

CTS Bill White Paper

Consultation Responses October 2022

004

Philip Thomas

1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

Yes

2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

Yes

3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

Yes – but 10,000 sqm seems way too large to be negligible.

4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

Yes

5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

Yes. However, it seems like an opportunity to include any nearby critical infrastructure – schools, leisure centres, hospitals, roads etc.

6. Do you agree with the approach to adding new tips to the register?

Yes

7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

Yes

8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

Disagree. Publicly available yes. The specific owner should be detailed, as they may make planning applications which could have implications to the tips site and

the public will not be able to reconcile any concerns, such as how an owner could impact the tip site.

Annex 4: The focus area is invalid. 100m from a tip site is not far enough, I'm pretty sure the Aberfan tip was further than 100m from Pantglas Junior school. The premise of this Annex is therefore invalid. The economic impact assessment needs to be undertaken again. There is no way as 2.3 suggests the risk associated are priced in. Hardly anyone knows where the tips are today, as this information is at present is being withheld from the public domain. This is acknowledged by the Welsh Government, and FOIs being refused as the information is in 'DRAFT'. Tip locations are unknown to the general public, as they consider these spoils to be 'mountains' in the area, unknowing of the risks they present.

As stated, insurance is a big concern for home and business owners/tenants. The Welsh Government does not seem to have a solution of recommendation in place. This gives me grave concerns in this Welsh Government legislative process.

9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

Curious: 'people' are defined as a subset of 'receptor'.

10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

I have strong concerns about 1&2 being higher risk (high and medium), yet it is proposed their ultimate accountability is to two different authorities. All higher risk tips should be the responsibility of one authority, namely the newly created Executive Welsh Government Sponsored Body. This authority will be equipped with a higher level of expertise and so should also be the ones who apply authority over the two higher risk categories. Especially as there is fluidity between categories.

11. Do you agree with the approach for interdependent and proximate clusters of tips?

Yes, but as reposed to 10: I have strong concerns about 1&2 being higher risk (high and medium), yet it is proposed their ultimate accountability is to two different authorities. All higher risk tips should be the responsibility of one authority, namely the newly created Executive Welsh Government Sponsored Body. This authority will be equipped with a higher level of expertise and so should also be the ones who apply authority over the two higher risk categories. Especially as there is fluidity between categories.

12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

Yes, but 6.11 Does not define what a higher risk and lower rated tip is. Is higher rated 1 & 2, and 3,4&5 lower rated? This need to be defined. I believe you should regard 1 & 2 as higher rated.

13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

Broadly yes, but 6 months is too infrequent for a category 1 tip, as is 12 months for category 2. 3 months and 6 months should be the minimum frequency. Human influence and natural influences can occur at much closer intervals, which are not necessarily related to weather events.

14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

I have strong concerns about 1&2 being higher risk (high and medium), yet it is proposed their ultimate accountability is to two different authorities. All higher risk tips should be the responsibility of one authority, namely the newly created Executive Welsh Government Sponsored Body. This authority will be equipped with a higher level of expertise and so should also be the ones who apply authority over the two higher risk categories. Especially as there is fluidity between categories.

I can perhaps see how publicly owned category 2 tips could be the responsibility of the local authority, but certainly NOT privately owned tips – as ultimately, the local authority will have less say on the use of the land and implications on the tip site. Highlighting how the fluidity between categories could also be human influenced and without the level of skill and expertise given to the Supervisory Authority, the local authority may miss small but significant detail leading to an increased level of risk. Additionally, private land owners may not see any ‘change’ if the authority remains the same as current (local authority) and although their land is higher risk, they may not sufficiently see the level of public obligation they have unless their tip complex is accountable to the Supervisory Authority.

15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

Broadly. Subsurface drainage information from higher ground leading into a tip complex, such as that on the side of a hillside isn’t specifically noted. It’s not just about the subsurface of the tip complex, but the ‘natural’ land on which it is located. Many tips are located on the side of a hill which has natural issues underneath and alongside from the fractured sandstone above and alongside the tip complex. This is noted in many Halcrow reports from the late 1960s early 1970s.

Additionally, there doesn’t seem to be any reference to how the land is incidentally used by the local community. Whether; there is a history/tendency for human created fires – implication of combustion; there is a history/tendency for off road vehicles to disturb the surface of the tip complex.

16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

Yes. However, as previous: I have strong concerns about 1&2 being higher risk (high and medium), yet it is proposed their ultimate accountability is to two different authorities. All higher risk tips should be the responsibility of one authority, namely the newly created Executive Welsh Government Sponsored Body. This authority will be equipped with a higher level of expertise and so should also be the ones who

apply authority over the two higher risk categories. Especially as there is fluidity between categories.

I can perhaps see how publicly owned category 2 tips could be the responsibility of the local authority, but certainly NOT privately owned tips – as ultimately, the local authority will have less say on the use of the land and implications on the tip site. Highlighting how the fluidity between categories could also be human influenced and without the level of skill and expertise given to the Supervisory Authority, the local authority may miss small but significant detail leading to an increased level of risk.

Additionally, private land owners may not see any ‘change’ in the legislative power, if the authority remains the same as current (local authority). Although their land is higher risk, they may not sufficiently see the level of public obligation they have unless their tip complex is accountable to the Supervisory Authority.

17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

No response, only to say the fixed penalty notices don't seem to be proportionate with the level of risks outlined.

Why is there no consultation question regarding tip maintenance orders? 42 days to **respond** to a an agreement on tip management order? So a category 1 or 2 tip, you'll allow 42 days to respond to simply say “notice received, we're working on our response”? That's nonsense!! How many days to agree on a tip maintenance order? This needs to be defined in law, and in months, not years.

18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Yes. It also should apply to any land higher in altitude to the tip complex, as this could have drainage implications into the tip site.

19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

If the authority is only inspecting higher risk tips every 6-12 months, how are you going to see if, for example a farmer is grazing and feeding his sheep/cattle near or by a tip complex – causing vegetation removal and surface instability? This can be currently observed on numerous higher risk tips. If a farm owner has a certain threshold of acres, they have quite a bit of discession on land use and alterations. By not inspecting more frequently you are potentially allowing activities to occur, and may face another legislative issue regarding farming land use.

20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

Yes. It also should apply to any land higher in altitude to the tip complex, as this could have drainage implications into the tip site.

I have very grave concerns regarding a specific location which includes a higher rated tip complex where planning has already been granted for two 125m wind

turbines directly above these HIGH-RISK coal spoils! Halcrow & Partners specifically mention this area as a risk where planning has been granted (see below).

The Local Authority have placed a condition on drainage which has not yet been discharged, but obviously, as the supervisory authority has not yet been established, they have not been given the opportunity to consult/intervene.

Planning may well have not been granted in the first place if the expertise you are now seeking to employ were here today. This new legislation should ensure the public are not allowed to be unnecessarily worried about a development which clearly should not have been approved in the first instance. Local residents are sincerely hoping this specific local authority is sufficiently skilled and briefed by Halcrow Partners reports to spot this incompatibility in drainage from above the tip complex.

We know the trackway, foundations and construction of wind farms can cause disasters to the watercourse. Imagine what this could be like with a high-risk coal spoil to boot. If you are not aware of Meenbog in the Northern Part of the Republic of Ireland and the peat bog wind turbine construction incident in November 2020, you should have a look into the matter.

<https://www.bbc.co.uk/news/uk-northern-ireland-foyle-west-54994865>

<https://twitter.com/rooneymobile/status/1327581502763380736?s=20>

Regardless, currently residents are being burdened with much anxiety by the issue and this should not be the case today, and certainly should not be the case in the future under the establishment of this new legislation.

Additionally, an EIA (Environmental Impact Assessment) should be mandated and not at the discretion of the local authority to say it is not necessary, if coal tip complex is nearby (within a mile). The aforementioned wind turbine application was approved without an EIA, as the authority said at its discretion, it was not required even though it is 200m from and higher up than the tip site!

21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Bydd hwn yn cyfle gwych i hyrwyddo'r Gymraeg mewn prosiect arloesol o'r fath dynoliaeth yn erbyn natur, bydd natur wastad yn ennill!

22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Bydd rhaid gwneud yn siŵr bydd unrhyw cwmni sy'n cael eu thalu i weithio ar unrhyw elfen sy'n cysylltiedig a'r cyhoedd yn gymwys yn y Gymraeg ac yn parchus tuag at Gymraeg yn yr ardal.

23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

The public purse should not pick up the cost of private tips. Most of the landowners acquired their land from the National Coal Board for a peppercorn fee in the 1980s knowing the risks and obligations under existing laws of safety to the nearby communities.

They should not benefit from funding in any way. If they are unwilling to fund the work; the land should return to public ownership, for the community to benefit.

The landowner should not benefit from the public purse investment in their land safety. It should enter ownership of the local authority, solely for the purpose of a park/recreation/biodiversity schemes but not for building houses or other commercial uses.

Environmental Permitting Regulations (England and Wales) 2016 should be widened. To include the effect on the entire local ecosystem. Examples; Meenbog disaster in Nov 2020, as referred to earlier; flooding from related streams, combustion, road access for emergency services.

I see issues with our net zero carbon legislation being superlative to the needs, wants and rights of residents and the wider local community. As per all previous responses, including Wind Turbine energy, foundations and trackway causing issues to the watercourse below, through underground channels and other means.

- Would it be right to flood local residents periodically in the interest of the nation's carbon lowering ambitions? Absolutely not. Besides - if one saw how many skips of rubbish were destined for landfill following the floods of 2020 in South Wales, one would easily conclude the total cost of waste and replacement of these belongings to the environment would very easily have a greater lifecycle impact.

I believe emergency powers should be granted to stop developments nearby these tips as you have previously mentioned the skillset required to adequately assess the impact of nearby developments has not been present. There are a number of reports in the Glamorgan Archives. A task force should be put in place to study these reports and look at the recommendations which have not always been implemented.

In the case of one tip complex, it was recommended a concrete steel reinforced gabion lining should be constructed around a scour channel above a Community School. This was not undertaken. A recent hill fire to the bracken exposed this area and one could see the coal spoil cut through by the stream. This same stream almost flooded nearby houses and sandbags were required to protect the

school. The recommendations to keep the stream clear have been forgotten and decade old trees are now blocking what was described in the 1970s as a 'scour channel'.

This is the same area where the Local Authority has approved (subject to drainage) these industrial sized wind turbines on wet boggy gorse land- including demolishing a very large pond for the trackway.

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Q1. Details	
Name	Christopher Wright
Organisation (if applicable)	-
Email / telephone number	
Your address	

Q2. 1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?
Yes

Q3. 2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?
No - It must be independent to remove the political influence of the narcissists in the Welsh Government. They keep forgetting they work for us - we are not here just to pay their wages.

Q4. 3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?
Any area that includes the coal, rock or other spoil of what was once extracted as part of coal mining is Wales

Q5. 4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

No - owners must bear responsibility for safety, security and where appropriate removal.

Q6. 5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

One lorry load

Q7. 6. Do you agree with the approach to adding new tips to the register?

Yes

Q8. 7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

The asset register and its updating, security and ownership must be part of the responsibility of the independent body set to oversee the safety of the people of Wales and the jeopardy set out by the continuing presence of the coal tips

Q9. 8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

They are coal tips - No information should be withheld

Q10. 9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons

No - the measurement of 'hazard' levels is something to be set as part of the remit by the independent body for their actions

Q11. 10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

No - again this is something to ensure the validity and independence of the body

Q12. 11. Do you agree with the approach for interdependent and proximate clusters of tips?

No - All tips are individuals

Q13. 12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

No - again this is something to ensure the validity and independence of the body

Q14. 13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

No - again this is something to ensure the validity and independence of the body

Q15. 14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

No - again this is something to ensure the validity and independence of the body

Q16. 15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

No - again this is something to ensure the validity and independence of the body

Q17. 16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

Yes

Q18. 17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

Yes

Q19. 18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

No - again this is something to ensure the validity and independence of the body

Q20. 19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

Enforcement powers proportionately based upon independent risk assessment

Q21. 20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

No - again this is something to ensure the validity and independence of the body

Q22. 21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Again this is something to ensure the validity and independence of the body

Q23. 22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Again this is something to ensure the validity and independence of the body

Q24. 23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

Make this an independent body including the powers to force the Welsh Government to act into their continuing failings in this matter

Q25. If you want to receive a receipt of your response, please provide an email address.

Email address

Q26. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

007

Dr John Perry BSc (hons) MSc PhD CEng CGeol FICE FIMMM FGS (ICE Wales Cymru, Author) Eur Ing
Keith Jones BSc DMS CEng CEnv FICE FCIHT FCMI (Director ICE Wales Cymru)

White Paper Annex

Question 1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate? Response:

Agreed. It is necessary to understand and manage tips whatever their source industry and having created a process and resources for coal tips, it seems a sensible step to include all types of tip. Highest risk sites should be phased in first, meaning an appraisal of all non-coal tips will be needed first.

Question 2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body? Response:

Agreed. The sole coal tip supervisory authority responsible for health, safety and environmental aspects of all disused tips should be independent of all tip owners. This would therefore exclude The Coal Authority, Local Authorities and Natural Resources Wales. The supervisory authority should be free of any conflict of interest as a tip owner and should have pan-Wales responsibilities only (i.e. no responsibilities outside of Wales as the new regulations will only apply in Wales). This would exclude The Coal Authority, Natural Resources Wales, and Local Authorities. Note, that whilst some Local Authorities in Wales will not be tip owners (particularly those wholly located outside coalfield areas) it does not seem appropriate that they would take on these responsibilities as they may have no domain knowledge or understanding of coalfield communities. The scope of responsibilities of the supervisory authority would extend beyond the HSE remit (e.g. environmental matters) and they would therefore not be suitable. Corporate joint committee's are not recommended as they will be regional and as such, if their geographical responsibilities are considered, more than one supervisory authority would be required. As corporate joint committee's are a new statutory mechanism for regional collaboration by local government, this would also raise the issue of conflict of interest with a local authority tip owner. Effective lines of communication between the supervisory authority, government, corporate joint committee's, local authorities and other interested parties should be

developed and maintained. As such, the creation of a new body as the supervisory authority would seem most appropriate and it should be a central public body reporting directly to the Welsh Ministers (ie an Executive Welsh Government Sponsored Body). The supervising authority's duties should cover all health, safety and environmental risks associated with disused tips.

Question 3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included? Response:

Not Agreed. The definition of tips should reflect the risk assessment after an appraisal of all tips has been made. If the risk is 'negligible', then the management of it should reflect this eg longer periods between inspections. It is important that the tip definitions reflect the whole spectrum of risk assessment and not separated because of a legal definition or legal action, as a negligible risk today may become high risk in the future if, for example, the surroundings or water regime changes. So, a continuous level of risk categorisation is preferred rather than a separate specific definition for 'negligible' de minimis tips.

Question 4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons. Response:

Not Agreed. A tip with negligible risk should still be appraised and the management reflect the risk level which will still include actions. The management might be quite insignificant at the time of appraisal. However, it might change in the future and this needs to be monitored. Hence, the tip owner should be included in the duties and the risk reviewed at an interval decided by the previous review. This also reflects our answer to Q.3.

Question 5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

Agreed. However would add any mitigation measures undertaken and feel it would be important to name the appropriate/relevant responsible party

Question 6. Do you agree with the approach to adding new tips to the register? Response:

Agreed. Although possibly few in number, new tips (including non-coal tips) might impact on old existing tips so it is important to assess their impact

Question 7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

Agreed. A bit more definition would be useful on how remedial works are to be captured when underway.

Question 8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

Agreed. However, it would be helpful to define how the 'location' will be provided – is it a grid reference, lateral extent, polygon of tip outline in a GIS shapefile etc? We would recommend that an intelligent GIS system is used, with security at various layers of information, and linked to records and data. The GIS system effectively becomes the Asset Register and can be put to better user interaction than lists are spreadsheets.

Question 9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

Agreed the approach but will need more work. The approach is subjective (although the only way) and one person's possible could be another person's unlikely. Hence, there is a need for training and checking/approval of hazard level at a professional level. More guidance will be needed to be provided with examples of scenarios. Perhaps a Guidance Note in the future. The hazard approach does not cover financial hazard. Although implicit in many of the examples in Table 4, cost is not mentioned. The Receptor Groups and Receptor Levels appear to be the 'hazard' and the 'probability' the likelihood. The product of these two is the 'risk' which is a more conventional term than 'Hazard Level'. Not sure why risk is not mentioned and appears an uncomfortable term.

Question 10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

Agreed. Numeric approach seems simple and categorisation is required. However, it is not clear what the 'Status' means relative to the 'Receptor Level' and why the so called Hazard Level (Risk Level is preferred) is not the categorisation?

Question 11. Do you agree with the approach for interdependent and proximate clusters of tips?

Agreed

Question 12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

Agreed in general. However, the timescales seem too long eg 18 months seems a long time for a management plan to be produced for a higher rate tip. Once a 'system has been developed it should be sufficiently interactive to produce and revise a management plan extremely quickly.

Question 13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

Agreed. But there will also be a need for non-routine inspections (e.g., reactive inspections following say intense/long duration rainfall or change in the situation of a tip such as undercutting). Non-routine inspection needs to be highlighted and their management described.

Question 14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

Agreed. However, it needs to be clear who is ultimately responsible if a tip fails. With these splits in responsibilities for inspection and appraisal, the ultimate responsibility becomes less clear as the Supervisory Authority would appear to have oversight of all tips but delegated responsibility for tip checking to others. A mechanism of auditing and enforcement may be needed. It is critical that the lower risk category duty holders can engage with the authority.

Question 15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

Agreed. 'Geotechnical' will need to include geological and groundwater so perhaps 'Ground Engineering' is a better term. An additional section which allows for 'other observations/feedback' could be useful, to help inform whether the form is useful or could be improved

Question 16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

Agreed

Question 17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

Response: The sanction should be clear to the offender so should be stipulated for each breach, subject to change with inflation etc. The table indicates a potential fine for not uploading a report, but only a compliance notice for not undertaking remedial works or maintenance. This does not seem appropriate to the potential outcome of the breach. The sanction or threat for not complying with a Compliance Notice needs to be a deterrent.

Question 18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Agreed.

Question 19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

Response: At a legal level, the planning process by LAs should include consultation with the Supervisory Authority in the same way LAs consult the highways authority. At an illegal level, there are fines already in place for vandalism and the only controls are due notice and regular monitoring (which is becoming easier with technology as well as on-foot).

Question 20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

Agreed

Question 21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment

Question 22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment

Question 23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

Response: The competency of the various parties should be discussed with the ICE, Geological Society, IMMM and Education Establishments. They will need to be brought in to the levels required and they will be the delivery path for the profession. The Supervisory Authority is to be given the role of supervising the competency and will need assistance from these bodies in defining the multifaceted 'experience' required. The technology trials are geared toward collecting data. These are up to date and specialist areas. This should be common practice. Where the development effort for this safety initiative becomes critical is providing a management system for the Supervisory Authority, which is geographically based (for ease of location), contains linked data and records as

they are collected, and, very importantly, allows the collection of knowledge and evidence for project managers to put their case to budget holders. There will inevitably be competition with other priorities, so evidence is critical. IT systems exist and the choice and tweaking required should be a top priority before it starts to lag behind the data collection.

009

Name: Heledd Fychan AS/MS

1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

I fully support the intention of incorporating the non-coal tips into the remit of the new public body. I understand that the scale of this work program will need time to find and fully assess spoil tips other than coal, and therefore would agree to the phasing in of these tips over a period of time.

2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

This was one of the things that I called for during the initial consultation and therefore very much welcome your comments at 2:15 around accountability, independence, expertise, remit, value for money, and public confidence. I fully endorse the Law Commission's views at 2:30 around this, and agree that this would give the new body

- Specialised technical skills, which can offer added benefit to local authorities in the management of disused coal tips
- Dedicated remit to ensure the safety of disused tip
- Providing independent oversight of the regime to ensure consistency in approach
- Provides independent oversight and monitoring to compliance with the new regime
- Economies of scale in procurement of services, gathering research and evidence and developing and sharing best practice and guidance.

