with several sizeable settlements in between. The introduction of a handful of infra-red aviation lights would have a negligible effect on that. [73, 171, 172]
239. The third matter under this heading is public rights of access. Whilst access along several public footpaths and bridleways near the southern end of the new access track would be temporarily interrupted during the construction of that part of the route, the

interruptions would be short-lived. On CL74 and CL77 no public rights of way would be directly affected by the works. [74, 158, 166]

240. Members of the public have open access rights over the commons (under the Countryside and Rights of Way Act 2000 and Section 193 of the Law of Property Act 1925) and during the construction (and restoration) period this would be impeded by the temporary fencing around the construction work areas and along the access track corridor, which would have crossing points every 300 metres. However, beyond that period unrestricted access would be restored, apart from the small areas of land occupied by the physical structures themselves. Most of the release land would also be returned to open access. [61, 62, 75]
241. The Banwen Miners Hunt rides on Mynydd y Gwair on about 8 Saturdays each year and has expressed concern that it would not be able to do this during the construction period. However, RWE has undertaken to suspend construction work on those days provided it is given sufficient notice. Thus, apart from having to use the regular crossing points over the new access track, the Hunt would be able to continue its activities. During the operational period the wind turbines would not interfere with the free access enjoyed by the Hunt. [63, 169, 170]
242. The areas of replacement land are currently fenced, and it would be a matter for the West Glamorgan Commoners Association (WGCA) and the commoners themselves to decide how they would prefer to manage that land. However, as newly registered common land, the public would have access to it, which represents a net gain in public rights of access to land. Overall, I conclude that effects on public rights of access to land would be minimal.
243. Finally, so far as archaeological remains and features of historic interest are concerned, the Applicant has carried out extensive surveys of the commons, and CADW and the local planning authority have been satisfied that any effects on these features would be acceptable. Two sites close to the proposed construction works are the subject of Section 38 applications for temporary fencing to ensure they would not be damaged during construction, and I am satisfied that all appropriate measures would be taken to ensure the scheme would not affect any of these features. [77, 78, 167, 192]
244. My particular attention has been drawn to Penlle'r Castell, a medieval castle located just to the north of the proposed wind turbines on CL77. It was built for purely military purposes as an advanced observation post to guard against intruders from the north, and its open setting has already been eroded to some extent by the recent Mynydd y Betws wind farm. The Mynydd y Gwair wind farm would have some additional impact on that but not sufficient to count as more than a negligible effect on the overall significance of the castle. [80, 193]

Any Other Relevant Matters

245. Finally, I turn to the fourth matter listed in the 2006 Act, which so far as these applications are concerned encompasses the benefits of the proposed wind farm scheme and possible effects on the Welsh language. The Welsh Government places great importance on the development of sustainable, renewable energy schemes, as

evidenced by the Minister's letter of 14 August 2015 which also said that "*the Welsh Government wants the people of Wales to benefit from the economic opportunities both through more job opportunities and commercial benefits presented by onshore wind*". [81]

246. There is extensive EU, UK and Welsh policy support for renewable energy, and the City and County of Swansea has also resolved to continue to move towards a clean energy future and to harness the abundant renewable energy resources available in the area, particularly tidal and wind. There is also legislative commitment, most recently the Welsh Government's Future Generations Act 2015, which is expected to receive Royal Assent in spring 2016, and which places a duty on Welsh Ministers to achieve certain emissions targets and carbon budgets over the coming years. [83-86]
247. TAN8 sets targets for each SSA which have been updated by Ministerial letter in July 2011. The Mynydd y Gwair wind farm has already been awarded a Contract for Difference to supply the national grid, a grid connection is available, and planning permission has already been granted. Thus there is no doubt the scheme would go ahead and make an important contribution towards meeting the Welsh Government's target. These renewable energy benefits and the Welsh Government's strong commitment towards the development of renewable energy in Wales is a factor of considerable weight in favour of approving these applications. [82, 189, 200, 202]
248. The scheme would also bring economic benefits in the form of substantial investment into the area and the creation of jobs, particularly during the construction period. It would generate income throughout the operational period, most of it to Wales and about half into South and West Wales. In addition, the Community Benefit Fund, for which provision is made under the planning permission, would amount to about £6M over 25 years. These amount to substantial economic benefits. [87-89, 188, 200, 201]
249. Finally, it has been submitted that, if the livelihood of farmers was affected, there would be an impact on the local community and hence on the Welsh language, as the indigenous population in this area is the heart of the Welsh language in this part of Wales. I am aware of the advice in TAN20. However, as I have concluded above that the interests of the commoners would not be unacceptably harmed, I consider the potential for impact on the Welsh language would be negligible. [102, 146, 186, 187]

Overall Conclusion

250. I have concluded above that the proposed wind farm scheme facilitated by these Section 16 applications and the lands concerned in the applications would have only limited detrimental effects. Although considerable inconvenience would occur during the construction period, on balance I concluded that the interests of commoners would not be unduly harmed. I have also concluded that the wider interests of the neighbourhood would not be significantly affected and that, on most matters, the public interest would not be significantly affected. The exception, of course, is in respect of the landscape and visual impacts.

