

DMQTWB 22 - Evidence from: Rhondda Cynon Taf County Borough Council

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?

The general principles of the Bill are needed as the current legislation is not fit for purpose. Whilst the general principles cover most aspects there is a possible lack of depth / clarity of how certain key elements are to be undertaken. Noting that Section 3 of the explanatory memorandum says “The Bill should not be looked at in isolation.” The details in the other work forming the Coal Tip Safety Programme will determine how effective the Bill will be.

Overall lack of clarity about tip owners duties with respect to tip safety – is it expected that tip owners rely on the Authority to determine operations required for tip safety? How does this correlate for example where an adjacent landowner has planning permission for activities that may increase the risk category eg housebuilding below a tip? Or for example deforestation of the forestry estate? How does this Bill interact with adjacent land uses and needs?

Detailed Provisions S3.36 “Clarity of roles and responsibilities” – no mention of other parties roles and responsibilities within the Bill (Owner- only in P3. Ch1. S.33&34)

Overall how does the Bill address future risk, i.e. climate change predictions of rainfall patterns. If a tip is located on unstable natural land does this Bill apply?

The stated objective appears inconsistently in the Explanatory Memorandum. For example, paragraph 1.1. refers to “the assessment, registration, monitoring, maintenance and oversight of disused tips”. Whereas, paragraph 3.1. refers to “assessment, registration, management, monitoring and oversight of disused tips in Wales”. In the second example, the focus is on “management” instead of “maintenance”. Given that the intention appears to be for a proactive instead of reactive approach – maintenance would be a more fitting term.

As noted above, there is no detail on owner’s duties. Many owners, including local authorities, have extensive maintenance plans already in place. The drafting of the Bill does not appear to allow for existing maintenance plans to continue – instead

the Authority will be taking full responsibility for registered tips. If this is the case – it would assist if clearer wording around maintenance was included throughout the Bill together with wording on the Authority accepting liability in the event a tip fails in the circumstances where all of the requirements of the Authority (i.e. section 33 notices) have been complied with. As a specific example, paragraph 3.56 of the Explanatory Memorandum confirms that the Authority is required to “Ensure necessary routine maintenance specific to each tip” but this does not appear to be captured by the drafting of the Bill.

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)

S2(1) – “ensure that disused tips do not threaten human welfare...”

This is a good objective to have but “ensure” is a very strong term. Risks can be reduced and mitigated against but it is a very high objective to ensure no threats and to achieve this level of assuredness will require costly standards of risk management that do not necessarily apply to natural land management or to other asset management within Wales.

It is clear that ground conditions change quite suddenly with little or no surface evidence. What is achievable is that each tip is assessed on the risk that they pose to human welfare and Management Plans (tip inspection frequency, remote monitoring, maintenance etc.) and Emergency Plans are prepared so that if instability should occur the appropriate steps are taken by the appropriate parties. In the longer term to achieve the objective to ensure that disused tips do not threaten human welfare will require significant operations.

S2(2) is very dependent on employing appropriate staff within the Authority and applying stringent quality standards. The detail as to what are the high standards to be attained and how they are to be applied is subjective – this needs to be clearly and transparently set out as the legislation is enacted.

The Authority and the powers vested in it appear to remove all existing responsibilities/duties from tip owners and place them with the Authority who will then (subject to inspection) require an owner of land to undertake operations or to carry out operations itself where it deems necessary. Whilst this may be an acceptable approach for those tips currently not being maintained or managed it

raises potential conflict with those owners who currently have robust inspection and maintenance operations in place. Where a tip is local authority (LA) owned does the LA absolve itself of this responsibility to the Authority and if so where is this stated. Where are all owners' future responsibilities stated?

There does not appear to be a mechanism to devolve or delegate the Authorities powers (if required) to (for example) a technically informed body such as a Local Authority to be able to undertake the functions set out in the Bill (on the Authority's behalf). Unless this falls under delegation to a committee or sub-committee? There are "informed and expert" owners currently who will be stripped of any regulatory or management function they currently exercise and will become reliant on the Authority to provide this.

S3-5. Funding is key to the management and maintenance and operations required on tips to maintain and improve safety to successfully achieve the objective of the legislation.

S3(3) Does this apply to any third party and without tip owner permission?

S3(4) this allows the Authority to send any person information and charge that person for the information. This appears to detract from the intention of ensuring tip safety by charging for tip safety advice.

