

Agenda – Climate Change, Environment, and Infrastructure Committee

Meeting Venue:

Committee room 4 Tŷ Hywel
and video Conference via Zoom

Meeting date: 5 February 2025

Meeting time: 09.30

For further information contact:

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Hybrid

Private pre-meeting (09.15–09.30)

Public meeting (09.30–12.00)

1 Introductions, apologies, substitutions, and declarations of interest

(09.30)

2 Stage 1 scrutiny of the Disused Mine and Quarry Tips (Wales) Bill – Evidence session with the UK Environmental Law Association (UKELA)

(09.30–10.15)

(Pages 1 – 45)

Professor Robert Lee, Director of Education for the Centre for Environmental Research and Justice at the University of Birmingham – on behalf of the UK Environmental Law Association (UKELA)

[Disused Mine and Quarry Tips \(Wales\) Bill: consultation responses](#)

Attached Documents:

Research brief – Disused Mine and Quarry Tips (Wales) Bill

Paper – UKELA



Break (10.15–10.20)

**3 Stage 1 scrutiny of the Disused Mine and Quarry Tips (Wales) Bill –
Evidence session with environmental organisations**

(10.20–11.10)

(Pages 46 – 57)

Daniel Therkelsen, Campaigner – The Coal Action Network

Haf Elgar, Director – Friends of the Earth Cymru

Attached Documents:

Paper – The Coal Action Network

Paper – Friends of the Earth Cymru

Break (11.10–11.15)

**4 Stage 1 scrutiny of the Disused Mine and Quarry Tips (Wales) Bill –
Evidence session with Mineral Products Association Wales and the
British Aggregates Association**

(11.15–12.00)

(Pages 58 – 67)

Nick Horsley, Director of Planning, Industrial Minerals and MPA Wales –
Mineral Products Association Wales

John Carlon, Planning, Permitting and Environmental Director – British
Aggregates Association

Attached Documents:

Paper – Mineral Products Association Wales

Paper – British Aggregates Association

5 Papers to note (12.00)

5.1 Temporary Closure of Holyhead Port

(Pages 68 – 69)

[Letter from the Chair of the Economy, Trade, and Rural Affairs Committee to the Cabinet Secretary for Economy, Energy and Planning, and the Cabinet Secretary for Transport and North Wales in relation to the temporary closure of Holyhead Port](#) – 20 December 2024

Attached Documents:

Response from the Cabinet Secretary for Economy, Energy and Planning, and the Cabinet Secretary for Transport and North Wales to the Chair of the Economy, Trade, and Rural Affairs Committee in relation to the temporary closure of Holyhead Port

5.2 Welsh Government Draft Budget 2025–26

(Pages 70 – 75)

Attached Documents:

Response from the Cabinet Secretary for Housing and Local Government to the Chair in relation to the scrutiny of the Welsh Government's 2025–26 budget

5.3 Annual scrutiny of the National Infrastructure Commission for Wales (NICW)

(Pages 76 – 91)

Attached Documents:

Letter from the Cabinet Secretary for Economy, Energy and Planning to the Chair in relation to the review of the National Infrastructure Commission for Wales

6 Motion under Standing Order 17.42 (vi) and (ix) to resolve to exclude the public from the remainder of this meeting

(12.00)

Private meeting (12.00–12.30)

7 Consideration of evidence received under items 2, 3 and 4

8 UK–EU implementation review of the Trade and Cooperation Agreement

(Pages 92 – 108)

Attached Documents:

Summary of evidence: Trade and Cooperation Agreement – Implementation Review

9 Consideration of the Legislative Consent Memorandum on the Data (Use and Access) Bill

(Pages 109 – 126)

Attached Documents:

Legal note on the Legislative Consent Memorandum on the Data (Use and Access) Bill

Document is Restricted

UKELA (UK ENVIRONMENTAL LAW ASSOCIATION) RESPONSE TO THE CALL FOR EVIDENCE ON THE DISUSED MINE AND QUARRY TIPS (WALES) BILL

INTRODUCTION

1. UKELA (UK Environmental Law Association) comprises over 2,000 academics, barristers, solicitors and consultants, in the public and private sectors, involved in the practice, study and formulation of environmental law. Its primary purpose is to make better law for the environment.
2. This paper responds to the call for evidence by the Senedd's Climate Change, Environment, and Infrastructure Committee (the Committee) which is undertaking Stage 1 scrutiny of the general principles of The Disused Mine and Quarry Tips (Wales) Bill (the Bill). It has been prepared by the UKELA Wales Group in consultation with other UKELA groups. It does not seek to represent the views and opinions of all UKELA members but has been drawn together from a range of its members.
3. This response provides some background and then answers the specific questions raised by the call for evidence.

Background¹

4. The Welsh Government White Paper: *Coal Tip Safety (Wales) White Paper* (May 2022) noted that the legacy of the Welsh coal mining industry is that nearly 2,500 coal tips remain, predominantly in South Wales. It referred to the tragedy of October 1966 when a massive coal spoil heap on the hillside above Aberfan became unstable and collapsed after prolonged and heavy rainfall engulfing

¹ This background is to provide some context to readers. It does not form part of the formal response to the questions raised and submitted.

Pantglas Junior School and killing 144 people in the village, 116 of whom were children. It also referred to the damage and trauma that climate change can cause, with intense rainfall from Storms Ciara, Dennis and Jorge leading to substantial flooding across Wales in February 2020 and where the heavy rainfall across South Wales led to a major landslide of a disused coal tip in Tylorstown, which resulted in over 60,000 tonnes of debris falling into the Rhondda Fach River. And while there were no injuries nor major damage to property and infrastructure, the resulting silt deposits impacted on river habitats and created a significant flood risk. Finally, it noted that the Met Office has published analysis demonstrating how our climate is continuing to warm, resulting in significant climate impacts now being felt across the UK. The latest independent Climate Change Risk Assessment for Wales (CCRA3) recognised the potential for climate impacts to increase the risk of future landslips, landslides and subsidence linked to historic mining activities also.

5. The Welsh Government explains that the overarching aim of the Bill is to reduce the likelihood of landslides on disused coal and non-coal tips. Its statement of policy intent sent to the Committee on 9 December 2024 notes, in summary, that the Bill:
 - establishes the Disused Tips Authority for Wales (the Authority) as a body corporate. Its main objective in carrying out its functions under the Bill is to ensure that disused tips do not threaten human welfare by reason of their instability;
 - makes provision for the assessment, registration and monitoring of disused tips;
 - contains provisions that enable the Authority to deal with tip instability and threats to tip instability. This includes powers to require a landowner to carry out operations and for the Authority to carry out operations itself, and related provisions in respect of payments in connection with such operations;
 - contains supplementary provisions including powers of entry for the Authority, information sharing provisions and powers to require information; and,
 - creates related offences to support the enforcement of the regime.

6. The Committee call for evidence asks whether the Bill's provisions are workable and will deliver the stated policy intention including the need for assessment,

registration and monitoring of discussed tips, addressing tip instability, whether there are any potential barriers to implementation of the Bill and the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation. Finally it asks whether there are any unintended consequences arising from the Bill; and the financial implications.

THE CALL FOR EVIDENCE QUESTIONS

1. Views on the general principles of the Bill and the need for legislation to deliver the stated policy intention

7. UKELA welcomes the proposals and the general principles in the Bill which establishes the Authority on a statutory basis as an independent body.

8. As an important preliminary point, the recital and main objective refers to the threat to human welfare, which is very important. However, it is also critical that the threat to biodiversity, habitats, landscape, the environment and infrastructure more generally should be included in as a key objective. This concern was evident in the White Paper and the discussion of the Tylorstown land which noted in the foreword that:

The resulting silt deposits impacted on river habitats however and created a significant flood risk until repair work was completed. The Tylorstown landslide was a stark reminder of the potential risks for our communities, environment and infrastructure still posed by Wales' past mining industry.

9. Importantly, threats to habitats, biodiversity, landscapes, watercourses etc. while exhibiting indirect effects on individuals and communities, may not be caught by the definition of 'threat to human welfare' contained in Clause 82. For this reason, the extent and scope of the threats arising from the disused tips should be wide and go beyond direct human threats. Similarly, all other provisions that relate to threats (e.g. Clause 24 on categories of disused tips, and Clauses 33 and 36 on notice to owners) should include reference to the threat of environmental harm. By way of example, the UK Climate Change Act 2008 defines 'environmental harm' as harm to the health of humans and other living organisms and goes on

to include; harm to the quality of the environment, including the environment taken as a whole, and harm to the quality of the air, water or land, and other impairment of, or interference with, the ecological systems of which any living organisms form part (Schedule 6, Part 1, para. 4B)

10. It is helpful that the Bill sets out in broad terms the Authority's remit and its responsibility for the assessment, registration, monitoring, maintenance and oversight of disused tips. This is appropriate and necessary though its remit will need to be subject to further guidance (see below). Removing those functions placed on local authorities under Mines and Quarries (Tips) Act 1969 (MQTA 1969) and the responsibility for their continued safety is also welcome. The reasons for this include:

- 1) It avoids any potential conflict of interest in having the responsibility for disused tips placed on local authorities which may own land on which tips are situated (estimated at up to 20% of disused tips; Figure 2 of Explanatory Memorandum). Local authorities discharge other potentially competing functions such as ensuring that there is sufficient land for development, supporting the local economy and businesses and carrying out land use planning functions.
- 2) The MQTA 1969 was introduced, post Aberfan, at a time when many tips remained under active management.
- 3) The Disused Tips Authority will have an exclusive focus which are those functions within the Bill, and as noted in the Law Commission Report there has been a loss of expertise in management of coal tips, which can be re-established, hopefully, in a single body.

11. There are a number of reasons why it is beneficial to have a legislative basis for establishing the new Authority:

- 1) As a matter of formality, the current provisions are found in primary legislation (i.e. the MQTA 1969) and that will need to be amended in any event.
- 2) There is value in having a degree of permanence and certainty in the new Authority, the need for which is unlikely to diminish in the foreseeable future.

12. Any decision to materially alter the functions or operations of the new Authority will require legislative change, providing an opportunity for review and public consultation.

2. Views on the Bill's provisions, including whether they are workable and will deliver the stated policy intention.

13. Subject to the specific points raised in this submission, the provisions in the Bill appear clear and workable although one critical factor will be to ensure that the new Authority is properly funded and supported in the short, medium and long term. While grateful for the assurance of the First Minister (in Senedd on 9 July 2024) that a Bill would be brought before Senedd to establish an environmental governance body for Wales, and noting the work of the current Interim Environmental Protection Assessor for Wales (IEPAW), it remains the case that Wales has still not established a permanent environmental regulator with full authority to consider and determine complaints about environmental law. The absence of environmental oversight, previously provided by the EU Commission, for what is now a five year period, is a serious concern and there remains a significant gap in the environmental protection and enhancement provisions in Wales compared to the rest of the UK.
14. A second issue concerns a lack of detail in relation to many provisions of the legislation. The Explanatory Memorandum makes extensive promises of guidance to fill out missing detail in areas such as:
 - (a) the content of both preliminary and full assessments of tips under Clauses 12 and 15 of the Bill;
 - (b) the operation of the Authority in tip monitoring and inspection and in relation to site specific constraints such as that caused by the proximity of habitats;
 - (c) aspects of the appeals process;
 - (d) the charging structure;
 - (e) the Authority's interaction with other public bodies (such as Natural Resources Wales);
 - (f) incident preparedness and emergency response; and
 - (g) biodiversity action on the part of the Authority.

15. As the UK Environmental Law Association, we are concerned especially with questions of habitat protection and biodiversity (see further below) but there is a wider point. We accept that not all guidance will be statutory guidance and that issuance of guidance is an ancillary Executive Ministerial Function in accordance with s.58A Government of Wales Act 2006. Guidance will be subject to consultation and post-implementation review. Nonetheless, the rule of law requires that legislation should be clear and complete, not leaving gaps to be filled by soft law guidance when hard law, statutory provision is more appropriate. We raise the question of whether greater clarity is needed in the Bill itself or in secondary legislation in relation to some of the concerns about the environment and environmental regulation, which we raise below.