I also fully support your final point (2:30) around the new body being arms lengths from the Government, and that the new body should produce an annual report.

3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

Considering how ad-hock the whole nature of registering and monitoring coal tips has been across Wales, I welcome the intent to develop and publish a central register of all coal tips in Wales. I would endorse the definition of a tip at 3:17 and understand that you may want to develop this definition to include, or have a separate definition for other spoil tips.

I agree with the de minimis definition and would like it to ensure that the size of the tip, the height of the tip, the gradient of the tip and the gradient of the land that the tip is on are all considered as important factors when categorising a tip as de minimus.

4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

I do agree. To do otherwise would appear cumbersome and unnecessary. It would create a burden of work for all parties which would be seen as being a waste of time and resources.

5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

As a starting point for the new body I would endorse the recommended minimum content as stated, and would say that the final two points are vital:

Unique reference number; • Name of tip • Location • Categorisation • Dates of inspections/appraisals • Assessment report • Inspection/Appraisal reports • Management plan • Maintenance agreements

I would endorse your points at 3:32 but would agree that all tips should be easily identifiable for the experts dealing with the tips and should therefore be named with a purely unique name/number. Information should also incorporate local usage to alleviate any confusion in reporting from members of the public. It does provide an opportunity to include any nearby critical infrastructure too, such as schools and roads.

6. Do you agree with the approach to adding new tips to the register?

I do, and fully support the legal right of the new body to enter land to make a determination on any new tip as outlined in 3:43.

7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

The register will be similar in nature to a website; if it has not been regularly updated then it becomes obsolete and useless, I therefore fully agree with your proposals as set out at 3:46 regarding inspection reports, appraisal reports, maintenance/remediation Works, maintenance agreements and management plan. The timetables for these all seem reasonable

8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

While I would agree with the information that should be available to the general public as outlined in 3:54 (Tip Name/identifier; Location; Categorisation; Ownership status (public or private); and Inspection timeline) I would have thought that it would be in the public interest to have available any information on any enforcement actions and consequent remedial works being undertaken. I believe that this would build confidence within communities and that transparency is key.

9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

I find the recommendations here to be clear and would be easily understood by the communities that have tips on their doorstep. Could 4:13 also include the date for the next review also? This

would give the public the confidence that the tip is not overdue another review.
I would like the 'life changing injury' category to also be included in the high risk (risk to life) category, and taken from the medium-high category.

10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

While I agree with the categories moving from the D-A to the 1-5, I am unsure if there should be any recourse for landowners to change the considered opinion of the experts who make the determination. However if there has been an error in the determination, then there should be room to allow these errors to be considered.

11. Do you agree with the approach for interdependent and proximate clusters of tips?

I do.

12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

Every tip, or group of tips in every area will have it's own unique set of circumstances which must be considered, and the inclusion of any historical data will play a big part in any management plan, and this data should be incorporated as soon as possible.

I would agree with the two tier approach and that tips that are deemed less dangerous can have a lighter approach.

I would like to see the new body creating any management plan for a category 1 tip, rather than allowing an outside body to create the plan. Once the plan is in place I would be happy for outside bodies to monitor the plan.

I agree with the minimum content for both tiers.

13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

While agreeing with the three tiered approach I would put the Assessment as No1, to follow the categorisation of the tips, with No1 being the most hazardous, and would move Inspection to No. 3. I agree with the frequency of the inspections.

14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

The approach here is sensible and appropriate.

15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

I agree with both appraisal and Inspection minimum content for reports. While agreeing that there will be some tips where it is difficult to gain information, it seems that there is a lot of wriggle room for landowners at 7:27 to avoid their full responsibility. We should also ensure that essential information also references how the land is used by the community and any risks/ historical evidence of setting fire to land etc.

16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

I do, but would suggest that there be strict timelines for compliance as there seems a lot of room to manoeuvre and feel that compliance could fall if there were not stricter guidelines for enforcement.

17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

It would feel more just all round if the sanctions were stipulated. One authority, or one officer may seem more lenient than another if there was room for discretion.

18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Yes

19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

There should be notices placed on access routes to areas containing tips with the possible enforcement actions and the possibility of criminal actions being taken against transgressors.

20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

Yes. The authority should be a vital part of any planning consultations within tip areas and therefore needs to be a statutory consultee. I am very sceptical of asking developers to make an assessment of the tips. The assessment of any high category tips will already be available from the statutory body.

21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

The body will obviously come under the Welsh Language Act and will be subject to laws there. The new body should try to employ any staff that deal with members of the public that are able to converse in both English and Welsh.

22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

The key thing is to ensure that any information and communication is available bilingually at all times.

23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

Developments near tips should be stopped if considerations are not given to their impact on the overall landscape including changing water courses which then can lead to flooding.

The UK Government has a duty to contribute financially to making the tips safe.

010

I support the Welsh Government's proposals for enhanced coal tip regulation and maintenance in Wales, contained within the above White Paper.

However, I would make the following points in addition, in response to the consultation currently being held:

1. There must be enhanced powers and resources for the proposed new coal tip supervisory authority *as well as local authorities* (as the two will need to work together and share both technical and policy expertise) to regulate privately-owned coal tips in Wales, as a greater proportion of those tips that are privately-owned are in higher-risk categories; and
2. Longer-term, the Welsh Government requires additional funding from the UK Government to address the cost of remediating remaining coal tips in Wales, as the vast majority (if not all) of them are a legacy of Wales' pre-devolution industrial past.

Yours sincerely

Hefin David MS

012

Q1. Details

Name CBP de Winton MRICS

Organisation (if applicable) CLA Cymru

Q2. 1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

yes

Q3. 2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

yes

Q4. 3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

yes, the size, location in relation to population (residential and employment), tip material concerned

and the overall impact if a failure occurred.

Q5. 4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

yes

Q6. 5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

yes

Q7. 6. Do you agree with the approach to adding new tips to the register?

yes

Q8. 7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

yes, notice of any issues or enforcement notices served etc.

Q9. 8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

yes

Q10. 9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons

yes

Q11. 10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

yes, we would prefer the proposal as set out in section 5.15, using an interim system/ staged approach similar to that which is covered in the Reservoirs Act 1975.

Q12. 11. Do you agree with the approach for interdependent and proximate clusters of tips?

yes

Q13. 12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

yes

Q14. 13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

yes

Q15. 14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

No. All inspections no matter what category of tip should be undertaken by the new Authority, to ensure consistency. Under No circumstances should NRW or Local Authority's inspect a tip on their own land,

for which they are ultimately responsible for as there is no independent monitoring, which will ultimately question the independence and the objectivity of this whole process.

Q16. 15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

yes

Q17. 16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

yes

Q18. 17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

The New Authority should have discretion over which sanctions to use.

Q19. 18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Agree in general with the proposed list of damaging activities.

Q20. 19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

The new Authority should be able to control any activity it deems to be damaging to the tip concerned.

Q21. 20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

yes

Q22. 21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the

Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment

Q23. 22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Comment

Q24. 23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

No Response

Q25. If you want to receive a receipt of your response, please provide an email address.

Q26. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

013

Comments collated from more than one consulted professional (hence noted contradictory responses to any one question).

1. Yes, generally this would appear to be a sensible idea providing that the time and economics of doing so are well advised in advance.

Only if a preliminary study of non-coal tips indicated they posed a lower risk to life than coal tips.

2. Yes, to ensure the nations interest is protected.

Suitable industry representation may be a helpful asset – especially if this could be undertaken as pro-bono to avoid consultants/designers tendering for financial gain.

No. This should be a new duty passed to The Coal Authority as they are the best placed body to understand the legacy risks associated with these features. Any other approach may ultimately lead to a tendering process where a race to the bottom allows small untrained individuals to undertake inspections which would ultimately almost certainly lead to no improvement from the current situation, but at the risk of significant financial loss.

3. Yes to ensure that efforts are not wasted where they are not warranted. 'Attributes' should include the 'de minimis' cannot be applied where existing or past instability has occurred.

Network Rail apply a minimum height to earthworks assessments with a similar caveat. This requires an initial baseline understanding of the situation - does this exist in real terms? Risk beyond stability must be considered - contamination, spontaneous combustion etc. If de minimis owners are exempt, are they liable in the event of a later negative incidence – such as a tip fire?

4. No – This opens a wider issue potentially around planning and the possibly that excluded owners could unintentionally or otherwise alter the existing condition of tips such that a problem is created. Reference should be made to Network Rail's approach to inspecting inactive mine/quarry sites within (100m?) of their land boundary to ensure no significant changes.

Not entirely – see above and a graded approach is suggested.

5. Name and profession of any inspector/engineer assessments – they should likely have CGeol or CEng status and relevant experience as a minimum – this should be vetted. Whilst it is noted that this would likely be captured in the QA section of any submitted report it should be stated by the proposed body as a pre-requisite to be confirmed.

The content set out here needs to be expanded to give content (headings and sub-headings of any reports – as proposed it is not fit for purpose. Suggest that efforts are made to review publicly available Coal Authority guidance regarding mine entry inspections – this could be used to inform requirements here. Considering the wider setting of many tips how will underlying ground conditions/model be considered?

Digital geological models are available from the British Geological Survey. These are not necessarily always sufficiently detailed but could easily be implemented and would be a good start.

The asset register should be GIS/web based and be downloadable. There are wider societal benefits if developers, local authorities and consulting engineers can easily access this information. The Coal Authority and the British Geological Survey already partially adopt this approach.

See <https://mapapps2.bgs.ac.uk/coalauthority/home.html>)

<https://mapapps2.bgs.ac.uk/geoindex/home.html>

https://webapps.bgs.ac.uk/services/ngdc/accessions/index.html?_ga=2.179504036.108918355.2.1622546055-1205285458.1610116506

6. Yes

7. In principle yes, but how will this be achieved? – who is going to do this? The body or contracted specialists? The latter may lead to tendering a low quality high volume approach – suggest consultation with The Coal Authority and their approach/response to mine entry inspection.

8. Yes

9. Yes

10. This must depend on the way the commission responds to the response provided in the consultation to questions 3 and 4. A de minimis approach may lead to unidentified consequences

11. Yes

12. Yes, this is a sound suggestion but how and where will this be funded from in practice, and how will the knowledge base of individuals making decisions be captured?

13. Not at this time, there are too many issues around how exempt should be defined and captured. See repeated comments regarding unintentional negative consequences.

14. No – how has climate change been considered in these timings – Please look at the recent spate of Welsh floods and the noted shaft bursts. What is the ‘worst case’ scenario regarding interaction with other mining legacy issues?

15. Minimum content should be used with negative responses required if appropriate. i.e., a proforma is required setting out key headings and subheadings, these should all be responded to including where consideration has been made and no response required. It is highly likely, given the numbers involved and the suggested responsible parties, that content and quality will vary. These reports are likely to be viewed as a low-quality high volume by the industry and as such strict guidelines will be required from the outset.

The actual content required requires more thought than providing a quick response here. This should be informed through a consultation/workshop process.

16. Whilst in principle it appears to be a sound suggestion how will this be enforced? Also has consideration been given to the situation of all landowners – can they afford remedial or even inspection works? Whilst this appears to be a straightforward response to the need to ensure reporting and action, I would question the ability of all responsible parties to financially comply with requirements being set out here. Again, what are the united consequences? – would be possible to hire a dozer and disfigure a valley side to remove a vegetated stable tip, if that would result in no further actions/responsibility under this legislation? This needs/requires further discussion.

17. Please see response above – too many unknowns here to comment further. This requires a consistent approach.

18. Yes, but again this is confusing - how will this work in the lower risk cases and with the de minimis approach? Surely inspections will still be required to ensure certain activities are not being undertaken.

19. Regular inspection by a public body or suitable experienced engineer employed by the body.

20.No, this should not be limited to higher status tips, this must take into account the proposals. Suggest an approach similar to the ASPRO teams within Network Rail, consultation and review by appropriately trained and experienced professionals. Limiting this to higher status only will likely have unintended consequences.

In addition, we have the following general comments on Annex 3. We are surprised procuring more frequent LIDAR data isn't mentioned. Procuring more frequent lidar surveys would allow straightforward and rapid remote wide area monitoring (say flights up & down the Valleys twice every winter). The existing Welsh Govt. lidar data has good coverage but generally has few timestamped datasets. With the right data and software lidar monitoring of slope profiles for apparently lower risk tips is not an especially specialised or time-consuming activity. This approach would help focus eyes on the ground & physical monitoring resources towards higher risk tips.

INSAR techniques to monitor vegetated slopes using freely available Band C Sentinel data at reasonable pixel sizes are being developed at Imperial College. They have a Welsh landslide as an example project. In a year or so this could be a commercially viable method for circa fortnightly monitoring over the whole of S Wales. HS2 have already bought in this service.

I trust your Satellite Applications Catapult team are aware of this research. If not ,we can provide the relevant contact details. Also as a general comment the proposal appear to require a level a of verification/inspection akin to that undertaken by Dam Panel Engineers and their guidance, if sought, may be worthwhile in structuring any proposals. These are high risk features, where stability issues could lead to significant injury and loss of life. Therefore any approach to inspection/classification and maintenance (of the current condition) must be very well documented and controlled. Good summaries of Network Rail's approach to earthworks classification and monitoring can be found within this document produced after the fatal 2020 Carmont derailment.

<https://www.networkrail.co.uk/wp-content/uploads/2021/03/Network-Rail-EarthworksReview-Final-Report.pdf>

John Davis

BSc MSc DIC EurGeol CGeol FGS

UK Registered Ground Engineering Adviser

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Your name: Stephen Smith

Organisation (if applicable): Retired former Head of Land Reclamation at WDA

1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

If the management of safety at coal spoil tips is to be implemented as proposed, then including spoil from non-coal 'mining' within a legislative framework makes sense to ensure consistency of approach to all mined/quarried waste deposited on the land surface. The proposals set out at 2.7 appear appropriate at this time.

2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

If a new body is to be created, then I would agree it should be formed as a Welsh Government Sponsored Executive Body. I also agree the factors set out at 2.15 provide an effective baseline for assessing the composition of a new body and the benefits outlines at 2.20 should be fully encompassed in the new body. However, I do have some reservations with regard to Overarching Structure set out at 2.34, particularly with regard to the long term nature of the workload to be taken on by a Supervisory Authority. The detailed structure will need to ensure its functions are clearly defined and its relationship with all tip owners, including the Welsh Government Estate, has an effective separation of duties and powers.

3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

Absolutely. As for other respondees to the consultation, I have not seen the data generated by The Coal Authority, but (from my experience of working in coalfield areas of Wales) I can only assume from the numbers given for total coal spoil tips that many of the individually recorded tips are relatively small and present no risk whatsoever to the range of receptors covered. Hence, these will not require a formal inspection/management regime to be imposed. I do feel, however, that the attributes to be used to define 'de minimis' could only be derived from a full analysis of the data undertaken by experienced professionals. Thus, the data collection exercise covered in 3.6 to 3.8 needs to be completed and verified to formulate a definition. As a first observation, it would also be beneficial to consider whether there has been any record of past movement or threat from the tip in addition to the attributes at 3.22

4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

As assumed for answer to 3 above, a 'de minimis tip' would be defined as one presenting no risk to receptors. On that basis, the owner should not be required to undertake the onerous duties to be defined for higher risk tips.

5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

I offer the view that the minimum content for the 'asset register' should solely be the identifying factors – first three on list at 3.26 – together with reference to any history (where known) of past operations on the tip; for instance work undertaken in compliance with the 1969 Act or work undertaken to 'reclaim' the tip for new uses or to address identified instability (3.33 to 3.37 refers to some of this information). Further information relating to the tip, such as that listed at 3.26, would be essential information for management by the Supervisory Authority and

to inform third parties (public or professional) of the status of the tip. Perhaps I am misreading the intent, but I am viewing the primary purpose of a register to be a record of the tip's existence. All other factors may be essential knowledge (and should be included in the requirements for 'inspection' and/or 'assessment' reports), but are not necessarily critical to recording the asset. Paragraphs 3.49 to .57 also cover this point

6. Do you agree with the approach to adding new tips to the register?

Generally agree but see Q7 below.

7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

Notification of any currently 'active tips' (and thus covered by Mines Regulations 2014) becoming 'disused' should be written into legislation to ensure they are added. Such notifications will require all relevant reports and data to be lodged with the Supervisory Authority.

Whilst I agree any coal spoil tips coming to light at a later date will need to be added, I cannot envisage that these will be significant, either in number or threat to public or environment.

8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

I would generally agree with the proposal. Public and third parties should not be excluded from requesting information on a particular tip, but the release of sensitive and technical information will need to be managed by the Supervisory Authority in accord with guidance to be developed and issued by Welsh Government.

9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

Whilst I would generally agree with the proposals in Chapter 4, it is my opinion that the term 'hazard' requires clearer definition and that the Hazard Assessment process must be developed in the short term; and certainly prior to the Supervisory Authority being established. This will be required to ensure all tips are effectively ranked. At the present time, there is a professional technical resource within Wales with experience of working on coal spoil and other coal related matters. Their expertise should be captured in developing the approach to hazard assessment, perhaps through peer review of the detailed approach being established.

10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

The categories used by The Coal Authority are a useful first step but are quite general and do not give clarity of the risk without being backed up by inspection assessment data. I feel that appropriate categories should be subject to ongoing

development as the tip inspection process is rolled out.

I would also offer an observation that there is cross over between Categories A and R. It would seem appropriate to move all reclaimed or built over tips into R (proposed 4 or 5 if the number system at 5.11 is adopted) unless there is robust evidence that they present a higher risk.

11. Do you agree with the approach for interdependent and proximate clusters of tips?

As referred to earlier, the data upon which the proposals are based has not been made available for respondents to fully assess the significance of tip 'complexes'. I suspect that a significant number of the individually recorded tips will be in close proximity to other tips (for example at Bedwas Colliery tip complex). Such sites will be 'interdependent'. Identification of 'proximate' tips would seem to be a management exercise in cases where nearby tips require operations to address risk. Not convinced this needs a definition but operational guidance would be beneficial.

12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

In general terms, I would agree with the proposals. However, given the timescale which will elapse prior to the Supervisory Authority commencing duties, then I would suggest that an interim approach is put in place. If The Coal Authority have provided data on the number of higher risk tips and the reasons for that designation, then there should be a baseline for local authorities to act in accord with the 1969 Act at tip sites where stability is suspect. It is a little disappointing that historic records for tips do not appear to have been accessed at this time. In my opinion, historic records, particularly those prepared (largely by NCB) to comply with 1969 Act and those held by local authorities from work under the public sector land reclamation programme, are essential data.

I would also note that 6.18 refers to approvals process for Supervisory Authority. Approval is something which needs to be applied with caution, but I would agree that the Supervisory Authority need to ensure appropriate technical skills are applied to the preparation and implementation of Plans.

13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

Yes subject to assessments being used to verify the 'hazard' status of the tip and the movement between categories being permitted to accord with outcome of the assessment.

14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

The proposal appears appropriate. As emphasised elsewhere, it is critical that whoever undertakes the inspection and assessment has the necessary skills and qualifications. If such resources are considered scarce at the present time, then there needs to be a focussed programme (in association with academic and

professional institutions) to train personnel.

15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

A standardised check list for appraisals and inspections will be valuable to ensure consistency. Initial inspection reports will need to be referenced in subsequent reports as these should provide the baseline for any follow on work. Hence, the inspection report should, in my opinion, include ecological data, any historical reports reviewed and proximity of receptors (related to the risks posed by potential movement or other identified event).

16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

I have no firm views on the enforcement and appeals process. However, given that access to privately owned tips and compliance with legislation/regulations was quoted as being a problem arising from the 1969 Act, there does need to be robust provisions in any new legislation to avoid similar problems arising.