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

A register is a proactive step towards an overall management strategy of tip safety within Wales. The inclusion of the information such as the latest inspection is useful. Will this date be of just an inspection by the Authority or will it include dates of landowner inspections? The interactions between all the available inspection information should be clarified within guidance documents.

The way forward of undertaking preliminary assessments leading to full assessments and subsequent categorisation is welcomed with additional guidance on the categorisation methodology. With respect to Full Assessments, the meaning as given in Section 15 and term 'Full' Assessment may be confusing. Reviewing the costs within the Explanatory Memorandum, this is not a full geotechnical or hydrological quantitative assessment but a qualitative walkover assessment for the purposes of categorisation.

Section 18 Notice of Intention to carry out full assessment – it may be prudent to allow some flexibility on the dates for access onto the land or the stating of one individual. There may be unavoidable reasons for entry on a specific date. A date

range or list of individuals who may carry out the assessment may introduce reasonable flexibility and efficiency into the noticing procedure.

18(2)b – it is presumed the name of the individual who will carry out the assessment is the person entering the land and the assessment will be reviewed and signed off by a senior person rather than reliance on one individual to complete the assessment.

If a tip is deemed to not pose a risk currently it will not be registered – however there is the potential for that tip (due to changes in circumstance) to pose a risk in the future – is there a database of unregistered tips and will these be reviewed to look at potential circumstantial change? Where does the risk and responsibility lie with unregistered disused tips?

Categorisation – 25 (1) states the Authority must publish a statement on its categorisation policy but there is no time frame. 24 (3) The 4 categories are subject to one or more of the matters outlined in 25(3) – it is anticipated that the guidance will outline the methodology to be used in order to assess the risk of instability or failure. This process is a fundamental aspect to this legislation and it is what the registration, categories, inspection, maintenance and management plans all rely on and is not currently explained in any detail. RCT would welcome consultation on the development of the guidance.

28 Notifiable change – what happens in a temporary situation whereby there are more frequent inspections or monitoring? This maybe be something within the guidance to address.

31 Compensation –

'Any other property is damaged, removed, disposed of' – 'Property' includes many things - possibly could be further explained.

'any person's enjoyment of any land is disturbed' – this appears to be a very broad category. This needs review and clarification. It appears anyone could claim a disturbance of enjoyment of land – e.g. noise disturbance, visual disturbance etc. For example, would a person who traverses a tip on open access land but this was restricted due to operations would they be able to claim? If a right of way was closed due to operations would persons be able to claim? This provision could be limited to those with an interest in the land a tip is on or the provision could be removed.

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

In general, the process gives greater powers than those within the MQTA 1969. There is a very broad range of work required to tips e.g. minor vegetation clearance up to major civil engineering /reclamation works – does it include preventative, or monitoring and investigation works potentially on a regular basis and long term?

33 It would be useful to include notice for "cessation of operations" where they are increasing risk to a tip, for example excavations or deposition of materials – we have had both situations within RCT and use of planning enforcement legislation has been the only means of potentially getting works to stop.

It would also be useful to include for "prevention of future operations" which may increase risk to a tip, e.g. widescale deforestation.

33(3)(b) 'the operations that must be carried out' can be required to be very prescriptive and requires time and resource to scope.

If specific requirements are met and those operations do not remove the threat/risks then who is liable?

What RCT have found when undertaking operations on tips is that change is required as maintenance and access is progressed and often a phased approach is needed over several 'seasons' of work, how would this be addressed within noticing procedures?

There is no mention of standards of workmanship, design, design checking, adherence to other national legislation, supervision, maintenance periods and so forth. If workmanship, designs and standards to ensure stability are not consistent and regulated then this detracts from the aims of the policy intention.

How would short term emergency or general maintenance works be funded?

How do the timescales given for works fit with potential grant funding timescales?

34(1) will the operations include details of access routes such that right of entry includes these routes? Will the right of entry be transferred to the landowners to undertake operations?

35(2)(f) means any activity on adjacent land?

37 Determination of Appeals – the inclusion of PEDW to undertake appeals is noted. It is difficult to anticipate the number of appeals but there could be a lot of work in this process and requirement of tip management and drainage knowledge and experience in reviewing.

