

## **DMQTWB 09 - Evidence from: Natural Resources Wales**

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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

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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 in Natural Resources Wales (NRW) welcome the Bill and agree there is a need for legislation. We are responsible for 143 coal tips and 50+ non-coal spoil tips on the land in our care.

As a landowner and a Category 1 responder under the civil contingencies act, we are acutely aware of the need to maintain energy over multiple years to deal with the kind of low likelihood, high impact risk that arises from instability in tips whereby nothing much appears to happen until it is too late.

This is made more acute by climate change which has already meant that changes in weather patterns that exacerbate risk are baked in and accelerating, as set out in the explanatory memo. for the Bill.

We are also responsible for regulating the impact on the environment of some of the activities associated with management of tips.

Our Corporate Plan 2023 - 2030 sets out how one of the steps we will take to achieve our vision of people and nature thriving together is, “.. adapting to the risks and impacts of climate change by...reducing the risks to the assets we manage on the land in our care such as spoil tips ... through maintaining and upgrading infrastructure.”

Accordingly, we are already working with Welsh Government, Local Authorities and others as part of the Coal Tips Safety Taskforce. We believe the Bill, by creating a new Authority and duties for tip owners, will maintain focus to enable all of us in Wales to reduce the risks to society of spoil tips. It should also enable all

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relevant bodies to maximise the potential benefits and minimise the potential problems of interaction with other environmental legislation.

## **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 support these provisions.

In supporting setting up a new body, we wish to acknowledge the good work of the Mining Remediation Authority, with whom we have a productive partnership, local authorities and, indeed, our own progress in this area, especially since Storms Ciara and Dennis in February 2020. This good work notwithstanding, we support that a new body is needed for the reasons set out above.

To be workable and achieve the policy intention without resulting in other significant unintended risks, we recommend that the stated objective of the body to “promote high standards in relation to management of disused tips” be interpreted to include standards across all relevant elements of environmental protection, akin to our core purpose to pursue “sustainable management of natural resources”.

For example, on managing flood risk, promoting tip stability often involves drainage of water off the tip rather than promoting percolation into the ground, the normal “slow the flow” practice when reducing flood risk using natural flood management approaches. Drainage from tips to maintain stability should be properly planned to help wider measures to manage flood risk. Another example is that some tips include valuable protected habitats the features of which arise due to instability, such as scree habitats. Changes to promote stability may require careful management to reduce impacts on protected nature conservation features, or, at least, active decisions on trade-offs between types of environmental benefit. A third example is on wildfire risk, many of the target tips are in the South Wales Valleys in which there is also a need to adapt to climate change driven increase in risk of wildfire. As for flood risk, we would wish the new body to promote management of tips that contribute to integrated wildfire risk management.

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

We support these provisions, for the reasons set out above and for transparency and to promote environmental justice. Many tips occur in more disadvantaged areas and we support this device that will help give potentially less powerful communities the power to hold the new body, other relevant authorities and tip owners, including us, to account. We welcome the recognition of these social justice considerations for the Bill in general set out in paragraph 9.33 of the explanatory memo., the socio-economic duty section of the impact assessment.

On workability and delivery of the policy intentions:

a. We support the use of four categories, which we feel is the right balance between detailed granularity and keeping it simple. An even number of categories also helps avoid a tendency to choose the middle category.

b. We note there is no duty to review the list periodically but there is a duty to reassess when the circumstances of tips change. We support this type of dynamism which should keep the register fresh without creating a burdensome cycle of review.

c. We advise that the new body needs to manage potential difficulties in defining a “tip”. This is both in terms of what piles of material arising from the disused mines and quarries are included and the number of separate entities. For example, when working with Welsh Government colleagues on the current list of coal tips at one stage we had c150 tips for ourselves whereas Welsh Government colleagues’ initial assessment was that we were responsible for c300 tips. The difference was due to one process lumping tip features and another splitting them. We arrived at a common position due to our already strong collaboration but there was a moment of confusion which the new legislated process should be set up to avoid.

d. The mechanism by which the list is created and stored needs careful thought. It should as far as possible be “future proofed” to advances in, for example, artificial intelligence, machine learning, and remote sensing.

