

Technical note:

Trecelyn Wind Farm - Draft Section 38 Commons Act 2006 Consenting Strategy with S.38 forms

1. Section 38 Commons Act 2006 Consenting Strategy

1.1 Proposed Development overview

1.1.1 Pennant Walters Ltd (the Applicant) is consulting on a draft planning application to be submitted to Welsh Government for consent as a Development of National Significance (DNS). The Proposed Development, as described in the draft DNS application form, is a proposal to construct and operate a wind farm of up to four turbines (with a maximum blade tip height of 145m) and associated infrastructure including:

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

1.2 Secondary consents

1.2.1 Section 9 of the DNS application form lists the secondary consents which can be considered by the Welsh Ministers alongside the primary DNS application.

1.2.2 Under these provisions, the draft DNS application subject to consultation has identified the requirement for a secondary consent related temporary works on Mynydd Maen common under Section 38 of the Commons Act 2006.

1.3 Overview of proposed works

1.3.1 The Proposed Development seeks to minimise works by using existing roads and access tracks, where possible. However, to deliver the turbine components for Turbines 2, 3 and 4, there is a requirement to temporarily widen by 1.5m along the length of the existing road to the access track for each turbine.

1.4 Pre-application Consultation

- 1.4.1 The draft DNS application is subject to statutory pre-application consultation prior to submission. Through the consultation the Applicant is also seeking to consult on all aspects of the proposals. The consenting regime required for the temporary works is identified as being through S.38 of the Commons Act 2006.

1.5 S.38 Application Forms

- 1.5.1 The draft DNS application is supported by a draft S.38 application form, providing further detail. The draft forms are contained in **Appendix A**.

Issued by

.....
Andrew Williamson

Approved by

.....
David Kenyon

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Document revisions

No.	Details	Date
1	Draft consenting strategy	November 2023

Appendix A: Section 38 forms



Application for consent to construct works on common land

Commons Act 2006: Section 38

National Trust Act 1971: Section 23

Return completed application to:

Planning and Environment Decisions Wales

2nd Floor West
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Tel: 0300 060 4400

E-mail: PEDW.casework@gov.wales

Application for consent to construct works on common land

- Answer all the questions on this form in full and only use a separate sheet where there is insufficient space for your answer
- Refer to separate **Notes** on completing this form (the "Notes") and the 'Common Land Guidance - General Overview' note before, and when, applying
- Consult informally and widely about your ideas before developing a formal proposal

This application is made under *(tick as applicable)*

Section 38: Commons Act 2006

.....
(if there is a Scheme of Management or local Act applying to the land, see Section I and 'Common Land Guidance – Special Consent Provisions (other than National Trust Land)' note before applying)

Section 23: National Trust Act 1971

.....
(see Common Land Guidance – Special Consent Provisions (National Trust Commons)' note before applying))

SECTION A – The land (see Notes 1, 2 and 3)

1. Name of Common CL No.

(a) Community/Town of

(b) Borough/County Borough/City of

2. Commons Registration Authority

3. Does owner of common consent to proposals

SECTION B – The applicant

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

(a) Forename(s)

(b) Surname

(c) Position/Organisation (if appropriate)

5. Full postal address

Postcode

Telephone number (incl national dialling code)

Mobile number

Fax number (incl national dialling code)

E-mail address

I prefer to be contacted by E-mail Post

Details of Agent (if appropriate)

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

Contact Name

Organisation

7. Full postal address

Postcode

Telephone number (incl national dialling code)

Mobile number

Fax number (incl national dialling code)

E-mail address

SECTION C – Area of common and common rights (see Note 4)

8. (a) Is the land on which the works are proposed registered as common land? Yes No

(b) If **No**, why do you need to apply?

9. (a) What is the total area of the common as registered?

(b) What common right(s); if any, are registered? (e.g. number and type)

Grazing rights over the land.

Are they ever exercised? Yes No

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

TBC

SECTION D – The proposal (see Note 5 and 6)

10. What works are proposed? (tick **all** that apply)

- (a) fencing
- (b) building/s
- (c) other structure/s
- (d) ditch/es, trench/es, embankments/s .
- (e) other works .