17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

No views

18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

I will provide views on this and the next 2 questions under one heading. I would agree that it is important for activities such as those listed to be recognised as having a potentially adverse impact on the stability (or other safety issue) at or in the vicinity of a spoil tip, I am not convinced that a 'catch all' list of activities is required. In particular, those related to trespass and vandalism will be very difficult to police and enforce. Other activities related to development at or in the vicinity of a tip would generally require planning or other regulatory consent, so perhaps a better approach would be to incorporate control of activities in the wider powers of local authorities or Natural Resources Wales. Guidance could then be issued for these bodies to consider safety at spoil tip sites, with the Supervisory Authority being an identified consultee rather than a statutory one.

19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

See 18

20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

See 18

21. We would like to know your views on the effects that the proposed new

regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No views

22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No views

23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

I have based my response on the premise that new legislation on coal spoil tip safety (and subsequently non-coal spoil) will be enacted for Wales. I have offered views that I believe are relevant and need to be accounted for.

I am still concerned, however, that the development of this legislation has not fully addressed the aspects of the 1969 Act which Welsh Government and their Task Force partners have stated render the 1969 Act out of date. In particular, will private owners of tips be more responsive than before and will responsible bodies be effectively resourced to deliver obligations imposed on them?

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

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Faculty of Computing, Engineering, and Science
University of South Wales

New Supervisory Authority for Coal Tip Safety

We read with interest the White Paper on Coal Tip Safety in Wales, and in particular the proposal for the establishment of a new Supervisory Authority, the recommendations for addressing the skills gap, and for trialling technology to support monitoring and inspection. The University of South Wales is well placed to contribute to these aspects.

The University of South Wales's main campus is at Treforest in the heart of the Valleys. It was founded in 1913 when local industrial leaders came together to form the South Wales and Monmouthshire School of Mines, which provided engineers and electricians for the coal industry. The early curriculum included

mathematics, chemistry, geology, colliery engineering, and colliery practice, but probably little or nothing about the after-effects of mining. In providing skilled members of the colliery workforce, we contributed to the Welsh economy, but at the same time have contributed to the legacy problems of the industry, so it seems appropriate that we contribute also to their solution.

Since the days of the School of Mines, many other strands have been added to the curriculum, so that today the multi-disciplinary university includes Civil and Mechanical Engineering, Surveying, Earth Sciences, and world-leading research in Sustainable Environment, elements of which are relevant to the safety of coal tips. USW also hosts some staff from the Coalfields Regeneration Trust, the independent charity which supports individuals and communities in the former coalfield areas.

Addressing the skills gap

As mentioned, USW has always trained skilled professionals for industries in South Wales. Industrial placements, work-based learning, and curriculum design in consultation with employers have always been embedded in our ways of working. As evidenced in REF 2021 we aim to carry out research which is of high impact and of relevance to the local and regional community which we support. With regards to the needs identified for the ongoing assessment and monitoring of coal tip stability, we can contribute expertise in the following:

Geoscience: Regional geological framework; structural and engineering geology; contaminated land; acid mine drainage and remediation; soil science.

Civil Engineering: soils analysis, design of retaining walls, compaction, shear analysis.

PUBLIC / CYHOEDDUS

GIS: USW is a participant in WISERD, the Wales Institute of Social and Economic Research and Data, and has expertise in mapping and analysis of GIS data.

Drone mapping: We have an established drone mapping and 3D visualisation team, who carried out the initial assessment of the Tylorstown slide. Climate Change:

Associated with the coal tips are extensive areas of peatlands, significant as both carbon sinks but also as records of past local environmental change.

In conjunction with other partners across the region, we consider that there would be a considerable opportunity in establishing an Earth Mapping Observatory, linking Government, business and academia and providing an integrated approach to understanding the risks posed by former mining activity, its assessment, monitoring and remediation. Trialling technology

We can also offer facilities for the trialling of technology in our engineering and science labs. Our civil engineering laboratories will be of particular relevance here.

Annex 3 within the White Paper lists a range of technologies being developed: tiltmeters, SAR data, real-time borehole installations, PRIME, GroundSat soil moisture mapping, deformation cameras, and drones. A critical future aspect will be the data collection and integration between these different technologies and USW would be well-placed to provide a central role in supporting the development and evaluation of different ground-monitoring technologies.

Management regime

In paragraphs 2.15 and 2.16 you note that no single existing body can match your six criteria for the management regime. Although we are not suggesting that USW could operate the Supervisory Authority, hosting it at USW would be consistent with all of the six criteria, as follows:

USW is itself accountable within the Welsh governance framework via HEFCW; we are independent; we can provide expertise on various topics as described above; we do not foresee any conflicts of interest between USW and the proposed authority; by using existing infrastructure to host the Authority we can contribute to the value-for-money element; and finally, USW would inspire confidence in stakeholders because of our history, and continued updating of our teaching and research to meet new challenges.

PUBLIC / CYHOEDDUS

Summary

We believe that USW can contribute to your plans for the new Supervisory Authority, and in particular to addressing the skills gap and trialling technology. We would be keen to have a conversation with you, which could include the possibility of the Authority being hosted at USW.

Professor Duncan Pirrie, Professor of Geology and Director of Research

Dr Bruce Hurrell, Faculty Chief Operating Officer

Faculty of Computing, Engineering, and Science
University of South Wales

017

Your name: Dr Sarah J Jones
Organisation (if applicable): Public Health Wales

1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

Yes, but the approach to phasing needs to be mindful of the need to protect health and prevent harm while avoiding creating or exacerbating inequalities.

2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

Yes – but it needs representation from health. Reference is made to the statutory body having a role as an environmental protector and for sustainable management of natural resources. As a public body it will also be important that this supervisory body considers its role in meeting all of the seven Wellbeing Goals, including creating “a healthier Wales”. It is important that this body has a clear objective to protect health and wellbeing.

3. Do you agree a ‘de minimis’ tip definition should be included in the Bill? If you agree – what attributes should be included?

In relation to the determination of tips to be included or excluded it may be useful to consider whether reference needs to be made to potential harms to health; whether mental or physical. If a de minimis tip has a potential population health risk then it should be included. Ownership responsibility should only be excluded if there are no health risks.

4. Do you agree an owner of a ‘de minimis tip’ should be excluded from the duties outlined? If not please state your reasons.

In relation to the determination of tips to be included or excluded it may be useful to consider whether reference needs to be made to potential harms to health; whether mental or physical. If a de minimis tip has a potential population health risk then it should be included. Ownership responsibility should only be excluded if there are no health risks.

5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

It is important to add a full Health Impact Assessment, which would include an assessment of the population exposed to current and future health and wellbeing impacts including physical and mental health and wellbeing.

6. Do you agree with the approach to adding new tips to the register?

Yes, along with an assessment of the potential health impacts of the tip.

7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

Discussion is needed on how to include health, wellbeing and community perspectives in this.

8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

There needs to be greater consideration of the implications for health of this approach and the approach needs to be informed by the evidence on risk communication. For some people, knowing that they live near to a tip will be a significant harm to their health, e.g. increasing anxiety. Consideration needs to be given to community engagement and communications in this process.

9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

The hazard assessment as a basis for the tip categorisation is appropriate only if it includes assessments of the potential health and wellbeing effects of the tip, both

in acute and chronic terms; that is, in terms of the harms to health that the very presence of the tip creates, as well as the harms of the tip moving. It is important that the long-term impacts of the tip on the community are factored into this assessment, not only environmental hazards. This is also critical to developing an appropriate management plan.

An alternative approach to the delivery of the duty could be to assess the size and nature of the population living within a short distance of the tip.

In terms of the proposed receptors, people should be classified separately from communities to ensure that the hazard implications are fully considered.

Table 4 needs to take a much broader view of health effects, both in terms of the potential health harms, particularly mental health harms that come with living near to tips, as well as the fact that if a slip occurs, the resulting harms will be much broader than injuries. It may be worth looking at the evidence in relation to flooding to improve understanding of the much broader effects that this type of event could have on the health of people directly and indirectly affected by a slip.

In addition, services need to be considered in a much broader sense. It is not clear what “non-life dependent community services” are, but the health impacts of these being compromised are likely to be significant. In addition, what is the time frame for “non-life dependent community services”? What about people not being able to access routine prescriptions?

The hazard assessment and Table 4 do not include any socioeconomic impacts of having a higher risk tip identified in an area e.g., on house prices and local investment / development and other socioeconomic impacts.

Winter et al. (2016) conducted a study of a series of landslides that blocked key road routes in Scotland in order to model the socioeconomic impacts including the cost of delays and diversion on transport networks. The authors categorise three types of economic impacts:

- Direct economic impacts: the direct costs of clean-up and repair of infrastructure and the costs of search and rescue
- Direct consequential economic impacts; loss of utility; cost of delays; costs of fatal/non-fatal injuries
- Indirect consequential economic impacts: severance of access to and from relatively remote communities for services and markets for goods; employment, health and educational opportunities; and social activities; disruption to tourism

Winter, M.G., et al. (2016). The economic impact of landslides and floods on the road network. *Procedia Engineering*, 143: 1425-1434.

10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

Box 1 needs to account for the fact that the existence of a tip in a local community has the potential to harm health beyond the obvious risk to life if the tip were to move.

Categorisation needs to include an assessment of the exposed population and key community services and assets.

11. Do you agree with the approach for interdependent and proximate clusters of tips?

Yes, but it is also important to be mindful that interdependent and proximate clusters of tips are likely to lead to greater health risks and harms because of their presence, and also should they move.

12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

The management plans need to account for and acknowledge the potential risks, mental and physical of the tip, and its presence, to the health of the local population. This may also include liaison groups with local community representatives to ensure that there is a transparency of management and decision making in relation to the tip. Having a sense of control over decisions that affect your life and your living environment is important for mental wellbeing. There does need to be some sort of oversight / approval of the management plans that are produced – without it the plan has little to no value. The existence of a plan is not sufficient, not least given the potential harms to health of the tips. Given the lack of inclusion of health in any previous assessment, there is no current intelligence as to how many tips are actually high risk.

13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

Hazard assessment cannot solely be based on “on-site” inspections; there also has to be a review of the population at risk and their current health status. In table 6, how would “significant” hazards be defined? Is this not potentially subjective? How would this then affect the assessment of the possible risk to the population?

14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

Yes But, also care is needed, particularly in terms of health risks, but also other wider determinants of health, that inequalities are not created where a tip is managed by a private owner v a public sector owner. This relates to this entire response.

15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

No, see comments elsewhere; assessment of current health and wellbeing of the local population and the risks of the presence of the tip also need to be accounted for.

16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

This question / issue is outside of our remit.

17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

This question / issue is outside of our remit.

18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

This question / issue is outside of our remit.

19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

This question / issue is outside of our remit.

20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

This question / issue is outside of our remit.

21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

This question / issue is outside of our remit.

22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

This question / issue is outside of our remit.

23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

- The main consultation document mentions health three times, but on all three occasions it is followed by “and safety”. There is no wider consideration of the health and wellbeing effects of the presence of these tips, whether mental or physical, social or economic.
- Health is not mentioned at all in the FAQs
- There is no information on the proximity of the 20,000 non-coal spoil heaps and 2,500 coal tips to people and their homes
- Hazard assessment needs to consider effects on people, including

proximity to local populations and existing health status of that population, including mental and physical health, and access to services, and risks if access is compromised. Health based hazard assessment needs to be part of the prioritisation.

- Tip clusters / proximate tips need to be considered in light of health risks, not just operational efficiencies
- The IIA does mention health six times, but there is no mention of the need for the proposals to protect health and no apparent consideration of harms other than the acute risks to health from a slip; there is nothing, e.g. about the mental health harms of living near to a tip. Mention is made of a landslide creating a risk to health, feeling safe is important for mental wellbeing and the threat / risk of a landslide is also a risk to mental health.

However, the IIA does note the need to provide a healthier and safer environment to live in. But, it needs to be noted that proposals could have a negative impact on people if they are now more aware of the proximity to the tip and the risk that exists. In addition, there are also significant risks to lower income households, particularly those who are owner-occupiers and / or are under insured.

- A separate HIA would have been beneficial
- To not extend to other spoil tips is not in the spirit of the WFGA
- Property prices are referenced, but is less of an issue than the proportion of properties in Wales that are owner occupied and already needing remedial work. Even with adequate insurance, home owners are likely to suffer significant mental health harms, possibly akin to the evidence base around flooding, if a property is affected by landslide.
- It is stated that [you] “anticipate significant positive impacts for those living within proximity”; there is no acknowledgement nor accounting for possible health harms of living near a tip in the higher category. People may not currently be aware of this.
- Objectives of the new regime should include protecting health / preventing harm to health
- The new supervisory body should include health sector.
- The National Asset Register is stated to contain “up to date” data and this is welcomed, but it must also include health considerations and assessments
- Tip activities are described as falling under three themes; (b) are those with the potential to change the condition or performance of a tip – does this include weather or climate?
- Of the n=296 tips that are now “removed” or “built over” it is also important to understand the implications of these (if any) for health
- Are the technological “solutions” proven to reassure and reduce health harms?
- Any annual report that is produced needs to make reference to the populations living near to these sites and how their health is being assessed and appropriate health services provided.
- “Communities” are mentioned as a specific, potential risk, but there is no explicit mention of health. Communities suggests only an acute risk if the tip moves, not the on-going health harms associated with just the presence of a tip near to a community.

• All identified tips (of which there are 2,456), have been given an interim rating from A-D in order to determine which tips need to be most closely monitored. A total of 327 disused coal tips have been given an interim rating of C-D (D being the highest rating), due to their size, history or location. 98% of these sites are located in the South Wales valleys. For the highest rated sites, an inspection is required every 6 months with a yearly appraisal. The paper states that the latest independent Climate Change Risk Assessment for Wales (CCRA3) “recognises the potential for climate impacts to increase the risk of future landslips, landslides and subsidence linked to historic mining activity”. This was evidenced as recently as February 2020 when the rainfall from storms Ciara, Dennis and Jorge resulted in a major landslide of a disused coal tip in Tylorstown. Given that we know climate change events are becoming more frequent, should there be some consideration to a predicted extreme weather event (flood warnings) acting as a prompt for an immediate, unscheduled inspection of the highest rated sites?

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

018

Q1. Details

Name Elizabeth Aldworth

Q2. 1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

Yes

Q3. 2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

Yes

Q4. 3. Do you agree a ‘de minimis’ tip definition should be included in the Bill? If you agree – what attributes should be included?

Don't understand di minimis

Q5. 4. Do you agree an owner of a ‘de minimis tip’ should be excluded from the duties outlined? If not please state your reasons.

No Response

Q6. 5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

No Response

Q7. 6. Do you agree with the approach to adding new tips to the register?

No Response

Q8. 7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

Register should be updated by Local authorities.

Q9. 8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

All made public - it is vital for local residents living close to coal tips to be aware of guidance if evacuation is required.

To be living near a coal spoil tip that has had fire outbreaks is a big concern.

New residents should be aware of such dangers.

Welsh Gov. Coal Authority, Natural Resources Wales and Councils, surely have a "Duty of Care"

Q10. 9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons

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Q11. 10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

A-D presently. D most hazardous

1 - 4. Suggested now with 1 being most hazardous

No real opinion on this.

Q12. 11. Do you agree with the approach for interdependent and proximate clusters of tips?

Don't know

Q13. 12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

Yes

Q14. 13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

Absolute frequent checks on high risk category tips.

D. Or. 1.

Q15. 14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

Agree but full inspection reports to sit with Welsh Gov.

Q16. 15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

Full reports please and placed for public record/viewing.

Q17. 16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

Yes

Q18. 17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

Sanctions imposed as per breach and judicial fine maybe imposed whichever greater weight

Q19. 18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Motor cycling and 4 wheeled vehicles using tips for "fun"

Q20. 19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

Difficult to police. Drones to patrol, particularly in regular tip areas - in my case Sunday's
Removal of tip best way forward !

Q21. 20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

Yes

Q22. 21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Cannot see any benefits - plain English required in this framework

Q23. 22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

?

Q24. 23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

Regulations a overdue and Legislation is key.

Q25. If you want to receive a receipt of your response, please provide an email address.

Q26. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

019

Your name: Network Rail Mining Team

1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

Network Rail is supportive of the proposed approach to phase in non-coal tips over time.

2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

Network Rail has no comment on this specific question; however it is of the view that a consistent approach to the management of tip safety around the UK should be aspired to. Consideration should be given to how this might be achieved in the future.

3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

Network Rail agrees that a 'de minimis' tip definition should be included in the Bill. A hazard assessment will be required to confirm the 'de minimis' status of an identified tip.

If a "de minimis" tip definition is adopted, in addition to the existing proposed attributes, consideration should also be given to the following:

- Slope angle of tipped material.
 - Presence of unfavourable underlying strata (such as Alluvium).
 - Mining features within, or within proximity to the tip, (e.g. shallow workings / mine shafts.)
 - Record of existing instability within the tip.
 - Record of mining related incidents within proximity to the tip including gas related incidents.
 - Tips with lagoons.
 - Tip composition (e.g. contaminants).
 - Evidence of spontaneous combustion (Active or historic).
- OFFICIAL

4. Do you agree an owner of a ‘de minimis tip’ should be excluded from the duties outlined? If not please state your reasons.

Noting that the excluded duties for a de minimis tip are those of a management plan with associated inspections and maintenance, Network Rail is of the view that a hazard assessment should be undertaken to confirm the ‘de minimis’ status of an identified tip.

5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

Yes, Network Rail agrees with this minimum content.

6. Do you agree with the approach to adding new tips to the register? Yes, noting that all ‘de minimis’ tips should also be included on the register where identified.

Network Rail is of the view that there should also be a mechanism (though not a duty) by which third parties can inform the authority of the suspected presence of a tip. It is the authority, after having made necessary enquiries, that then has a duty to add the site to the register.

7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

Yes, consideration should also be given to a timeframe by which an initial hazard assessment should be undertaken once a tip (as defined by the legislation) has been identified.

8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

Yes. Any tips found to be within Network Rail land should have their categorisation excluded from the publicly available dataset.

9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

Hazard types (4.17) – consideration should also be given to associated mining features on the site including mine shafts and the potential for shallow workings and their interaction with the tip (e.g. consequences of a collapsed mine shaft and or workings).

OFFICIAL

In respect of Table 4 “Receptor Groups and Receptor Levels”, consideration should be given to the operational use of Network Rail infrastructure in determining it’s Receptor Level and not merely the risk to the fabric of the infrastructure.

10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

Network Rail agrees with the approach.

11. Do you agree with the approach for interdependent and proximate clusters of tips?

Network Rail agrees with this approach.

12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

Network Rail agrees with this approach.

13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

Network Rail agrees with the tiered approach and has no comment on proposed frequencies of checks.

14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

Network Rail agrees in principle with the split of responsibilities for inspections and appraisals. Consideration will need to be given to Resourcing and Competence of the individuals undertaking the inspections/appraisals and how this will be monitored/checked.

Where one tip is in multiple ownership clarification should be given as to who is responsible for the overarching assessment and maintenance of the tip.

15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

Yes, however further clarity would be useful regarding the content of the technical information for the Appraisals. For example, what Geotechnical information is required (e.g. underlying geology, details of nearby boreholes etc).

In addition, the following information should be included:

- Dates the tip was active
- Method of tipping

- Mining setting (e.g. links with past mining, mining features present on the site)

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16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

No comment.

17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

No comment.

18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Network Rail agrees with the current list. We suggest that changes to drainage off site should also be a material consideration.

19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

Network Rail has no comment on this. However, it would wish to be informed proactively of any issues with the management of a tip which may lead to an adverse impact to the railway. Is it possible to include a provision requiring the authority, on making a tip order, to notify potentially affected landowners in the vicinity?

20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

Yes.