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

We support these provisions; the new body needs such powers if it is to manage the risk, especially due to the urgency of adapting to climate change. In particular, the powers allow the body to promote mitigation of risk not just reacting when the risk has materialised or is imminent.

We support the formation of new criminal offences. We note the active decision not to include civil sanctions. We believe that civil sanctions are part of a proportionate and cost-effective approach to enforcement. We recommend not closing off the introduction of civil sanctions power at some later date.

On workability, for us there are two key aspects:

a. Interaction with other environmental regulation: implementation of these provisions should recognise that many of the actions required to deal with tip instability also require compliance with other aspects of environmental regulation, for example, waste, water quality, nature conservation, and flood risk. The time allowed for delivery of notices should take account of the time required to navigate such regulation. In addition, the new body and all stakeholders need to have reasonable expectations of our capacity to provide advice alongside all the other regulatory responsibilities we already embrace. For the most part, advice on such matters will need to be bought in by the new body and/or tip owners rather than expecting it to come from us for free. The most difficult challenge for us is likely to be when works are urgent but not emergency. In such cases, other environmental legislation must be followed and our resources and service level agreements will set the pace at which we can operate. In this respect the Bill is helpful in that it sets out a requirement for forward planning. For the Coal Tips Safety Taskforce we have produced a guidance note “Site-specific Coal Tip Contingency Plans: Environmental Considerations” (attached). We are currently trialling this in practice with a local authority and on one of our higher risk tips. We believe it is a good basis on which the new body could build to work out how to resolve the interaction with other environmental legislation, including the need for reasonable expectations of us.

b. Resources for compliance on the tips in our care: we are responsible for ten coal tips in the first (higher) risk category and a further 22 in the second category. We are already inspecting, maintaining, and making further investment in stability of these tips. Continued development and delivery of plans requires continued

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investment, which currently is provided via the Welsh Government's Coal Tips grant. This grant or another source of additional funding will be required for us to afford the requirements, particularly the long-term revenue costs of maintenance. Please see further comments on resources in below. Such resource considerations are almost certain to apply for all tip owners, especially local authorities.

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

We support these provisions.

We welcome that we are listed as a relevant public authority.

In connection with our comment about wildfire above, we also welcome that the Fire and Rescue Authorities are listed.

We note the wide ranging provisions for powers of entry, which we believe are required for workability.

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

We support these provisions.

We note the definition of human welfare and welcome that its breadth includes, for example, infrastructure such as transport, as opposed to limiting it to direct impact on human health and safety. We have considered whether we would have preferred inclusion of environmental impact. Indeed, in our consultation response to the White Paper we set out a preference for a broad range of environmental, social, and economic considerations in keeping with our own duties for SMNR. However, we understand and support the more focussed provisions in the Bill. Making it wider would almost certainly make confusion with other environmental legislation more likely.

Because of the requirement to plan how to implement the Bill that we discuss above, we support that parts 3 and 4 come into force via statutory instrument at a date after the other provisions come into force.

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

Please see our answer to previous question.

### **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)**

We support these provisions and recommend an “adaptive management” approach to putting the Bill into practice; start the work, learn, and adapt as we collaborate. The timescales for the different elements coming into force are helpful in this regard.

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

Unintended consequences are unlikely, provided the new Body works with other relevant authorities to manage the interaction with other environmental legislation, as we discuss above.

The requirement for Welsh Ministers to provide the new body with guidance will be important for dealing with the potential for confusion with other environmental legislation and for establishing reasonable expectations on our role as a regulator and advisor. We welcome that this is covered in paragraphs 3.75 (general) and 9.33 (for biodiversity) of the explanatory memo.

Not likely but something to consider is whether the Bill could create a perverse incentive to keep tips in a “maintain to keep stable” state as opposed to full restoration and risk elimination. The cost of full restoration is beyond the funding available but the Body could start identifying tips for multi-year investment for full restoration even if that goes beyond the requirements 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 welcome the thought that has gone into this assessment but feel that it underestimates the costs of compliance for tip owners, including us.

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The compliance costs appear to us to underestimate the long-term revenue costs of maintenance. As stated in the explanatory memo., one of the reasons for the Bill is to create a body with the powers to require tip owners to maintain the infrastructure created to keep tips stable. However, in the “Compliance Costs” table there is mention only of the cost of urgent works (the current Coal Tips Safety Scheme grant, albeit this includes an element of revenue funding). This is a most welcome grant and we support its continuation as set out in the explanatory memo. However, we believe that the cost of compliance is underestimated and it should include more than the current £1M for longer-term maintenance costs that is mentioned in the memo. as part of the Coal Tips Safety Scheme grant.