Please specify

11. Area and extent of works

(a) What area will be occupied by the works or enclosed by the fencing? sq m/ha

(b) What length of works/fencing is proposed? m

12. Are the proposed works:

(a) permanent?

(b) time-limited? (see Note 7)

(c) a mixture of both (a) and (b)

For time-limited works, how long will they be needed? weeks/months/
years

13. Is this application, or any part of it, for works that have already been constructed? (see Note 8) Yes No

14. Describe the proposed works below

The works include temporary minor widening of the existing road to enable the delivery of the turbine components for turbines 2, 3 and 4 of the Proposed Development.

15. Say more about the nature and purpose of the proposal, and explain why the proposed works are needed on the common (**see Note 9**)

The works include temporary minor widening of the existing road to enable the delivery of the turbine components for turbines 2, 3 and 4 of the Proposed Development. The works are required on common as the land immediately adjacent the existing road is common land.

16. It is strongly recommended that you consult **informally** on your proposals at an early stage in their development. (**See Note 10 and** 'Common Land Guidance - General Overview' note)

What **informal** consultation have you carried out? Give details below

Consultation on the temporary works is included as part of the planning application consultation process.

SECTION D1 – Additional questions where proposed works involve fencing
(If your proposal does not include fencing, go straight to Section E)

17. Please give details of:

(a) the type(s) of fence proposed

(b) the height of fencing

18. Please give **full** details of the need for fencing. This should cover: why fencing of this type is needed, what the aim of the fencing is, and why it is the length proposed.

19.(a) What other measures (i.e. alternatives to fencing) have you considered? Why are these not available to you, or not considered to be practical?

(b) Give details of any measures proposed to mitigate the visual effect of the fencing.

20.(a) How will you ensure that the public and others with rights (e.g. common rights holders) will have access to the land after the fencing is in place? Give details of the number, type and location of stiles and gates (see also question 17.(b)).

(b) Will the fencing cross any public right of way or road? (See 'Common Land Guidance - General Overview' note) ... Yes No

If **yes**, has the consent of the highway authority been given for any stile, gate or cattle grid and bypass which may be required? Yes No

.....

If **Yes**, please enclose a copy. Copy enclosed

If **No**, but consent is needed please give:

Date of Application

Reference Number

Highway Authority Contact: Name

Tel

E-mail

Details of Application and stage reached

SECTION E – Other consents (see Notes 11 and 12)

21.(a) Is planning permission needed for your proposal? Yes No

If **Yes**, has planning permission already been obtained? Yes No

If **Yes**, please enclose a copy. Copy enclosed

If **No**, but application has been made please give:

Date of Application

Reference Number

Planning Authority Contact: Name

Tel

E-mail

Details of Application and stage reached

Application has been submitted to support the main wind farm application that will be determined by Planning and Environmental Decisions Wales (PEDW) through the Development of National Significance (DNS) process. Current details of the proposal are noted above - the proposals are currently at PAC stage.

(b) Has an Environmental Impact Assessment screening opinion been adopted? Yes No
(See 'Common Land Guidance - General Overview' note)

If **Yes**, has a screening application been approved by Welsh Government? Yes No
.....

If **Yes**, please enclose a copy. Copy enclosed

If **No**, but an opinion is needed, please give details of application:

A screening opinion was issued by PEDW in December 2022. This scoping opinion has been issued to assist in preparing the DNS application, which has been confirmed as Environmental Impact Assessment (EIA) development and will be supported by an Environmental Statement (ES). A copy of which is available to view as part of the statutory consultation for the application.

SECTION F – Designations

22.(a) Is the proposal in or near a Site of Special Scientific Interest (SSSI), a Special Area of Conservation (SAC) a Special Protection Area (SPA), a wetland listed in accordance with the Ramsar convention? (**See Note 13 and General Overview**) Yes No

If **Yes**, please give details, identify on the map (see Section K), and provide evidence that you have consulted Natural Resources Wales.

(b) Will the proposal affect a Scheduled Ancient Monument (SAM)? Yes No

If **Yes**, please give details, identify on the map (see Section K), and provide evidence that you have consulted Cadw (**see Note 14**).