3. Views on the assessment, registration and monitoring of disused tips (Part 2 sections 6 to 32 and Schedule 2)

16. Section 9 of the Bill provides for public access to the register and properly provides for online or electronic access by members of the public at all reasonable times. All matters related to disused tips will fall within the scope of the Environmental Information Regulations 2004 SI 2004/3391 and Articles 4 and 5 of the Aarhus Convention 1998² and, in the circumstances, public access to all environmental information should be made available unless there are specific and justified exceptions as to why the information should not be made available. Similarly, Article 5 of the Convention requires that environmental information should be progressively made available by electronic means. This being the case, it is not clear why information specified by regulations made by the Welsh Ministers under Clause 8(2)(f) might be excluded from the publicly available information, which the Explanatory Note suggests that it might. This feeds into concerns expressed above regarding the extent of delegated power contained in the Bill.
17. Section 32 of the Bill refers to penalties for obstructing monitoring activities or assessments which appears reasonable. However, it is important to be clear and certain under s. 32(2) concerning any maximum penalty that a person may be

² Full title: Convention on access to information, public participation in decision making and access to justice in environmental matters done at Aarhus, Denmark 25.6.1998.

exposed to if someone is found liable on summary conviction. If it is the case that conviction should be subject to an unlimited fine then this should be stated in s. 32(2). We recognise that since the introduction of s. 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in March 2015 most environmental crimes are subject to unlimited fines in the magistrates' court. However, given the potentially significant consequences and threats that could arise from intentionally obstructing an Authority's activity, UKELA suggests that the penalty on conviction should be clear such that there is no doubt as to the potential consequences of committing an offence.

4. Views on dealing with tip instability and threats to tip stability (Part 3 sections 33 to 54 and Schedule 3).

18. The Explanatory Memorandum describes the regime as 'proactive rather than reactive'. Intervention to prevent tip failure is greatly welcome, but it is rather surprising that the Bill does not cover action to address the aftermath of a tip failure. It is understood that with regard to the emergency intervention at Tylorstown certain planning consent was applied for retrospectively, including for the receptor sites which were in the ownership of the planning authority, Rhondda Cynon Taf Council. In such an incident there will be significant volumes of waste material, the movement, storage and treatment of which will require environmental permits. The Bill might make some effort to address how emergency interventions in the aftermath of a tip failure might be handled with a view to the role of the new Authority, which will be the repository of relevant expertise in Wales.
19. This approach also means that the position and responsibilities of an owner of a tip that has failed remain unclear. The power to serve a notice requiring owners to carry out operations is limited to those necessary to pursue the objectives of Section 33(2), namely, to prevent or deal with threats of tip instability or to stabilise a disused tip. Note in this regard, there is no provision in the draft legislation for stop notices or other forms of civil sanction which might assist the new Authority. Such regulatory enforcement mechanisms might be helpful to deal with other issues, beyond instability, of causing potential harm to human health or the environment, such as the leaching of mine waters from a tip. Most significantly, it is possible that there may be a need for further stabilisation work following a tip failure, but on the face of it, this is not a power to serve notice on

an owner requiring work in the aftermath of a landslip. As such it reduces the incentives for owners to carry out adequate care of and operations upon a tip. For these reasons, the almost exclusive emphasis on a proactive approach, without consideration of remediation, appears surprising.

20. Section 36 provides for a right of appeal against notices under Sections 33 and 35. However, the provisions refer to an application to vary or cancel the notice rather than a formal appeal process and Clause 37 simply says that the appeal will be determined by a person appointed by the Welsh Ministers. And while it is noted that Clause 38 requires the Welsh Ministers to make regulations in this regard, it is submitted that the appeal systems and structures should preferably be in place within the primary legislation. Further, it is noted that the Explanatory Memorandum anticipates that the person appointed is likely to be someone such as an Inspector from the Planning and Environment Decisions Wales (PEDW). However, there should be more certainty and clarity to the appeal system. UKELA considers that a PEDW Inspector is likely to be best placed to determine the appeals that may arise. It will be important to ensure that any role that is conferred by the regulation will have sufficient independence. Contrast this provision with the certainty and clarity of Section 50 and the right of appeal to a court for an order to vary a contribution order made under section 49(4).
21. Section 39(2) on the penalty for failure to comply with a notice again simply refers to a fine when this could appropriately state that the offender is liable on summary conviction to an unlimited fine.
22. Section 50 refers to a right of appeal by a 'contributory' given a demand under section 49(4). The section does not state to which court a 'contributory' may appeal although it is understood from section 85 that reference to a court is to a High Court or a county court. Given the different route of appeals it would be preferable for the relevant clauses to be specific as to which court or appellate body is dealing with any particular appeal. Similarly, section 52 should specify that the court is either the High Court or a county court. This is key, filing an appeal in the incorrect court may be fatal to an application where strict time limits for making applications apply: see e.g. the 6 week appeal time limit in section 52(2).

5. Views on the supplementary sections (Part 4 sections 55 to 70)

23. The ownership of land upon which disused tips are located is understood to be a matter of great complexity in practice so that provisions such as those on Section 58 are necessary and supported.
24. The powers of entry on to land and associated rights, for example taking equipment on to land and sampling, seem unextraordinary when compared to similar regulatory powers contained in similar environmental regulation, especially given provisions relating to notices and warrants. Entry onto land without a warrant and in some cases without service of notice if exercised in a careful and proportionate manner by the Authority is unlikely to offend human rights to property under Article 1 of Protocol 1 of the European Convention on Human Rights given the threats posed by coal tip collapse and the provisions in that Article relating to the wider public interest and the conditions imposed by law in the form of this legislation.
25. Section 69 states that in discharging its function the Authority must have regard to guidance given to it by Welsh Ministers. The width of the guidance envisaged in the Explanatory Memorandum is considered above. It is possible to envisage guidance which might go beyond that to the Authority, such as guidance on appeals or guidance on interaction with other public bodies where guidance may need to be given to those other public bodies, e.g. to NRW, in facilitating the work of the Authority or to other public bodies dealing with emergency responses. This Clause might be drafted wider to apply to the Authority but also extend to other relevant public bodies.

6. General (Part 5 sections 71 to 88)

26. We have drawn attention above to the limitations in the use and definition of 'threat to human welfare' in Section 82. Presumably, the definition of tip includes mine tailings under water even though an accumulation underground is excluded from the definition. This seems sensible as the failure of a mine tailings dam could certainly pose a threat to human welfare (though again it could also cause significant harm to the wider environment).

7. Any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them

27. The Bill allows for the possibility of compensation for the loss of enjoyment of property, and this provision is not confined only to tip owners and could extend to anyone suffering a nuisance caused by the operations undertaken. However, this gives rise to a possible clash of remedies. Neighbouring owners of land suffering from (say) volumes of coal dust that are reaching their land have an available remedy for statutory nuisance under Part 3 of the Environmental Protection Act 1990. This would take the form of an abatement notice rather than compensation, served by a local authority but available also in summary proceedings brought by the person aggrieved by the statutory nuisance (s.82 EPA 1990). Abatement might halt crucially important works, but the remedy of 'entitlement' to compensation does not appear to provide an exclusive remedy and there is nothing in the Bill to prevent such action under Part 3 of the EPA 1990.
28. Other potential barriers to implementation, include the constraints imposed on land owners, and others including the Authority itself, by need for compliance with existing planning and environmental legislation. The Law Commission Report and the final Chapter of the White paper discuss some of these constraints, which could render tip safety operations unlawful if not accompanied by permits the granting of which could delay and complicate emergency interventions. In cases in which notices are served on owners, quite significant burdens may be placed on those owners under planning and environmental law. These are not clear on the face of this legislation but might include, by way of example:
- a) Gaining planning consent;
 - b) Undertaking environmental impact assessment as part of the planning process;
 - c) Obtaining environmental permits and associated waste law requirements such as a waste carrier's licence;
 - d) Undertaking an ecological HRA (Habitats Regulation Assessment);
 - e) Dealing with constraints posed by legislation which confers specific protection to certain species e.g. under the Protection of Badgers Act 1992 such as (in that case) obtaining a licence from NRW; and
 - f) Obtaining other site licences such as a tree felling licence.

29. None of these obligations are impossible to meet, but they are time consuming, expensive and subject to practical limitations (such as seasonality requirements for an appropriate HRA). In allowing the Authority to serve notices on owners of land to carry out operations under the legislation, the Bill does not dispense with these regulatory requirements which presumably will remain with the owner. It will certainly be necessary to ensure that the period set to conclude the operations, in accordance with cl.33(4), will allow for the delays taken up by planning and permitting. This may trigger the need for more operational intervention by the Authority than envisaged as the owner lags well behind the time schedule allowed or the need for immediate intervention becomes pressing over time.
30. Presumably where the Authority invokes its powers under Clause 42 to itself carry out operations on land, the regulatory burdens considered above pass to the Authority, but there appears to be no express provision for this in the Bill. This is unless section 42 is seen as conferring some form of statutory authority upon the Disused Tips Authority that overrides the need for (e.g.) planning consent for the development. Similarly, cl. 43 allows the Authority to remove 'property' (not defined according to the Table 1 index) which could include the removal of coal tip debris, including coal. But this is nonetheless waste, and its storage and removal should be governed by waste regulation, in accordance with the environmental permitting regime. Greater clarity on the regulatory burdens falling on the Authority when intervening using Chapter 2 powers would be most welcome.

8. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (set out in Chapter 5 of Part 1 of the Explanatory Memorandum).

31. Please refer to comments above about the wide number of issues left to future regulation and, in particular, to guidance.

9. Whether there are any unintended consequences arising from the Bill

32. Over time following the major closure of coal mines in the 1970s and 1980s, the South Wales Valleys have become a much greener environment. Coal tips have often become re-wilded when left alone. We know from the background documents to the legislation that many have become at least part of protected environments. Without disputing the need for the powers in this legislation, it is important that they are exercised in conformity with the duties contained in the Environment Act (Wales) 2016, placed on public bodies in Wales to maintain and enhance biodiversity. Proactive action to curb threats to human welfare ought not to override considerations of environmental sustainability which are poorly iterated in the Bill as it stands.
33. This submission is not merely concerned with what is in the Bill but also with what is not there. If there is a conflict between the powers in this Bill and those already on the statute book, there is a danger that, rather than action to ensure the safety of coal tips, the unintended consequence of such conflict is one of stasis in the face of competing regulatory requirements which have not been fully addressed in the legislation and which ought properly to be the subject of that legislation rather than left for later guidance.

10. Views on the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum)

34. The only comment is that made above concerning the need for longer term funding should funding via the coal tip safety grant not be continued beyond 2026.

Christian Jowett, Robert Lee, Dan Scrase
UKELA Wales
16 January 2025

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Agenda Item 3

DMQTWB 03 - Evidence from: Coal Action Network

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Tomenni Mwyngloddiau a Chwareli Nas Defnyddir (Cymru) | Disused Mine and Quarry Tips (Wales) Bill

1. What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

We broadly welcome this Bill and the intention behind the Bill. We agree with the Welsh Government that stronger provisions are needed to protect people living in Wales from coal tip instability, particularly due to the increasing pressures from climate change.

2. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

▪ Part 1 - The Disused Tips Authority for Wales (sections 1 to 5 and Schedule 1)

Given the public interest and stakes involved, the DTA must prioritise transparent and accountable public communications, with an eagerness to cooperate with environmental NGOs. If the DTA sees this as an impediment to its work, it will fail to create trust in the safety of coal tips for those living in their shadow.

▪ Part 2 - Assessment, registration and monitoring of disused tips (sections 6 to 32 and Schedule 2)

Without the details of the desk-based assessment, it is difficult to assuage our concerns that stability risks could be missed, if they are – as a result – never escalated to a physical inspection, which may highlight those more effectively.

▪ **Part 3 - Dealing with tip instability and threats to tip stability (sections 33 to 54 and Schedule 3)**

The technical detail in ownership, occupier status, and sale are outside our area of expertise. However, we have seen liability tied to ownership abused by Celtic Energy Ltd to evade tens of millions in restoring Selar, Margam, East Pit, and Nant Helen, which had the land ownership transferred to shell companies registered in the Cayman Islands. It should therefore not be made possible for land owners to sell the land on where the new owner would clearly be unable to fund stability works, and there should be stipulations about what must be declared in the sale of land containing registered coal tips.