21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment.

22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment.

23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

- a) Noting that the law commissions suggestion for the definition of a tip includes the potential use of the word “lagoon” (3.14) there is very limited reference to lagoons in the white paper and how these will be considered as part of the legislation. Supplementary definitions may be required for what constitutes a lagoon within the boundaries of a tip.
- b) Consideration should be given as to how sites could be removed from the register post remediation or removal of the tipped material.
- c) Where one tip is in multiple ownership clarification should be given as to who is responsible for the overarching assessment and maintenance of the tip.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

020

1. The Welsh Local Government Association (WLGA) is a politically led cross party organisation that seeks to give local government a strong voice at a national level. The Association represent the interests of local government and promotes local democracy in Wales. The 22 councils in Wales are all members of the WLGA and the 3 fire and rescue authorities and 3 national park authorities are associate members.

2. WLGA believes that the ideas that change people’s lives, happen locally. Communities are at their best when they feel connected to their council through local democracy. By championing, facilitating, and achieving these connections, we can build a vibrant local democracy that allows communities to thrive.

3. The main aim of the Association is to promote, protect, support and develop democratic

local government and the interests of councils in Wales. This means:

- Promoting the role and prominence of councillors and council leaders
- Ensuring maximum local discretion in legislation or statutory guidance
- Championing and securing long-term and sustainable funding for councils
- Promoting sector-led improvement
- Encouraging a vibrant local democracy, promoting greater diversity
- Supporting councils to effectively manage their workforce.

General Points and comments

4. WLGA welcomes the opportunity to respond to Welsh Government’s consultation on its proposals for coal tip safety. The engagement with councils and WLGA on the

development of these proposals has also been appreciated.

5. Views on the questions included in the consultation document are included below.

Brief comments on the questions

Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

6. Yes. The approach outlined in the consultation, to add non-coal tips to the asset register over time as appropriate and when information becomes available, makes sense. It will prioritise coal tip safety but ensure other tips are not overlooked. Furthermore, this approach will enable councils and other stakeholders to get up to speed with the new requirements, strengthen service structures, and upskill their workforces.

Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

7. In response to the Law Commission consultation in 2021, WLGA called for the supervisory role to be undertaken by a body based in Wales, for it to receive funding that is additional (and not taken from existing bodies), be able to attract the necessary range of skills and experience and for it to report and be accountable to Welsh Government. The criteria listed in para 2.15 of the consultation document (e.g. about being independent and having no conflict of interest) are also clearly important.

8. In terms of the governance and accountability of the new Executive WG Sponsored Body it will be important to consider how external stakeholders and councils' interests are embedded as part of the decision-making process, as required under the Well Being of Future Generations Act. As an example, the format of NRW's governance (with its own Internal Board with members chosen by NRW) would not be suitable due to the lack of integration and involvement of external stakeholders in the decisionmaking process, which has implications for external stakeholders. As such, a Board with councils, and perhaps NRW, represented on it should be considered, especially if some duties and powers can be devolved by the SB.

9. Provided all those requirements are met, an executive WG-sponsored body appears to be a sensible way forward.

Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

10. A de minimis definition could avoid generating work on small tips that pose no significant risks. The criteria suggested in the consultation document - area, height, and gradients of tips and the basal plane - make sense although the thresholds used will need careful consideration. The Mines & Quarries Regs thresholds which define what constitutes a tip appear reasonably high (e.g. over 15m) and so the further research that is planned will be important in ensuring any tip that poses a risk is

covered. It may be worth also considering adding the criterion of proximity to critical infrastructure and residential properties.

Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

11. Yes. If the de minimis thresholds are set to ensure the tips covered pose no significant risk, then there should be no need to have to set out requirements in terms of inspections, maintenance and management plans. It might be useful, though, to set some minimum requirements or good practice guidance in relation to the management of tips below the de minimis threshold as well as the type of (leisure or other) activities that may be carried out on these tips.

Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

12. Yes, the proposed minimum content looks appropriate and would give a good and consistent overview of the key aspects of each tip. Regarding the suggestion that ownership details should be included on a restricted version, that would make sense provided those details can be kept up-to-date with minimal bureaucracy/cost (including any GDPR implications). Whilst the Law Commission felt this would duplicate information held by HM Land Registry, there is value in having all vital information in one place, especially in an emergency situation or in the case of enforcement or other legal procedures against the owner for non-compliance. A mechanism to record change in ownership should also be considered as Land Registry records are not always updated by new owners.

Do you agree with the approach to adding new tips to the register?

13. Yes, the approach is sound and use of Data Map Wales will provide ready access to a range of other data that may be useful and relevant (e.g. habitat). Enabling the addition of non-coal tips as and when data become available is a manageable way forward.

Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

14. Although the timescales for uploading reports seem broadly acceptable, it may be more suitable to apply a single timescale for uploading across all elements to limit confusion, risk of breaches, and allow for adequate time for appraisals to be completed and submitted. More important, though, is the time taken to undertake the various activities. There is little value from ensuring a report or change is uploaded within 'x' number of days if the work has been drawn out over an unnecessarily long period of time.

15. The proposal seeks to give administrative access to a range of parties to allow each organisation to update the register. Similar databases with multiple users have proven to be very complex and challenging to manage and to access by some organisations due to IT restrictions. It may be worth considering whether a single

user may be more appropriate, perhaps the supervisory authority who would manage an annual or bi-annual data request?

16. In the case of maintenance agreements 'between parties', there needs to be clarity as to which party is responsible for updating the register. It is not entirely clear whether the Coal Authority and NRW would be responsible for uploading their own information or if this would be done via the supervisory authority.

17. Learning from similar exercises aimed at recording data from a range of stakeholders at a national level (e.g. the National Flood Asset database) it is paramount that recording fields, database format, and even perhaps software are agreed and used by all parties from the offset. Failure to do so will lead to a range of issues at all levels from data requests to compatibility of data at a national scale. We would encourage the WG to scope out the potential platform and database, and liaise with local authorities to ensure IT compatibility. The AMX and BMX software are already widely used by councils for recording bridges, highway, and flood assets.

Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

18. Yes, the categories of publicly available and excluded information look acceptable. In relation to ownership, provided that is simply 'public or private' that should not present any issues. If, however, a decision is taken to include any actual details of the owners that data should not be in the publicly accessible version. There may need to be further discussion around the publication of technical information as this can be easily misinterpreted or perhaps used by the insurance industry to justify increases in premiums without a full understanding.

19. As with other publicly available risk mapping (e.g. Flood Risk Assessment Wales), this register is likely to create an increase in public concern, blight on properties, and potentially impact on the delivery of regeneration schemes in some areas, especially the South-East Wales valleys. A joint communication strategy and impact assessment should be developed to ensure that issues and potential solutions are agreed and developed by stakeholders.

Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

20. Yes. The suggested hazard types and receptor categories look appropriate, as do the receptor levels from low to high. The hazard level matrices then introduce the likelihood of a hazard. For clarity, and for consistency, would the analysis still be carried out on each of the hazard categories even if one or more is deemed to be non significant – e.g. a score of 1 assigned (i.e. low priority and rare) to be fed into the overall quantitative assessment?

21. Whilst the need for consistency and the proposal for only a few professionals to undertake these hazard assessments is supported, WLGA has some concern that the minimum competency of ten years of relevant experience, or seven years of relevant experience as well as Chartered Membership with a relevant institution, may make recruitment very difficult.

Do you agree with the approach to developing categorisations? If not please specify your reasons.

22. Yes. The proposed approach is logical and consistent. Moving to a '1-5' categorisation is more intuitive, with 1 being the top/highest (as opposed to 'A to D' which was open to misinterpretation). Having a staged approach, which allows a period for representations (as opposed to appeals) about categorisation, also makes sense. The ability to amend the category of a tip in light of changes or actions is clearly important too.

23. Whilst it is understood that tip owners cannot appeal against categorisation, it may be worth considering if categorisation is permanent or can be changed based on the type of remedial works that have taken place. As such, should a risk level be also considered alongside hazard?

Do you agree with the approach for interdependent and proximate clusters of tips?

24. Yes, the approach outlined is supported. However, tip investigations may reveal interdependencies between what was initially thought to be a proximate cluster of tips. In such a scenario, too, the Supervisory Authority would need to redesignate the cluster and reconsider the need for it to be involved in the management plan.

25. However, consideration should be given to the implications of multiple ownership, cross boundary clusters, and how to ensure that all remedial and maintenance works are undertaken simultaneously not to impact on engineering or environmental performance of interdependent tips in a cluster.

Do you agree with the proposals for developing management plans? If not, please provide your reasons.

26. Broadly, yes. One area that needs to be clarified, though, relates to the statement: "...where the category 1 tip is managed by a party with the relevant level of expertise, the supervisory authority can arrange for the management plan to be developed by that party".

27. This raises a number of questions as to:

(i) who determines if a party has the appropriate level of expertise?

(ii) is that based on overall organisational capacity or on the skills and knowledge of specific individuals?

(iii) what happens if the situation changes (e.g. the party loses key staff or the site was sold)?

(iv) crucially, who pays for the work on the Management Plan – would the supervisory authority cover the costs either way?

Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

28. The tiered approach is proportionate and risk-based. There is a risk of all the arrangements viewed collectively appearing too complex at first sight. There are four

hazards, five receptor groups, four receptor levels, four hazard levels, five tip categories, higher status and lower status tips, two types of tip cluster and then three tiers of checks.

29. However, whilst it will take time to become familiar with all of these, they should be seen as allowing flexibility rather than imposing a 'one size fits all' approach. Having different frequencies of inspection and appraisal based on tip categorisation makes perfect sense especially for cat 1-2 where there is high maintenance or vulnerable infrastructure associated with a site e.g. during winter periods and pre/post storm event. The inspection frequencies proposed, however, may not be frequent enough for the highest risk tips. Some of these are currently inspected every three months to ensure there has been no change.

Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

30. The question of resources applies again here – who meets the cost of the appraisals and inspections? The document states: “Local authorities would lead on arrangements for inspections and appraisals for their own Category 2 tips and category 2 tips on private land”. Presumably, if the duty is on the supervisory authority and councils are undertaking this work on its behalf, they would be recompensed? Or is this suggesting councils would have to cover the costs? Any such costs would fall unevenly on councils, given the different legacy of mine workings across Wales. (If, as a result of the legislation, inspections and appraisals have to be undertaken more frequently than would otherwise have occurred, it would represent an additional legislative burden.

Any additional costs should therefore be covered financially in line with the long standing Essex-Jones agreement between Welsh Government and councils).

31. Either way, though, there will be capacity issues for councils, with some not having the requisite skills in-house and all of them currently struggling to recruit into such technical roles. It may be an option for councils to work regionally, to share expertise, subject to clarification on the funding arrangements.

Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

32. Yes. The administrative and technical information for appraisal and inspection reports as set out in the consultation document, along with the timeframe for any action, would be a good basis of 'essential information'. It is assumed the name of the individual conducting the reports and their organisation would also be included.

33. By prescribing the minimum content in subordinate legislation, as proposed, there is scope to amend the minimum context in light of experience.

Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

34. WLGA agrees with the use of civil sanctions with a summary criminal offence available as a last resort for persistent offenders or wilful non-compliance.

35. Whilst we note and welcome the proposal in 8.6, local authorities must also be given appropriate powers if they are to be responsible for overseeing privately owned cat 2-3 tips or if work has been delegated by the supervisory authority. Specific powers must be given to local authorities to ensure a tip owner will undertake remediation works if any unconsented works have taken place or if it is likely to impact on the integrity and stability of a tip. We have previously highlighted to the Law Commission using the example of Schedule 1 of the Flood & Water Management Act 2010 how a lack of powers and gaps in legislation can be detrimental to delivering a function and ensuring engineering integrity of key assets. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

36. Agree with the discretionary approach so that the sanctions are appropriate to the case in question.

Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

37. Yes, the list of activities appears to cover the main areas of concern.

What control mechanisms do you consider need to be introduced to control certain activities on tips?

38. The controls suggested (bans, consenting and civil sanctions) all have potential use but do raise the issues of who would be responsible and how/whether they could be applied on private sites?

39. There also needs to be clarity on who will be the consenting authority and whether this should mirror the proposed split of responsibility between the supervisory authority for cat 1 and local authorities for cat 2-3. The consenting function would be another resource burden for local authorities and some thought would need to be given to timescales for determining applications, fees, and who would consent for work on their own land. Whilst we support the proposals in principle, we are seeking clarification around the consenting proposal.

Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

40. Yes, the supervisory body will definitely need to be a statutory consultee for developments on category 1/2 tips. Developers should be responsible for undertaking coal tip assessments to progress any application for works in the vicinity of such tips.

41. Thought needs to be given to how a Local Planning Authority will consider this and whether a TAN needs to be developed. It is also important to note that the level of risk differs with the type of receptors. For example, highly vulnerable developments (dwellings, schools, hospitals, etc) may not be suitable in the vicinity of high risk tips but lower risk ones maybe. Perhaps an approach considering the type of developments could be considered?

We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

42. All potential effects on the Welsh language will need to be considered fully in order to ensure compliance with existing legal obligations on LAs under the Welsh Language Act.

Please also explain how you believe the proposals could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

43. As above.

Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

44. Whilst the consultation questions cover a range of areas, these remain quite high level and we are concerned that many of the fundamental questions and discussions which took place during the workshops with local authorities are not considered within these questions. We are therefore seeking re-assurance from the WG that all transcripts from the sessions will be fully considered and included within the summary of responses and decision making process leading to the creation of the new legislation.

45. The detailed elements discussed by attendees throughout the 4 workshops will be fundamental in ensuring the legislation is applicable, deliverable, and minimise impacts on already stretched councils' services.

46. We also strongly encourage the WG to ensure that all tools, guidance, and mechanisms to enable delivery of the legislation are developed and shared alongside the enactment of the legislation as failure to do so will drive inconsistencies and create a range of issues.

47. WLGA believes there should be a review of the permitting and licensing regime to reflect the emergency nature of certain activities. These may need to be undertaken within a matter of days to deal with any risks to public safety. The definition of waste materials and the content of waste management regulations also need to be revisited for such scenarios to ensure they facilitate rapid response and avert the possibility of potential prosecution for emergency actions that are taken. NRW's timescales for determination in this area should be reviewed to ensure permits are issued in a timely manner, so that they don't affect funding windows or create unnecessary delays.

48. Whilst we have tried to define the term 'emergency works' as part of the WG, NRW, and WLGA MoU on Coal Tip Safety, the legislation must include a clear definition of this term. This needs to be done in a way as not to create any misinterpretation, especially by NRW's permitting and licensing teams as theirs often differs from the interpretation of others.

49. Finally, it would be beneficial to bring in a planning regime similar to the COMAH regulations 2015. This puts a responsibility on site owners to prepare an 'internal' plan which would identify who to call if movement is detected, the possible area that would be affected by a slip and actions to be taken by the owners in the case of an emergency. This can then be tied in with an 'external' multi-agency plan on how responding organisations would receive calls, how these would be cascaded, actions taken, evacuation routes, warning and informing of the public and welfare of those affected.

022

Q1. Details

Name Paul Ransome

Organisation (if applicable) Neath Port Talbot CBC

Q2. 1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

Yes it is important that all tips are covered by the new legislation

Q3. 2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

Yes as it will be accountable to Welsh Ministers

Q4. 3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

Yes, it is important that smaller tips are included on the registry as the land owner & the supervisory Body have evidence that the tip has been investigated and the risks considered. The minimum attributes that should be included are location, size and height

Q5. 4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

Yes, we think the owners of de minimis tips should be excluded from undertaking Inspections, Maintenance, and preparation of a Management Plan.

Q6. 5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

Yes

Q7. 6. Do you agree with the approach to adding new tips to the register?

Yes

Q8. 7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

Yes

Q9. 8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

We provisionally accept, with reservations – How is it likely to affect home or business insurance? How is it likely to affect property resale values? We accept that public access to a limited extent is necessary but it can be easily envisaged that once made public there will be public and subsequently local political pressure to remediate sites near homes and businesses regardless of their risk. Particularly if the tips proximity causes any detriment to insurance or property values.

Q10. 9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons

Yes, but will the tip owner have a right to appeal the Hazard Assessment and if so who will adjudicate. There is also the question of who pays for the Hazard Assessment, private landowners may be unwilling or possibly unable to afford the costs, and if the landowner cannot pay, will there be a default mechanism.

Q11. 10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

Yes, but will the tip owner have a right to appeal the categorisation and if so who will adjudicate. There is also the question of who pays for the work in assessing the categorisation, private landowners may be unwilling or possibly unable to afford the costs, if the landowner cannot pay will there be a default mechanism.

Q12. 11. Do you agree with the approach for interdependent and proximate clusters of tips?

Yes

Q13. 12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

Yes, but again who pays?

Q14. 13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

Yes but the question of who pays for the Inspections and Appraisals remains a concern

Q15. 14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

Yes. However, the requirement for local authorities to lead on arrangements for inspections and appraisals for category 2 tips on private land will put a financial burden on them, which will need to be centrally funded.

Q16. 15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

Yes

- Tip Name, Number, Category & date of current appraisal
- Details of any Geotechnical, Engineering, Drainage and Monitoring Infrastructure and their current condition.
- Photographs & plans
- Maintenance work that is required including timescales

Q17. 16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

Yes

Q18. 17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

The level of sanctions should be stipulated in the legislation for each breach

Q19. 18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Yes as it is important to prevent certain activities being undertaken on coal tips which could have a destabilising effect.

Q20. 19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

There should be a requirement to obtain consent from the supervisory authority or local authorities on lower risk tips to undertake certain prescribed works on a disused tip. Works that form part of the maintenance agreement should be excluded from this requirement.

Q21. 20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

Yes, we agree with the need for the supervisory authority to be a statutory consultee for developments on or near higher status tips & that coal tip assessments should be undertaken by the developer.

Q22. 21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the

Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Whilst we are very much in favour of the promotion & use of the Welsh language in Wales there could be technical difficulties in having the need for the Inspection, Hazard Assessment & Appraisal Reports translated due to the terminology used. We think that the Legislation, Policies & Guidance should be bilingual along with the forms & report templates but the technical submissions should be submitted in English. It would be prohibitively expensive for statutory authority and/or individual landowners to translate reports. Given the timescales for completion of certain documentation following entry of a tip onto the register & the limited pool of experienced staff, the time delays in translation could also mean non-compliance with the new legislation. The register should be bilingual as this would keep the traditional Welsh names for the tips alive.

Q23. 22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q24. 23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

The proposals in the White Paper will help to manage the legacy of disused Coal Tips within Wales & should be extended to include all disused mineral tips as soon as is practicable. Welsh Government needs to address the long term funding required by this White Paper as there are additional responsibilities & costs for individual landowners who may not be in a position to undertake these responsibilities. Similarly there will be additional responsibilities & costs placed on local authorities, with a few of them bearing a disproportionate amount. Additional funding for local Authorities will need to be in place to undertake their new roles.

Q25. If you want to receive a receipt of your response, please provide an email address.

Q26. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

023

Q1. Details

Name Leanne Harris

Organisation (if applicable) Torfaen County Borough Council

Q2. 1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

Yes

Q3. 2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

Yes, however, the preferred scenario would be that the supervisory body has overall responsibility for inspecting and maintaining tips rather than splitting different categories of tip between different bodies.

Q4. 3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

Yes, attributes already suggested appear sufficient.

Q5. 4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

Yes

Q6. 5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

Yes. Any further content can be agreed by the relevant body but the minimum seems sufficient.

Q7. 6. Do you agree with the approach to adding new tips to the register?

Yes

Q8. 7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

Concern over the time frame for an appraisal to be updated on the register, if these are being outsourced due to resources or skill sets we would be reliant on the reports being provided to the LA in a timely manner for the LA to then update the register. Perhaps change all timescales to 30 days?