We welcome the commitment in the explanatory memo. that additional costs to us would be expected to be included in any future grants from Welsh Ministers and not come from our existing budget (paragraph 10.8). However, we believe that the estimated costs attributable to us set out in table 23 are an underestimate, for the reasons set out above. For efficient budget management and for assurance over long-term risk management, we would also prefer it if the revenue costs were baselined into our Grant in Aid rather than provided by year on year grants.

We are not proposing any inclusion of the potential costs of us having to provide additional advice on the interaction between duties in the Bill and other environmental legislation. This is because the Bill does not create any direct additional powers or duties for our advisory or regulatory functions. However, as set out above the expectations on us will need to be managed and we would prefer it if the memo. at least acknowledged the potential for these additional costs for us.

## **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 Mining Remediation Authority (Coal Authority as was) currently provides us with a service of emergency walkover inspections triggered by intense rainfalls over our highest risk tips, as automatically monitored via our hydrometry and telemetry system. As part of implementation, we would welcome discussion of how best to continue this service and of how to build on it for other tip owners.

We welcome the inclusion of non-coal tips in the Bill and support the proposals for the timing of bringing in non-coal spoil tips (2032 – 33). We note the

commentary on the likely risk levels from these tips. We are already investigating such tips on our land. We have found none so far that would make intervention on them more urgent than for the higher risk coal tips on the land in our care. However, at this stage, we do not have enough evidence to confirm their general risk levels.

We recommend that consideration be given to the interaction between Local Resilience Forums and the new Body. It may be beneficial to define the Body as a Category 2 responder under the Civil Contingencies Act in a similar way to that which has been done recently for the Mining Remediation Authority.

# Site-Specific Coal Tip Contingency Plans:

## Environmental Considerations

Guidance note

**Reference number:** GN073

**Document Owner:** Head of Regulation and Permitting

### What is this document about?

As part of NRW's role and remit in the Welsh Government Coal Tip Safety Collaborative Working Group, NRW is committed to supporting the ongoing work with technical advice.

This document is related to contingency planning in order to minimise environmental impacts from incidents at coal tips. This guidance provides an outline of what should be considered as part of contingency plans for a coal tip, specifically in relation to environmental legislation. This guidance aims to support landowners and/or tip managers who are responsible for coal tips to develop contingency plans before an incident occurs. It covers NRW's environmental considerations so that environmental impacts are mitigated/minimised. This guidance is to be used as part of the planning stages of a site-specific incident plan. It also considers NRW's statutory duties in issuing authorisations and supports with preparation for obtaining relevant authorisations.

The advice contained within this document will be particularly relevant where urgent works are required, for example, if a potential risk of collapse is identified. In such circumstances, regulatory approval by NRW for works, such as the treatment or storage of waste, will almost certainly be required. This advice and NRW's active participation in the Coal Tips Safety Collaborative Working group is aimed at making such approval as smooth as possible to facilitate works to be carried out efficiently and legally, to ensure protection of the environment and human health.

### Who is this document for?

The document is intended to support landowners and/or tip managers responsible for coal tips in their contingency planning. It is an output from the Welsh Government's Coal Tips Safety Collaborative Working Group. It supports the Coal Tips Safety Collaborative Working Protocol but is not a part of the protocol.

This guidance does not cover incidents and emergency situations which may require a multi-agency response by those with statutory duties under the Civil Contingencies Act.

## Contact for queries and feedback

[enquiries@naturalresourceswales.gov.uk](mailto:enquiries@naturalresourceswales.gov.uk)

## Version History

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To report issues or problems with this guidance contact:  
[guidance.development@naturalresourceswales.gov.uk](mailto:guidance.development@naturalresourceswales.gov.uk)

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# 1. Introduction

NRW is responsible for regulating several environmental regimes. This document brings together environmental regulatory advice from across these regimes to support landowners and/or tip managers when producing contingency plans for coal tips. NRW is not required to assess or approve these contingency plans.