We would also like to know how the current Bill proposal would be implemented in a real-world situation where, for example, in Bedwas where we understand there is a tip where the land under the tip is owned by one party but the surface of the tip is owned by another party.

▪ **Part 4 - Supplementary (sections 55 to 70)**

55(1)(E) “the Coal Authority” should be updated to the new title of “the Mining Remediation Authority”

▪ **Part 5 - General (sections 71 to 88)**

No comment

3. What are the potential barriers to the implementation of the Bill’s provisions and how does the Bill take account of them?

To reduce opportunistic appeals by landowners to delay and avoid necessary stability works (in the vein of what we’ve seen mining companies do to stave off an enforcement notice recently), there should be clear and pragmatic eligibility grounds for appeal.

4. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

The power granted to Ministers within the Bill to amend the definition of a disused coal tip could greatly impact the reach and application of the Bill as this definition is core to the Bill's implementation. We are therefore of the opinion that Ministers should not be given the unfettered liberty to redefine what constitutes a disused tip. Given that the new Bill has not sought to amend the definition of a disused tip from the 1969 predecessor Bill, there is not a compelling practical case for creating this liberty, given the risks it raises.

We have even stronger concerns regarding S81(5), permitting Ministers to exempt an otherwise qualifying disused tip from the Act. This opens the door to an element of arbitrariness undermining the legislative aim of generating consistency and public trust in the application of a cohesive and even-handed regulatory regime.

5. Are any unintended consequences likely to arise from the Bill?

The Integrated Impact Assessment claims the Bill does not deal with coal tip remediation, and does not increase the likelihood of movement and potential combustion of coal that can accompany coal tip remediation. However, this Bill may inadvertently increase pressure on resource-strapped Local Planning Authorities by fuelling a new wave of coal extraction applications, such as the current proposal by ERI Ltd to 're-mine' two coal tips in Bedwas in a practice that dates back to at least 1984.

ERI Ltd is a private company offering to permanently remove tip stability risks at no charge to the landowner (Caerphilly Council) in return for selling the extracted 'waste coal'. Coal tip remediation involving coal removal and earthworks is presented as a solution to permanently prevent future coal tip instability. It does not substantively differ from other actions such as irrigation to prevent instability which is included within the remit of the Bill. The Explanatory Memorandum's separation of the two activities is arbitrary and doesn't reflect the present reality.

We believe similar proposals would be an attractive prospect to other landowners facing open-ended coal tip liabilities under the lower thresholds introduced by the new Bill. This is particularly true for landowners who may struggle to sell on land containing higher risk coal tips.

The UK Government's promise of no new coal licences would fail to prevent this unintended consequence of the Bill because 're-mining' coal tips does not require a coal licence, merely planning permission (as the coal has already been extracted from the coal seam). Even if the patchwork of Welsh policies were sufficient to prevent planning permission for such projects, which we believe it is not, the applications coming forward would increase the burden on resource-strapped Local Planning Authorities as well as wasted resources of the private sector.

If this Bill stimulates the practice of 're-mining' coal tips across Wales, it could have significant consequences for Wales climate change emissions. Estimating coal content across the diverse tips distributed across Wales is very difficult, but extrapolating from ERI Ltd's estimate of 500,000 tonnes of coal contained within two coal tips in Bedwas, around 643 million tonnes of saleable coal could be extracted from the 2,573 coal tips in Wales. If burned, this coal would emit 1.8 billion tonnes of CO₂ – equivalent to 7x Wales national CO₂ emissions (2022). Given that this Bill was partly introduced in response to the predicted effects of climate change on the stability of coal tips, failure to safeguard against this unintended consequence could undermine the core legislative aim of public safety.

As a starting point, and in recognition of this unintended consequence, the Welsh Government must undertake a Carbon Impact Assessment and full Climate Change Impact Assessment, currently omitted.

6. What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

No comment

7. Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

Over 85% of disused coal tips (and 90% of coal tips with higher stability risks) in Wales are located in the South Wales valleys, and – according to the Welsh Indices of Multiple Deprivation – are based in communities classed as amongst the 10% most deprived in Wales. As the Government's Integrated Impact Assessment outlines, preventing coal tip slips would benefit lives, land, and housing in these areas.

To realise this benefit, though, it is vital that the design and execution of stability works on coal tips prioritise minimising potential impacts on the wellbeing of these socio-economically disadvantaged communities – for example in operating hours, HGV movements, flora clearance, restriction of public access to green spaces etc.

DMQTWB 06 - Evidence from: Friends of the Earth Cymru

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Tomenni Mwyngloddiau a Chwareli Nas Defnyddir (Cymru) | Disused Mine and Quarry Tips (Wales) Bill

1. What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

We strongly support this urgently needed legislation. The issue of dangerous tips and quarries has been well known for decades in Wales, and of course in particular since the tragic coal tip disaster of Aberfan in 1966.

But in recent years it has become even more apparent and urgent as extreme weather events caused by climate change become more frequent and more extreme, causing unprecedented tip destabilisation – including in Tylorstown and most recently in Cwmtillery. This will only increase as the impact of climate change is felt in Wales as throughout the world. There have also been welcome steps taken to assess the scale of the problem in recent years.

However we believe the scale of the problem and the sensitivity of the areas, as well as the impact on communities and on nature, requires a public authority and public funding to deal with dangerous tips and make them safe.

Individual local authorities have neither the capacity, expertise nor funding necessary to do this on their own, leaving a dangerous gap which could see private companies step in and propose ‘solutions’ based on financial gain from removing and selling the coal, rather than taking an approach which puts safety and welfare first and prioritising tips that put communities at risk.

We are already seeing this situation arise with 2 of the tips at Bedwas in Caerphilly Council area, and fear that this could escalate into a dangerous new coaling industry – as we have seen with opencast coal mining and its repercussions and legacy on communities and landscapes in recent decades. We cannot let this happen again, as this committee’s report ‘Restoration of Opencast Mining Sites’ published in August 2024 evidenced and made recommendations regarding.

2. What are your views on the Bill’s provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

▪ Part 1 - The Disused Tips Authority for Wales (sections 1 to 5 and Schedule 1)

In general we support these provisions.

Given the impact and interest of communities and other groups in the role of the Authority and the situation of disused tips, we would encourage it to proactively engage with communities and collaborate with relevant interested parties.

▪ Part 2 - Assessment, registration and monitoring of disused tips (sections 6 to 32 and Schedule 2)

No comment.

▪ Part 3 - Dealing with tip instability and threats to tip stability (sections 33 to 54 and Schedule 3)

No comment.

▪ Part 4 - Supplementary (sections 55 to 70)

In terms of the list of public authorities that can be required to provide information we would be interested in whether the Crown and UK Government Departments could and should be included as well as the devolved public sector. They could be relevant as landowners or bodies that hold information on relevant land.

▪ Part 5 - General (sections 71 to 88)

We welcome that the definition of “threat to human welfare” in section 82 makes reference to food, water, energy and fuel supplies and facilities for transport. We would welcome clarification on whether it would include threat by fire and flood, which could also have a significant impact on nature and biodiversity, and whether disruption of water supplies includes the contamination of water.

3. What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

A significant barrier to effective implementation of the Bill's provisions is financing its provisions – not only the setting up of a new public authority, which is taken account of, but the cost of making tips and quarries safe when this has been assessed as necessary.

The risk of not having funding secured is that private industry takes advantage of the situation and proposes to remediate or develop coal tip sites in a way that prioritises profit for the corporation rather than public interest and community safety.

We believe that the UK Government has a moral and historic responsibility to cover the cost of dealing with the legacy dangerous tips, which pre-date devolution and should have been dealt with decades ago.

We understand that this is not a matter to be included on the face of the bill, but would seek reassurances and commitments from the UK Government during the scrutiny of the bill and its passage through the Senedd.

Another barrier that has been seen in dealing with opencast restoration is with the strength and suitability of enforcement powers, in particular requiring owners of land and sites to act. We understand that there has been significant work to ensure that there are robust requirements on owners under this bill, but would urge the committee to scrutinise and ensure that enforcement will be possible under the wording of this bill.

4. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

No comment.

5. Are any unintended consequences likely to arise from the Bill?

As referred to in reply to previous questions, we are greatly concerned that an unintended consequence of this bill could be to create a new coal industry in Wales if there is a push to restore sites without the public funding or capacity to

deliver on this – with a danger of private companies seizing the opportunity to step in and a repeat of the tragic situation we face with legacy opencast sites.

In light of the stated intention to deal with coal policy and related matters after this bill is passed, and the current loopholes in the Welsh Government's coal policy which sees us face applications such as those currently live for opencast coal mining in Glan Lash in Carmarthenshire and mining coal from 2 of the Bedwas coal tips in Caerphilly, this shows that the current regulatory set up is not strong or clear enough to convince industry that there will be no more coal extracting in Wales.

Unless coal policy and related matters are dealt with during the process of this bill we are concerned that the bill could be seen as an opportunity for further coal mining opportunities in Wales, flying in the face of our carbon targets, global responsibilities and intention of our energy, coal and planning policies.

We would also like to see a full climate impact assessment of this bill, taking account of this unintended consequence.

Another unintended consequence could be the destruction of some of our most biodiverse and unique wildlife sites in Wales (see question 20 for more information - question 11 in the template response) under the guise of making coal tips safe. This is more likely to happen if profit-making companies are involved.

Public safety must come first, but the impact on wildlife and biodiversity must always be considered and preserved and protected as much as possible. At a time when one in six species in Wales is at risk of extinction, it is incumbent on us to do our utmost to protect biodiversity hotspots.

There is currently no reference to environmental legislation on the face of this bill, and although we understand that the government's intention is that existing environmental legislation would apply we would welcome a reference to that on the face of the bill.

6. What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

We have no comment on the direct financial implications of establishing and running the Authority that would come about as a result of this bill.

However, the finance needed to make dangerous tips safe is much higher than has so far been committed by the Welsh Government and from the UK Government. We need a commitment from the UK Government to fund this legacy issue.

7. Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

We understand that this bill has a relatively narrow legal basis linked to establishing a new public authority and threats to human welfare, due to the complexities of the measures needed to set up this new regime.

However we would like to raise the following issues and would urge the committee to investigate how these can be addressed as a matter of urgency, as a part of this bill or in related provisions.

- Prohibiting coal extraction

This bill does not include any measures to change the coal regime or coal policy, although there has been recognition by Welsh Government that this is needed. We believe that these are urgently required to save communities from being exploited with companies either testing loopholes in current coal policy which is intended to stop coal extraction, or to usher in a new coal industry in the form of mining coal from coal tip sites, as set out further in reply to question 18 above (question 9 in the template response).

We urge the committee to investigate whether revising and updating the current coal and mining regime, and removing loopholes in current policies, could be addressed during the course of this bill rather than after its implementation, with provision introduced to prohibit coal extraction in Wales.

If this is not possible in terms of capacity, or is outside the remit of the bill, we

would like to see a provision in the bill to prohibit coal extraction for commercial gain from disused coal tips.

- Dealing with legacy opencast sites

It is our understanding that the remit of this bill would include disused mines such as East Pit and Margam/Parc Slip, but not sites which are deemed to remain 'active' such as Ffos y Fran and Glan Lash. However all of these sites and the communities that they impact need to be properly and safely restored, as highlighted in the committee's report 'Restoration of Opencast Mining Sites' (August 2024) and proposed in its Recommendation 15.

We urge the Committee to press these issues during the bill scrutiny process, and to ensure a safe restoration and justice for all the communities impacted.

- Nature and biodiversity

Welsh coal tips often support habitats and wildlife of considerable local, regional, and national importance. Across Wales, colliery spoil sites provide a refuge for diverse communities of birds, mammals, amphibians, reptiles, plants, fungi, lichens, and invertebrates.

There are currently 99 coal tips in Wales that are within designated Sites of Special Scientific Interest (SSSI), and a further 32 that are Special Areas of Conservation (SAC) (<https://stateofnature.org.uk/countries/wales>).

Restoration proposals could transform the character of sites - altering soil conditions, topography and vegetation, with significant impacts on habitats and biodiversity.

Public safety must come first, but impact on nature must be considered and minimised.