251. On these I have concluded that the wind farm would be detrimental to the character and appearance of the commons and to the majority of people's enjoyment of them for recreational purposes. However, as the site lies within Strategic Search Area E and there is policy acceptance in principle to landscape changes in order to gain renewable energy development, the weight attributed to this harm is not as great as it might otherwise be.

252. The scheme would bring substantial benefits, both economic benefits but more particularly the benefits of renewable energy. Bearing in mind the Welsh Government's commitment towards the increased provision of sustainable renewable energy, the need to achieve targets for its development and the sustainability benefits of moving towards increased reliance on renewable energy, I attribute substantial weight to these benefits and consider they far outweigh the detrimental effects outlined above.

253. For these reasons I conclude that the 3 Section 16 applications should be approved.

Section 38 Applications

254. I consider each of these in turn, and first the application for the construction of new access track and upgraded track on CL68. This is an alternative way of achieving the same aims as the Section 16 application for CL68 and only one or the other should be approved. I have concluded above that the Section 16 application would be acceptable and, as that offers the benefit of the provision of an area of replacement land, I consider it would be preferable to approve the Section 16 application rather than that under Section 38, even though the value of the replacement land is quite small. I agree that it would offer little benefit to CL68. However, it was apparent on my site visit that it would provide some benefit to the adjoining common, CL45, as the fence on that side is in poor condition and stock have obviously already been grazing on the higher part of the plot. Thus, it would provide a beneficial addition to the area of common land as a whole. [45, 49]

255. Whilst considering this application, it is timely to ask why it is necessary to construct an access track through CL68 at all when highway access much closer to the wind farm site would appear to be available. The 2014 Inspector expressed doubts about this. However, it has now been explained that access via the A48 Bolgoed Road is the only feasible route for the exceptional loads involved in transporting the wind turbine parts. Whilst the vehicles (lighter and shorter after unloading) would be able to leave the site via Rhydypany Road, it is not feasible to use that route to bring the heavy loads to the site because it is handicapped by 2 substandard old bridges that would be damaged by the exceptionally heavy loads involved. [49, 176]

256. The second and third applications are for temporary fencing around a scheduled ancient monument and an undesignated historic asset to prevent damage to them during construction work. They are sited close to parts of the proposed works. No meaningful objections have been raised to these fences, and there can be no doubt they would be a sensible and worthwhile precautionary measure. [51]

257. Finally, I turn to the application for ditch improvement works alongside Rhydypany Road to deter vehicles from entering the common. The Applicant has explained that, whilst these might be seen as works of maintenance (which would not need approval)

rather than improvement, the Section 38 application has been made as a precaution to avoid there being any doubt. I agree that it is marginal; the work involved is quite minor and the ditch would only be deepened by about 0.25 m. [52, 127]

258. Concern has been expressed that the work might affect the water supply to Lygos Farm on the eastern side of Rhydypany Road, a spring partially fed from a stream that crosses the road in the vicinity of the ditch in question. However, the works would be some distance north of the road crossing and would affect only a small part of the catchment area. In addition, the Construction Method Statement for the ditch works includes measures to minimise the risks of pollution. I consider these factors give confident assurance that the water supply would not be affected. [53, 184]
259. Although not needed for the construction of the wind farm, the works proposed under this application would provide a useful benefit to the commoners by reducing the likelihood of unlawful access to the common for joyriders. Some disturbance of this sort has occurred in recent years, and the WGCA and the commoners have worked with the police to deter it. Approval of this application would enable an additional deterrent to be implemented. [114]
260. Some mention needs to be made of conditions, as Section 39(3) of the 2006 Act makes provision for consents to be given "*subject to such modifications and conditions relating to the proposed works as the appropriate national authority thinks fit*". As explained above, the Applicant has put forward a series of possible conditions for each of the Section 38 applications and has suggested that they would provide an extra safeguard to enable the Welsh Ministers to support the commoners if necessary. [19, 25, 203, 204]
261. Those suggested for the first 3 applications would duplicate similar controls applied through conditions attached to the planning permission, and I consider them to be unnecessary and potentially confusing. The Rhydypany Road ditch works are not part of the planning permission and so would need to be controlled through the Section 38 consent. 3 conditions have been suggested but I consider the only one needed would be for the works to be constructed in accordance with the Construction Method Statement for the Ditch. RWE has suggested that this should be submitted to and approved by the Welsh Ministers. However, a satisfactory version is included as a Core Document and would need no further approval. [204, 205]

