

Rebecca Evans AC / AM  
Y Dirprwy Weinidog Ffermio a Bwyd  
Deputy Minister for Farming and Food



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref 516000

Ms Karen Howe  
Senior Associate  
Clarke Willmott LLP  
1 Georges Square  
Bath Street  
Bristol  
BS1 6BA

13<sup>th</sup> November 2015

Dear Ms Howe

**Commons Act 2006: Section 16 Deregistration and Exchange of Common Land  
Application to deregister part of Trefil-Las and Twyn Bryn-March Common (BCL015)  
at Rassau, Ebbw Vale and provide replacement land in order to facilitate the  
proposed development known as the Circuit of Wales**

1. I refer to the application dated 1 September 2014 signed by The Most Honourable Henry John Fitzroy Marquess of Worcester, the Somerset Trust (Julian Richard Whately, Matthew James Wakefield and David Terrance Digby Harrel), Blaenau Gwent County Borough Council and Monmouthshire County Council. The application is made under section 16 of the Commons Act 2006 ('the 2006 Act') for the deregistration and exchange of common land at Trefil Las and Twyn Bryn-March Common, Rassau, Ebbw Vale Blaenau Gwent, with replacement land proposed at Bryn Farm, Garden City Woodlands, Waun-y-Pound, Greenmeadow Farm, Sirhowy Woodlands, Crown Avenue and Wentwood.
2. The area of land to be deregistered ('release land') comprises 244.39 hectares, and the application is intended to facilitate the proposed development known as the Circuit of Wales motorsport facility.

**Summary of Decision**

3. The formal decision is detailed at paragraphs 59-60 below. The application is approved, subject to one condition.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

English Enquiry Line 0300 0603300  
Llinell Ymholiadau Cymraeg 0300 0604400  
Correspondence.Rebecca.Evans@wales.gsi.gov.uk

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## **Procedural Matters**

4. In considering an application to exchange land it is necessary for the proposals to be advertised to allow those with private interests and third party rights the opportunity to make representations on the application. The Inspector's report notes that the application was advertised in the Gwent Gazette on 4 September 2014 and re-advertised in the South Wales Argus and Gwent Gazette on 9 October 2014. It also states that notices were posted at the main points of entry to the lands and sent to various consultees along with relevant documentation being deposited at the Civic Centre, Ebbw Vale, Blaenau Gwent. The applicants confirmed at the Inquiry that the Inquiry Notice was posted on site by no later than 27 January 2015 and deposited at the Civic Centre, Ebbw Vale. The Inspector's report also sets out that the notice was published in the Gwent Gazette, the South Wales Argus and on the Planning Inspectorate's web-site.
5. Representations both for and against the application were received. Welsh Ministers have appointed the Planning Inspectorate Wales (PINs Wales) to undertake the processing of section 16 applications on their behalf including the making of recommendations to Welsh Ministers on whether or not an application should be approved.
6. PINs Wales considered it appropriate to hold an independent public local inquiry, which ran for eight days from 10-13 and 17-20 March 2015.

## **Inspector's report**

7. Consideration has been given to the report of the Inspector, Emyr Jones BSc (Hons) CEng NICE MCMI, who held an Inquiry into the application to deregister part of Trefil-Las and Twyn Bryn-March Common (BC015) at Rassau, Ebbw Vale and provide replacement land.
8. In his report, the Inspector concludes that, on the evidence before him, the requirements of the Deregistration and Exchange of Common Land and Greens (Procedure) (Wales) Regulations 2012 ('2012 Regulations') for publicising the application have been complied with. In light of the above information I am satisfied that the appropriate publicity required for this type of application has been carried out.
9. The Inspector's conclusions of the Inquiry are set out at paragraphs 309-369 of the report, a copy of which is enclosed. The Inspector recommended that the application be allowed and that Welsh Ministers make a Deregistration and Exchange Order requiring:
  - Powys County Council to remove the release land from its register of common land and to register the Bryn Farm Replacement Land as common land subject to a Law of Property Act 1925 section 193 public right of access for air and exercise;
  - Blaenau Gwent County Borough Council (BGCBC) to register the Garden City Woodlands, Land Adjacent to Waun-y-Pound Industrial Estate, Sirhowy Woodlands, Land East of Crown Business Park and Greenmeadow Farm Replacement Land as common land subject to a Law of Property Act 1925 section 193 public right of access for air and exercise; and
  - Monmouthshire County Council to register the Wentwood Forest Replacement Land as common land subject to a Law of Property Act 1925 section 193 public right of access for air and exercise.
10. The Inspector considered the main considerations in the application to be:

- the effect of the proposal on the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it);
- the effect of the proposal on the interests of the neighbourhood;
- the effect of the proposal on the public interest; and
- whether the socio-economic benefits of the proposed development on the release land are sufficient to outweigh any adverse impacts identified in respect of the other three main issues.

## **Considerations**

11. Section 16(1) of the 2006 Act provides that the owner of any land registered as common land may apply for the land ('release land') to cease to be so registered. If the area of release land is greater than 200m<sup>2</sup> a proposal must be made to replace it with other land to be registered as common land ('replacement land').
12. The Welsh Government has issued guidance on 'Common Land Consents'. Welsh Ministers seek to adhere to the guidance in processing and determining applications under section 16. I note that every application must be considered on its own merits and a determination may, in exceptional circumstances, depart from the guidance if it appears appropriate to do so.
13. The Welsh Ministers are required under section 16(6) of the 2006 Act, when determining the application, to have regard to:
  - i) the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it);
  - ii) the interests of the neighbourhood;
  - iii) the public interest;
  - iv) any other matter considered to be relevant.
14. The 2006 Act sets out, at section 16(8), that 'public interest' includes the public interest in nature conservation, 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.

## **The Application**

### **The Release Land**

15. The release land is upland moorland extending to 244.39 hectares. This land forms the south eastern most part of Trefil-las and Twyn Bryn-March Common (BCL015) to the north of Rassau, Ebbw Vale, Blaenau Gwent. It lies within the Trefil and Garnlydan Special Landscape Area (SLA) designated under BGCBC Local Development Plan (LDP). The upland habitat on the release land supports a wide variety of species and qualifies as a Site of Importance for Nature Conservation (SINC). A public bridleway runs along the south western boundary following the line of the dismantled mineral railway line and a public footpath runs north from the bridleway through the release land. Most of the south eastern boundary of the release land abuts the Rassau Industrial Estate which lies just to the north of the realigned A465, Heads of the Valleys Road. The industrial estate includes a single wind turbine and a large metal fabrication plant with a number of associated chimneys. A line of overhead 400kV power lines on pylons crosses the release land close to the boundary with the industrial estate. An underground high pressure gas pipeline runs along the north western boundary. The land includes archaeological remains and features of historical interest, including two

Scheduled Ancient Monuments. The northern and north eastern boundary abuts the Brecon Beacons National Park (BBNP).

16. Trefil-las and Twyn Bryn-March Common is surrounded on the western and northern sides by common land unit numbers BCL014 and BCL016, which in turn adjoin units BCL002, BCL018 and BCL019 with further units of common land beyond these stretching across the southern slopes of the Brecon Beacons. There are further units of common land to the south, along the ridges which separate the valleys in this part of South Wales.