- Community involvement and impact

Too often mining and quarrying work has been undertaken without adequate involvement of the communities, to the detriment of welfare and wellbeing of these often socio-economically disadvantaged communities. Following on from the community evidence witnessed by the committee in its inquiry into opencast sites, we would urge the committee to champion the involvement of

communities at all stages of dealing with disused mine and quarry tips, ensuring minimal disruption where work is essential, and taking into account issues such as noise and air pollution and access to green spaces.

Agenda Item 4



deunyddiau hanfodel
atebion cynaliadwy

essential materials
sustainable solutions

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17th January 2025

Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

Email: SeneddClimate@senedd.wales

Dear Sir/Madam

DISUSED MINE AND QUARRY TIPS (WALES) BILL - DECEMBER 2024

The Mineral Products Association (MPA) is the trade association for the aggregates, asphalt, cement, concrete, dimension stone, lime, mortar and silica sand industries. With the affiliation of British Precast, the British Association of Reinforcement (BAR), Eurobitume, MPA Northern Ireland, MPA Scotland and the British Calcium Carbonate Federation, it has a growing membership of over 530 companies and is the sectoral voice for mineral products. MPA membership is made up of the vast majority of independent SME quarrying companies throughout the UK, as well as the 9 major international and global companies. It covers 100% of UK cement production, 90% of GB aggregates production, 95% of asphalt and over 70% of ready-mixed concrete and precast concrete production. In 2016, the industry supplied £18 billion worth of materials and services to the Economy. It is the largest supplier to the construction industry, which had annual output valued at £169 billion in 2018. Industry production represents the largest materials flow in the UK economy and is also one of the largest manufacturing sectors. For more information visit: www.mineralproducts.org.

In view of our representation of the vast majority of companies involved in the extractive sector we must express our extreme disappointment that Welsh Government has failed to engage with the sector. We have spoken with the Geotechnical lead at QNJAC who has confirmed that he was not aware of the proposals as outlined. Whilst we recognise the need to address the historic issues associated with Disused Coal Tips, we are both surprised and extremely disappointed that the scope of the Bill now proposed has been significantly expanded to include non-Coal Tips, without the appropriate evidence base. This has been done without due regard to our previous representations, without proper engagement with our sector and as such we must express our serious concerns over the direction of travel and must OBJECT to the current consultation. Our concerns are expressed in detail below.

We would be more than happy to continue engagement on this matter.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Nick Horsley', is written over a light blue horizontal line.

Nick Horsley
Director of Planning, Industrial Minerals and MPA Wales

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Tel: 07568 427720

MPA Wales/Cymru is part of the Mineral Products Association, the trade association for the aggregates, asphalt, cement, concrete, dimension stone, lime, mortar and silica sand industries

Registered in England as Mineral Products Association Limited No. 1634996
Registered Office: Gillingham House
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1. What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

(We would be grateful if you could keep your answer to around 500 words).

We object most strongly to the proposals. The crafting of the consultation is careless and risks derailing the progress of the legislation to address the legacy of Disused Coal Tips. We have commented previously on two Welsh Government Consultations on the proposed regulation of the Disused Coal Tips. At no stage, have those previous consultations raised concerns over Non-Coal Tips, and nowhere has the necessary research been undertaken. This is stealth legislation without the supporting evidence base. We are now faced with ill-conceived proposals to regulate all disused tips.

The research done by the Law Commission has focussed solely on the legacy of the historic Coal Industry. The current proposals have bolted on all mines and quarry tips without due consideration or research into the subject and without formal engagement with the sector. This may open a legal can of worms and be open to challenge. To change direction of this Bill without proper consideration and Regulatory Impact Assessment requirements, risks delaying the legislation. The focus should be solely on Disused Coal Tips. It is disingenuous for the Memorandum to state that this is part of the Government Programme 2021-2026. That programme clearly focussed on the legacy of Coal mining as reflected in Welsh Government's response to the Law Commission Consultation, not on the wider quarrying sector. Further, the White Paper also focussed solely on the Coal Tip Legacy.

2. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

▪ Part 1 - The Disused Tips Authority for Wales (sections 1 to 5 and Schedule 1)

(We would be grateful if you could keep your answer to around 500 words).

The work carried out by the Coal Authority was limited to Disused Coal Tips and we are not aware of parallel research on non-coal tips. Indeed, the data contained in Figures 1&2 verifies this. We remain of the opinion, that the new legislation should relate solely to Disused Coal Tips and be regulated by the Coal Authority, where the existing expertise lies until such time as a full and proper assessment/research has been undertaken into the non-coal sector. The proposed approach seems to be politicising this serious issue. It is impossible to gauge the scope of any new authority until such time as the extent of the non-coal legacy is understood. Worryingly and as stated in the consultation, the Welsh Government has only commissioned the Coal Authority to carry out a review of coal tips in Wales and not other legacy features. We fail to see how non-Coal Tips can be categorised when no assessment research has been undertaken. This is reinforced throughout the report. Where we do support the consultation, is the Right of Appeal. As no research has been done on non-coal tips this is undoubtedly necessary. Further we have concerns that any new authority will lack funding and more importantly the resources and skills to deal with Coal Tips, let alone the addition of non-Coal Tips. It is unclear how such skills will be "magicked" out of nowhere, when at the heart of the consultation is the inability for regulators to undertake their existing statutory duties, let alone the additional burden imposed by the current proposals. Whilst we support the findings of the Law Commission's Report, the current proposals do not reflect the finding of that research and go way beyond the measures proposed to rectify the problems. The proposals have failed to address many of the concerns raised in our previous two representations in terms of land ownership and material ownership, i.e. is the surface owner of the land the same person who owns the minerals from which the tips have been formed. The consultation suggests that the absence of consultation on a draft Bill is satisfactory as the Bill proposals reflect the principles outlined in the White Paper. This is utter fabrication. At no point does the White Paper propose extending the Law Commission Report to Non-Coal Tips. As such,

the process is flawed and thereby open to challenge. Further, the Powers now been afforded to Welsh Ministers go beyond the scope outlined in the previous two consultations.

3. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

- Part 2 - Assessment, registration and monitoring of disused tips (sections 6 to 32 and Schedule 2)

(We would be grateful if you could keep your answer to around 500 words).

We have no alternative but to object to the provisions in the Bill. No previous research or consultation exercise has been undertaken on non-coal tips and as such is it improper to seek to incorporate any such legacy issues into the Bill, where the research and previous consultations have been limited to the Coal Industry. We question the accuracy, validity and evidence base for the Regulatory Impact Assessment when it is clear that the proposals to include Non-Coal Tips are without proper research, going beyond the report findings of the Law Commission. Accordingly, the RIA is flawed and we fail to see how any credence can be given to it, in the absence of sound research. As highlighted, the Key Evidence relates solely to investigative work on Coal Tip Safety and not on Non-Coal Tips. The RIA, cannot quantify the skills and staff requirements to deal with non-Coal issues. How can the cost of running the service be estimated, when no assessment has been carried out as to the extent of the work required. We get to almost halfway through the document, when the first mention of prioritising Coal Tips is apparent over and above non-Coal Tips, yet the extent of the latter has not been researched, seriously questioning the validity and accuracy of the RIA. The additional cost of mapping non coal tips is estimated at £0 in Table 1. This further highlights the flaw in the consultation especially when the figures plucked out of thin air suggest there are 20,000 non-coal tips over and above the 2,500 coal tips. Also, we question on what basis the figure of two non coal tips per day (500 per year) being assessed, is based. This suggests the author has never carried out a geotechnical assessment. The figures in paragraph 8.23 simply do not add up. Table 2 also suggests costs of £0. Funding a new authority is one thing, securing the skills and expertise to undertake the work is another. We believe the £1m to be an under-estimate. The hourly rates charged by Governmental departments and Agencies for pre-application advice in planning or permitting start at circa £150, therefore to suggest hourly rates of £90, £110 & £135 for Inspectors, Senior and Lead, are, we believe a significant under estimate.

4. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

- Part 3 - Dealing with tip instability and threats to tip stability (sections 33 to 54 and Schedule 3)

(We would be grateful if you could keep your answer to around 500 words).

We do not believe the provisions within the Bill are workable as there is a significant shortfall in the research, which has failed to assess the extent of non-coal tip legacy.

5. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

- Part 4 - Supplementary (sections 55 to 70)

(We would be grateful if you could keep your answer to around 500 words).

See above

6. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

- Part 5 - General (sections 71 to 88)

(We would be grateful if you could keep your answer to around 500 words).

See above

7. What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

(We would be grateful if you could keep your answer to around 500 words).

The barriers to the Bill are simple, it is flawed and without a sound evidence base.

8. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

(We would be grateful if you could keep your answer to around 500 words).

Until such time as proper research is carried out, it would be foolish for Welsh Ministers to be creating subordinate legislation in an area where there is a total absence of a sound evidence base.

9. Are any unintended consequences likely to arise from the Bill?

(We would be grateful if you could keep your answer to around 500 words).

Yes, the decision to incorporate Non-Coal Tips, without the necessary research and previous engagement through the proper consultation channels risks bringing the whole house of cards crashing down and add significant delays. Whether or not these consequences are unintended is unknown, but it could represent serious maladministration

10. What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

(We would be grateful if you could keep your answer to around 500 words).

In a word, woeful. The financial implications of the Bill are considered a gross underestimate as the scope now proposed has not been quantified.

11. Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

(We would be grateful if you could keep your answer to around 500 words).

We strongly recommend the Bill is reeled back to the original concept, i.e. addressing the legacy of Disused Coal Tips.

DMQTWB 27 - Evidence from: British Aggregates Association

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Tomenni Mwyngloddiau a Chwareli Nas Defnyddir (Cymru) | Disused Mine and Quarry Tips (Wales) Bill

1. What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

There is no requirement for the bill as the Mines and Quarries (Tips) Act 1969 and the regulations published in 1971 dealt with open tips and closed tips and the categories of the tip based on gradients of the base, the ground conditions, the height of the tip and the surface area. The British Coal Corporation and their successors were responsible for inspecting tips within their district that were former colliery spoil tips and the Coal Authority who manage the coal industry's assets should work with Local Authorities to ensure that each tip has been risk assessed. As regards the tips at quarries the Mines and Quarries (Tips) Regulations 1971 provide for the owner to be responsible for safety and stable condition of the tip and that still applies. The problem is the legacy of the coal mining industry and the underground mines that were abandoned by the National Coal Board and British Coal Corporation. Quarry tips that were closed prior to 1999 are assessed by the landowner as part of the completion of the site and the closure is regulated by the Health and Safety Executive and the Mineral Planning Authority based on the planning conditions at the time. Quarry tips that were open after 2000 are regulated by the Quarries Regulations 1999 regulations 12,13, 16 and 30 to 37 for geotechnical assessments of tips. The Act and Regulations require amending to allow Local Authorities or their nominated body to inspect coal tips, a new bill is not required. The evidence and work undertaken by the Coal Authority has been solely on coal tips and not on tips within quarries on non coal mines. The previous consultations focussed on legacy coal mining tips and not on the wider minerals sector.

2. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

▪ Part 1 - The Disused Tips Authority for Wales (sections 1 to 5 and Schedule 1)

The work undertaken on behalf of the Welsh Government by the Coal Authority was solely on coal tips that were part of the nationalised industry and other assets that were taken over by the NCB in 1947. The Coal Authority or now the Mine Remediation Authority are the successors to the NCB and British Coal Corporation as they manage the legacy issues of the coal mining industry. It is understandable the Authority would inspect colliery spoil tips but the BAA are not aware that the survey and inspections have been extended to tips within quarries or non coal mines. From the BAA members experience the inspection of tips under the Quarries Regulations 1999 and the approved code of practice has worked extremely well and is continually monitored every two years. The BAA fail to see how the legislation can be extended to non coal mining tips when no research has been undertaken and no asset list has been prepared.

The problem lies with the coal mining legacy issues of spoil heaps being placed on land above areas of population and infrastructure that have not been regularly inspected by the Coal Authority or the Local Authority unless it was an emergency.