This document **does not**:

- Provide detailed, complex guidance for all environmental regimes. It directs you to additional guidance for more detail.
- Set out how to write a contingency plan. It is a checklist of potential regulatory considerations.
- Cover advice relating to planning considerations. Your local planning authority (LPA) can provide this advice. NRW will be consulted on planning considerations as a statutory consultee to the LPA.

It may be possible to obtain additional advice and guidance on the regulatory requirements through engagement with local NRW operations teams, including discussion around potential Regulatory Decisions. It may also be possible to obtain advice on completed contingency plans through NRW's [discretionary advice service](#). You can find information on how to access this on our website: [Natural Resources Wales / Our service to developers](#)

## 2. Waste

During the production of a contingency plan, a waste management strategy should be developed to support compliance with the waste regulatory framework.

It is needed to address the potential waste issues arising at any historical coal tip. The waste management strategy will help identify:

- what may be in the scope of waste regulation
- where sampling and testing may be necessary
- what authorisations may be required to undertake works

The checklist below lists the potential considerations needed when developing a waste management strategy.

You may want to speak to your local NRW waste regulatory team for:

- technical advice on the definition of waste, waste classification, waste management activities and pre-application advice
- guidance for authorisations which may be required.

Your local team can be contacted via [enquiries@naturalresourceswales.gov.uk](mailto:enquiries@naturalresourceswales.gov.uk)

NRW carry out functions delegated to us by the Welsh Revenue Authority (WRA) on the collection and administration of Landfill Disposals Tax. Where there is a disposal of waste on or in land in Wales without benefit of a disposal permit, the unauthorised rate of disposals tax may apply. Any decisions on how and when the tax is applied sit with WRA. More information can be found here: [Unauthorised disposals and Landfill Disposals Tax | GOV.WALES](#)

### Identification of waste

Assess the site and identify the volumes/quantities of waste at the site, considerations may include

- What stockpiles are on site (a map identifying stockpiles, including those most at risk of failure and requiring intervention, may be useful).
- The quantities of waste within each stockpile
- Confirm they are waste
- Assess and classify the waste in line with waste classification technical guidance
  - [Natural Resources Wales / How to classify and assess waste](#)
  - [Waste classification technical guidance - GOV.UK \(www.gov.uk\)](#)
- Identification of hazardous hotspots/areas of potential legacy hazardous contamination

## Hazardous Waste Regulations

Testing and analysis to identify and classify the waste, may lead to hazardous waste being identified.

If hazardous waste is identified, specialist recovery/disposal may be required and this will need to be reviewed as part of the waste management strategy within contingency planning.

Compliance with the Hazardous Waste (Wales) Regulations 2005 includes:

- Consignment notes [Natural Resources Wales / How to complete a hazardous waste consignment note](#)
- Premises notification [Natural Resources Wales / Register or renew as a hazardous waste producer](#)
- Record keeping
- Transfer, treatment, recovery or disposal at an appropriately permitted facility

## Identify priorities and review potential options

Identify the priority and highest risk stockpiles, and any areas of concern. For example, any waste assessed and classified as hazardous during initial assessment.

Consider the waste management requirements for the stockpiles on site, for example:

- What are the waste recovery or disposal options
- Will any waste require treatment on site
- Will waste need to be transported/moved from site
- Will any temporary or intermediate storage of waste be required, and if so estimate the length of time required

## Waste Authorisations

Review the priorities and options against requirements under the Environmental Permitting (England and Wales) Regulations 2016 and consider what authorisations may be needed.

For example:

- What authorisations will be needed for recovery/disposal/storage/treatment/movement of waste  
[Natural Resources Wales / Check if you need to tell us about your waste activity](#)
- Will a Standard Rules or Bespoke Environmental Permit be required, if so what type
- Are there any exemptions or Regulatory Decisions that could cover activities [Natural Resources Wales / Register or renew your waste exemptions](#)
- What are the compliance conditions, application requirements, timescales for determination for any authorisations
- Will on-site treatment be required. If so then authorisations (i.e. mobile plant deployments) may be needed for the pre-treatment activity

- Locations of permitted sites and operators potentially able to accept/treat/recover/dispose of the identified wastes, including multiple options.
- Could the waste be sustainably reused under the CL:AIRE Definition of Waste Code of Practice - [Natural Resources Wales / Submit a CL:AIRE Code of Practice declaration](#)
- How will compliance with requirements be met.