Recommendations

Application A

262. I recommend that consent be not granted.

Applications B and C

263. I recommend that consent be granted.

Application D

264. I recommend that consent be granted subject to the following condition:

- (1) The works hereby consented shall be undertaken in accordance with the Construction Method Statement for the Rhydypany Ditch.

Applications E, F and G

265. I recommend that the applications be granted and orders be made.

Clive Nield

Inspector

APPEARANCES

FOR THE APPLICANT:

Marcus Trinick QC	Instructed by Eversheds LLP, Cardiff.
He called:	
Christopher Hadley, BSc(Hon) Agric, MBIAC	Director, Savills, East Lothian.
Thomas Oxtoby, BVSc, CertCHP, MRCVS	The George Farm Veterinary Group, Wiltshire.
Judith Jeans, BSc(Hon), AIEMA, MBHS	Senior Consultant, Wallingford Hydrosolutions Ltd, Oxfordshire.
Dominic Woodfield, BSc(Hon), CEng, CEnv, MCIEEM	Managing Director, Bioscan (UK) Ltd, Oxfordshire.
Brian Denney, BA(Hon), DipLA, MLI, MIEMA	Director, Pegasus Group Ltd.
Mike Kimber, MA(Hon), MCIFA	Project Manager, Headland Archaeology (UK) Ltd, Hereford.
Karl Cradick, BA(Hon), MSc, MRTPI	Director, Savills, Dorset.

FOR SAVE OUR COMMON MOUNTAIN ENVIRONMENT (SOCME):

Glyn Morgan	Chairman of SOCME and local farmer.
He gave evidence and called:	
Brigitte Rowlands	Secretary, West Glamorgan Commoners Association (WGCA).
Glyn Morgan	As local grazier on the common land.
Phil Thomas, DipREM, MRICS, FAAV	Director, Messrs Herbert R Thomas LLP, Cowbridge – appointed by WGCA.

Gareth Mulligan, BSc, BVSC, CertBCP, MRCVS	Afon Veterinary Centre, Neath.
Gwyn Davies	Local grazier on CL74.
Floyd Farthing	New grazier on CL77.
Cellan Jones	Local grazier on CL68.
David Francis	Local grazier (CL74) and water diviner.
Clare Moseley, MA(Oxon)	Local resident and representative of The Open Spaces Society.
Simon Meecham-Jones	University lecturer – cultural history.
Paul Northcote	Local resident (statement read at Inquiry by wife, Mrs Sharon Northcote).
Barry Stewart, BSc(Hon)	Barry Stewart & Associates, Consultant Ecologists.
John Miles	Local Councillor, Pontarddulais Town Council.
Ian Hinton	Representing the Bunker/Hinton family, local residents.
Frank Jones	Local guest house owner.
Alan Richards	Representative of 3 local walking groups: Pontarddulais Walking Club; Pontardawe Strollers; and Swansea Ramblers Association.
David Edwards	Secretary of Banwen Miners Hunt.
Ian Glendenning, BSc, MPhil	University academic - astronomy.

OTHER INTERESTED PERSONS:

Dr Altaf Hussain AM	Regional Assembly Member for South Wales West.
Robin Kirby	Chairman, The Gower Society.
Jonathon Carter	Local resident.
Cllr Ioan Richard	Local Ward County Councillor.

Charles Weiswall	Proprietor, A1K9 dog training centre, adjacent to common land, CL68.
Brian Humphreys	Local resident & former Commons Registry Officer.
Charles Hill, BA, MCIfA	Local resident & former archaeologist.

INQUIRY DOCUMENTS

INQ1	Core Documents List, comprising: 1.1-1.63 Application Documents; 2.1-2.2 Representations and Applicant's Response to them; 3 Planning Conditions Discharge Pack; 4.1-4.13 Additional Documents (supporting Application); 5.1-5.12 Applicant's Submitted Evidence; 6 Common Land Consents Guidance (WG); 7.1-7.2 Nature Conservation – relevant papers; 8.1-8.2 Cultural Heritage Policy; 9.1-9.2 European Obligations; 10.1-10.11 UK Law and Policy (particularly re Energy); 11.1-11.14 Welsh Policy (particularly re Energy); 12 Case Law; 13.1-13.13 Reports and Decisions on Common Land Orders for Other Wind Farms. (14.1-14.12 Inquiry Documents – as INQ5.1-5.12 below)
INQ2	List of Appearances on behalf of Applicant.
INQ3.0-3.19	List of Appearances on behalf of SOCME, and Statements of Evidence of witnesses.
INQ4.1-4.3	3 additional letters of objection.