It is unclear where these professional engineers and geologists experienced in geotechnical engineering will come from when the current Authorities have not been able to carry out their statutory duties due to lack of expertise and funds. The quarrying and civil engineering sectors are struggling to hire engineers and geologists who can carry out the geotechnical work on operational mines and quarries, never mind closed and abandoned mines. The Coal Authority probably don't have the expertise now that they once had as most of the staff who have knowledge of coal mining and colliery tip inspections and record keeping will have retired.

The proposal goes beyond the White Paper and the Law Commission report which was purely to address the legacy coal mining issues with tips and lagoons. The bill should not be extended to include operational quarries and non coal mines as they are regulated under the Quarries Regulations 1999 and the HSE.

The powers being afforded to Welsh Ministers under this bill are beyond the previous consultations and now include all quarries and mines. The issue of

ownership has to be addressed first as in most cases the surface will be in one ownership and the minerals in another.

Mineral law is a complex subject and the owner of land where a tip is will be difficult to prove unless it is an operational facility where the onus is on the operator to manage excavations and tips.

On the other hand the colliery spoil tips were either made by coal mining companies that were nationalised and therefore became an asset of the State or made by operational NCB and BCC mines before being privatised leaving the legacy of these tips with the Coal Authority.

▪ **Part 2 - Assessment, registration and monitoring of disused tips (sections 6 to 32 and Schedule 2)**

The British Aggregates Association objects to the provisions in the Bill as it now includes all disused tips in Wales which goes beyond the scope of the consultation on coal tips and the Law Commission report. Consultees have responded to the two previous Welsh Government consultations as it was purely about dealing with coal tips on the surface that had been built from underground mining or some of the opencast sites that were left unrestored. There has been no research on the disused non coal mining and quarry tips in Wales and certainly no consultation with the wider minerals supply sector. The regulatory impact assessment (RIA) can only have considered the coal mining legacy so it is flawed as the cost of the service when adding non coal mining assets into the remit, with no research has not been quantified. It is assumed there are 20,000 non coal tips in Wales that will require assessment. Further research is required if this Bill is to include non coal mining tips as it is clear there will be considerably more work based on the number given in paragraph 8.18. It is clear that the author of the Bill has not discussed the work required for a geotechnical assessment for a tip under the Quarries Regulations 30 to 37 and the Approved Code of Practice and the time taken to complete one whether for a coal tip or quarry. The report is the same for a disused tip as it is for an active tip.

▪ **Part 3 - Dealing with tip instability and threats to tip stability (sections 33 to 54 and Schedule 3)**

The British Aggregates Association know the provisions in the Bill are not workable as there has been no research on non coal mining tips or the work that has been undertaken on such tips since the Mines and Quarries (Tips) Regulations

1971 that came into effect on the 1st October 1971. Records will be kept of these tips and quarries / mines under these regulations by the HSE, the Planning Authority and the operator and most likely the minerals / landowner. The Bill should deal with the coal mining legacy issues as clearly they are the major risk to human health and well being and infrastructure in the Welsh coal mining areas particularly the South Wales Coalfield.

The Authority could accept the function of Local Authorities in relation to tips inspections under the Mines and Quarries (Tips) Act to deal with the colliery spoil tips under the same classification. Non coal mining tips can continue to be assessed by the quarrying sector, the HSE and the Minerals Planning Authorities when active. Non coal mine tips are usually inspected by minerals company that built them or the landowner under some clause in the working agreement. As the regulations have been in place for over 50 years it is unlikely that there are any tips that are a hazard unless they are older than 50 years or before the Town and Country Planning Act.

▪ **Part 4 - Supplementary (sections 55 to 70)**

The British Aggregates Association do not see any issues with the Bill's provisions on the "relevant public authority" or their function as it applies to tips. The issue is the consultations and the Law Commission report, the research and the Coal Authority assessment only related to coal mining legacy issues and not the wider minerals industry. The risk from tips in Wales are mainly due to colliery spoil tips on the valley sides in South Wales as borne out by the research tabulated on figure 1 on page 22 for each local authority. Non coal mining tips should not be brought into this Bill. If the Welsh Government thinks non coal mining tips should be assessed then the research should be undertaken with full consultation and data gathering with the HSE, quarrying companies, the British Aggregates Association, the Mineral Products Association, Mineral Estate Owners and Mineral Planning Authorities to assess the data that is available on disused tips, the age of the tips and the risk to human health and the environment.

▪ **Part 5 - General (sections 71 to 88)**

The British Aggregates Association does not see any issues with sections 71 to 88 but it should only be applied at the present time to the coal mining tips in Wales as the RIA, funding and research has been undertaken on those tips by the Coal Authority. Disused non coal mining tips such as metalliferous mines, building stone quarries and limestone mines should be inspected under an extension to Tips Regulations until further research is undertaken on the non coal mining tips

in Wales that would involve the BGS, local history societies, the minerals owners and the HSE as they are likely to hold plans of these mines and tips.

3. What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

The Bill financial provision is flawed as it is based only on the coal mining related hazards on colliery spoil tips and the Bill. The White Paper did not propose extending the legislation beyond dealing with colliery spoil tips and the powers proposed in this bill go beyond what was previously consulted upon. The colliery spoil tips are or were owned and operated by the National Coal Board and the successor was the Coal Authority who manage the legacy issues. The state was responsible for the safety of the tips hence the person having the responsibility of a closed tip being the owner. With the NCB before privatisation, being the owner of those tips it was clear who to deal with under the Regulations. Now those colliery parcels of land will be in separate ownership so there are issues of who is responsible for the tips, the landowner, the minerals owner, which in the case of coal is still the State or is it the body who created the spoil tip, which again was the NCB or British Coal Corporation. Even when the industry was privatised, the coal still belongs to the State and is licenced by the Coal Authority to allow mining by a third party so they are never the owner of the coal. There is only an evidence base for the Bill for the research undertaken on the colliery tips.

4. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

It is not appropriate to make subordinate legislation without a sound evidence base.

5. Are any unintended consequences likely to arise from the Bill?

Yes, the decision to incorporate Non-Coal Tips into the Bill, without the necessary research, financial risk assessment and engagement through the proper consultation with the wider stakeholders in the non coal mining sector increases the risk of legal challenges, uncertainty of who is responsible as the tip owner and add significant delays and costs. Whether or not these consequences are unintended is unknown, but it will frustrate the intentions of the Bill to deal with risk to human welfare from colliery spoil tips in the South Wales Coalfield.

6. What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

The British Aggregates Association's view is that the financial implications for dealing with the coal mining legacy issues could be predicted. To extend that to the wider non coal mining tips and hazard risks based on an assumption there are 20,000 tips in Wales with no other research cannot be quantified.

7. Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

The Bill should be restricted to the Coal Mining tips and how to deal with that hazard which is relatively unique in that it is material that has been brought from underground and stored on the surface up above settlements in the South Wales Coalfield and valleys. The North Wales coalfield does not suffer from the same risks and they have mainly been restored for other uses as industrial or commercial development. The extension of the Bill to non coal mining disused tips threatens the financial governance and diverting funds away from dealing with the legacy coal mining issues that State as owner should be held accountable for.

Agenda Item 5.1

Ysgrifennydd y Cabinet dros Drafnidiaeth a Gogledd Cymru
Cabinet Secretary for Transport and North Wales

Rebecca Evans AS/MS
Cabinet Secretary for Economy, Energy and Planning
Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio

Andrew RT Davies MS
Chair,
Economy, Trade and Rural Affairs Committee



Llywodraeth Cymru
Welsh Government

23 January 2025

Dear Andrew,

Thank you for your letter of 20 December on behalf of the Economy, Trade, and Rural Affairs Committee, in relation to the temporary closure of the Port of Holyhead. Noting the cross-portfolio nature of the issues raised, this is a joint response on behalf of the Cabinet Secretary for Economy, Energy and Planning and myself.

We fully share the Committee's concerns about the potential short and longer terms impacts as a result of the temporary closure and have sought to ensure that all Members have been kept informed of the collaborative action being taken by the Welsh Government and partners, particularly the Irish Government.

Given the speed of events and subsequent responses, the substantive points you raise are largely addressed through the following statements which provide a chronology of the rapid collective action undertaken:

[Written Statement: Port of Holyhead Closure \(14 December 2024\)](#)

[Joint Communique from the Welsh Government and the Irish Government - Port of Holyhead \(17 December 2024\)](#)

[Written Statement: Welsh Government Update Following the Temporary Closure of Holyhead Port \(19 December 2024\)](#)

[Statement by the Cabinet Secretary for Transport and North Wales: Port of Holyhead \(7 January 2025\) – Item 5](#)

[Written Statement: Welsh Government Statement Following the Reopening of the Port of Holyhead \(16 January 2025\)](#)

We are naturally very pleased that it has been possible for the port to re-open for businesses on 16 January, resuming normal capacity for both ferry operators through the use of berth 5 and making adjustments to the sailings timetable. This should significantly remove the

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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.

challenges that have been faced by the logistics sector and passengers on both sides of the Irish Sea.

Throughout the temporary closure we have collaborated closely with the UK Government and Irish Government, speaking frequently with our ministerial colleagues, including regular discussions between the First Minister and the Taoiseach.

With specific regard to affected business and workers, and cognisant of the potential local and regional economic impacts, we are also working closely with the Isle of Anglesey County Council, which is currently gathering evidence of the potential impact of the closure, including via a survey available on their website for businesses to complete. As of the end of last week, it had received 40 responses. Over 72% of those are from the hospitality, retail and beauty sectors, 18% from logistics and associated services with the remainder being “other” sectors. Common themes were concerns that a reduced number of sailings would impact future revenue and concerns that there would be decreased confidence in Holyhead Port. Whilst the re-opening of the port should address a significant element of those concerns, we are conscious that new challenges may arise. We will jointly review this evidence on an ongoing basis and consider any necessary action following the closure of the survey at the end of January.

Looking forward, to support the port's recovery and minimise the risk of similar events in the future, we have announced the establishment of a Welsh Government-led, multi-stakeholder taskforce. This taskforce will develop a new strategy for the future of Holyhead, focusing on the resilience of sea connectivity between Wales and Ireland. The taskforce will include representatives from the Welsh and Irish Governments, the UK Government, local authorities, regional businesses, logistics bodies, and surface transport operators.

Our plans also involve significant investment in the port's infrastructure. We are committed to ensuring that the port's breakwater can be maintained, allowing the port to remain usable for many decades to come. This investment is crucial in safeguarding the port against future severe weather events and other hazards.

The above illustrates the Welsh Government's commitment to working with all stakeholders to ensure that the port of Holyhead not only recovers, but thrives, providing economic benefits to the region and maintaining its strategic importance in the UK-Ireland trade corridor.

We will of course keep the Committee and other Members of the Senedd informed of developments and would be happy to provide further information if required.

Yours sincerely,



Ken Skates AS/MS

Ysgrifennydd y Cabinet dros Drafnidiaeth
a Gogledd Cymru
Cabinet Secretary for Transport and
North Wales



Rebecca Evans MS

Ysgrifennydd y Cabinet dros yr Economi,
Ynni a Chynllunio
Cabinet Secretary for Economy, Energy and
Planning

Agenda Item 5.2

Jayne Bryant MS
Ysgrifennydd y Cabinet dros Lywodraeth Leol a Tai
Cabinet Secretary for Housing and Local Government



Llywodraeth Cymru
Welsh Government

Llyr Gruffydd MS
Chair, Climate Change, Environment and Infrastructure Committee
Senedd Cymru

29 January 2025

Dear Llyr,

Thank you for your letter of 16 December 2024, requesting information on the draft budget for 2025-26 relating to the Warm Homes and residential decarbonisation and quality Budget Expenditure Lines (BELs). Detailed comments to respond to your questions regarding the specific use of capital and revenue funding in BEL 0950 Warm Homes and BEL 1065 Residential Decarbonisation and Quality, are contained in Annex A.

I was pleased to have been able to increase the budget in some key areas within my portfolio for the next financial year, including interventions to address homelessness. While the residential decarbonisation general Capital budget is unchanged, the focus needed to be on provision of more homes for those in need. I was able to include a 7% uplift in Capital budget to the Warm Homes Nest scheme (BEL 0950) in recognition of the continuing need to invest in energy efficiency, reduce bills and lower carbon emissions from poorly insulated homes.