### **The Replacement Land**

17. The replacement land offered is formed by seven separate parcels and totals 306.56ha:
18. Bryn Farm: 16.53 hectares of land to the north of the Gurnos Estate and north west of Brynmawr Cemetery, at Brynmawr. It comprises a number of upland fields, including one containing a multi-sports court, and a block of coniferous planting. The land adjoins the section of Mynydd Llangattock Common that lies to the south of the A465.
19. Garden City Woodlands: 45.37 hectares of land located to the west of Park Road and north, south and west of Garden City, Ebbw Vale. The land is on a hillside and largely wooded in character. The land is designated as a SINC, is subject to a covenant preventing use other than for the planting of trees, as open space and for recreation, is a candidate Local Nature Reserve (LNR) and lies within the Cefn Manmoel Special Landscape Area (SLA). A number of footpaths cross the site.
20. Waun-y-Pound: 29.99 hectares of land surrounding and to the south of Waun-y-Pound Industrial Estate. The land is predominantly woodland and scrubs with more open areas at the south eastern end. The land is crossed by a number of tracks providing informal public access. It is designated as a SINC and is also within the Sirhowy Woodlands and Cardiff Pond LNR. The area known as Cardiff Ponds is subject to a fishing licence through the Ebbw Vale Welfare Angling Club.
21. Sirhowy Woodlands: 48.83 hectares of land to the south west of the A4047, east of Thomas Ellis Way and north of Grangetown Hill, Tredegar. The site is designated as a SINC and is within the Sirhowy Woodlands and Cardiff Pond LNR as well as the Cefn Manmoel SLA. The land is a mix of wooded and more open spaces crossed by a number of public footpaths and further routes provide informal public access.
22. Crown Avenue: 16.34 hectares of land east of the Crown Business Park, Tredegar which is designated as a Green Wedge in the LDP. The land is former derelict industrial land which has been reclaimed and planted with trees. It is crossed by a restricted byway and public footpaths.
23. Greenmeadow Farm: 36.60 hectares of agricultural land at Cwmtillery that adjoins Gwastad Common. 17.25 hectares are designated as open access land, most is designated as a SINC and it lies within the Cwm Celyn and Cwm Tyleri SLA. The land is crossed by a number of public footpaths, bridleways and restricted byways.
24. Wentwood Forest: 112.90 hectares of land situated to the north of the A48 and the east of the A449 adjoining Gray Hill Common and Bicca Common. The land is heavily forested being leased to the Welsh Government and managed by Natural Resources Wales (NRW). It is crossed by public bridleways and also has a number of informal way marked access trails.

## **The Mitigation Land and Additional Mitigation Land**

25. In addition to the replacement land the applicants making the section 16 application have identified further common land in close proximity to the release land that they, through a Mitigation Strategy, intend to improve the habitat and grazing of to mitigate for the impact of the development. An area of land to the north west of the release land has been set aside as Mitigation Land (61.31 hectares to the north west of the high pressure gas main within the planning application boundary and a further 110.5 hectares of adjacent land to the north east). There are also two areas of Additional Mitigation Land, one to the north east of the Mitigation Land and the other further to the east beyond the B4560, both within the BBNP. In total the Additional Mitigation Land has an area of no less than 800 hectares.
26. Parts of the Mitigation Land and the western Additional Mitigation Land lie within the Mynydd Llangynidr Site of Special Scientific Interest (SSSI), designated for its geomorphological interest, whilst the eastern Additional Mitigation Land lies within the Mynydd Llangatwg SSSI which is part of the Usk Bat Sites Special Area of Conservation (SAC). A Mitigation Strategy provides for the improvement of the habitat along with grazing for both cattle and sheep.

### **Conclusions reached by the Inspector**

27. The Planning Inspector has considered the application and the representations made, both in writing and through a public inquiry, and has submitted a report to the Welsh Ministers which contains his assessment of the issues arising from the application and his recommendation on whether the deregistration and exchange of common land should proceed.
28. Given the length of the Inspector's conclusions, it is only possible to include an overview of his main conclusions. Namely:

#### **The interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it)**

*"As all of the relevant commoners on CL015 have agreed to surrender their rights voluntarily in return for appropriate compensation, as allowed for by the Commons Act 2006, there is no reason to believe that their private interests would be adversely affected. This surrendering of rights would mean that there were no rights to be transferred to the Replacement Land, but they would retain their rights to graze the remainder of the Common which is currently significantly under-grazed"* (paragraph 319 of the Inspector's report).

29. The Inspector is of the view that the proposals to improve grazing on the Mitigation Land would actually benefit CL015 graziers.