Further information on waste permitting and associated controls can be found on NRW's website, [Natural Resources Wales / Waste permitting](#)

It is possible to obtain pre-application advice from your local waste regulatory team. Information on our pre-application advice can be found via the following link [Natural Resources Wales / Pre application advice for environmental permits](#)

## Duty of Care

Where waste is identified and the contingency plan shows it will need to be moved, consider

- how will it be moved
- where will it be moved

Compliance with duty of care includes

- Documentation for waste movements [Natural Resources Wales / Completing waste transfer notes](#)
- Authorisations for third parties used (including waste carriers licences for anyone transporting waste, relevant permits or exemptions for authorised receiving sites – these can be checked on NRW's public registers)

Records of these will need to be kept to demonstrate compliance.

You can find more information:

- [Natural Resources Wales / Waste duty of care for organisations](#)
- [Waste duty of care: code of practice \(accessible version\) - GOV.UK \(www.gov.uk\)](#)
- [Natural Resources Wales / Check for a permit, licence or exemption \(Public Register\)](#)

## Other Considerations

As part of the waste management strategy, it would be useful to identify:

- key environmental receptors which may be impacted by any waste management activity
- how the plan compliments/interacts with other aspects of the response (such as potential movement of waste and the impact that may have on water quality, biodiversity etc)
- what additional measures or mitigation needs to be considered to ensure that any waste management activities do not lead to an impact on other environmental receptors (for example, dust management)
- Other relevant permissions needed/required, for example, landowner permission, planning permission

### 3. Water Quality and Resource

Landslides can lead to water pollution of streams and catchments. They also present a risk to drinking water quality which may mean temporary closure of water treatment works downstream, or the need for increased treatment.

A contingency plan should give early consideration to the implications of diverting or managing surface water flows. How surface water flows are managed can mitigate impacts on the water environment. Impacts can be in the receiving water and further downstream within the catchment. They can affect water quality, ecosystems, and protected sites.

Please refer to the land contamination section which links to advice on how to manage risks to the water environment from land contamination.

The contingency plan should reference procedures in the case of an incident occurring, such as

- Notifying the Water Companies downstream - Contingency plans should include contact details for the relevant water companies who may abstract water for water supply downstream
- Notifying NRW if polluting materials have entered or could enter a watercourse or soak into the ground. Remember that any substance that's not found naturally in an environment could cause pollution. Details for notifying NRW's Incident Communication Centre can be found on our website [Natural Resources Wales / Report an incident](#) 0300 065 3000

Other key priorities to address in a contingency plan are captured below.

#### Take steps to minimise pollution of soils, water and groundwater

You must take steps to avoid causing pollution to prevent any substance that harms, or could harm people or the environment getting into the water or ground.

Prepare a pollution incident response plan to which you will adhere through an incident response, recovery and remediation; including, for example

- plan for water containment measures
- plan storage of excavated materials (including wastes) in a way which prevents entry into the watercourse
- plan works to avoid vehicles tracking through watercourses, where possible.

## Understand the likely contaminants

Given the material which might be mobilised, determine the likely contaminants and risk to downstream water quality or drinking water supply

## Understand the sensitivity of the receiving water

Contingency plans should identify the locations of aquatic and other protected site designations, immediately and further, downstream

## Find out if you need a permit to discharge to surface water or groundwater

You may need an environmental permit if you discharge liquid effluent or waste water into surface waters (for example, rivers, streams, estuaries, lakes, canals or coastal waters) or into, or on, the ground.

[Natural Resources Wales / Find out if you need a permit for discharges to surface water and groundwater](#)

## Find out if you need an abstraction or impoundment licence

You will need an abstraction licence if you take water from an inland water or from groundwater, unless it is exempt from licensing.

You **will need** an impoundment licence if you construct, alter, repair or remove an impoundment structure, unless it is an exempt activity.

More information can be found on our website [Natural Resources Wales / Find out if you need a water abstraction or impoundment licence](#)

## 4. Protected Sites and Species (nature & geodiversity conservation)

It is important that protected sites and species are considered within environmental contingency planning to ensure impacts are minimised and relevant licences are obtained where necessary.