We are using the independent Nest advice service to signpost callers to other schemes that households in Wales may be eligible for, and consequently we are not dependent only on the Capital within this BEL to fund energy efficiency measures for those in fuel poverty.

In addition to £92 million of investment in social homes through the Optimised Retrofit Programme, I am also allocating £3 million of financial transactions capital (FTC) in 2025-26 to extend the Green Homes Wales pilot. The scheme is designed to provide additional incentive to those who wish to invest in energy efficiency and low carbon heating but lack the upfront capital. It has attracted a significant amount of interest since its introduction last summer and I am delighted to be able to support it again next year.

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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.

Yours sincerely,

A handwritten signature in black ink that reads "Jayne Bryant". The signature is written in a cursive, flowing style.

Jayne Bryant AS/MS

Ysgrifennydd y Cabinet dros Lywodraeth Leol a Thai
Cabinet Secretary for Housing and Local Government

Annex A: Responses to detailed questions

Warm Homes Programme: BEL 0950

Resource Budget: £ 3.731 million
General Capital Budget: £ 37.5 million

When developing the new Warm Homes Nest scheme, we worked on the assumption we would provide measures to approximately 1,500 homes per year based on £30 million per year of capital investment. This estimate accounted for the changes to the programme's eligibility criteria and the deeper retrofit requiring more costly measures, alongside recent construction cost inflation. As the scheme is demand-led, the number of homes assisted in any year will vary depending on the level of interest and the types of interventions recommended through the whole house assessment.

While it is not possible to accurately forecast demand in 2025-26, it is reasonable to assume that a scaling of the capital investment will result in a similar percentage increase in properties supported. It should be noted that a proportion of the funding in this BEL will also be used to rectify poor workmanship in legacy schemes such as those in Caerau, Bridgend and Bryn Carno, Caerphilly. Officials will be providing me with advice on this before the end of this financial year.

The Warm Homes Nest scheme operates as a domestic energy efficiency scheme, albeit with eligibility criteria to ensure those in fuel poverty are supported. There are significant technical crossovers between this scheme and our work on social housing and, through Green Homes Wales, with owner occupiers who are investing themselves. As we move towards greater use of low carbon technologies, and consider cross-tenure area-based interventions, the argument for having these programmes in the same portfolio is clear.

The Cabinet Secretary for Social Justice has a keen interest in the Nest scheme, and an external Fuel Poverty Advisory Panel inputs into the scheme design. Over the last six months, we have worked with the Panel to introduce a crisis route for households without heating or hot water, and subsequently refined the approach in light of the panel's feedback. This has allowed us to support those in immediate need without losing sight of our longer-term climate goals.

My officials are currently working through the review of the new Nest scheme and work on this will be completed by April / May. Once we are confident the demand-led scheme is working well, we intend to discuss with the contractor the potential of expanding into small area-based activities such as blocks of flats or rows of terraced housing. This will be included within the Capital allocation for the Nest scheme.

Decarbonising on a wider area basis, in particular co-ordinating switching to low carbon heating systems across different housing tenures, will need detailed planning involving a wide range of stakeholders. UK Government decisions, such as around the strategic decision on hydrogen for home heating and the future of the gas network, will have a significant impact on any work we plan here in Wales. This long-term work requires careful consideration to understand potential future consequences.

Most of the revenue budget for the Warm Homes Programme (BEL 0950) is used to fund the Nest advice service and independent quality assurance function associated with the Nest scheme. The remainder is used for evidence and policy development around fuel poverty, such as the revision of fuel poverty estimates.

Residential decarbonisation and standards (BEL 1065)

Resource Budget:	£ 1.673 million
General Capital Budget:	£ 92 million
Financial Transactions Capital:	£3 million

The general capital allocation for 2025-26 is £92 million, which is unchanged from 2024-25. This will be used to fund the Optimised Retrofit Programme (ORP). ORP3 will be extended for up to a further two years, focused on its existing priorities. This will allow us to gather evidence from social housing landlords on their compliance against the WHQS2023 standard, the evaluation of ORP and our policy development work ahead of Carbon Budget 3, which will inform future policy options.

The remaining £3 million of Capital in the 2025-26 budget is Financial Transactions Capital. This will be allocated to upscale our Green Homes Wales pilot, supporting owner occupiers to decarbonise their homes through the provision of interest free finance. This is an increase on the approximately £0.5 million of Financial Transaction Capital which will be drawn down by the Development Bank of Wales this year, reflecting the maturity of the scheme and the time lag between initial expressions of interests through the process of retrofit assessment, installer quotations and loan applications. Loan values range from between £1,000 and £25,000 and are based on the recommendations of each individual retrofit assessment. We do not yet have sufficient pilot data from year 1 to accurately predict the average value of a loan application. We should have greater detail at the end of year 2 of the pilot.

Resource funding for this BEL stands at £1.673 million in 2025-26. It includes funding for staffing, running a net zero decarbonisation hub in Wales, resource costs associated with running Green Homes Wales, the team responsible for the regulation of Registered Social Landlords and evidence, research and evaluation costs.

To note, the general capital allocation to BEL 1065 is unchanged at £92 million. In 2024-25 there was an allocation of Financial Transactions Capital of £4 million in total, however there are limitations on its use. We anticipate approximately £0.5 million will be drawn down from the 2024-25 allocation to fund the Green Homes Wales pilot, which launched in the summer of 2024.

Agenda Item 5.3

Rebecca Evans AS/MS
Cabinet Secretary for Economy, Energy and Planning
Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/RE/0213/25

Llŷr Gruffydd MS
Chair
Climate Change, Environment and
Infrastructure Committee
SeneddClimate@senedd.wales

30 January 2025

Dear Llŷr,

National Infrastructure Commission for Wales (NICW) Review

Last year, the Climate Change, Environment and Infrastructure Committee made a number of recommendations to the Welsh Government on the review of the National Infrastructure Commission for Wales (NICW). I am pleased to enclose a copy of the review report for the Committee's attention. The report is also being published on the Welsh Government website.

I am pleased that, overall, the review gives NICW a 'light green' assurance status, which indicates a reasonable assurance that governance, risk management and control processes are suitably designed and applied effectively. However, the report identified 6 observations that require attention with moderate risk exposure until resolved. These largely involved matters which are in the gift of the Chair of NICW and the 'Management Actions' have been accepted by officials to work with the Chair to address these.

In Appendix A of the review document, other observations are made in relation to the Commission's status, remit, objectives, Commissioner terms, Welsh Government responses to reports and a National Infrastructure Assessment. These will require further consideration as they go to the remit of NICW and its longer-term work programme and I will respond in due course on these. In coming to a view on this, I would like to hear the Committee's own thoughts on these issues.

I understand you have a committee session with the Chair and Deputy Chair of NICW on 20th February. NICW have also received a copy of the report.

Yours sincerely,

Rebecca Evans AS/MS

Cabinet Secretary for Economy, Energy and Planning
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Welsh Government

OFFICIAL - SENSITIVE



Adroddiad y Gwasanaeth Archwilio Mewnol Internal Audit Service Report

National Infrastructure Commission for Wales

Local Government, Housing, Climate
Change & Rural Affairs Group /
Economy, Energy & Transport Group

January 2025

File Ref: qA2152582
Report No: 529: 24/25

Disclaimer - The opinions & assurances provided in this report are given solely for the use of the Welsh Government

Proffesiynol ac Egwyddorol
Professional and Principled

Adeiladol ac Ymarferol
Constructive and Practical

Hyblyg ac Ymatebol
Flexible and Responsive

Strategol ac Integredig
Strategic and Integrated

Cefnogol ond heriol
Supportive but Challenging

National Infrastructure Commission for Wales – January 2025

Chwmpas / Scope

Commission effectiveness, dynamics and functioning, including;
✓ Consideration of the case for extending the term of appointment for Commissioners.
✓ Assessment of the merit in requiring the Commission to undertake a national infrastructure assessment.
Governance arrangements, including;
✓ Evaluation of the Commission's status, remit and objectives
✓ Timeframe for Welsh Government response to Commission reports

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Sicrwydd / Assurance



Sicrwydd Rhesymol / Reasonable Assurance that governance, risk management and control processes are suitably designed and applied effectively. Some matters require attention with moderate risk exposure until resolved.

Arsylwadau / Observations



Fundamental **Significant** **Merits Attention**

- ✗ 'Strategic Approach' does not define the strategy for achieving success factors or targets to allow evaluation of performance.
- ✗ There are no performance metrics to support performance updates.
- ✗ There are no lessons learnt exercises on Commission reporting.
- ✗ Risk management arrangements require enhancement.
- ✗ There are no terms of reference to support Commissioner meetings.
- ✗ Verbal updates at meetings impact on robust scrutiny and challenge.

Cefndir / Background

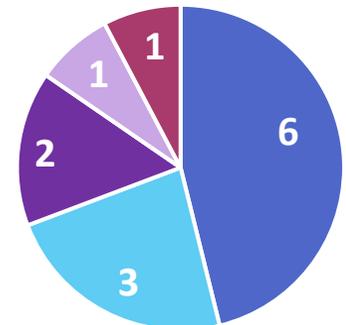
- The National Infrastructure Commission for Wales (the Commission) was set up in 2018 as an independent, non-statutory, advisory panel to Welsh Ministers. Its remit is to assess the economic and environmental infrastructure needs of Wales over the next 5 – 80 years.
- The current Commission was appointed for a three-year term (although this has since been extended) and is comprised of eight Commissioners supported by Government officials.
- The Commission's Remit Letter was issued in April 2022 and is supported by the Commission Terms of Reference, which confirm the requirement for a comprehensive review of the Commission's status, remit and objectives at least once every five years.
- The Climate Change, Environment and Infrastructure Committee undertakes annual scrutiny of the Commission. Recommendations from the Committee's 2023 scrutiny report are addressed in Appendix A.
- The review methodology, together with a summary of external stakeholder questionnaire responses, is included at Appendix B.
- The review Terms of Reference and Audit Definitions are included at Appendix C.

Cryfderau / Strengths

- ✓ Structural changes made since the first Commission have been effective, with cultural issues inherent in the previous Commission being recognised and addressed.
- ✓ Succession Planning has been considered appropriately in the work of the Commission.
- ✓ Commission membership is diverse, and Commission Values have been defined.
- ✓ The Remit Letter provides a clear steer for Commissioners across the term of government.
- ✓ Terms of Reference to support the wider Commission provide clarity about role and purpose.
- ✓ Commissioners have been proactive in their approach, including agreement for a mini national infrastructure assessment and extending the term of office of Commissioners.
- ✓ Declarations of interest are considered and managed appropriately. The 'New Declarations of Interest Form' is included as a meeting agenda link.

Themâu / Themes

- Planning
- Delivery & Review
- People & Culture
- Financial & Asset Management
- Regulatory Compliance
- Information Management



Cynllun Gweithredu / Action Plan

All the observations made by IAS are accepted by Management and IAS is content with the proposed remedial action(s) and implementation date(s), except where stated otherwise. Group Operations will monitor and report progress to the relevant Audit & Risk Assurance Committee(s).

Sylw / Observation	Risg & Effaith / Risk & Impact	Gweithred / Action
Arwyddocaol / Significant		
<p>1. Strategy</p> <p>The Commission has recently developed a light touch ‘Strategic Approach’ document, which summarises its activities and ‘success factors’ for monitoring the impact of the Commission. These have been derived from the Terms of Reference, Remit Letter and Commissioner ‘Values’ and expectations.</p> <p>Whilst the ‘Strategic Approach’ document includes success factors with some narrative based metrics, it does not define the strategy for ensuring the achievement of these success factors or include ‘targets’ to allow the ‘Signs of Success’ to be evaluated effectively.</p>	<p>Without an appropriate ‘route plan’ to achieve strategic success factors and without clearly defined future goals, supported by metrics, it may be difficult to translate the Commission’s strategy into clear actions and to understand when success has been achieved.</p> <p>THEMES: Planning Delivery & Review</p>	<p>ACCEPTED</p> <p>MANAGEMENT ACTIONS:</p> <p>The Secretariat will work with the Commission to re-examine the Strategic Approach to outline how success factors will be achieved and to develop targets or indicators to evaluate the ‘signs of success’</p> <p>OWNER: NICW Secretariat</p> <p>TARGET DATE: 31 August 2025</p>
<p>2. Performance Reporting</p> <p>The Commission’s Annual Report includes an assessment of summary performance against desired outcomes, alongside a review of the year and an update on the Commission’s work programme.</p> <p>Whilst performance reporting is in place and scrutiny of performance is ensured through the Senedd Climate Change, Environment and Infrastructure Committee, there are no performance metrics / measures to support the narrative performance updates.</p>	<p>Whilst narrative performance updates provide clarity and context, without appropriate performance measures it is difficult to assess the performance ‘gap’ between current and target performance.</p> <p>THEMES: Planning Delivery & Review</p>	<p>ACCEPTED</p> <p>MANAGEMENT ACTIONS:</p> <p>The Secretariat will develop performance metrics to be included in the new remit for NICW. These will be required to be reported on in future NICW annual reports.</p> <p>OWNER: NICW Secretariat</p> <p>TARGET DATE: 31 March 2026</p>

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Cynllun Gweithredu / Action Plan

All the observations made by IAS are accepted by Management and IAS is content with the proposed remedial action(s) and implementation date(s), except where stated otherwise. Group Operations will monitor and report progress to the relevant Audit & Risk Assurance Committee(s).