#### **The interests of the neighbourhood**

*"Neighbourhood is not defined in the Act and must be established in the particular context of the individual site.... The impact on the ability of those living in the neighbourhood to use and enjoy the Common is ordinarily the key consideration under this heading. I have considered the protection of public rights of access under a separate heading below. The neighbourhood would suffer the same permanent loss of the right of access as the public in general. ... Given that only some of the Replacement Land would be accessible to the neighbourhood and the points made in respect of tree cover, fencing, other obstructions, existing access and designations apply to varying*

*degrees, it follows that the proposal must also be detrimental to the ability of those living in the neighbourhood to use and enjoy the Common.” (paragraphs 320-322 of the Inspector’s report).*

*“I agree that the wider interests of the neighbourhood which would flow from the application are a relevant consideration. The socio-economic aspects of the proposal are considered under a separate heading below. However, given that the wards and towns closest to the release site are generally even more deprived than the wider neighbourhood, the extensive socio-economic benefits that I identify, with the commitments to local employment and training, would be of particular advantage to the neighbourhood.” (paragraph 323 of the Inspector’s report).*

*“In my opinion, the socio-economic benefits to the neighbourhood would be of a scale that would outweigh the detriment to the ability of those living in the neighbourhood to use and enjoy the Common and any negative impact on residential living conditions. As a result, the overall impact on the interests of the neighbourhood would be positive.” (paragraph 326 of the Inspector’s report)*

30. The Inspector also considered the potential negative impact the Circuit of Wales could have on those living in the neighbourhood through such matters as lighting, noise and traffic. These matters are discussed under ‘other relevant matters’, however as the Inspector notes these are material planning considerations which were fully considered by the local planning authority when determining the outline planning application.

### **The public interest**

31. Public Interest includes the public interest in nature conservation; 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. Considering each in turn:

### **Nature Conservation**

*“The Release Land comprises a mosaic of acid grassland, marshy grassland, wet and dry heath, bog and acid flushes with a small area of calcareous grassland which supports a variety of species. Around 64% of it is section 42 NERC Act 2006 Natural Environment and Rural Communities Act 2006) and priority BAP (Biodiversity Action Plan) habitat, and it qualifies as a SINC on numerous counts and features. The proposal would result in the total loss of some 244 ha of such priority habitat. With the right management it also has the potential to be managed to a more favourable condition than that currently existing and that potential would be lost forever. However, without the CoW, I see no prospect of appropriate management being instigated for the foreseeable future, especially as the commoners have recently elected to join a ‘Glastir’ lower stocking scheme. Even if funding could be made available from other sources, there is no evidence of a willingness to submit applications or the longevity of any measures so secured.” (paragraph 327 of the Inspector’s report).*

*“The relevant statutory requirement is to have regard to the public interest in nature conservation. I see nothing in the Commons Act 2006 or Welsh Government Guidance that restricts such consideration to the Release and Replacement Lands. Thus if a proposal would facilitate improvements to nature conservation elsewhere, that would be in the public interest and it would be entirely appropriate to take such improvements into account in the decision making process.” (paragraph 329 of the Inspector’s report).*

*“The evidence clearly demonstrates that the Mynyddoedd Llangattock and Llangynyidr Commons are significantly under-grazed, resulting in the open moorland deteriorating in condition. The only way of reversing this structural decline is for them to be grazed by cattle in significant numbers and the proposals for the Mitigation Land and Additional Mitigation Land would facilitate such grazing.”* (paragraph 330 of the Inspector’s report).