Q9. 8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

Yes

Q10. 9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons

Yes

Q11. 10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

Yes

Q12. 11. Do you agree with the approach for interdependent and proximate clusters of tips?

Yes, however, consideration should be given to ownership when agreeing clusters.

Q13. 12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

Yes

Q14. 13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

Yes

Q15. 14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

As mentioned before, it would be ideal if one authority carried out all inspections and appraisals to ensure consistency and level of expertise, Local Authorities could struggle to recruit given the lack of personnel with relevant experience.

Q16. 15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

Yes

Q17. 16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

Yes

Q18. 17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

Supervisory Authority should have discretion.

Q19. 18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Yes

Q20. 19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

Enforcement action by Planning for alterations to tips or use of tips, Police involvement for anti-social behaviour, legal action where drainage is altered/impeded etc.

Q21. 20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

Yes.

Q22. 21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No Comment

Q23. 22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Comment

Q24. 23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

Mentioned before but we would like to emphasise the preference for one Supervisory Authority that would be responsible for all tips to minimise issues relating to resources/lack of training/expertise within already struggling LA's. We would like to raise a question relating to recharging when works are carried out or arranged by a LA as an emergency on a privately owned tip – will we have some way of recovering monies spent other than a charge on the property which will likely never be recouped? Torfaen CBC has also agreed and contributed to the response provided by the WLGA.

Q25. If you want to receive a receipt of your response, please provide an email address.

Q26. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

024

Q1. Details

Name: Ivor Richards OBE

Organisation (if applicable): Richards, Moorehead & Laing Ltd

Q2. 1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

Yes. For example, metalliferous waste tips and lagoons, slate waste tips, buried mines shafts and adits

Q3. 2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

Yes

Q4. 3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

We think that site characterisation is important - location, geology, geo-technical conditions, chemistry, shape/slopes, vegetation cover, ecology, climate, hydrology and previous history, especially any works carried out.

Q5. 4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

Yes.

Q6. 5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

No, refer to our response to Question 3, in addition to those listed.

Q7. 6. Do you agree with the approach to adding new tips to the register?

Yes.

Q8. 7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

Yes.

Q9. 8. Do you agree with the proposal for the type of information to be made publicly

available and which will be classed as excluded?

Yes.

Q10. 9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons

Hazard assessment is not within our expertise, but the management of vegetation and ecology is within our skill set.

Q11. 10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

Yes.

Q12. 11. Do you agree with the approach for interdependent and proximate clusters of tips?

Yes.

Q13. 12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

Yes.

Q14. 13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

Yes - characterisation is the key to identifying any future action. Please refer back to our response to question 3.

Q15. 14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

Yes

Q16. 15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

We suggest adding the health and vigour of existing vegetation

Q17. 16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

Yes

Q18. 17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

This topic is not within our expertise to comment.

Q19. 18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Yes.

Q20. 19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

Development of a 'toolbox' for Inspectors and Appraisers to create and maintain a site specific record. Mechanisms to control activity on sites is essential and powers need to be given to the new body to manage activities

Q21. 20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

Yes.

Q22. 21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Assume the Welsh Language Act and Welsh Language Commissioner is a consultee.

Q23. 22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

WLIA- this question would have to be

Q24. 23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

We would like to recommend reference to the following published guidance documents which deal with technical matters associated with mineral workings, for which Richards, Moorehead & Laing Ltd were responsible:

- Working with Nature (Low Cost Land Reclamation Techniques) Welsh Development Agency January 1994;
- Restoration and Re-vegetation of Colliery Spoil Tips and Lagoons, Department of Environment, 1996, HMSO;
- Slate Waste Tips and Workings in Britain, Department of Environment 1995, HMSO;

- The Reclamation and Management of Metalliferous Mining Sites, Department of the Environment 1994, HMSO;
- Use of Vegetation in Civil Engineering, CIRIA C708, 1990 and republished 2007.
- The Reclamation of Former Coal Mines and Steelworks, ELSEVIER, 1993, for the European Commission;

Q25. If you want to receive a receipt of your response, please provide an email address.

Q26. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

025

Your name: Delyth Jewell MS, Heledd Fychan MS, Sioned Williams MS, Peredur Owen Griffiths MS, Luke Fletcher MS
 Organisation (if applicable): N/A

1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

We fully support the intention of incorporating the non-coal tips into the remit of the new public body. We furthermore understand that the scale of this work programme will need time to find and fully assess spoil tips other than coal, and therefore would agree to the phasing in of these tips over a period of time. Quarry spoils are an obvious addition to be phased in as part of this work.

2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

This was one of the things that we called for during the initial consultation and therefore very much welcome your comments at 2:15 around accountability, independence, expertise, remit, value for money, and public confidence. We fully endorse the Law Commission's views at 2:30 around this, and agree that this would give the new body:

- Specialised technical skills, which can offer added benefit to local authorities in the management of disused coal tips
- A dedicated remit to ensure the safety of disused tips
- An independent oversight of the regime to ensure consistency in approach
- An independent oversight and monitoring to compliance with the new regime
- Economies of scale in procurement of services, gathering research and evidence and developing and sharing best practice and guidance.

We also support your final point (2:30) around the new body being arms lengths from the government, and agree that the new body should produce an annual report.

3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

Considering how ad-hock the whole nature of registering and monitoring coal tips has been across Wales, we welcome the intention to develop and publish a central register of all coal tips in Wales. We would endorse the definition of a tip at 3:17 and understand that you may want to develop this definition to include, or have a separate definition for other spoil tips. We agree with the de minimis definition and would like it to ensure that the size of the tip, the height of the tip, the gradient of the tip and the gradient of the land that the tip is on are all considered as important factors when categorising a tip as de minimis. We believe that local communities should be consulted as part of this process.

4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

As a starting point for the new body, we would endorse the recommended minimum content as stated, and would say that the final two points are vital:

Unique reference number;

- Name of tip
- Location
- Categorisation
- Dates of inspections/appraisals
- Assessment report
- Inspection/Appraisal reports
- Management plan
- Maintenance agreements

We would endorse your points at 3:32 but would agree that all tips should be easily identifiable for the experts dealing with the tips and should therefore be named with a purely unique name/number. Information should also incorporate local usage to alleviate any confusion in reporting from members of the public. It does provide an opportunity to include any nearby critical infrastructure too, such as schools and roads.

6. Do you agree with the approach to adding new tips to the register?

7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

The register will be similar in nature to a website; if it has not been regularly updated then it becomes obsolete and useless. We therefore agree with your proposals as set out at 3:46 regarding inspection reports, appraisal reports, maintenance/remediation works, maintenance agreements and management plan. The timetables for these all seem reasonable.

8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

While we would agree with the information that should be available to the general public as outlined in 3:54 (Tip Name/identifier; Location; Categorisation; Ownership status (public or private); and Inspection timeline) we would have thought that it would be in the public interest to have available any information on any enforcement actions and consequent remedial works being undertaken. We believe that this would build confidence within communities and that transparency is key.

9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

We find the recommendations here to be clear and would be easily understood by the communities that have tips on their doorstep. Could 4:13 also include the date for the next review? This would give the public the confidence that the tip in question is not overdue another review.

We would like the 'life changing injury' category to also be included in the high risk (risk to life) category, and taken from the medium-high category.

10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

While we agree with the categories moving from the D-A to the 1-5, we are unsure if there should be any recourse for landowners to change the considered opinion of the experts who make the determination. However if there has been an error in the determination, then there should be room to allow these errors to be considered.

11. Do you agree with the approach for interdependent and proximate clusters of tips?

12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

Every tip, or group of tips in every area will have its own unique set of circumstances which must be considered, and the inclusion of any historical data will play a big part in any management plan, and this data should be incorporated as soon as possible. We would agree with the two tier approach and that tips that are deemed less dangerous can have a lighter approach.

We would like to see the new body creating any management plan for a category 1 tip, rather than allowing an outside body to create the plan. Once the plan it would make sense for outside bodies to monitor the plan. We agree with the minimum content for both tiers. It's also important that the biodiversity of tips that are stable is protected as part of the management plans.

13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

While agreeing with the three tiered approach, we would put the Assessment as No1, to follow the categorisation of the tips, with No1 being the most hazardous, and would move Inspection to No. 3. We agree with the frequency of the inspections.

14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

The approach here seems sensible and appropriate.

15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

We agree with both appraisal and Inspection minimum content for reports. While agreeing that there will be some tips where it is difficult to gain information, it seems that there is a lot of wriggle room for landowners at 7:27 to avoid their full responsibility. We should also ensure that essential information also references how the land is used by the community and any risks/ historical evidence of setting fire to land etc.

16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

Yes, but would suggest that there be strict timelines for compliance as there seems a lot of room to manoeuvre and feel that compliance could fall if there were not stricter guidelines for enforcement.

17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

It would be more just and transparent if the sanctions were stipulated. One authority, or one officer may seem more lenient than another if there was room for discretion.

18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Yes.

19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

There should be notices placed on access routes to areas containing tips warning of the dangers of disturbing the tips, as well as possible enforcement actions including police actions being taken against transgressors.

20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

Yes. The authority should be a vital part of any planning consultations within tip areas and therefore needs to be a statutory consultee. We are sceptical about asking developers to make an assessment of the tips. The assessment of any high category tips will already be available from the statutory body. We are concerned about current developments (like wind farms) that are in close proximity to tips, because of how the works could destabilise the tips. This could even be true of heavy load vehicles driving past the tips to get to sites nearby.

21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

The body will obviously come under the Welsh Language Act and will be subject to laws there. The new body should try to employ staff that deal with members of the public that are able to converse in both English and Welsh.

22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

The key thing is to ensure that any information and communication is available bilingually at all times.

23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

Developments near tips should be stopped if considerations are not given to their impact on the overall landscape including changing water courses which then can lead to flooding.

The UK Government has a duty to contribute financially to making the tips safe since they were the government with responsibility over them, and who got the profits from activities relating to them, while the coal mines were active. The Welsh Government should consider legal avenues to secure these funds. However, we cannot wait for these funds to become available, and must act swiftly so that no further injuries or deaths happen as a result of coal tips in Wales.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

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Your name: Ed Meyer

Organisation (if applicable): Transport for Wales

1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

TfW feel that it would be advantageous to have one piece of

legislation governing 'tips' to include non-coal-tips. This could help reduce the risk of ambiguity and provide clear and concise guidance on management practice. The principle is understood but there will need to be clear definitions and categories to cover non-coal tips where the determination of non-coal tips will need to be properly developed. It would be preferable to have consistency across different types of tips where it makes sense to do so to avoid unnecessary differences and complexity.

2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

It is TfW's view that the body needs to be safety focused, and therefore have access to enough budget to be able carry out duties responsibly, also autonomous so that decisions are not driven politically. This will ensure that the body is part of/accountable to and funded by WG to ensure they cannot be influenced by private finance/investment. Likely to be required to provide the necessary governance and accountability for a) the sheer number of coal tips across Wales, in a variety of ownership/management regimes and b) due to the level of risk presented if any coal tips were to fail.

3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

It seems sensible for a threshold to be introduced however stakeholders should be consulted further to determine appropriate hazard types and thresholds levels based on risk rather than size. TfW also agree that this seems sensible so as not to place unnecessary burden on owners of remediated tips or tips that otherwise pose little risk. TfW question whether tips should be categorised higher if they are in a more risky or precarious position?

TfW suggest that there needs to be the option to re-categorise through periodic assessment, if the level of risk changes due to factors such as climate change. A de minimus definition that does not apply (regardless of being small or otherwise falling within the definition) where it has been determined that a tip has a reasonable chance of interfering with third parties or property other than that property on which the tip sits.

4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

TfW's view is that a 'De-minimus' categorisation should not remove all tip-owner obligations, but requirements be less onerous. We also believe it is only appropriate if it has been determined by the new authority (perhaps through application of landowner to put onus on the landowner to seek such an exclusion) that falls within the definition including that it has less than a reasonable chance of interfering with third parties or third-party property. Exclusions could be available by default to residential owners of land under a certain area with the authority taking responsibility for such tips. TfW query whether the requirement to comply with any new legislation will feature as part of the planning application process.

Overall TfW agree provided such a threshold is suitably defined and that the subject tip is periodically inspected to ensure that it doesn't breach the threshold and

provided there is a means by which the hazard level can be reassessed in the event of any significant changes that might alter the risk level.

5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

No, TfW believe there should also be a requirement for tip owners to hold Public Liability insurance and for that to be uploaded to the register annually on renewal. We also believe the following should be added: Date of next risk review, climate change risk assessment, details of public liability insurance, link to land registry, emergency response plan details for those tips presenting significant risk.

6. Do you agree with the approach to adding new tips to the register?

Yes, but TfW would expect the local name to also be available to search due to local knowledge of them. We also feel that there should be a system/process to enable the public to be able to a) search for coal tips in their local area and b) propose "new/additional" coal tips for review that aren't included on the existing register.

7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

TfW requests that insurance details are also uploaded annually, we agree that the time frame seems reasonable. TfW recommend that there is a periodic review i.e., every 5 years to review and re-determine the level risk in the case that influential factors change, such as climate change.

8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

TfW agree that landownership detail not required, although available in the public domain this could lead to loss of control. TfW query why inspection detail not publicly available (or at least available to public authorities)?

TfW agree that neighbouring landowners should be able to see where tips are located and the risks that they pose but not have access to personal details.

TfW feel that a layered access seems a sensible way of balancing data sensitivity issues with need for relevant parties to be informed of tip safety risk. Bodies responsible for managing infrastructure should be given free access to all information necessary to allow them to make their own assessment of risk relating to all relevant tips whether they are inside or entirely outside their land ownership boundary. Further consultation should be carried out to determine appropriate information types.

TfW also feel that the insurance information is also made available to the public in case of incident/event.

9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

Proposed hazard categories (1 to 5) are defined by the White Paper in terms of risk (Likelihood x Receptor Level). Table 4 of the White Paper implies Receptor

Level 4 ("RISK TO LIFE") is only applicable to the Receptor Group, "People/Communities", and not, for example, to "Infrastructure"). TfW will need to understand how all tips score on both sides of the risk calculation to inform our own future assessment of risk. TfW's stance is that risk to passenger rail infrastructure should also be considered under "RISK TO LIFE" given the potential for rapid tip failure to cause train derailment.

Climate change risk assessments should be a priority and conducted by qualified personnel. The CCRA needs to be informed by the latest climate change scenarios and should be supported by consultation with, for example, hydrologists, Geotech engineers etc. Risk assessments should also be repeated periodically to account for any change to influential factors that could change the existing risk categorisation.

The risk categorisation also could have negative consequences for landowners (i.e., management costs) and community relations with the landowner. Furthermore, the risk categorisation could invalidate buildings insurance for nearby properties, so there needs to be careful consideration for how this is handled.

In terms of ecosystems/environment, there is no inclusion of impacts upon protected species and habitats (which many coal tips support and for which data exist through environmental records centres). Only designated sites are included in the current receptor groups, therefore additional ecological impacts risk being missed. In the event of any potential/occurred incident, a suitably qualified person (i.e., ecologist) would need to determine site specific ecological and biodiversity risks on a site-by-site basis, which would need to extend beyond a high-level desk study search for designated sites alone.

10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

We need to understand the basis of characterisations of all proximate tips to inform our own assessment of the risk they pose to TfW infrastructure.

TfW request to be engaged in developing of plans and sighted on proposals so that further consideration can be given on this point. Similar for rows 12-16.

Overall, the approach seems sensible but because tips will be rated using overall hazard categories that are defined in terms of risk, it will be important for stakeholders to be given all the necessary information to allow them to understand in detail how tips score on both sides of the Likelihood x Receptor Level equation so that they are able to clearly understand the nature and severity of the hazard(s) to inform their own risk assessments.

11. Do you agree with the approach for interdependent and proximate clusters of tips?

TfW understand that tip clusters are tips that are dependent on each other for stability but geographically separate entities - i.e., not physically connected (e.g., overlying, or underlying). What are the legalities for the landowners through tip-clustering, including public liability insurance? Could clustering increase the level of risk, particularly for nearby sensitive parties, such as communities.

12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

TfW need to better understand the potential implications (including costs) for TfW as potential joint owner of a tip in having to arrange management plans, inspections and maintenance in accordance with the regime. TfW query whether the management plans will be sufficient in their content and ability to remediate any identified risks, if it is left to individuals. Leaving the development of management plans to individual landowners could result in significant risk to TfW infrastructure if they are inadequate. A supervisory body has the ability to conduct a consistent approach with the development of management plans, through consultation with core stakeholders. Consideration of climate change should be made within the management plan, as the current level of risk and identified remediation strategy could change over time. Also, will there be a requirement to review and amend the management plan (if required) periodically, to account for any change to the level of risk?

13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

Included in our response to q12.

14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

Included in our response to q12.

15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

The list in this chapter below 'admin info' and 'tech info' seems to be fairly comprehensive. Presumably there will be a requirement for the party undertaking the inspection to be suitably competent (qualification, insurance etc) and TfW feel that an assessment of climate risk should be a key component of the report, as climate change is likely to change/exacerbate the level of risk over time for some tips, particularly instability for those on slopes.

16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

TfW agree that such sanctions are required to motivate the party to undertake the required action however query what would happen where a landowner does not have the means to undertake the work identified to ensure the stability or safety of the tip within their land ownership. TfW feel that the role of the body should be to work with tip owners to manage the tips safely and not simply hand out fines. It should be noted that financial assistance may also be required, especially in the case of private landowners as compliance will come at a cost.

17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

This should be defined to allow for a consistent approach to managing compliance failures and TfW feel that they should be stipulated in the legislation to avoid misinterpretation, mishandling, ambiguity and unfairness.

18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

The WG tip data reveals that some tips (including interim category C tips) overlap with the CVL land boundary area. TfW need to understand the implications of the new regime (e.g., maintenance agreements, restricted activities, etc.) for TfW as a tip owner and its ability to carry out activities on land designated as a tip. In relation to Q18 to Q20 there needs to be a mechanism to allow infrastructure asset owners to be able to carry out emergency work necessary to ensure operational safety (e.g., vegetation clearance, excavations) outside any permitting system.

A permitting system would ensure that works with potential to affect safety of jointly owned tips would be given appropriate scrutiny to ensure safety of neighbouring land, however if certain activities are to be subject to a permitting process, then there needs to be appropriate exemption or mechanism to enable infrastructure asset owners to carry out emergency works necessary for ensuring operation safety (e.g. vegetation clearance, excavation, drainage work, etc.)

TfW may have the requirement to divert drainage, for example, as part of the necessary asset management regime, that could impact upon a nearby coal tip. We need clarity as to what takes precedence - rail or tip safety? If it's the latter, as a control mechanism are Welsh Gov comfortable closing sections of the network as a result? This is particularly pertinent for any drainage management requirement in the vicinity of high-risk tips.

19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

Included in our response to q18

20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

Included in our response to q18

21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

The legislation and tip register should be accessible for Welsh speakers. All necessary documentation, e.g., management plans should be translated. The supervisory authority should have a Welsh speaker, translation service to support

Welsh speaking landowners/stakeholders.

22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Included in our response to q21

23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

There should be statutory obligation on tip owners to have public liability insurance. Climate change should be a mandatory consideration and the determination of risk categorisation should include the completion of a climate change risk assessment. Periodic reviews will enable factors like climate change which could change the level of risk for tips over time, to be considered. Climate change adaptation should be a core requirement of all tip management plans.