Sylw / Observation	Risg & Effaith / Risk & Impact	Gweithred / Action
Arwyddocaol / Significant		
<p>3. Lessons Learnt</p> <p>Anecdotal evidence suggests the Welsh Government response to the 2024 Flooding Report has been more positive than the response to the 2023 Renewable Energy Report. Discussions with Commissioners indicated changes were made in the approach to the development and launch of the Flooding Report to ensure it had greater impact. Whilst annual reflection days are held to consider progress, lessons learnt and areas of good practice, no formal lessons learnt exercise has been undertaken to capture good practice or areas for development to ensure continuous improvement and achieve maximum engagement with reports and the issues they cover.</p>	<p>Failure to complete a lessons learnt exercise represents a missed opportunity to improve understanding and delivery and to inform future activities.</p> <p>THEMES: Planning People & Culture</p>	<p>ACCEPTED</p> <p>MANAGEMENT ACTIONS:</p> <p>The Secretariat will work with NICW to facilitate lessons learnt discussions which are captured and used to improve future work projects. The ending of the Commission’s current work programme enables an opportunity for a reflection on the past three years which will be recorded and used for the next NICW term.</p> <p>OWNER: NICW Secretariat</p> <p>TARGET DATE: 31 December 2025</p>
<p>4. Risk Management</p> <p>Whilst a live link to the Risk Register is provided as part of the agenda for Commissioner meetings, there is no evidence in the minutes of robust review, discussion or update of risks. In addition, the Risk Register does not include several key fields, specifically;</p> <ul style="list-style-type: none"> • Nominated risk owner, to confirm accountability for risk mitigation and management. • Target dates for further actions needed and responsibility for additional controls required. • Date of most recent update (version control). • A target risk or acceptable risk score, to indicate the Commissioner’s expectations and whether there is a need for further mitigation of identified risks and additional control measures to be implemented, depending on the acceptability of the assessed level of residual risk after [actual] mitigations and controls are taken into account. 	<p>Insufficient information in the Risk Register to assess whether risks are being managed to acceptable/appropriate levels may impact the effectiveness of the risk management process and oversight of risk and leave the Commission over-exposed.</p> <p>THEMES: Planning Regulatory Compliance</p>	<p>ACCEPTED</p> <p>MANAGEMENT ACTIONS:</p> <p>The Secretariat will work with the NICW Chair to further develop the NICW Risk Register with the aim of making the improvements suggested by the review.</p> <p>OWNER: NICW Secretariat</p> <p>TARGET DATE: 28 February 2025</p>

Cynllun Gweithredu / Action Plan

All the observations made by IAS are accepted by Management and IAS is content with the proposed remedial action(s) and implementation date(s), except where stated otherwise. Group Operations will monitor and report progress to the relevant Audit & Risk Assurance Committee(s).

Sylw / Observation	Risg & Effaith / Risk & Impact	Gweithred / Action
Arwyddocaol / Significant		
<p>5. Terms of Reference</p> <p>Whilst Terms of Reference are in place for the wider Commission, aligned with the Term of Government Remit Letter, there are no Terms of Reference to support Commissioner Meetings.</p>	<p>Without Terms of Reference supporting Commissioner meetings there may be uncertainty about the functioning of meetings, specifically about any required quorum for decision making or parameters against which decisions should be evaluated.</p> <p>THEMES: Planning People & Culture</p>	<p>ACCEPTED</p> <p>MANAGEMENT ACTIONS:</p> <p>The Secretariat will work with NICW to develop specific terms of reference for NICW meetings.</p> <p>OWNER: NICW Secretariat</p> <p>TARGET DATE: 28 February 2025</p>
<p>6. Board Papers</p> <p>Work programme / project updates are included as a standing agenda item at each Commissioner meeting.</p> <p>Whilst it is acknowledged the Commissioners are in frequent communication outside formal monthly meetings (seeking views on papers, work scopes, draft outputs, etc.) and the Secretariat's Report to each Commissioner meeting provides a summary of work updates, Board Papers are not provided in advance of meetings to support the 'work programme' / 'project update' substantive agenda items, with detailed updates being provided verbally at meetings.</p>	<p>Without supporting board papers, issued in advance of Commissioner meetings, the opportunity for robust review, scrutiny and challenge by other Commissioners is limited.</p> <p>THEMES: Planning Delivery & Review Information Management</p>	<p>ACCEPTED</p> <p>MANAGEMENT ACTIONS:</p> <p>Board papers are currently issued a week in advance to all Commissioners. The NICW Secretariat will look to expand the information in the Secretariat Report, developing a page for each project, to provide more comprehensive updates on each major piece of the NICW work programme.</p> <p>OWNER: NICW Secretariat</p> <p>TARGET DATE: 28 February 2025</p>

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Consideration of Commission Status, Remit & Objectives

The Senedd Climate Change, Environment and Infrastructure Committee report ‘Annual Scrutiny of the National Infrastructure Commission for Wales: 2023’ includes the expectation its recommendations are used to inform the internal audit review of the National Infrastructure Commission for Wales. Specifically:

- The Welsh Government must deliver on its commitment to undertake a comprehensive review of the Commission’s status, role / remit and objectives before the end of 2024. We expect the Welsh Government to consult the various infrastructure sectors and other relevant stakeholders to inform the review
- As part of the Welsh Government’s review of the Commission’s status role /remit and objectives, it should consider the case for extending the term of appointment for Commissioners so that it is better aligned with those of other public appointees.
- The Welsh Government must review its timeframe for responding to the Commission’s reports. It should consider adopting a response time of between 6 weeks and 3 months, so that it is more aligned with the response time for reports by Senedd committees and the Independent Environmental Protection Assessor for Wales.
- As part of the comprehensive review of the Commission’s status, remit and objectives, the Welsh Government should consider whether there is merit in requiring the Commission to undertake a national infrastructure assessment (comparable to that of the assessments undertaken by the UK National Infrastructure Commission).

Each recommendation has been considered below.

Committee Recommendation: The Welsh Government must deliver on its commitment to undertake a comprehensive review of the Commission’s status, role / remit and objectives before the end of 2024. We expect the Welsh Government to consult the various infrastructure sectors and other relevant stakeholders to inform the review.

a. Commission Status

The National Infrastructure Commission for Wales (the Commission) was established in 2018 as an independent, non-statutory advisory body to the Welsh Ministers. The Commission is the only Infrastructure Commission globally that is a non-statutory body. The Commission is funded annually on a project basis (funding has not been agreed for the full term of the Commission), with the Commission considered to be a ‘budget pressure’ within the LGHCCRA Group. Review of the Welsh Government Register of Devolved Public Bodies confirms the Commission is the only Welsh Government devolved Advisory Panel which is non-statutory.

A statutory body has specific powers and responsibilities as defined in legislation, which outline its structure, functions and authority. Whilst the non-statutory nature of the Commission brings continued uncertainty about funding, the Commissioners consider their status as a non-statutory body allows them to be more independent and flexible in the delivery of outputs, without the constraints imposed by Welsh Government processes, procedures and systems.

Whilst the Commission is delivering outputs in accordance with its Remit Letter, there is likely to be limited value in recommending significant changes to the Commission’s status. However, consideration could be given to agreeing Commission funding for the term of government to ensure alignment with the Remit Letter.

Consideration of Commission Status, Remit & Objectives

Consideration of Commission Status, Remit & Objectives

b. Commission Remit and Objectives

The National Infrastructure Commission for Wales Remit Letter is dated April 2022, issued by the Deputy Minister for Climate Change, and covers the current Senedd term (2021 to 2026). The Remit letter references the Welsh Government Wellbeing Objectives and the Wellbeing of Future Generations (Wales) Act and provides focus for Commissioners. The Remit Letter requires the Commission to report on Renewable Energy and Flooding and Climate Change Resilience in years 1 and 2. The content of the Remit Letter is reflected in the Commission Terms of Reference. The Remit Letter provides a clear steer from Welsh Government and drives the work programme of the Commission.

Responses to questionnaires issued to infrastructure sectors and wider external stakeholders (34% completion rate) indicate consensus that the Commission:

- is focused on Wales' most pressing infrastructure challenges (81%);
- works in an open, transparent and collaborative way to identify Wales' future infrastructure needs (89%);
- addresses the nature and climate emergencies, Wales' decarbonisation targets and the goals of the Wellbeing of Future Generations Act (85%);
- is transparent and consultative, supported by wide engagement and consensus for its recommendations (81%).

Based on review of the Remit Letter, discussions with Commissioners and consideration of stakeholder questionnaire responses, the Commission's remit appears to be focused appropriately, supporting effective delivery of agreed objectives.

Consideration of Commission Status, Remit & Objectives

Consideration of Commission Status, Remit & Objectives

Committee Recommendation: As part of the Welsh Government’s review of the Commission’s status role /remit and objectives, it should consider the case for extending the term of appointment for Commissioners so that it is better aligned with those of other public appointees.

c. Commissioner Term of Appointment:

Wales has four Commissioners appointed by the First Minister (FM). All are appointed on a fixed seven-year term, have statutory powers and have formalised funding and governance arrangements. As a non-statutory advisory body, the National Infrastructure Commission for Wales does not have the same funding or governance arrangements, with a standard term of office of 3 years (although this has been extended for the current Commission to allow completion of the 24/25 Year 3 project).

When benchmarking against Welsh Government devolved public bodies established as Advisory Bodies / Advisory Panels, whilst these bodies have shorter terms of office than FM appointed Commissioners, some have an option for a second term of office.

Agricultural Advisory Panel for Wales (23/24) - Advisory Panel (statutory)	4 years + 4 years
Creative Skills Advisory Panel - Advisory Group	3 years
Independent Remuneration Panel for Wales - Advisory Committee (statutory)	Up to 4 years
Welsh Industrial Development Advisory Board - Advisory Body (statutory)	3 years + 3 years

Commissioners have discussed the scope for extending Commissioners’ appointments to two terms (3 years + 3 years). This would support ongoing succession planning and ensure continuity of experience and skills.

Whilst it seems reasonable to extend the period of office, we would suggest any change to Commissioner Terms of Appointment are supported by strengthened performance management arrangements, with annual assessments linked to individual Commissioner performance objectives linked to the refreshed strategy, with skill gaps and training needs identified and supported by a formal programme of training.

Consideration of Commission Status, Remit & Objectives

Consideration of Commission Status, Remit & Objectives

Committee Recommendation: The Welsh Government must review its timeframe for responding to the Commission's reports. It should consider adopting a response time of between 6 weeks and 3 months, so that it is more aligned with the response time for reports by Senedd committees and the Independent Environmental Protection Assessor for Wales.

d. Timeframes for Welsh Government Responses to Commission Reports:

The Commission's Terms of Reference confirm the Welsh Government is committed to;

- “formally responding to the Commission's reports, stating clearly whether the government accepts or rejects the recommendations;
- giving reasons where it disagrees with the Commission's recommendations and, where appropriate, presenting an alternative proposal for meeting the identified need;
- responding as soon as practicable, which should mean within 6 months in the vast majority of cases and never longer than a year”.