- INQ5.1-5.12 Pack submitted by Applicant:
- 5.1 – Map used for Site Visit.
 - 5.2 – Letter from C&C of Swansea Council, 8 Feb 2016.
 - 5.3 – Qualifications and Experience of Mr Oxtoby.
 - 5.4 – Updated Carbon Balance Report, Feb 2016.
 - 5.5 – Recreation Survey Addendum, Feb 2016.
 - 5.6 – Updated Draft Unilateral Undertaking, 10 Feb 16.
 - 5.7 – Explanatory Memorandum for UU.
 - 5.8 – Frank Knight letter, 16 Feb 2016.
 - 5.9 – Ffynnon Oer electricity generation data.
 - 5.10 Introductory Presentation of Proposals.
 - 5.11 Notes on Recent Law and Policy.
 - 5.12 Aerial photograph.
- INQ6 Third party representations made to LPA on Planning Permission Conditions Pack submitted to LPA by Applicant.
- INQ7 Applicant’s responses to these representations.
- INQ8 Internal LPA note re Condition 31, sub by Applicant.
- INQ9 Aerial photograph of common (CL77), sub by SOCME.
- INQ10 Dr Hussain’s Statement. (in Statement folder)
- INQ11 Mr Carter’s Statement. (in Statement folder)
- INQ12 Photographs of standing water on and around Golden Mile road, sub by Mr Carter.
- INQ13 Photo montages of wind farm, submitted by Gower Society.
- INQ14 Arup Report on TAN8 Strategic Search Areas E and F, Dec 2008, sub by Gower Society.
- INQ15 Deed of Grant and Licence re Ty Canol Farm grazing rights on common, dated 1974, sub by SOCME.
- INQ16 Revised Statement of Evidence presented by Mr Stewart.

- INQ17.1-17.2 Mr Kirby's Statement (in Statement folder) and Summary of Statement, on behalf of Gower Society.
- INQ18 Correspondence from Mr Howe (Gower Society) re access track and drainage proposals.
- INQ19 Applicant's response to Mr Howe's comments.
- INQ20 Revised Unilateral Undertaking, dated 19 Feb 2016, sub by Applicant.
- INQ21 Letter of support for scheme from William Powell AM for Mid and West Wales, sub by Applicant.
- INQ22 Letter of support for scheme from Cllr Sybil Crouch, sub by Applicant.
- INQ23.1-23.2 Cost Estimate for borehole water supply, & Report on evidence of Dr Rachel Connor re Energy Bill 2016, sub by Mr Northcote.
- INQ24.1-24.6 Amended Statement on behalf of Banwen Miners Hunt; schedule of hunts for 2015/16; ancient map of area covered by WGCA; Transco brochure for farmers re gas pipeline scheme; and photographs of land before and after pipeline, all sub by Mr Edwards.
- INQ25.1-25.2 Additional Statement presented by Mr Miles and photographs of water draining off Gopa Hill, sub by Mr Miles.
- INQ26 Applicant's response to Mr Miles' representations.
- INQ27 Cllr Richard's Statement. (in Statement folder)
- INQ28 Mr Hill's Statement with attachments.
- INQ29 Applicant's response to Mr Hill's comments re LIDAR coverage.
- INQ30 Applicant's suggested conditions for Section 38 Applications.
- INQ31 Closing Submission on behalf of Gower Society.
- INQ32 Closing Submission on behalf of SOCME.
- INQ33 Closing Submission on behalf of Applicant, RWE.
- INQ34 Completed and signed Unilateral Undertaking, submitted by Applicant after Inquiry to agreed timetable.

PLANS SUBMITTED AT INQUIRY

- A Proposed Replacement Land at Blaen-yr-Olchfa, previous (2014) and current (2016) submission.
- B Commons Public Inquiry Plan 1, Permanent and Temporary Works, Sheet 1 of 2 – Drawing No. SK042.
- C Commons Public Inquiry Plan 1, Permanent and Temporary Works, Sheet 2 of 2 – Drawing No. SK043.
- D Commons Public Inquiry Plan 2, Operational Infrastructure – Drawing No. SK044.
- E Commons Public Inquiry Plan 3, Operational Infrastructure – Drawing No. SK045.