32. The Inspector’s report notes that NRW supports, in principle, the proposed Mitigation Land and Additional Mitigation Land strategies as compensation for the loss of habitat on the release land. The Inspector notes at paragraph 331 of the report that *“Subject to their management to a favourable condition using a common standards monitoring approach, NRW is satisfied that the benefit to the nature conservation value of the remaining common land should be enough to offset the nature conservation value that would be lost from the Release Land.”*
33. In contrast to the Release Land, *“the Replacement Lands only comprise around 13% section 42 NERC Act 2006 and priority BAP habitat, although some are LNRs and/or SINC’s. The poorer habitats means that the species supported are also likely to be of a lower conservation value than on the Release Land ... Nonetheless, it is noteworthy that NRW agrees that successful implementation of the principles set out in the Replacement Land Management Plans should result in net enhancement to habitats and species diversity, including those listed under section 42 of the NERC Act 2006, although that might not be quantifiable at this stage.”* (paragraphs 334 and 335 of the Inspector’s report).
34. Also under this heading, the Inspector reflects that the plans for the Mitigation Land and Additional Mitigation Land are currently unapproved, require further iterations and are currently at the strategic level with the detail to be developed. However, these matters would be addressed through the planning system and the Inspector states that in this regard it is right to assume the proper functioning of that system.
35. In concluding the arguments for nature conservation the Inspector states at paragraph 340 of the report *“that the likely out-turn of deregistration would be an overall enhancement of nature conservation interests on the wider Commons and on the Replacement Lands resulting in an overall nature conservation benefit as a result of the proposal as a whole”.*
36. The Inspector also addresses the obligations on the Welsh Ministers to have regard to the duties to conserve biodiversity and to further the conservation of features of principal importance for conserving biodiversity under the NERC Act 2006, and concludes that such duties would be complied with. He is also content with NRW’s conclusion that the proposal would benefit the site of special scientific interest and have no adverse effects on the integrity of the Usk Bat sites SAC (see paragraphs 341 and 342 of the Inspector’s report).

### **The conservation of the landscape**

37. The Inspector notes within his report that placing a development of the scale and nature represented by the Circuit of Wales in such a location would have a significant and irreversible detrimental effect on the character and appearance of the site itself and the surrounding area.
38. In his conclusion, the Inspector comments at paragraph 345 that *“the surrounding area includes part of the BBNP and the CoW would erode the sweeping grandeur and sense of remoteness experienced within part of the National Park. Any landscape benefits*

*resulting from the proposals for the Mitigation Land and Additional Mitigation Land would not come anywhere near to offsetting this effect”.*

39. Under this heading for consideration, the Inspector comments at paragraph 346 that *“insofar as the Replacement Land parcels are concerned, they differ widely in character, location, topography and the range of landscape experience from the Release Land and from each other”*. None compare with those of the release land and only Bryn Farm benefits from close proximity to the BBNP.
40. In concluding his assessment, the Inspector believes that *“the proposal would not provide land of ‘at least equal benefit’ and it would cause significant harm to the public interest in landscape conservation”*. Nevertheless, the Inspector acknowledges that in the context of Blaenau Gwent, *“it would be virtually impossible to provide Replacement Land that reflects the open moorland that would be lost and the sites probably represent the best possible suite.”* (paragraph 347 of the Inspector’s report).

### **The protection of public rights of access to any area of land**

41. The proposal would result in the permanent loss of the public right of access to some 244 hectares of open common (the release land), although in practice the Inspector notes that the ability to exercise that right is restricted by the presence of wet and boggy areas.
42. The Inspector reports that the replacement sites being offered would see the creation of public rights of access to approximately 307 hectares of newly designated common, but that around 19 hectares is already designated as open access land. However, certain parts of the replacement land (Waun-y-Pound, Garden City Woodlands, Sirhowy Woodlands, Crown Avenue and Wentwood) are densely wooded (NRW estimate around 60%) which would impose a severe limitation on the public’s ability to benefit from the newly created rights. The presence of fences and other obstructions at most of the sites and the steep nature of Garden City Woodlands would represent further obstacles, particularly to those on horseback.
43. The Inspector’s conclusion in this regard is that *“overall the proposal would not provide land of ‘at least equal benefit’ and it would be detrimental to the public interest in the protection of public rights of access”*. Nevertheless, he acknowledges *“that in the context of Blaenau Gwent, it would be virtually impossible to provide Replacement Land that reflects the open moorland that would be lost and the sites probably represent the best possible suite for the neighbourhood and the public in general”* (paragraph 353 of the Inspector’s report).