(c) Is the proposal in a National Park or Area of Outstanding National Beauty (AONB)? Yes No

If **Yes**, please give details and provide evidence that you have consulted the National Park Authority or Natural Resources Wales.

SECTION G – Existing works and adjacent common land (see Note 15)

23.(a) Are there any existing buildings, roads, fences or other constructions on the common? Yes No

If **Yes**, give details below (see Section K)

Mynydd Maen common covers a vast area where there are existing roads, tracks and in some areas existing fencing and walls.

(b) Does any area of common land or village green, of a different registration number, adjoin the common on which the works are proposed? Yes No

.....

If **Yes**, give details and identify the boundaries on the map (see Section K)

SECTION H – Public access (see Notes 16, 17 and 18)

24.(a) Do the public have a right of access to the common for air and exercise under section 193 of the Law of Property Act 1925? Yes No

.....

(b) Is the common subject to an Order of Limitation made under section 193? Yes No

.....

If **Yes**, give its date and other details, and send us a copy of the Order

The answer to both questions above is 'no' - the forms will not allow me to tick no for both.

SECTION I – Schemes of management and local Acts (see Notes 19 and 20)

25.(a) Is there a Scheme of Management for the common made under the Commons Act 1899? Yes No

(b) Is there any other regulatory Scheme or Act for the common? (e.g. a Provisional Order Confirmation Act under the Commons Act 1876) Yes No

If **Yes** to (a) or (b), give its date and other details, and send us a copy of the Scheme or Act.

The answer to both questions above is 'no' - the forms will not allow me to tick no for both.

SECTION J – Advertisement and consultation (see Notes 21, 22 and 23)

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

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

- the owners of the land
- the commons council or association (if there is one)
- all known commoners
- others with a legal interest e.g. tenants, those with easements, or other rights over the land
- any relevant community/town, borough/county borough, city or county council
- Natural Resources Wales
- Cadw
- National Park authority (if the proposal is in a National Park)
- Open Spaces Society (**see Note 24**)

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

For all matters relating to advertising and consulting on the Section 38 application, advice was given by PEDW to confirm that with regard to Secondary Consent relating to the main wind farm application, consideration should be given to the changes made by Schedules 9 and 10 of the Developments of National Significance (Wales) Regulations 2016 (as amended) to the Common Land legislation.

For S38 applications, this means that Regulations 4 to 9 of the Deregistration and Exchange of Common Land and Greens (Procedure) (Wales) Regulations 2012 do not apply to Secondary Consents.**

27. Are you the owner of the land? Yes No
.....

If **No**, does the owner support your application? Yes No
.....

Provide written evidence of the owner's views. Evidence enclosed

SECTION K – Maps (see Note 25)

You must include with your application **two copies** of a map which fully meets the requirements set out in **Note 25**. The map must clearly show what you are proposing to do and where.

28. Two copies of the map that meets the requirements set out in **see Note 25** are enclosed x

SECTION L – Public inquiry or hearing (see Note 26 and ‘Common Land Guidance - General Overview’ note)

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

TBC for final submission

Contact Name/Tel Number:

Checklist (tick to confirm)

For all applications:

I have read the relevant **Notes** and ‘Common Land Guidance - General Overview’ note

For section 38 applications only:

- I am satisfied that:
.....
 - the land is registered as common land or is otherwise within the scope of section 38
 - the proposed works would prevent or impede access

For section 23 applications only:

- I have enclosed a letter from the National Trust confirming its view that the proposed works are "desirable" under section 23(1)

For all applications:

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

I will within 7 days:

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

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

SECTION M – Declaration

I/We* apply under section 38 of the Commons Act 2006/section 23 of the National Trust Act 1971* to the Welsh Ministers for CONSENT to construct the works described in Section D of this form.

**delete as appropriate*

Signed

Name (BLOCK letters)

Position (if applicable)

Organisation (if applicable)

Date

You must keep a copy of your completed form

Data Protection Act

Your application will be in the public domain. As such, all papers associated with it will be disclosed during the application process to others, including other Central Government Departments, public bodies, local authorities, other organisations and members of the public.