

17th January 2025

Welsh Parliament
Cardiff Bay
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Email: SeneddClimate@senedd.wales

Dear Sir/Madam

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



deunyddiau hanfodel
atebion cynaliadwy

essential materials
sustainable solutions

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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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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 it is 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.