### **The protection of archaeological remains and features of historic interest**

44. The Inspector’s report notes that it is not disputed that the proposal would harm the public interest in the protection of archaeological remains and features of historic interest. He considers the significant adverse impact on the setting of the Twyn Bryn March Round Cairn IV to be of particular concern and is of the view that the preservation in situ would not reduce the residual impact to a minor one. However, he notes Blaenau Gwent County Borough Council’s conclusion that this was not of itself sufficient reason to prevent development and Cadw’s note that the impact has been addressed through the planning permission.
45. When considering the archaeological features on the replacement land, the Inspector concludes that these *“do not appear to be generally under any real threat and there are no proposals for their upkeep, investigation or interpretation that would be of public*



*benefit... In any event, none are of national or regional importance".* (paragraph 356 of the Inspector's report)

## **Any other matter considered to be relevant**

### **Socio-economic impact**

46. The Inspector reports that the wards and towns closest to the release land and particularly those to the north of the Heads of the Valleys Road (A465) are generally even more deprived than the wider neighbourhood. This is particularly the case in relation to long-term and youth unemployment. The incidence of unemployment is felt disproportionately in some of the communities which are the very closest to the proposal facilitated by this deregistration. The Inspector's view is that the Blaenau Gwent area is an area that would benefit from a socio-economic point of view. He notes that the evidence on deprivation levels is un-controvertible.
47. The evidence considered at the Inquiry demonstrates that of the Circuit of Wales would provide 4,000 - 6,000 full time equivalent person years of work during the construction phases plus a further 4,000 – 6,000 operational jobs based in technology, engineering, research, management, hospitality and event management would be created directly. Beyond that further spin off and multiplier jobs would be created across the South Wales economy.
48. The Inspector comments that *"the project has been thoroughly scrutinised ... including open book access to business plans, financial models and bank details. As a result, ... if the project proceeds, then the employment levels generated and economic benefits would be likely to be within the ranges suggested in the evidence. In my view, given the dire economic circumstances in the area, it is not an overstatement to suggest that the impact of those job opportunities would be of generationally transformational importance"* (paragraph 359 of the report).
49. By way of conclusion the Inspector also notes that the regeneration opportunity is consistent with the Welsh Government's Regeneration Strategy: 'Vibrant and Viable Places'. *"In locational terms, the release land is identified as being within the Ebbw Vale multi-site Enterprise Zone, which forms a key plank of the Welsh Government's employment and enterprise policy, with the development plan also supporting a large new tourist based regeneration development in the north of Blaenau Gwent County Borough"*. The Inspector therefore concludes that very significant weight should be given to the socio-economic benefits of the proposal (see paragraphs 360 and 361 of the report).

### **Noise**

50. The Inspector considered the impact of noise on the tranquillity of the BBNP. The supporting evidence which was provided through the Motorsport Noise Assessment *"shows that in worst case downwind conditions for the more typical high performance event noise levels of 40dB and above would only extend for 1.5km into the BBNP with intervening topography ensuring that there would be no appreciable noise disturbance in Dyffryn Crawnon"*. The Inspector also noted that the proposed Noise Management Plan referred to in the Motorsport Noise Assessment will seek to achieve the right balance through effective liaison with the local community and that such a plan would assist Blaenau Gwent County Borough Council in delivering their regulatory duties and enable the Circuit of Wales to operate in a reasonable and responsible manner thereby resulting in limited noise impact on the BBNP (see paragraphs 325 and 362 of the Inspector's report).

## Lighting

51. The Inspector recognised that the BBNP International Dark Sky Reserve (IDSR) status is a unique selling point for tourism. He concludes that whilst *“further detailed work is required to satisfy planning condition 10, but on the basis of the available evidence I am satisfied that the impact on the IDSR would in all probability be minimal”* (paragraph 363 of the Inspector’s report).