### Protected sites

It is stated within Welsh Government's Natural Resources Policy 2017 that Protected Sites form a core component of ecological networks. In order to build resilience, we must reduce and better manage the pressure on ecosystems and natural resources. A nature-based approach is a key component of climate change action.

The inclusion of appropriate environmental information and response strategies in a plan will help to deliver these requirements and ensure that biodiversity and geodiversity interests are adequately addressed.

There are two stages in contingency planning in relation to environmental sensitivity:

1. Identifying sensitive areas and sites
2. Planning of appropriate response strategies.

### Stage 1 Spatial planning – identification of protected sites

Identify the locations of all protected sites within the geographical area relevant to the coal tip location, the following datasets can support when scoping for the contingency plan.

- Downloadable GIS boundary information is available on [Home | DataMapWales \(gov.wales\)](#) for Sites of Special Scientific Interest (SSSIs), Special Areas of Conservation (SACs), Special Protection Areas (SPAs), Ramsar Sites and Marine Conservation Zones (MCZs)
- Statutory site designation documentation including SSSI Citations (description of the site and special features), SSSI Explanatory Geological Notes (where applicable), Site Management Statements for SSSIs and Core Management Plans for SACs and SPAs can be found on the NRW web site: [Natural Resources Wales / Find protected areas of land and sea](#). This also includes an online map to search for protected areas by address, postcode, or name of a village, town or city.

Note that activities which take place **outside** of protected site boundaries may potentially cause damage to the designated site features. Proposals need to take account of the NRW advice to (as far as is reasonably practicable), minimise damage to the site features and restore the site(s) to former condition if any damage does occur. For example, diverting or managing surface water flows may impact a wetland/marshy grassland SSSI near by (could be a positive or negative impact).

Contingency plans should be complementary to other published plans and programmes

- Area Statements [Natural Resources Wales / Area Statements](#) Nature Recovery Action Plans – national, local and organisational
- River Basin Management Plan Opportunity Catchments
- River Restoration Plans
- Welsh National Marine Plan
- Future Wales National Natural Resources Map
- Local Planning Authority Green Infrastructure Strategies
- Other S6 authority published biodiversity strategy.

## Stage 2 Consideration of appropriate response strategies - Legal duties and policy requirements

**Sites of Special Scientific Interest (SSSIs)** – S.28G of Wildlife and Countryside Act 1981 sets out the duty of a statutory undertaker to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest'. Further guidance on seeking assent can be found at [Natural Resources Wales / Sites of special scientific interest \(SSSI\): responsibilities of public bodies and statutory undertakers](#)

We recommend that contingency plans should make reference to these requirements, alongside recognition that the legislation – the Wildlife and Countryside Act 1981 at section 28P(4)(b) – provides an exemption from seeking SSSI assent if works have been deemed an *emergency* operation. The legislation does not define the term “emergency” in this context, but NRW consider this to mean situations as defined under the Civil Contingencies Act.

Contingency plans should recognise this and make note that if there is a need to carry out emergency works which may affect a SSSI, NRW must be informed as soon as possible after commencement by contacting NRW at the below details

Email [SSSI.notices@cyfoethnaturiolcymru.gov.uk](mailto:SSSI.notices@cyfoethnaturiolcymru.gov.uk) or call NRW's incident hotline on 0300 065 3000 .

It should also be noted that if the SSSI is being damaged as a result of emergency works, NRW should be notified by contacting the incident hotline.

**Habitats Regulation Assessment (HRA)** is required for any plan or project that might have an impact on a European protected site (aSAC, SPA or Ramsar site). The Welsh Government has published [Habitats regulations assessments: protecting a European site \[HTML\] | GOV.WALES guidance on undertaking HRA](#)

If you're a public body, within the contingency plan you should demonstrate how you have fulfilled your duty under **Section 6 of the Environment (Wales) Act**, to “*seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in doing so, promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions*”.

# Protected Species

## Species licensing

Where works will affect a protected species, a protected species licence may be required.

As part of contingency planning identify

- if any protected species are within the area of the coal tip, or within the areas where works may need to be carried out
- if the identified protected species are likely to be affected by any required works
- identify if any licences would be required to undertake the works

A licence is not required if works are organised in a way which will not disturb or harm the species or its habitat.