Ecosystem, ecological and biodiversity risks, impacts and mitigation should be determined for each site by an ecologist as required, which is inclusive of protected species and habitats impacts and not designated sites alone by way of desk study.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

027

Name J Dean Maddison CEng, CEnv FICE, Director of Ground Engineering
Organisation (if applicable) Jacobs UK Limited (formerly Halcrow Group Limited)

Q2. 1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

The value of expanding the register to include non-coal tips needs careful consideration. As is stated in the White Paper this would significantly expand the work. This could well result in loss of focus on the main issue, coal tips, and substantially expand budgeting needs which may not be affordable. In our Company extensive (+50 years) experience in this field of work in Wales and wider UK there has been negligible requirement to assess other forms of tip, a main factor being the very different nature of most non-coal tips compared to coal tips. In longer term the aspiration to include other tips should be encouraged, whilst not losing focus on main objective. Ironstones in particular, external forces such as erosion, drainage blowout could result in stream / river impacts etc. Many may be 'de minimis' see 3 below. It is worth noting that the South Wales Valleys in particular are extensively affected by natural landslides and there are several major active landslides in the area, in a variety of landownership, that

present significant risks to people, property and infrastructure, and require management and maintenance works. These are excluded by this White Paper but the interdependencies should not be discounted (See Q5).

Q3. 2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

The reasoning for the new supervisory body being a new Executive Welsh Government Sponsored Body is strong and we consider the proposal is the best solution.

Q4. 3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

We considered that it would be appropriate to include a 'de minimis' tip definition in the Bill. This might then be applied to a tip following an initial inspection. We note that White paper para.3.22 states "a fourth attribute of gradient of natural strata (basal plane) may be beneficial to include." We believe that this is already covered by item (iii) in para 3.21 "the average gradient of the land covered by the refuse exceeds 1 in 12". A fourth attribute could be to set out that the tip slopes should not exceed a stated value. Such a value could be conservatively assessed based on knowledge of the properties of South Wales Colliery Spoils and the required minimum factor of safety to provide for a secure tip.

Q5. 4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

Whilst we consider that it would be appropriate to exclude an owner from the proposed duties set out in the White Paper after a tip has been categorised as a 'de minimis' tip we consider that a duty should remain on the owner to bring to the attention of the supervisory authority any changes that occur that they become aware of that could result in the 'de minimis' categorisation no longer being applicable.

This could include for example: failure of drainage channels or a culvert underlying a tip. A change in a stream flow eroding a tip flank, a change in the groundwater table leading to new seepage lines /ochreous water discharge, evidence of tip burning, ground collapse etc?. Perhaps the owner should be required to make a statement of no change, supported by an informal inspection as required, at a minimum of every five years if they do not report anything in the interim period.

Q6. 5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

In addition to the minimum content set out, we consider the following should also apply:

1. In the South Wales Valleys there are numerous coal tips that lie on or in the immediate vicinity of known and recorded major landslides, both active landslides and dormant landslides that could become reactivated from natural events (e.g.

increased rainfall / elevation of groundwater table) or as a result of human activity (e.g. cutting away the toe or loading the backscar area). In these cases the performance of the coal tip will be interdependent with the landslide and particularly in cases of an active landslide the management of the tip and the landslide should necessarily be integral. The Register should flag if a tip is affected by or could be influenced by a known recorded major landslide and its status. In these cases the inspection/appraisal/assessment reports should consider the landslide and its affects on the tip, if any.

2. We agree with application of a new unique reference for each tip. There is a lot of historic assessment and inspection work on the South Wales tips and it is important that that work can be easily related in the new referencing system. Many of the South Wales tips have a National Coal Board (NCB) reference number and a "know as" name, which was used in the work undertaken 1967 to mid 1980's, e.g. Lady Windsor Colliery had tips including Tip 433, Tip 434, Tip 436 and Tip 767, but also Tip 435 known as "Lady Windsor Washery Tip", Blaenant Drift Colliery had Tip 340 known as "Cefn Coed 'A' Tip". Where a tip has a 'former' NCB Tip reference and "known as" name it should be recorded on the register for ease of cross-referencing with historic records. Similarly it will be useful to have the local colloquial names recorded on the Register. Careful consideration of how this information is held and presented within the Register should be able to avoid any confusion and not detract from the Register new tip reference number and tip name to be used going forward.

3. The location should include National Grid Reference co-ordinates for the approx. plan centre of the tip as a minimum.

4. For ready reference, there should be a location plan for the tip, based on 1:50,000 or 1:25,000 Ordnance Survey mapping.

5. We agree with the White Paper stated aim of a centralised repository for historic and archive data. In our extensive experience in this field of work such records are extremely valuable and provide for efficacy of work. In the past they have on occasions become lost to Clients. The Register/its repository provides an excellent opportunity to capture the unique and important historic tip records that are still available, providing for their safe keeping and future availability.

6. With reference to significant hazards, we consider mine entries should be flagged here as well as specialist drainage adits / major culverts that underlie a tip e.g. at Marine, Merthyr Vale (Aberfan), National. These assets are important to maintaining tip stability/avoiding flooding incidents, they are confined spaces working and will require regular inspection by specialists and specialist maintenance.

Q7. 6. Do you agree with the approach to adding new tips to the register?

We agree with the approach to adding new tips to the Register. New tips assuming relatively modern should have sufficient records to enable them to fit into the reporting regime. Industry collective memory could be important in ensuring all tips are captured, therefore the ability to make additional entries into the register is important.

Q8. 7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

The proposed approach to updating the asset register appears to lack control of records and their quality. Our extensive Company experience is that inspection/appraisal/assessment reports can and do vary in accuracy and quality. We strongly believe that quality and consistency of reporting is essential to maximise the benefit of the Register. Whilst guidance and worked examples will set a baseline for consistency and aspiration of quality, without an overview/review of records going onto the Register quality will likely be variable and may not deliver the goals of colliery spoil tip safety.

We consider that it would be best for reports to be submitted (in the stated time lines) with a certificate to a limited number of designated persons for review and formal acceptance to go onto the Register.

The designated persons would need to have suitably qualified and experienced and could be from a combination of the Executive Body, Local Authority or appointed consultant representative. It is appreciated that there will be a cost to this, but it provides value and ensures quality of data and tip management that is aspired to. Similar procedures are followed for asset management by organisations such as National Highways. It is not clear how recommendations made from inspections / appraisals would be taken forward to maintenance/remediation by the Supervisory Authority in a consistent manner.

Q9. 8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

We agree with the proposal for the type of information to be made publicly available and which will be classed as excluded.

Q10. 9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons

The proposed approach to measure hazard level follows industry best practice is generally agreed. However, the categories need to be broken down further eg ground movement /instability, this could be linked to the tip geometry but also linked to mine entries or shallow mine workings beneath the tip. Flooding could include natural stream/river courses but also tip surface drainage and under-drainage.

Q11. 10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

We agree with the approach to developing categorisations.

Q12. 11. Do you agree with the approach for interdependent and proximate clusters of tips?

We agree with the approach for interdependent and proximate clusters of tips.

Q13. 12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

We agree in general with the proposals for developing management plans, but would comment that we consider that it would be very beneficial for the Supervisory Authority to issue a guidance report on the development and presentation of management plans, with a set of proforma and worked examples. This will provide for consistency across a category and quality of management. This will be particularly helpful to private tip owners new to such aspects.

Q14. 13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

In our experience the tiered approach and the proposed frequencies of checks is appropriate. We suggest not using the term " 'reduced-technical' inspection as it implies a lesser approach to the work and just referring to an "inspection".

Q15. 14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

The delegation of responsibilities for particular categories is a reasonable solution, but will need an appropriate split of funding. We would suggest that these roles are managed by the the same body to take the site knowledge forward.

Q16. 15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

In addition to the information listed in the White Paper, we would recommend that:

1. Observations are made of the vegetation. Changes in vegetation can be important e.g. the development of an area of soft reeds would indicate higher groundwater levels, and possibly shallow sub-surface becoming less effective. Identification of presence of invasive species would assist in future management.

2. The reports should include a plan marked up with the location of the key points of observation, photograph locations and direction.

3. We would note that each tip is going to have a unique set of locations and features to be observed. A plan marked with reference points and matching the particular check list will provide for consistency of observations and ease of identifying those locations on site. There are digital solutions available that allow the collection of data in the field in real time from smartphones and tablets using prepared data forms for specific data collection including photographs. These solutions provide for efficient working and accuracy of inspection and efficacy of data retrieve which is particularly important at times of emergency. Application of such tools should be applied on all work going forward. It is appreciated that there will be a set-up cost but they will provide substantial benefits.

Q17. 16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

No comment made.

Q18. 17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

No comment made.

Q19. 18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

In our experience the list of activities is comprehensive. Careful consideration will be needed for each of these activities and how they are approached so that restriction is not applied that may introduce problems for future remediation work to tips, e.g. the impounding on water on a tip, in the form of attenuation facilities for temporary storage for peak storms run-off, has been applied on several remediated tip sites, to negate flooding downstream. More recently constructed works usually line the storage facility to negate any stability problems.

Q20. 19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

No comment made.

Q21. 20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

We agree with the proposals relating to development activities in the vicinity of higher status tips.

Q22. 21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment made.

Q23. 22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment made.

Q24. 23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

1. To provide for accuracy, consistency and quality of work, a set of Guidance Reports with example proforma for inspection/ appraisal/ assessment reporting should be issued. Also, rules for stability assessment and required minimum factors of safety, should be set out, as was historically done.
2. Training and training materials should be established by the supervisory authority and rolled out to those undertaking inspection/ appraisal/ assessment reporting work.
3. For efficacy and consistency of work in the field electronic data capture should be used that can be uploaded to the Register/repository.
4. The repository needs to be functional, easy to use and easy to retrieve data. Its design should be given careful thought and it would be of benefit to look at databases that are already in use for asset management, e.g. the National Highways Geotechnical Data Management System.

Q25. If you want to receive a receipt of your response, please provide an email address.

Q26. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

028

Name: Joanna Wragg

Organisation (if applicable): British Geological Survey

Q2. 1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

Yes, providing in accordance with pre-existing legislation and guidance and building on existing UK spend in that regard, e.g. Mine Waste Directive, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300824/PS019-MWD_Regulatory_Framework.pdf see also: <https://nora.nerc.ac.uk/id/eprint/10083/>

Q3. 2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

Yes. Consider a forward-looking approach to preparedness for remediation/ reuse and recycling and sharing of research and research outcomes, Section 2.26 should also reference geology

Q4. 3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

Yes, providing that potential impacts, including pollution potential, as well as size constraints, are considered.

Q5. 4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

Yes, unless significant potential risk is linked to the site.

Q6. 5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

Consider adding additional fields for (i) additional data, e.g. papers including the South Wales Landslide database held by BGS, (ii) geological/hydrogeological context, (iii) land use, and (iv) alternate names.

Q7. 6. Do you agree with the approach to adding new tips to the register?

Yes

Q8. 7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

Some of the timescales suggested might be delayed if land ownership issues arise.

Q9. 8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

Information should be GDPR compliant. Register of professionals' clause 3.62 geologist and environmental scientist omitted.

Q10. 9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons

Terminology may require clarification in the context of hazard, impact, receptor and hazard. Table 2 Hazard Level Matrices shows Likelihood assessment of receptor level - this terminology is associated with risk

Table 3 Not clear how the hazard levels are defined.

Clause 4.3 should an accurate assessment of hazard potential be best practical...

also geological and hydrogeological setting should be listed as another variable.

Clause 4.11 ... or when new data that are relevant to the appraisal, come to light.

Clause 4.17 consider defining minimum data requirements, e.g. tip size, slope angle, composition, geological/hydrogeological setting. Consider making Box 1 a risk ranking.

Q11. 10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

Clause 5.6 Consider making reference to ground gases such as methane, hydrogen sulphide, carbon dioxide and carbon monoxide, commonly associated with coal mines and which may be generated in areas of mine waste. Clause 5.9 refers to the new categories (1) ahead of them being introduced in Table 5. Clause 5.10 instead of strong evidence base, should be best available evidence. Table 5 Define tip categories.

Clause 5.15 the allusion to similar/related structures (i.e. reservoir dams) is useful. It may also be helpful to look at other policies/strategies/guidance from the wider geotechnical asset management community – e.g. the Network Rail ‘Earthworks Technical Strategy 2018’ etc. Clause 5.17 ...or future development.

Q12. 11. Do you agree with the approach for interdependent and proximate clusters of tips?

Very sensible. Consider including potential for an owner to apply for management within a cluster. Clause 6.9 ...lodged with the Supervisory Authority.

Clause 6.14 as well as rainfall trigger levels, for tips near the rivers consider flood levels or reports of significant erosion

Q13. 12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

Yes, aligns well with other statutory requirements, e.g. the EA IPPC approach.

Clause 6.19 Consider that requests for data are assessed to ensure that they are proportionate to the perceived risk, i.e. to manage the administrative burden on site owners

Q14. 13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

Yes, aligns well with other statutory requirements, e.g. the EA IPPC approach.

Clause 7.4 typo ‘The new regime is required to be’

Table 6 (Diagram 3 and as referred to in text) Consider if the assessment also be reviewed in the event that more data comes to light or new development (potentially impacted) is proposed.

Q15. 14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

Yes, but compilation context to maintain overview is not so clear. Need to consider how long will data be retained and if it will be subject to change in public accessibility over time, e.g. relevance of older data. 7.18 Consider listing geomorphology, including erosion. 7.21 Consider vegetation (trees) as potential indicators of movement 7.20 Consider validating minimum experience through a register.

Q16. 15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

Yes and agree relative change is particularly important. Consider ways of facilitating greater engagement with this including a requirement for images.

Q17. 16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

Not in BGS remit.

Q18. 17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

Not in BGS remit.

Q19. 18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Given the diverse range of activities – perhaps a clear ranking based on potential consequences needs to be considered.

Q20. 19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

Not in BGS remit

Q21. 20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

Clause 9.6 - consider if more work required to ensure that the content of this White Paper is embraced in the planning regime Should this be extended to consider all tips, e.g. they may be associated with unmonitored ground gas issues. At the moment the proposals for development are directed only at higher status tips, which might leave development near to lower status tips exposed to unmonitored hazards, e.g. ground gases.

Q22. 21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Not in BGS remit

Q23. 22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Not in BGS remit

Q24. 23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

The consistent approach by the partner bodies of the Coal Tip Safety Task Force is important for the protection of communities, infrastructure and the environment in the context of climate change. BGS would be interested in working with the new Supervisory Authority in advisory, on-going research and innovation, and data and information provision contexts. There may be some benefits from knowledge sharing with respect to hazard characterisation and risk with the BGS landslides team. BGS should also be well placed to work in collaboration with the new authority to develop an automated data delivery service associated with tips and buffer areas.

Q25. If you want to receive a receipt of your response, please provide an email address.

Q26. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

031

Name: Martin Buckle, Chair / Cadeirydd

Organisation (if applicable): Wales Flood & Coastal Erosion Committee / Y Pwyllgor Llifogydd ac Erydu Arfordirol Cymru

I write in response to the consultation document.

The Wales Flood and Coastal Erosion Committee has been established by the Environment (Wales) Act 2016, Section 81. Its purpose is to advise the Welsh Ministers on matters relating to flood and coastal erosion risk management. In 2021, the Committee responded to the Law Commission's consultation paper, indicating our support for the proposals, including their benefits for flood risk management. Similarly, we endorse the proposals in the White Paper for the same reasons.

It is important that proposals for addressing coal tip safety recognise the critical interfaces between water, flood risk management and coal tips. Springs and watercourses are often a key trigger for coal tip failures, while failures themselves can often lead to blockages in watercourses which heighten flood risks for properties in the vicinity. Additionally, in some instances, coal waste has been deposited in flood plains, adding to levels of flood risk. Consultation and collaboration between the proposed supervisory authority and Flood Risk Management Authorities, as defined by the Flood and

Water Management Act 2010, will therefore be of key importance.

We note in particular and welcome the proposals for addressing the skills gap to ensure sufficient capacity and capability to deliver the on-going inspections and

maintenance programmes. However, in addition to establishing a register of professionals competent to undertake tip safety work, there will be a need to go further in developing a joined-up approach to the shortage of individuals with relevant skills on a cross-sectoral basis, given in particular the transferability of skills between flood and coastal erosion risk management and coal tip safety. This reflects proposals contained within the report “Resources for Flood and Coastal Erosion Risk Management in Wales” recently submitted by our Committee to the Minister for Climate Change. We would also particularly endorse the proposal that the supervisory authority should be a statutory consultee in development applications, where the development could change the categorisation of a tip from a lower status to a higher status tip.

It is also important to stress that the proposals in the White Paper will have additional implications in terms of organisational capacity, resources and skills for local authorities as well as those of the supervisory authority itself, and mechanisms will need to be found by which these implications can be addressed.

033

Name: Sean O’Neill

Organisation (if applicable): Children in Wales

1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

We do not have any objections to this proposal.

We recognise the potential in the White Paper of extending the regime to non-coal tips through gradual phasing in as evidence of numbers, locations and ownership is obtained. Timescales for gathering this information should be outlined.

This extension would provide many benefits and enhanced protections to a wider cohort of children and families, and the environments in which they live, learn and work.

2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

We acknowledge the recommendation of the Law Commission and agreement by the Welsh Government that a supervisory authority for Wales is required, and that this body is independent from government. We do not have any objections to this proposal.

3. Do you agree a ‘de minimis’ tip definition should be included in the Bill? If you agree – what attributes should be included?

We do not have a position on this

4. Do you agree an owner of a ‘de minimis tip’ should be excluded from the duties outlined? If not please state your reasons.

We do not have a position on this

5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

We do not have any objections to this proposal.

6. Do you agree with the approach to adding new tips to the register?

We support the conclusions of the Law Commission.

7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

We do not have any objections to this proposal.

8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

We welcome the intention to make information on tip location available publicly to support transparency and accountability.

It is essential that this information is made available in a format which is accessible to all sections of the general population, including children and young people (to comply with child rights legislation) and disabled persons (to comply with equalities legislation).

Consideration should also be given to the language needs of the local population, and requirements towards diversity.

Public information should also be actively promoted amongst the population so that they are aware of the changes and know where they can access information.

9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

We do not have any objections to this proposal.

10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

We do not have any objections to a staged approach and support the move to categorise by numbers not, letters to comply with Welsh language requirements.

11. Do you agree with the approach for interdependent and proximate clusters of tips?

We do not have any objections to this proposal.

12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

We do not have any objections to this proposal.

13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

We do not have any objections to this proposal. We agree that a clearly defined monitoring regime is a fundamental component of any new management regime to provide public confidence that tips are being assessed and providing an up-to-date record of conditions.

14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

We do not have any objections to this proposal.

15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

We do not have any objections to this proposal.

16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

We do not have any objections to this proposal.

17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

We do not have any objections to this proposal.

18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

We do not have anything in addition to add

19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

Several of the activities listed are avoidable and should form part of a general awareness raising programme amongst the general population, as well as a targeted education programme in schools with children and young people.

Reform of the national curriculum provides a timely opportunity for schools in areas affected by these changes to ensure that all pupils have sufficient knowledge and understanding of the dangers and risks human activity can cause, and the steps they can take to minimise risks to themselves, others and their environment. The historical background to this White Paper can also be included in relevant lesson plans to ensure pupils have a better awareness of their communities and the lessons learnt from past events.

20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

We do not have anything in addition to add

21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

If implemented as intended, we would envisage that the proposals will have a positive impact of delivering improved outcomes for children and young people who use, and access information through the Welsh language. The Welsh language, in line with Article 30 of the UNCRC, should be seen as an integral component in the delivery of this Plan and the deliverables set out in this consultation. It is essential that information is provided in Welsh on all matters which will impact on children and young people.