## Traffic

52. The Inspector noted within his report that there will be a potential increase in traffic in the area, potentially including the B4560, which was fully considered by the local planning authority when determining the outline planning application. The Inspector accepts that *“large events such as Moto GP and World Superbikes would have a significant catchment area with spectators willing to travel long distances to attend”*. The Inspector states that he has *“no reason to conclude that they [traffic levels] would be so significant as to materially affect highway safety or the enjoyment of the BBNP”*. He appears satisfied that the documentation provided in respect of noise provides sufficient reassurance that the noise would be adequately managed, whilst acknowledging that there would be a limited noise impact on the tranquillity of the BBNP (paragraphs 364 and 366 of the Inspector’s report).

## Conclusions

53. In considering the Inspector’s report I agree with the conclusions, as set out above, that the deregistration of the release land in exchange for the replacement land, to facilitate the development known as the Circuit of Wales will result in harm to the public interest in landscape conservation, the protection of public rights of access, and the protection of archaeological remains and features of historic interest, as well as certain elements of the interests of the neighbourhood. The concern that the replacement land does not provide land of at least equal benefit is considered extensively throughout the report and the Inspector’s conclusion is that it does not. Having considered the matter in detail, I share this view. In addition, I agree with the Inspector’s conclusion that there would be a limited noise impact on the tranquillity of the BBNP. In paragraph 367 of the report, the Inspector states that *“if there was nothing of very significant public benefit to put in the balance, the above would be more than sufficient to justify a recommendation that the application be refused”*.

54. However, I also recognise that the Circuit of Wales would bring overall benefits to the public interest in nature conservation, together with extensive socio-economic benefits to the neighbourhood of Blaenau Gwent and beyond. When considering the requirements of section 16, I am required to have regard to each of the headings contained in section 16(6). As is evident from the report, and the level of public interest in this matter, this requires me to consider competing priorities and objectives, and balance the competing interests. In reaching my decision I place considerable weight on the socio-economic benefit which will result from the development of the Circuit of Wales. For the reasons articulated in the report – both by the Inspector but also by other parties, I believe the socio-economic benefits that will result from the deregistration of the common land will be of significant public benefit to both the immediate area and beyond. As a result I believe that this justifies the departure from the Welsh Government guidance which stipulates a general approach that, as regards section 16 applications, the Welsh

Government wishes to ensure that any deregistration of registered land is balanced by the registration of land of at least equal benefit.

55. Under section 40 of the Natural Environment and Rural Communities Act 2006 (NERC 2006) 'Every public body must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'. This obligation falls on the Welsh Ministers when considering this application. Throughout the report the issue of nature conservation is considered extensively. The report sets out that – in the statement of common ground - NRW agrees that for a minimum of 30 years, successful implementation of certain principles would offset the loss of the release land habitats including those of principal importance for the purpose of conserving biodiversity and be likely to enhance species diversity including those of principal importance for the purpose of conserving biodiversity. In the context of the replacement land it should result in net enhancement to habitats including those of principal importance for the purpose of conserving biodiversity and would be likely to enhance species diversity including those of principal importance for the purpose of conserving biodiversity. I am therefore satisfied that the duty under NERC 2006 to have regard to the purpose of conserving biodiversity alongside the consideration of other relevant issues has been satisfied.
56. Part of the Mitigation Land and Additional Mitigation Land includes land designated as a SSSI (Site of Special Scientific Interest). As a consequence of this, section 28G of the Wildlife and Countryside Act 1981 (1981 Act) imposes a duty on Welsh Ministers to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the flora, fauna or geological or physiological features by reason of which the site is a SSSI. The SOCG sets out NRW's view that, for a minimum of 30 years, successful implementation of certain principles would result in benefits to Mynydd Llangatwg SSSI. Whilst this position is not universally accepted by those making representations, I am not satisfied that this opposition is justified by the evidence provided. Others accept that biodiversity benefits may arise from the planning proposals. The Inspector states that such matters would be addressed through the planning system, and it is right to assume the proper functioning of that system. I believe this is the correct approach and I am therefore satisfied that the duty under the 1981 Act has been discharged during the course of this determination.
57. The Welsh Ministers are also under a duty to have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions. The Usk Bat Sites SAC comprises part of the land in question. NRW is content that the proposal would have no adverse effects on the integrity of the site. The Inspector states that he has no reason to disagree with NRW's conclusion in this regard. I am satisfied that the obligations under the Habitats Directive and the Conservation of Habitats and Species Regulations 2010 have been complied with.
58. As the proposal is in the vicinity of the Brecon Beacons National Park, the Welsh Ministers have a duty, under section 11A of the National Park and Access to the Countryside Act 1949, to have regard to the purposes for which National Parks are established. These are: conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas; and of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public. If it appears that there is a conflict between those purposes, greater weight shall be attached to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area within the National Park. The Inspector, in considering the matter, is of the view that the Circuit of Wales would 'erode the sweeping grandeur and sense of remoteness experienced within part of the National Park'. He addresses objections that have been raised in respect of noise, lighting and traffic. He appears satisfied that the