More information, including how to apply for licences and timescales for determination, can be found here [Natural Resources Wales / Species licensing](#)

## Bird licensing

All species of wild birds in Wales are protected. As part of contingency planning, you may want to consider if any urgent works will affect birds, their nests and their eggs, and identify if any birds, in the area requiring urgent works, fall under the rare birds listed in the Wildlife and Countryside Act 1981 (as amended).

NRW can grant licences for specific purposes. There are [general licences](#) available for certain situations, which can be downloaded from the NRW website without needing an application. If your situation is not covered by a general licence, consider the purpose of your licensing activities and complete the relevant application form.

Further guidance, including how to apply, can be found [Natural Resources Wales / Bird licensing](#)

## Invasive Alien Species

There are regulations to prevent and minimise the impact of the introduction and spread of non-native animals and plants. During contingency planning consider

- whether any invasive species are within the coal tip area, or would be affected by any urgent works or tip failures
- if invasive species are identified during the review, consider including steps to prevent the spread or release of them further into the environment

More information on Invasive species [Natural Resources Wales / Invasive alien species](#)

## 5. Woodlands and Forests

Many coal tips across Wales are located in areas near or in woodland and forests, which might need careful management in the event of tip failure or during the activities of urgent works. NRW is responsible for issuing felling licences, approving forest management plans, forest resource plans and overseeing Environmental Impact Assessments for forestry.

Whilst contingency planning

- identify if urgent works will impact on woodlands and/or forests and require any tree felling to be carried out
- check if a tree felling licence will be required [Natural Resources Wales / Check if you need a felling licence](#)
- information on how to apply for a felling licence can be found [Natural Resources Wales / Apply for a felling licence](#)

As per the advice in section 4, you may need to assess potential impacts on wildlife as a result of any tree felling.

Guidance on this can be found at [Natural Resources Wales / Check if you need a wildlife licence during forest operations](#)

## 6. Flood Risk Management

An assessment will need to be made on any works that may impact on main rivers. This will help us to decide if any authorisations are required under the Environmental Permitting Regulations. The primary purposes of a Flood Risk Activity Permit under these regulations is to control any impact upon flood risk and to prevent environmental harm. Consideration will also be required for any works that may impact ordinary watercourses within an Internal Drainage District (IDD).

During contingency planning, you must consider if:

- there are any NRW flood risk assets nearby
- they would be affected by any potential works.

This includes, not only the assets themselves, but also if NRW's ability to maintain the assets will be affected.

Assets would include defences, structures, gauges and monitoring equipment.

This guidance document does not cover advice relating to flood risk assets owned by another Risk Management Authority or permissions for works in an Ordinary Watercourse (unless located within an IDD). Your Lead Local Flood Authority can provide this advice.

### Flood risk assets

To identify if there are any flood risk assets nearby please use the Flood Risk Assessment Wales map, which has a layer for flood defences [Flood and Coastal Erosion Risk Maps \(naturalresources.wales\)](https://naturalresources.wales)

Remember to consider that access is required to ensure that these assets can be maintained.

Gauges and monitoring equipment aren't shown on the online maps. This information can be requested from NRW's Hydrometry and Telemetry team by contacting [enquiries@naturalresourceswales.gov.uk](mailto:enquiries@naturalresourceswales.gov.uk)

### Flood Risk Activity Permit

When contingency planning, assess whether you are likely to require carrying out works in a main river.

Works in a main river will require a Flood Risk Activity Permit (FRAP) under the Environmental Permitting (England and Wales) Regulations (2016).

Key flood risk activities which may be relevant:

- a) Erecting any structure (whether temporary or permanent) in, over or under a main river.

- b) The carrying out of any work of alteration or repair on any structure (whether temporary or permanent) in, over or under a main river if the work is likely to affect the flow of water in the main river or to impact on any drainage work.
- c) Erecting or altering any structure (whether temporary or permanent) designed to contain or divert the floodwaters of any part of a main river.
- d) Any dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a main river (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging and desilting.
- e) Any activity which is likely to divert the direction of the flow of water into or out of a main river or alter the level of water in a main river.
- f) Any activity within 8 metres of a non-tidal main river (or within 8 metres of any flood defence structure or culvert on that river) or any activity within 16 metres of a tidal main river (or within 16 metres of any flood defence structure or culvert on that river) which is likely to:
- i. cause damage to or endanger the stability of the banks of that river or of any culvert;
  - ii. cause damage to any river control works;
  - iii. alter, reconstruct, discontinue or remove any river control works;
  - iv. divert or obstruct flood waters or impact on the drainage of that river; or
  - v. interfere with Natural Resources Wales' access to and along that river.