22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

See response to question 21

23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

We understand that a separate Children's Rights Impact Assessment (CRIA) will be published, which we welcome and would support. Whilst the Integrated Impact Assessment (IIA) published alongside this consultation makes reference to the impact of the proposals on children, it is underdeveloped and general in nature. Within the section Human Rights and UN Conventions in the IIA there is reference made to Annex A where the effects in relation to the UN Convention on the Rights of the Child are addressed – we could not locate this document? Our separate engagement with children and young people will provide additional information to support your deliberations.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

Your name: Councillor Anne Gunter

Organisation (if applicable): Pontypool Community Council, TORFAEN

1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

YES

2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

YES

3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

Location; height; angle of the tip; are there streams or natural springs present

4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

NO, All tips should be treated and inspected whether 'de minimis' tip and included on the Asset Register. Owners should comply with outlined duties or face sanctions for non-compliance

5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

YES

6. Do you agree with the approach to adding new tips to the register?

Definitely YES

7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

YES

8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

I agree public should have access to Asset Register but not access to all layers due to confidential matters

9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

YES

10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

YES

11. Do you agree with the approach for interdependent and proximate clusters of tips?

YES

12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

YES

13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

YES

14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

YES

15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

YES

18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

YES/NO, Strict controls over any proposed development near a high category tip
Any proposal to alter water courses and natural springs

19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

Trespassing and vandalism, Excavation, blocking of any drainage infrastructure which can have a detrimental effect. Strict controls over any proposed development near a high category tip

20. Do you agree with the proposals relating to development activities in the

vicinity of higher status tips?

YES

21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

I do not believe that the proposed new regulatory framework for disused coal tips in Wales will have any significant effect on the Welsh language unless Welsh language speakers are specifically requested as essential on future job descriptions.

22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

I do not believe that the proposed new regulatory framework for disused coal tips in Wales will have any significant effect on the Welsh language unless Welsh language speakers are specifically requested as essential on future job descriptions.

23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

036

Name Steve Parry, SC (Hons), MSc, CGeol, CEng, FIMMM, FGS
Organisation (if applicable) Parry Engineering Geological Services

1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

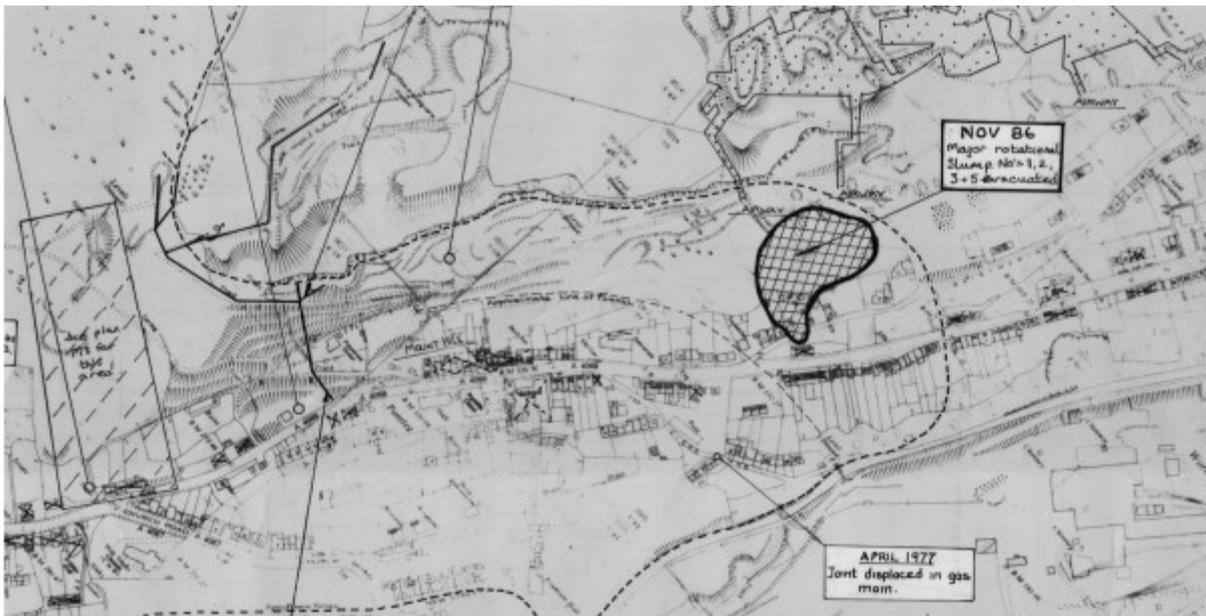
Yes, but it should be noted that the behaviours of such tips are likely to be considerably different to coal tips in terms of the geotechnical properties of the waste; the types of failures that could occur; their frequency and their mobility.

2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

I agree in principal although does it require the level of expertise discussed? The actual assessments will be carried out by consultants so why not appoint an overall management consultant with the depth of skills necessary rather than to replicate this on a small scale (from what has been stated to be a relatively small pool of specialists). It is suggested that a panel of experts be formed to review assessments drawn from appropriate specialist organisations in order to ensure impartiality

3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

Spoil tips vary greatly in size with very small tips often associated with individual adits. However, even small tips in the right combination of circumstance can pose significant risk and it is recommended that initially no "de minimis" definition should be used. By way of an example a landslide involving the failure of a small tip occurred in Pantteg in 1986. It would appear the colliery spoil was placed over a pre-existing spring. This resulted in part of the landslide becoming more mobile with a longer run out impacting on properties.



Pantteg landslide from limited spoil tip, Extract from Halcrow Report 1989

4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

No, see reply above.

5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

No. The information is considered far too limited. Information should also be provided on context of placement, area, estimated volume, maximum height, date commenced and date finished.

6. Do you agree with the approach to adding new tips to the register?

Yes, but it should be noted that the behaviours of such tips are likely to be considerably different to coal tips in terms of the geotechnical properties of the waste, the types of failures that could occur, their frequency and their mobility.

7. Do you agree with the proposed approach to update the asset register? If not, please provide detail on how you consider the asset register should be updated and by whom.

Yes but the timescales tight. Suggest rewording to submitted within xx days of completion of reporting.

8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

Yes.

9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons

No, I find Chapter 4 problematic. The term “hazard” is not defined, Fell et al., 2008 define landslide hazard as “A condition with the potential for causing an undesirable consequence. The description of landslide hazard should include the location, volume (or area), classification and velocity of the potential landslides and any resultant detached material, and the probability of their occurrence within a given period of time.” It is suggested this definition be adopted.

Fell, R. Corominas, J, Bonnard, C, Cascini, L., Leroi, E., Savage, W. 2008. JTC-1 Joint Technical Committee on Landslides and Engineered Slopes Guidelines for Landslide Susceptibility, Hazard and Risk Zoning for Land Use Planning, Engineering Geology 102(2008): pp 85-98 It is unclear why risk is not adopted as suggested by the law society. Fell et al 2008 define landslide risk as, “A measure of the probability and severity of an adverse effect to health, property or the environment. Risk is often estimated by the product of probability of a phenomenon of a given magnitude times the consequences. However, a more general interpretation of risk involves a comparison of the probability and consequences in a non-product form. For these guidelines risk is further defined as: (a) For life loss, the annual probability that the persons at risk will lose their life taking into account of the landslide hazard, and the temporal–spatial probability and vulnerability of the person (b) For property loss, the annual probability of a given level of loss or the annualised loss taking into account the elements at risk, their temporal–spatial probability and vulnerability”

It is noted that whilst the term “hazard” is used the assessment includes consequence which is traditional part of risk. 4.10 what is the definition of “relevant” The establishment of another register (following RoGEP) is not supported, Chartered membership of an appropriate institute and a detailed CV should be sufficient for establishing the person is suitable for the task. Chartership is required as this ensures CPD is undertaken. 4.11 initially a panel should be established to review all reports to ensure consistency of approach. 4.13 Reference should be made to CIRIA report RP 1086 (in press) and Fell et al., 2008. These recommended where

possible a quantitative approach which increases transparency. The Hazard Assessment form includes consequence which is part of risk (Fell et al., 2008).4.14 If a qualitative approach is to be adopted this should be a standardised approach and should be defined. Otherwise, numerous variations will occur which will result in uneven scoring and non-standardised ranking. Note that the hazard type “instability” can result in the need to assess multiple hazard scenarios (see final comments) as such the approach is considered over simplified.4.17 Two hazard types (flooding pollution) are secondary hazards resulting from instability and as such can form part of the instability assessment, i.e., a single assessment. Is combustion a key hazard? This is fundamentally different in terms of mechanisms and area effects (restricted to the tip). It is unclear why this is included.4.20. What are the definitions of likelihood? This should be a combination of the probability of failure and the probability of the failed of material reaching element at risk. The likelihood should be defined otherwise significant variations of approach will occur resulting in non-standardised scoring. See Fell et al 2008 for suitable definitions of likelihood. Table 4 risk to life conflicts with the text which states all scenarios should be considered high. Based on the approach a separate hazard assessment is required for each receptor and for each hazard type i.e., in theory there may be 20 hazard assessments for a single site. The resulting hazard levels for each receptor type will not be equal. How will the hazard levels then be ranked where there is more than one receptor? For example, how does a severe hazard level for a cultural site compare with a moderate hazard level for a railway?

10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

No, see comment above.

Box 1 C and D are confusing. What is the definition of potential to cause risk to life or property? How were signs of instability assessed? Given the significant number of sites most will not have been inspected. How many were vegetated restricting access? A single category would seem more appropriate. Similarly, B A and R are essentially low risk so the box would appear to have essentially two categories risk or no/low risk.

11. Do you agree with the approach for interdependent and proximate clusters of tips?

Yes.

12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

No. The problem with the suggested approach is that once categorised as 1 or 2 there will be an expectation of action and reduction of hazard. However, it is unclear how this will be achieved in reality.

13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

No, It is considered that there are issues with the approach.

Table 6. A number of tips will be densely vegetated with limited access, hence visual inspections are unlikely to provide evidence of any instability. In SAR is better rapid first time failure will not be identified prior to failure. Many tips are likely to not be suitable for "maintenance".

The approach as it stands is likely to give a false sense of security and is unlikely to anticipate future failures.

14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

Yes.

15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

No .

Engineering geomorphological mapping is a fundamental approach to instability assessment and is not discussed.7.20 relevance is not defined.

16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

No comment.

17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

No comment.

18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

No comment.

19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

No comment.

20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

No.

21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think

there would be? How could positive effects be increased, or negative effects be mitigated?

No comment.

22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment.

23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

Current Tip Assessment Methodologies

As discussed above it is unclear as to the methodology of the initial assessments undertaken. However, I have separately reviewed (albeit a small number) of Coal Authority Tip assessment and found them limited in terms of the consideration of hazard and the evaluation of risk. The reports examined did not present a systematic nor rigorous assessment of either hazard (the combination of the probability of a landslide occurring and that landslide reaching identified elements at risk) or risk (the combination of the hazard and its consequences on the elements at risk). As a result, the approach is not transparent nor reproducible.

With respect to previous instability, observations of instability were made but these are very limited, do not use standard terminology and were not located on a plan.

There was no evaluation of the magnitude and frequency of past landslides. There was no evaluation of temporal data sets e.g., aerial photographs. Discussion of the geological setting was restricted to that of the solid geology. There was no discussion of superficial deposits or geomorphological processes.

Hazard (as defined by Fell et al, 2008) was not evaluated i.e. the probability of a landslide impacting on elements at risk. From the examples reviewed possible hazards scenarios include:

1. Failure of the spoil – debris avalanche
2. Failure of the natural terrain below the spoil – debris slide resulting in debris avalanche of the spoil
3. Debris avalanche entering a drainage line a developing into a debris flow, possibly through a 'dam burst' scenario

Each of these hazard scenarios will have different magnitude/frequency/runout relationship. Elements at risk were not defined. Consequently, there was no evaluation of angle of reach/run out

Distance As the elements were not defined, therefore the potential consequences could not be assessed.

On the basis of the above it is recommended that the methodology and results of the initial assessment be published in full, in order that the methodology can be assessed and that they can form a benchmark against which future assessments are made. Alternative Methodologies

There are no UK standards for the assessment of landslide hazard and risk (though the Scottish Government produced guidelines for Pear Slides for Wind Farm developments). However, Fell et al (2008) reporting on behalf of JTC-1 (Joint Technical Committee on Landslides and Engineered Slopes, an IAEG, ISRM ISSMGE collaboration exercise, i.e. all relevant international professional geotechnical societies) provide guidelines for landslide hazard and risk assessments. JTC-1 is largely based on AGS (2007) (freely downloadable) with minor modification for international implementation.

The guidelines provide:

- Definitions and terminology for use internationally.
- Description of the types and levels of landslide zoning
- Guidance on where landslide zoning and land use planning are necessary to account for landslides.
- Definitions of levels of zoning and suggested scales for zoning maps taking into account the needs and objectives of land use planners and regulators and the purpose of the zoning.
- Guidance on the information required for different levels of zoning taking account the various types of landslides

- Guidance on the reliability, validity and limitations of the methods
- Advice on the required qualifications of the persons carrying out landslide zoning and advice on the preparation of a brief for consultants to conduct landslide zoning for land use planning. Whilst the Guidelines were produced for land use zoning they can be adopted for assessment of individual sites, This approach has been recommended in the CIRIA Guidelines (In Press) for landslide assessment in the UK. The consultation document has no discussion of these documents and the usefulness of such approaches.

AGS (2007). Australian Geomechanics Society. Landslide Risk Management. Australian Geomechanics

Vol. 42 No. 1. Volume 42, Number 1 – Australian Geomechanics Society
CIRIA (In Press) RP1096 Natural Slopes and Landslides – Condition, Assessment, Mitigation

Fell, R. Corominas, J, Bonnard, C, Cascini, L., Leroi, E., Savage, W. 2008. JTC-1 Joint Technical

Committee on Landslides and Engineered Slopes Guidelines for Landslide Susceptibility, Hazard and

Risk Zoning for Land Use Planning, Engineering Geology 102(2008): pp 85-9

037

Your name: Jenna Arnold

Organisation (if applicable): Cadw

1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

Cadw can see benefits to this approach, but it is important to recognise that the majority of both coal and non-coal tips are historic in origin and retain important heritage significance. Many slate tips, for example, are now included within the recently inscribed Slate Landscape of Northwest Wales World Heritage Site and are of international importance. There are tips associated with the Roman Gold Mines at Dolaucothi and the Bronze Age copper mine at Parys Mountain. It is crucial that the heritage values of historic industrial workings from all periods of our shared past are recognised, and that the impacts of management decisions on them are carefully considered to ensure that their significance is not harmed.

It is important to recognise that both coal and non-coal tips as we have inherited them reflect the industrial workings at their most developed point. As such, later coal and non-coal tips often cover or incorporate earlier evidence for industrial archaeological activity, including shafts, adits, buildings, structures, transportation, water management, as well as archaeological evidence from pre-industrial periods and buried historic land surfaces.

2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

No opinion

3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

No opinion

4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

No opinion

5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

No opinion

6. Do you agree with the approach to adding new tips to the register?

No opinion

7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

No opinion

8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

No opinion

9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

Cadw welcomes the inclusion of heritage sites as a category of receptor.

Cadw disagrees with the proposed ranking of conservations areas as a Medium-Low receptor level. Conservation areas are defined and protected in the same legislation as listed buildings (Planning (Listed Buildings and Conservation Area) Act 1990). Listed buildings have been defined in your ranking system as being of High-Medium receptor level. Cadw recommends that Conservation Areas are moved to the High-Medium receptor level for consistency, as both are protected for their special architectural or historic interest and are of national importance.

Section 66(1) of the (Planning (Listed Buildings and Conservation Area) Act 1990) states that when considering whether to grant planning permission for development which affects a listed building or its setting, the LPA shall have “special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses”. Section 72 of the Act contains similar requirements with respect to buildings or land in a conservation area. In this context, “preserving”, means doing no harm. Cadw would like to ask how this will be considered in the Coal Tip Safety Act?

Cadw disagrees with the proposed ranking of undesignated archaeological monuments as a Low receptor level. Although undesignated, this resource is defined by WG as a finite, non-renewable and shared resource and a vital and integral part of the historical and cultural identity of Wales. Much of the undesignated archaeological resource is considered to be of national importance. As such, WG’s framework of historic environment policy, advice and guidance (PPW; TAN 24 etc.) states that there is a presumption in favour of their physical protection in situ, whether designated or not. Cadw recommends that undesignated archaeological monuments are re-catergorised to at least a medium-low receptor level, if not higher.

The landscape of Wales is a vital resource for social, economic and environmental wellbeing. It is also historic — shaped by centuries of human activity and rich in evidence of the past. To recognise the value of historic landscapes and to raise awareness of their importance, Cadw has compiled a register of landscapes of historic interest in Wales. We have identified 58 landscapes of outstanding or special historic interest, which we consider to be the best examples of different types of historic landscapes in Wales. Many of these, and their character areas, are defined by their former industrial workings, including coal and other tips. Cadw recommends that historic landscapes are added to the Culturally Significant/Significant Sites category as a medium-low receptor level.

10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

No opinion

11. Do you agree with the approach for interdependent and proximate clusters of tips?

No opinion

12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

Cadw welcomes the proposal to develop management plans to maintain coal tips. Cadw recommends that archaeological/heritage should be added to the list of additional types of specialist inspection. This will enable the archaeological/heritage value and significance of a coal tip to be determined and help inform management responses.

13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

No opinion

14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

No opinion

15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

No opinion

16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

No opinion

17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

No opinion

18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Cadw recommends that the list of unofficial recreational use is expanded from bicycles and motorcycles to include 4x4s.

19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

No opinion

20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

No opinion

21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No opinion

22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No opinion

23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

Cadw welcomes Welsh Government's confirmation that we are not proposing to remove all disused coal tips, and the proposal to introduce management plans to manage and maintain tips. The White Paper acknowledges the historic origin of the coal tips and their impact in shaping communities, particularly in the South Wales Valleys. Whilst the natural environment value of the coals tips is recognised (ecosystems, habitats etc.), the White Paper does not acknowledge that the coal tips are themselves a significant aspect of Wales's recent industrial past, nor does it state their contribution to regional landscape character or national self-identity.

Cadw recommends that the heritage significance of a historic coal tip needs to be understood and the impact of proposed reclamation and / or remediation schemes on this significance is understood as part of the wider proposed assessment process and certainly prior to works commencing. This is to ensure that historically significant coal tips are identified and preserved for the benefit of this and future generations. It is important that the better-preserved examples of historic coal tips are retained to contribute to a 'Wales of Thriving Culture and Welsh language.' The impact of proposals for tree planting, helping to enhance biodiversity, and recreation etc. on the heritage values of historic coal tips should also be considered and managed appropriately.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

038

Your name: Jenny Emmett/John Lawson

Organisation (if applicable): ALGAO:Cymru on behalf of the Association of Local Government Archaeological Officers (ALGAO)

1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

More information is needed about this process. In principle it is logical for the framework to encompass all spoil tips, but, as set out in the White Paper, this will be a considerable undertaking over several years, and the appropriate approach for different site types may vary. Whilst recognising the challenge of collating, inputting and assessing data, inconsistency appears inevitable if sites are added on a rolling basis. The process for updating the register and notifying stakeholders needs to be clearly set out.

Non-coal tips comprise an extensive resource which includes innumerable industrial archaeological sites. Among these will be elements of the recently inscribed Slate Landscapes of Northwest Wales World Heritage Site, including slate tips designated as scheduled monuments. As for the approach to coal tips, consideration needs to be given to how the framework would relate to existing policy and regulatory frameworks.

The White Paper does not indicate that any further consultation would be carried out when the review of non-coal tip data has been completed. We would suggest that consultation would be appropriate in the interests of identifying and remedying any potential issues, and would advise that Cadw should be included as the specialist statutory consultee for the historic environment.

2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

Yes. It will be important for the new supervisory authority to have access to specialist historic environment advice. This could be achieved through employing this expertise along with other technical professionals within the authority. We recommend that a formal arrangement to consult with Cadw and the curatorial sections of the Welsh Archaeological Trusts is put in place.

3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

Yes. The proposed attributes (3.21 and 3.22) appear suitable.

4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

Yes, this is reasonable, particularly where tips are remote and/or resulting from historic trials that did not develop into active workings.