40 Power to cancel notice – would it be easier to have power to amend a notice too – see comment 33(3)b above.

44 (3) Duty to give notice – the terminology 'immediately' may give cause for difficulties in applying this provision. You may have emergency stand by crews to

undertake immediate work, for example clearing a culvert screen but there will also be other work that needs to be done urgently but requires more lead in time to mobilise such as a couple of days. You may be open to claims if this clause is used to gain entry, but operations did not start until some days after the instruction i.e. not 'immediately'. Within clauses 44(3) and 44(4) provision of an option where 'urgently necessary' (terminology used in the EM) works are required to be undertaken and landowners to be informed of this as soon as reasonably practical would allow for critical urgent work to prevent risks being realised and give the necessary powers of access to manage immediate and urgent work required on a tip.

44 The wording does not permit notice to be served on adjacent land for access across other land, unlike 18 for access for full assessments?

If the Authority notices or undertakes work which subsequently has an effect on neighbouring property, roads, watercourses – can the Authority be served notice or if the operations were detailed by the Authority – what defence does the landowner have against any potential breaches in other legislation for complying with the notice?

48 Compensation for Damage – see comments for clause 31 - this potentially opens up possible claims against a landowner for undertaking operations on their own land. How do you assess the disturbance to a person's enjoyment of land?

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

In general the process is OK –

Unable to comment on how workable S.58 will be – dependent on individual landowners, for example previous Landed Gentry estates may not have the records for historical ownership. S.59 dependent on Crown Land records.

S.63 – letters will need to be sent to all landowners of a tip. Current DMW records just describe ownership as being mixed not listed individually. Landowner records are dependent on Land Registry – records may be out of date. Frequency of LR checks to be considered. LR searches cost £3 for title + £3 for title plan. Are there any records of people with an interest in the land e.g. leaseholders and private tenants?

Part 4 Information Sharing – noting Section 60 – notice may not be given to a relevant public authority – there could be significant information held by local authorities on privately owned tips – how could this information be shared?

Especially on privately owned tips or tips owned by other public authorities?

Can the Authority not serve notice on the Coal Authority (Mining Remediation Authority) for historic Coal Board records and information or will the Authority have to pay for those records as is the case currently where LA's make enquiries

for information?

63(1) 48 hours of intended entry? What does intended entry mean – the date and time or could it be for a period of time. For example, we have had situations where a landowner has been excavating on a tip – would you want to wait at least 48 hours – probably more by the time the administration and delivery of notices has taken place. Appreciating there is Section 63(3) but this is very specific and requires there to be a suspicion of instability or threat to human welfare to undertake operations on the land. This does not appear to improve access rights over the existing legislation.

63(3)b Only if tip is unstable – you may need to enter land to undertake work to prevent the tip becoming unstable – e.g. clearing a culvert inlet

It does seem, as drafted, to exclude access onto land in certain scenarios where you would want to enter onto the land to review if the tip is unstable or that there is instability – for example during or after periods of heavy or sustained rainfall. You may want to take ground water measurements or inspect culvert inlets – you will not be able to give 48 hours' notice but neither of the conditions for entry are achieved.

63(4) Not residential land? Why exclude access via gardens etc which in some instances may be the only route of access to some areas of a tip? There are some tips and one Category D tip within RCT that realistically the only means of access to certain lower flanks of the tip is via residential driveways and gardens.

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

S.75 same comments as above regarding giving notices and records of ownership.
81 (1) the definition opens up many other sites (not currently necessarily classed as a “tip”) e.g. old colliery surfaces or relatively flat lying areas. Does this include reworked material which was once for example coal tip material but has now been moved and re deposited to a new location? Is it an accumulation or deposit of naturally occurring waste materials from a mine or quarry?

81(2) May complicate ownership issues and legal responsibilities as the wall may not be owned by the “main body” tip owner – is the wall causing an issue with the tip or is the tip causing an issue with the wall? The wall may have preceded the tip formation so why is it to be classed as part of the tip?

82 – what is the definition of “serious” unless this is defined it could be ambiguous.

82 Possibly need something to reference serious disruption to water courses and increase of flood risk or possibly this is already included by looking towards other legislation.

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

Some potential barriers to successful implementation of the Bill's provisions have been highlighted in the some of the previous comments.

Other observations are:-

Inspection Frequency – RCT currently inspect Cat D tips (D1, D3) on a monthly or 3 monthly cycle. Cat C tips on a 6 month cycle, Cat B annually, and Cat A's on 2 or 4 year cycles. This not only provides a robust inspection and monitoring regime it provides public confidence that these assets are being managed effectively.

