

## **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.