As previously highlighted, anecdotal evidence suggests the Welsh Government response to the 2024 Flooding Report has been more positive than the response to the 2023 Renewable Energy Report. Discussions with Commissioners indicated changes were made in the approach to the development and launch of the Flood Report to ensure it had greater impact. Discussion with the Secretariat has also suggested a cultural element to the acceptance of external recommendations by individuals and divisions within Welsh Government, exacerbated by the maturity and resources of the respective teams.

Discussion with Year 1 and Year 2 report recipients has indicated required timescales for Government response would be dependent on the number of report recommendations, the extent to which the recommendations were 'exceptional' and the extent of advance notice of report publication (allowing response times to be scheduled into work plans). There was consensus across report recipients that response timeframes of 6 to 12 months are too long and may impact the relevance of report recommendations.

The Senedd Committee's recommendation for a response time of between 6 weeks and 3 months is not unreasonable but the most workable approach might be for the response deadline to be discussed with the relevant Welsh Government teams on an individual report basis, to allow clarity at report publication date of the expected response date and any circumstances which would justify and support the expected response date being extended. Notifying teams of report publication dates well in advance of report launch will also allow appropriate time to be scheduled in diaries and support report responses within shorter timescales.

Consideration of Commission Status, Remit & Objectives

Consideration of Commission Status, Remit & Objectives

Committee Recommendation: As part of the comprehensive review of the Commission's status, remit and objectives, the Welsh Government should consider whether there is merit in requiring the Commission to undertake a national infrastructure assessment (comparable to that of the assessments undertaken by the UK National Infrastructure Commission).

e. National Infrastructure Assessment:

A UK National Infrastructure Assessment is carried out once in every UK Parliament, setting out the UK Commission's assessment of long-term infrastructure needs, with recommendations to the UK Government. The National Infrastructure Commission (UK) carried out their second National Infrastructure Assessment in October 2023. Whilst the costs of carrying out the National Infrastructure Assessment (NIA2) are not publicly available, the NIA2 does confirm Commissioners and Chief Executives held over 130 hours of face-to-face meetings with Ministers, government officials and political and industry leaders. In addition, over 500 hours of face-to-face meetings took place with stakeholders across the various infrastructure sectors. The Chair of the National Infrastructure Commission for Wales has also discussed Infrastructure Assessments with counterparts in the New Zealand Infrastructure Commission (population comparable in size to Wales) who confirmed the cost of carrying out their comprehensive Infrastructure Assessment was in the region of £2.5m.

In the absence of a National Infrastructure Assessment, Welsh Government receive assurances around devolved infrastructure sectors from relevant policy areas. In addition, an assessment of risks that have the potential to compromise Critical National Infrastructure (CNI), Significant Local Infrastructure (SLI) and supply chain resilience in Wales, forms an integral part of the Welsh Government's strengthened approach to risk assessment. Having been finalised in November 2024, a new Wales risk register sits alongside a number of new risk management products developed by the Welsh Government to support statutory emergency preparedness work undertaken by Category 1 responders as set out in the Civil Contingencies Act 2004. Working in conjunction with UK Government departments and agencies, such as the National Protective Security Authority (NPSA) and National Cyber Security Centre (NCSC), the Welsh Government monitors risks to Wales' infrastructure and supply chains and provides specific support to help address vulnerabilities.

The Senedd Committee has recognised it would be unreasonable to expect the current Commission to carry out a National Infrastructure Assessment given the constraints within which it is operating. In the current financial climate, there is unlikely to be appetite for a comprehensive Infrastructure Assessment for Wales; any such decision would require considerable additional resource and would need to be considered alongside structural changes to the Commissions' status and remit. Recognising this, the Commission is in the process of planning a mini-infrastructure assessment for 2025/26 built on work already undertaken by the Commission and work scheduled for Year 3 of the Commission. The 'mini' Infrastructure Assessment is a pragmatic solution in the interim, with the outcomes used as a basis for determining if a larger exercise would be appropriate and provide value for money for the Welsh Government.

Following the publication of the Commissions mini-infrastructure assessment (currently anticipated in March 2026), we would advise a formal exercise is carried out by the LGH&CCRA Group to ensure a robust understanding of the costs and benefits of a full National Infrastructure Assessment and to assess whether this offers value for Welsh Government.

National Infrastructure Commission for Wales

Methodoleg Adolygu / Review Methodology

Review Methodology

The Commission's Remit Letter was issued in April 2022 and is supported by the Commission Terms of Reference, which confirm the requirement for a comprehensive review of the Commission's status, remit and objectives at least once every 5 years.

The Climate Change, Environment and Infrastructure Committee undertakes annual scrutiny of the Commission. Recommendations from the Committee's 2023 scrutiny report, in relation to the review of the Commission's status, remit and objectives, confirmed expectations that;

- The recommendations in the scrutiny report will be used to inform the internal audit review.
- Consultation would take place with the various infrastructure sectors and other relevant stakeholders.

The 2023 Scrutiny Report can be found at: <https://senedd.wales>.

A systematic review and evaluation of the Commission was undertaken through:

- ✓ Evaluation of responses to confidential online questionnaires issued to Commissioners, providing scored and narrative responses to a series of statements.
- ✓ Evaluation of responses to confidential online questionnaires issued to representatives from various infrastructure sectors and wider stakeholders, providing scored and narrative responses to statements around the effectiveness of the Commission.
- ✓ Open and productive confidential interviews with 4 selected Commissioners.
- ✓ Confidential interviews with 2 stakeholders who had not returned a completed questionnaire.
- ✓ Observation of the Commission's July 2024 meeting.
- ✓ Discussion with the Welsh Government Secretariat.
- ✓ Benchmarking against Welsh public bodies established as Advisory Panels / Advisory Groups.
- ✓ Examination of evidence supporting the governance arrangements in place within the Commission (terms of reference; board papers, risk registers; performance reports).
- ✓ Consideration of the specific issues raised by the Climate Change, Environment and Infrastructure Committee around the Commission's status, remit and objectives; Commissioner term of appointment; timeframes for Welsh Government Responses to Commission Reports and the merits of carrying out a National Infrastructure Assessment.

National Infrastructure Commission for Wales

Methodoleg Adolygu / Review Methodology (cont.)

External Stakeholder Questionnaires

- Questionnaires were issued to all 8 x Commissioners, with a 100% completion rate.
- Questionnaire were issued to 79 x infrastructure representatives and external stakeholders, with a 38% response rate / 34% completion rate.
- Responses to the external questionnaires, together with a list of those organisations who responded, are detailed below.

1 = Strongly Disagree 2 = Partly Disagree 3 = Neither Agree nor Disagree 4= Partly Agree 5 = Strongly Agree DK= Don't Know

		1	2	3	4	5	DK
1	The work undertaken by the National Infrastructure Commission for Wales (NICW) is focused on Wales' most pressing infrastructure challenges.			3	9	13	2
2	NICW works in an open, transparent and collaborative way to identify Wales' future infrastructure needs.		1	1	10	14	1
3	NICW engages stakeholders, including the public, to promote its work and gather a wide range of views on future infrastructure.			1	10	13	3
4	NICW seeks to be transparent and consultative in its work, engaging widely and building consensus for its recommendations.			3	8	14	2
5	The work carried out by NICW appropriately addresses the nature and climate emergencies; Wales' decarbonisation targets and the goals of the Wellbeing of Future Generations Act.		1	1	9	14	2
6	NICW considers the impact future technological and other change may have on infrastructure needs and solutions.			5	10	10	2
7	NICW recommendations are clearly prioritised and underpinned by a robust evidence base.			3	11	12	1
8	NICW has appropriate regard to the trade-off between maintaining and maximising the potential of existing infrastructure assets and the opportunities arising from new infrastructure.		1	4	11	6	5
9	NICW takes account of the likely scale of costs associated with its recommendations and ensure that there is a realistic prospect of its recommendations being accommodated.	1	1	3	12	4	6
10	Welsh Government responses to NICW Reports are timely and robust and address all recommendations made.		1	7	7	1	11
11	There are clear linkages between NICW recommendations and the Welsh Government policy decisions around longer-term infrastructure objectives.		2	7	8	3	7

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National Infrastructure Commission for Wales

Methodoleg Adolygu / Review Methodology (cont.)

External Stakeholder Questionnaires (cont.)

Completed questionnaires were received from the following organisations / bodies:

Design Commission for Wales	Wales and West Utilities	Conwy CBC
Welsh Government	Western Power Distribution	Met Office
Menter Mon	Trydan Gwyrdd Cymru	Cardiff University
Renewables UK Cymru	Cynnal Cymru	Future Generations Commission
Institute of Civil Engineers	Cardiff Council	Institute of Civil Engineers
SP Energy Networks	Flood & Coastal Erosion Committee	IWA
Mace	WLGA	Learning & Work Institute
Arup	Miller Research	JBA Consulting

National Infrastructure Commission for Wales

Adolygu Cylch Gorchwyl a Diffiniadau Archwilio/ Review Terms of Reference & Audit Definitions

Review Terms of Reference

Objective of the Review:

The objective of the review was to provide assurance to Management, the NICW Commissioners and the Senedd around the Commissions status, remit and objectives.

Description of the System / Area being Reviewed:

The NICW is a non-statutory, advisory panel. Its remit is to assess the economic and environmental infrastructure needs of Wales over the next 5 – 80 years. The NICW conduct studies into Wales' most pressing infrastructure challenges making recommendations to the Welsh Government. The NICW Terms of Reference require a comprehensive review of its status, remit and objectives at least once every 5 years, with the date of the first review being no later than 2024.

Review Scope:

A comprehensive review of the NICW was undertaken, with focus on:

- Commission effectiveness, dynamics and functioning, including;
 - ✓ Consideration of the case for extending the term of appointment for Commissioners.
 - ✓ Assessment of the merit in requiring the Commission to undertake a national infrastructure assessment.
- Governance arrangements, including;
 - ✓ Evaluation of the Commissions status, remit and objectives.
 - ✓ Timeframes for the WG response to Commission reports.

Review Approach:

A systematic review and evaluation of the Commission was undertaken through;

- Use of a confidential online questionnaire, completed by Commissioners and wider stakeholders;
- Confidential interviews with selected Commissioners / stakeholders;
- Consultation with various infrastructure sectors and other relevant stakeholders;
- Observation of Commission meetings;
- Benchmarking against similar organisations;
- Examination of evidence supporting the activities of the Commission (remit; terms of reference; agenda packs; performance reports; self-assessments; risk registers, etc.).

Our observations focus on the extent to which the NICW has demonstrated its effectiveness and the adequacy of its governance arrangements.

National Infrastructure Commission for Wales

Adolygu Cylch Gorchwyl a Diffiniadau Archwilio/ Review Terms of Reference & Audit Definitions (cont.)

Audit Definitions

ASSURANCE CLASSIFICATIONS

Category	Definition
Substantial	Substantial assurance that governance, risk management and control processes are suitably designed and applied effectively. Either no, or very minor, matters exist with low-risk exposure which may not need to be resolved.
Reasonable	Reasonable assurance that governance, risk management and control processes are suitably designed and applied effectively. Some matters require attention with moderate risk exposure until resolved.
Limited	Limited assurance that governance, risk management and control processes are suitably designed and applied effectively. Some significant matters require attention with moderate to high-risk exposure until resolved.
None	No assurance that governance, risk management and control processes are suitably designed and applied effectively. Urgent action is required to address the control framework with high residual risk exposure until resolved.

OBSERVATION CLASSIFICATIONS

Category	Definition
Fundamental	A weakness of control where there is a serious failure or absence of key internal controls and/or leadership. This could lead to a substantial loss of resources, a failure to comply with legislation or policy, fraud, impropriety, poor value for money or a failure to achieve Departmental objectives. Immediate remedial action is required.
Significant	A weakness of control which, though not fundamental, could expose the system to level of significant risk. Such a risk could impact on the operational objectives of the Department and should be a concern to senior management. Requires remedial action as soon as possible.
Merits Attention	Areas that individually have no major impact but where management would benefit from improved control and/or have the opportunity to achieve greater effectiveness and/or efficiency.

Agenda Item 8

By virtue of paragraph(s) vi of Standing Order 17.42

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