Identify which rivers near your tip are main rivers. Watercourses classed as main rivers can be found on the NRW website online maps - [Geocortex Viewer for HTML5 \(cyfoethnaturiolcymru.gov.uk\)](http://cyfoethnaturiolcymru.gov.uk)

On assessment of potential works required, check whether you will require a permit or if there is an exemption or exclusion that will apply to the identified activity [Natural Resources Wales / Check if you need a flood risk activity permit \(FRAP\)](#).

Further information and advice on how to make an application can be found on our website - [Natural Resources Wales / Flood risk activity permits](#)

We are able to undertake pre-application consultation ahead of a formal application being made, please contact the relevant area team via the following email addresses:

- DFR North and Mid - [floodpermitting.northmid@naturalresourceswales.gov.uk](mailto:floodpermitting.northmid@naturalresourceswales.gov.uk)
- DFR South – [DFRSouthPermitting@naturalresoruceswales.gov.uk](mailto:DFRSouthPermitting@naturalresoruceswales.gov.uk)

A permit application will require

- Location / site plans
- Drawings of proposed works (plan and cross section)
- Method statement if undertaking in river work

- Relevant fee
- Environmental assessments (in some cases)

[Natural Resources Wales / Flood risk activity permit application \(FRAP\): Information you will need to provide](#)

## Land Drainage Consent

When contingency planning, assess whether you are likely to require carrying out works in an ordinary watercourse within an IDD. You may need to apply to us for a Land Drainage Consent under Section 23 of the Land Drainage Act (1991).

The Land Drainage Act specifies that only certain activities need a land drainage consent.

These activities are:

- Erecting, raising or altering any mill dam, weir or other obstruction to the flow of an ordinary watercourse
- Erecting a culvert
- Altering a culvert in a manner that would affect the flow

Further information can be found on our website [Natural Resources Wales / Apply for land drainage consent](#)

When making your application, please ensure you complete the appropriate form accurately (available on our website) and include the following elements:

- plans showing the location of your works
- detailed drawings showing what you wish to do, along with any calculations
- a method statement for the works, including details of how the works will be carried out and any environmental protection/mitigation measures that will be put in place

We will grant or refuse applications within two months of receiving your application. If we fail to notify you of the determination of your applications, then it is deemed to have been consented.

## 7. Land Contamination and Stability

Land contamination can have significant impacts on human health, property, ecosystems and water quality (for example, rivers, groundwater and lakes) and needs to be managed appropriately. The Local Authority will need to be consulted on human health risks from historic contamination.

During contingency planning, we will work with developers, their consultants and major landowners to provide generic and site-specific advice, particularly on water issues. We will do this prior to applications for planning permission or when voluntary remediation is being proposed or undertaken. We may need to charge for this service as per our DPAS service [Natural Resources Wales / Our service to developers](#).

The key priorities to address in a contingency plan from a land contamination and stability perspective are below.

### Land contamination

- An assessment of risks posed from historic contamination (in the event of a slip) in line with the Land Contamination Risk Management (LCRM) guidance [Land contamination risk management \(LCRM\) - GOV.UK \(www.gov.uk\)](#)
- A controlled waters risk assessment for any temporary/new receiver site for slip material: [Development of land affected by contamination: a guide for developers, WLGA 2023 \(PDF 1.64MB\)](#)

It may also be useful to refer to this groundwater protection advice: [Groundwater protection - GOV.UK \(www.gov.uk\)](#)

### Land Stability

A stability risk assessment should be carried out prior to any proposed engineering works at the tip site and at any other receptor locations where material is moved, or stored temporarily, in line with the Land Stability planning guidance [Land stability - GOV.UK \(www.gov.uk\)](#)

If the transfer of material forms a new tip the landowner should add it to their spoil tip list and assign a hazard category. Where spoil remains at the site and is re-engineered, the hazard category of the spoil tip should be re-assessed.

The relevant central authority should be informed of a new tip or changes to an existing tip.