documentation provided in respect of noise provides sufficient reassurance that the noise would be adequately managed, although acknowledges that there would be a limited noise impact of the tranquillity of the BBNP. He notes that further detailed work is required to satisfy planning condition 10, but on the basis of the available evidence is satisfied that the impact on the International Dark Sky Reserve would in all probability be minimal. The Inspector also considers the potential increase in traffic and reaches the conclusion that on the basis of the information before him, he has no reason to conclude that this would be so significant as to materially affect the enjoyment of the BBNP. In view of the extensive consideration of these issues I am satisfied that the duty to have regard to the National Park purposes has been fulfilled.

## **Formal Decision**

59. In conclusion, for the reasons given above, and in exercise of my authority as Deputy Minister for Farming and Food, under authority of the Minister for Natural Resources, one of the Welsh Ministers, I approve your client's application for the exchange of 244.39 hectares of common land at Trefil Las and Twyn Bryn March Common for 308.28 hectares of new common land (replacement land) at Bryn Farm, Brynmawr; Garden City Woodlands, Ebbw Vale; Waun-y-Pound, Ebbw Vale; Greenmeadow Farm, Abertillery; Sirhowy Woodlands, Tredegar; Crown Avenue, Tredegar; and Wentwood. This decision is conditional upon all rights of common existing on the release land (Trefil-Las and Twyn Bryn-March Common (BCL015)) on the date of the Order being extinguished under regulation 29 of the Commons Registration (General) Regulations 1966. The Order will not have effect until such rights have been extinguished.
60. The Inspector's report makes it clear that the parties do not consider it appropriate for the Commoners' rights to be transferred from the release land to the replacement land – this is evident from the deed of surrender that has been agreed between the parties. The condition attached to the Order reflects the assumption by the Inspector, based on representations by the applicants at the Inquiry that the relevant Commoners would voluntarily agree to extinguish their rights prior to the deregistration of the release land. The representations made at Inquiry are at paragraphs 95 and 96 of the report and the Inspector's conclusions as to the interests of the commoners based on those representations are at paragraph 319. This condition will ensure that no such rights transfer to the replacement land. This approach further ensures that the substance of the recommendation made by the Inspector is reflected in the Order and that the Welsh Ministers pay proper regard to the considerations under section 16(6)(a) of the 2006 Act.
61. I enclose a copy of the Inspector's Report and a copy of the Order made under section 17(1) and 17(2) of the Commons Act 2006, which has today been sent to Powys County Council, Monmouthshire County Council and Blaenau Gwent County Borough Council and to all other parties who appeared at the Inquiry.
62. The Welsh Ministers' decision on this application will be publicised as required by regulation 19 of the 2012 Regulations.
63. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order, regulation or private agreement other than sections 16 and 17 of the Commons Act 2006.

Yours sincerely,

Rebecca

**Rebecca Evans AC / AM**

Y Dirprwy Weinidog Ffermio a Bwyd  
Deputy Minister for Farming and Food