Whilst there is provision for ad hoc inspections / appraisals to be undertaken following inclement weather events it is not considered that the minimum standard interval is frequent enough particularly on the higher risk tips. They are by their definition higher risk and can be prone to rapid changes which is why a higher minimum frequency of inspection would be prudent.

This could be reviewed following (say 5 years) of inspection and management under new legislation.

Conflict with environmental, waste and planning legislation is not addressed. It needs to be considered and a hierarchy of priorities established particularly in the event of an emergency and the actions required to be set in motion.

The new legislation does not address the need for emergency planning or trigger / alert levels in order to manage tip instability events effectively.

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?

Given the powers conferred on the Authority and the ability to request or enforce works there is likely to be a lot of concern from private tip owners as to the level of work and financial commitment they will be expected to undertake.

As previously stated there has to be a consistent approach to standards of work, methodology, design and supervision – uninformed private owners are unlikely to be aware of many of the requirements so there needs to be guidance documentation and advice readily available.

It is unclear from the legislation what role (if any) there is for larger well informed LAs and public bodies in the future implementation of this legislation.

Removal of responsibility described in MQTA69 for tip owners may lead to less consideration for tip safety and routine maintenance if they believe that someone else is responsible. It also removes powers from local authorities who may rely on MQTA 1969 to gain access to their owned tips, how the Bill confers rights onto tip owners to undertake inspections and maintenance needs to be considered.

In the event of a failure of a tip causing threat to human welfare, who will be held responsible? If Owners (who currently do not have their responsibilities set out) rely on the Authority to inspect, review and recommend maintenance works, will responsibility lie with the Authority or the Owner? If an owner has undertaken all required works and the tip still fails – who is responsible?

Transference of the legislative powers from local authorities may restrict access and rights of entry over adjacent land for LA's to manage tips on their land. Interaction of this legislation in relation to other legislative requirements of local authorities and how the Authority will discharge its duties in relation to this needs to be considered.

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?

It is assumed that grant funding continues – this is an unknown but underpins much of the financial assessment.

It is assumed that routine maintenance works carried out by owners should be no different to works already being completed where a disused tip is being maintained to a safe level and so no additional cost has been included. However, many private tips are not maintained so there is likely to be a substantial underestimation.

There is an assumption of £11.3m grant funding per year based on the previous year's grant funding, however grant applicants have made bids totalling £27m in 2024-25 alone, so the demand for funding may well be considerably higher than the £11.3m assumed in the RIA.

Does the costing model allow for improvements to drainage infrastructure on tips, for example some infrastructure may need to be replaced and will require upgrade to current capacity and climate change predictions – this increases costs and also requires attenuation and sustainable drainage to be installed which

increases costs.

These are just a few examples where the assumptions made may fall well short coupled with how these anticipated works may need to be procured and managed going forward the outturn cost predictions may be misleading.

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

1. Is the Authority going to be a statutory consultee for planning matters? Planning Guidance should include consultation with respect to Tip Safety.

2. Following inspections how are maintenance works going to be prioritised - is it intended that there will be a prioritisation system?

3. Existing Infrastructure (particularly drainage) on tips is by and large reaching, or has past its design life, and in many cases is failing. Maintenance of this infrastructure is not necessarily just a simple matter of clearing out a ditch it may involve a total redesign and reconstruction. Much of the existing drainage infrastructure is likely to be under designed for current standards (including current climate change requirements) - is the Authority going to design any new requirements based on inspection and assessment or is this aspect to be given to landowners - who will regulate this?

4. The requirement to improve the existing drainage infrastructure on tips is a crucial element of their safety moving forward. It is essential to remove the water as efficiently and as quickly as possible from the tip - however - this poses a conflict with other regulatory requirements. Storage, attenuation, detention are all methods to do this but come at a cost and depend on available land to provide these features.

5. Many tips do not have formal drainage infrastructure - however given the changing weather patterns and events experienced together with such things as off road activity causing new uncontrolled drainage features on tips and the likely need for new formalised drainage has this been factored into the financial model in order to provide an acceptable level of safety?

6. Bodies such as LA's are seen by the public to be largely responsible for their welfare, provide a degree of confidence and are their usual first port of call and these expectations need to be managed appropriately around such a sensitive and emotive subject.

7. Will you supply information and reports you create on tips to the tip owners?

4.6 Should Rhondda Cwm Taff Committee read Rhondda Cynon Taf Committee?