5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

Yes. In addition, we would recommend the inclusion of statutory historic environment designations and reference to non-designated heritage assets— while these are readily available on public resources (e.g. HERs), inclusion of this data supports holistic management and will act as a trigger for specialist consultation where there is potential conflict with designation or management regimes. We would suggest that contact details for technical specialists such as archaeological and landscape advisors should be included in supporting guidance.

6. Do you agree with the approach to adding new tips to the register?

Yes. We would suggest that there should be a prompt to notify key stakeholders (such as local planning authorities, or Cadw/NRW where a designated site is affected) when additions are made.

7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

Yes.

8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

Yes.

9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

Yes. We welcome the specific identification of 'Culturally sensitive/significant sites' and the inclusion of undesignated archaeological monuments. In addition, Table 4 should include Registered Historic Landscapes; it is suggested that this should be classed as Receptor Level 2: Medium-Low.

10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

No comment.

11. Do you agree with the approach for interdependent and proximate clusters of tips?

Yes. This appears sensible and consistent with integrated management principles.

12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

Yes, though there may be merit in including information on the historic environment in management plans for lower status tips as well, as the constraints and obligations associated with environmental and heritage designations are equally applicable and may have a bearing on e.g. general maintenance.

13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

No comment.

14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

No comment.

15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

No comment.

16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

Yes.

17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

Use of discretion appears the more pragmatic option, to avoid disproportionate or draconian action and allow the maximum flexibility to achieve the most effective response.

18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Yes. In addition we would suggest including the demolition of buildings or structures; this is not always subject to planning and, besides resulting in the unrecorded loss of historic structures, can entail activity contributing to destabilisation.

19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

The range of measures proposed in paragraph 9.7 seem appropriate.

20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

Yes.

21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment.

22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

The publicly available Register should be bilingual. In particular, it should be straightforward for the register to accommodate all the names by which a site is known, by including a suitable field in the database. This will aid accessibility and support Welsh Government objectives of fostering Welsh language, culture and Welsh place-names.

23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

We would reiterate the suggestion in our response to the Law Commission consultation that there may be merit in a protocol for information exchange between the new register and historic environment records (HERs), both to aid site management and development management decision making.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

039

Name: Dominic Driver, Head of Land Stewardship
Organisation (if applicable): Natural Resources Wales

Chapter 1: Introduction

Regarding remedial works being done on these tips, we recommend that their risks to flammability should be considered. Matting may add an increased risk of wildfires in an already high-risk areas such as areas where wildfires are a regular occurrence, particularly within the South Wales Valleys. It may also destabilise the tip further

through increasing the fuel loading. All plans and remediation works should be discussed with lead officers from Fire and Rescue Services as key leads.

The number of disused coal tips identified in sub-heading 1.24 is satisfactory. At present, there are complexes or clusters – for ease of inspection or where they are interconnected. Clarification is needed as to whether we should be counting each tip within a cluster individually. This should not be a priority above ensuring that all tips are brought into an acceptable standard of management. Additional clarification on how to manage responsibility is also required where NRW have tips partially on our land.

It is important to distinguish the risk of a tip failing and the risk that a failure may have an impact. A tip in a bad condition may be in a remote location so the impact of a failure could be low. Whereas a stable tip, which might be given a low-risk rating, may have a massive impact if it was to fail depending on its location.

Therefore, it is also important to note that the locality of the tip in its location to communities/population. These should be inspected more frequently as it poses more threat. Tips should also be inspected more regularly after any incident that factors its instability e.g., wildfire removing vegetation from the surface. These are regular occurrences within the South Wales Valleys and was an element that played a part in the Tylorstown slip.

As in the climate change prediction, we are more likely to get periods of drought as well as an increase in wildfire risk across Wales. Wildfire poses a significant threat to tip instability as it removes surface vegetation and can sometimes penetrate deeply into the subsoil/surface soil of the tip. Vegetation removal can cause significant instability and thus destabilise the tip. Wildfire risk should be considered as a risk from Climate Change.

Currently safety inspections of tips typically rely on visual inspection of the surface condition of a tip and any protective infrastructure. It is believed that an increased use of geotechnical instrumentation (inclinometers, soil moisture etc) and remote sensing have huge potential to improve safety monitoring. For example, identifying tips that are at risk from underlying springs. LiDAR drone mapping/surveying and sub-surface mapping (soil moisture, seismic, GPR, magnetic, gravity etc) needs to be vastly expanded. The current technology trials for potential suitable monitoring approaches should be continued. New technology is appearing fast, and we need to utilise new technologies that may be unknown to us at this point.

NRW is currently implementing an emergency walkover procedure for the tips on its estate based upon rainfall data and clarification would be welcomed as to what the system should be for general use.

All spoil tips, including both coal and non-coal tips, may pose a risk but any new regulations should apply to those tips that are deemed to be a hazard and may be a risk. Any tip that is regarded as not being a risk should be exempt from any new controls as these would be unnecessary (but please see our comments below on “e”). With identification and mapping of tips, we recommend that the task force works still more closely with existing organisations to identify tips that may not yet have been mapped. Spoil tips can also be identified from aerial maps and satellite images as well as LiDAR aerial surveys.

We welcome the recognition that many coal tips in Wales provide thriving ecosystems as well as supporting habitats and wildlife of considerable local, regional

and national importance and that these could be reasonable considerations in how safety work is undertaken.

Chapter 2: Scope and Supervisory Authority

NRW agrees with the statement that while there are existing bodies who could provide some of the functions outlined in this White Paper and the Law Commission's report, no single existing body meets all the criteria required. The technical ability is currently spread across multiple organisations.

A new Supervisory Authority will take time to become established with procurement frameworks, maintain delivery and enabling home grown expertise in a specialist multidisciplinary sector. We suggest that this may be better accomplished in transitional stages. For sustainable economics/finance, a new arm of the Coal Authority could be established, so that the investment generates and supports the Welsh economy, which within a set timescale separates to be an autonomous Welsh public body. This link will enable benefits from ongoing RD&I within UK.

The majority of Coal Tips are in the South Wales Valleys and other mining spoil tips such as slate and other heavy metals are in North Wales. Ignoring non-coal tips may create an unhelpful geographical division in the public opinion of how Welsh Government is applying legislation.

Consultation Question 1 - Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

Overall, we in NRW agree with the proposed approach to phase in non-coal tips over time. However, we note that it would require collation of a dataset from currently unknown sources and possible large-scale surveying. We would also note that this could include known sites on and off the estate related to old industrial metal mine workings where risks to the environment are wider than slips from spoil. Currently, we have an inspection and maintenance regime for non-coal spoil tips on our estate in South Wales. This would therefore need to be extended over time to our estate in the rest of Wales. It should be considered whether these non-coal tips should hold priority over relatively benign category A and category B coal tips due to the level of other environmental risk and safety. There are non-coal spoil tips presently managed by NRW which could be classified as the equivalent of coal tip risk category D. The miner right ownership (MRO) will also have to be fully considered to ensure stability work can be progressed legally, especially if moving spoil. The term "spoil" or "tip spoil" would need a clear definition as MRO may have a different view at the differing quarries, granite, limestone, slate or metal mines. If Law Commission's suggestion for definition of a disused coal tip, which includes elements such as '...prospecting, extraction, treatment and storage of coal and associated minerals and as including, but not limited to, overburden dumps, backfill, spoil heaps, stockpiles and lagoons' is to be extended to all mineral tips, MRO may also consider residual value, especially as technology changes aiding critical mineral/metal harvesting.

Consultation Question 2 -Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

We agree that the new supervisory body should be a new Executive Welsh Government Sponsored Body. NRW does not have the expertise, capacity, or remit to effectively carry out this role. A separated division could be created in the Coal Authority as they are currently used as the main contracted inspector, although, it may be preferential to establish a new body over time.

Chapter 3: Asset Register and Register of Professionals

We recommend that the asset register be defined in detail including among other things exactly what needs to be recorded on the asset register. If we know exactly what standard data should be captured, a database can easily be designed. Under sub-heading 3.10, it states "...we have considered the implications of the ownership landscape of a tip and developed our proposals in a way, which does not place onerous duties on a party with a negligible interest in a tip." We recommend further clarification of what constitutes negligible interest in a tip and the parameters. In regards of having a definition of a disused spoil tip, it would be helpful but it may mean that items which could constitute a hazard are disregarded. Spoil tips are so variable. It is very difficult to define what constitutes a spoil tip and definition could easily miss an important factor. An expert is often needed to assess a feature for it to be considered part of a spoil tip.

For the definition reference from 2014 Regulations in sub-heading 3.17, it would require defining the term "mine" as many spoil heaps may be from sources other than what we consider a mine – for example a waste dump or a stockpile. It also needs to be extended for open cast and quarries for non-coal mineral exploitation. 3.17. The definition in the 2014 Regulations being:

"tip means an accumulation or deposit of any refuse from a mine (whether in a solid or liquid state or in solution or suspension) other than an accumulation or deposit situated underground, and includes, but is not limited to—

- (a) overburden dumps, backfill, spoil heaps, stockpiles and lagoons, and
- (b) any wall or other structure that retains or confines a tip"

As for defining de minimus tip, a minimal risk tip would depend on a number of factors which are not easily defined, one definition would not fit all. A tip needs a risk score, if the score is below a certain limit the tip could then be considered de minimus.

The referenced classified tips definition from The Mines and Quarries (Tips) Regulations 1971 assumes a tip is "refuse" or waste material. This may not be the case as many tips are now being reused and exploited thus would not be regarded as waste e.g., the Ffestiniog slate tips. We agree that gradient of natural strata will be beneficial to include as is the presence of an underlying lubricating layer such as clay or peat. Dip, orientation and composition of underlying strata or superficial deposits may also be useful.

Regarding content of the register, we suggest that attributes such as Other Names, Tip description and Type of tip are added to the minimum content of the asset register. For operational purposes, landowner or responsible person particulars need to be kept. with tip names, the register could have the main name and other names

in separate fields. Lastly, external risks could be added to historical data including reports of anti-social behaviour, wildfire, historical data in the locality, etc.

Consultation Question 3. Do you agree a ‘de minimis’ tip definition should be included in the Bill? If you agree – what attributes should be included?

We believe that there could be benefits from including a ‘de minimis’ tip definition in the Bill. It would allow the Supervisory Authority to focus on key sites and tackle them over time, not needing to be distracted by smaller sites. The Supervisory Authority could also have an allowance/means to add tips should a higher risk hazard become apparent, and inspection determines the need to otherwise incorporate them into the tip inventory. The definition should also be revisited when other non-coal tips are being considered for entry onto the database as polluting impact of metal mine tip is a risk.

There could, however, be an unintended consequence that the assessment becomes more about whether an a priori definition of de minimus is reached as opposed to the actual risk. This could be resolved by tips that may fit the de minimus category having a streamlined, perhaps desk based, form of assessment either at categorisation or in some reasonable time period after initial categorisation. In that regard “An expert WILL be required to assess each tip and decide if it has a low enough risk factor to be disregarded as having no apparent risk”. Once that’s been undertaken a tip could be classed or continue to be classed as ‘de minimus’ if appropriate, subject to the definition working for that process.

What we are advising on is finding a balance between the burden of in-depth assessment of large numbers of features that are almost certain to be very low risk and creating a definition that could generate more legal argument than actual work to improve safety. For example, a small but steep slope held by a poorly maintained/constructed retaining wall/berm could be defined as de minimus but in time yield causing injury, death or damage. We have some ideas on a detailed methodology from our experience with abandoned metal mines which we would be delighted to share if appropriate.

Consultation Question 4. Do you agree an owner of a ‘de minimis tip’ should be excluded from the duties outlined? If not please state your reasons.

We agree that an owner of a “de minimis” tip should be excluded from the duties outlined, assuming that the coal tip has been categorised and assessed as such in accordance with our recommendations above. We believe that there are tips on NRW land which would fall into the category and should be designated as such.

Consultation Question 5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

We agree and believes that the chapter has set out a logical approach and essential information required. However, it should be noted where there have been historical inspections and maintenance carried out otherwise, it may give impression that these tips have not been managed.

A geographical area on OS Plan for coal tips could also be included as it would add more clarity than a number or a point. If other non-coal tips are to be included, a definition on the content of the tip would be appropriate, i.e., grain size and material granite, limestone, slate, metal mine spoil (Pb, Zn, Cu, Mn), tailings. The Mineral Rights Owner could also be added.

Consultation Question 6. Do you agree with the approach to adding new tips to the register?

We agree with the approach to adding new tips to the register. It should also consider other non-coal tip when their data become available. Some de minimus coal tips could also added, should they represent special circumstances. The de minimus tips definition may need amending for non-coal tips.

Consultation Question 7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

We agree with the proposed approach to update the asset register, although, it should be noted that NRW's land AMX (the "Land Estates Asset Portfolio" (LEAP)) system will be doing internally for NRW exactly what is outlined. This has been demonstrated to the Coal Tip Safety Team. In scenarios, where organisations are already operating such a system a possibility to link to the register would be useful rather than having to transfer information to a new register, otherwise, much work could be created, reducing the benefit of having an effective inspection and maintenance system.

In relation to this, we recommend that the system for undertaking hazards assessments, inspections and appraisals is further considered. We and many local authorities are already using an AMX system inspections and maintenance. We recommend this is looked at for integration into the proposed new system. Please note that we make no direct recommendation to use a particular supplier. We would prefer to continue to use our LEAP system rather than be required to transfer to a new system unless transfer would provide significant benefits to the inspection and maintenance programme for the tips on our estate.

It is also important that emergency services have access. We note that DataMap Wales already serves as a good function for sharing of data e.g.: fire and rescue services access and management plans.

Consultation Question 8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

We support the proposal for the type of information to be made publicly available. Some information does need to remain confidential. Access to the register could be limited at different levels of input. For example, Mineral Rights Ownership as Yes/No publicly, but underlying confidential information that includes the MRO & contact details could be available to the landowner & other regulators such as NRW for Non-Coal tips.

Chapter 4: Hazard Assessment

In relation to sub-heading 4.10, which states that "...we believe the supervisory authority should have a duty to arrange hazard assessments, thereby enabling it to delegate to another party or agree with an owner (e.g., a local authority) with the relevant experience to undertake the assessment", we recommend that what body / bodies this third party could be is clarified. During the workshops we heard that we would not be this third party and we would welcome this being confirmed / clarified as NRW would not have the competency or resource to carry out this function.

The minimum competency of a specialist to undertake hazard assessments is also noted. Due to shortage of professionals in the field, getting inspectors with ten years of experience and chartered would probably be difficult. Inspections should be able to be undertaken by junior professionals as long as they have the senior oversight who can sign off the inspection.

Following the proposed receptor groups and receptor levels, it is unclear whether the specialist would have to be qualified to carry out effective assessment of receptor groups 4 and 5 as well as the geotechnical specialism or would this be fed into by another third party. It would be unlikely they were competent in all aspects. The conservation and heritage priority levels against safety and hazard levels need to be specified. We recommend that the Environment (Wales) Act and Sustainable Management of Natural Resources duty is referenced.

We recommend that the skills need across Wales is considered. We feel it is almost certain that Wales would need more resource than currently available to carry out both Hazard Assessments and Inspections/Appraisals to avoid too much competition for the same resource by the Supervisory Authority, NRW, Local Authorities and private landowners.

Consultation Question 9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

Overall, we agree with the proposed approach to measure hazard level. We recommend adding pollution and flooding to those to be considered when determining receptor levels. Abstraction points, both potable and non-potable, could also be included as a receptor group.

Within Ground Stability Assessment, we recommend the assessment includes how the tip responds to heavy rainfall and how quickly it becomes saturated. This would inform the need for emergency inspection and the relevant triggers. It would also be good to see the inspection interval justification related to the hazard assessment. If the features of a tip were mapped at this stage, this should form a consistent mapping regime relevant to the inspection form that can be easily identified by the landowner or contractor to carry out maintenance works. This is currently an issue NRW experiences and opportunity should be taken to produce readily understandable mapping so that issues can be located with ease.

As far as possible, the hazard assessments being undertaken by the Coal Authority on behalf of Welsh Government this summer and beyond should be used instead of having to duplicate assessments again when the supervisory authority is in place.

Chapter 5: Categorisations

Consultation Question 10. Do you agree with the approach to developing categorisations? If not please specify your reasons

We agree with the approach to developing categorisations, though the Supervisory Authority should be able to act in case work is deemed necessary.

Chapter 6: Tip Clusters and Management Plans

Consultation Question 11. Do you agree with the approach for interdependent and proximate clusters of tips?

We agree with the approach for interdependent and proximate clusters of tips. NRW currently uses a similar approach. It is important for the monitoring and maintenance of interdependent tips and for the efficiency of operations by inspecting proximate tips of the same categorisation.

Consultation Question 12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

We agree with the proposals for developing management plans. However, we have some recommendations.

If the system is to remain consistent it needs to be entirely led by the Supervisory Authority in developing all management plans, otherwise there is the risk of divergence following the hazard assessment.

The proposals should be further clarified and more still more consistent in some sections. At the start of chapter 6, Welsh Government (WG) identifies tip clusters and category 1 tips to have a Supervisory Authority management plan, Law Commission report recommends in sub-heading 6.6 that the supervisory authority should arrange the management plan for every tip and yet in sub-heading 6.10 states "Owners of small-scale tips with low to no risk should not be under any onerous duty to develop a complex management plan, particularly where they may not have the relevant expertise or access to it".

The sub-heading 6.6 also includes, "Due to the potential scale of such a duty, we agree no single body should be responsible for producing all management plans, but owners should also be required to participate in this exercise". For NRW, to undertake new management plans for each of its tips would be an onerous exercise. There is a suggestion that the Supervisory Authority should arrange all management plans if they are required. If an assessment is prepared for each tip on the register and arranged by the Supervisory Authority, this may be a natural conduit for generating management plans for lower category tips.

Alternatively, it could help the Supervisory Authority to have an ability to issue a Notice requiring a Management Plan at other category tips if for example, circumstances dictated deterioration/movement of the tip, its infrastructure or increasing poor water pressures.

This duty would provide an onus on NRW for which we haven't got resource. NRW would require funding to resource outsourcing and managing the preparation of Management Plans. We would likely require a minimum of 3FTE's and Management Plans being prepared probably @£12K to £15K (our mine desk studies are costing @£10K) per plan. This would be increased if subsequently extended to non-coal tips and we would therefore need to reconsider our likely resource and capital needs when enabling extension to non-coal tips.

Chapter 7: Inspections/Appraisals and Maintenance and Maintenance Agreements

We question whether low risk, no or remediated tips should require repeat inspections if they have been appraised as presenting no apparent risk. Not doing this would reduce the inspection resource required as well as costs.

Table 4 contains the proposed three-tiered system of checks which include "...Inspections – Can be completed as a self-assessment by the responsible party for the lower status site – essentially an affirmation that nothing has changed..." We recommend clarification of how a self-inspection would be policed. If a landowner can inspect their own tip, the Authority would need a way of assessing whether the inspection was honest and reliable. An independent inspection should be required at the minimum.

Sub-heading 7.5, states "...there would be inspections undertaken pre and post any significant weather event". We recommend this is clarified with details on what would constitute a significant weather event. Whilst it is mentioned in the management plans section about triggers such as rainfall events, this needs a technical clarification. NRW have currently implemented an emergency walkover system for the tips on its estate developed by the Coal Authority based on certain rainfall data. This would need reviewing along with the trial monitoring proposed, and the decisions made on specific trigger mechanisms for emergency inspections needs clarifying and implementing by the Supervisory Authority.

Please could NRW's responsibilities be made still clearer throughout the document, often only Local Authorities and landowners are mentioned. NRW has the largest number of tips on its estate and the responsibilities need to be made clearer for us, our stakeholders and the public. For example:

- Tables 8 and 9 do not include NRW as a responsible party while in sub-headings 7.10 and 7.34 NRW is mentioned as being responsible for its own tips.
- The sub-heading 7.10 highlighted different arrangement for Local Authorities and NRW. The arrangement should be the same, because they have the same arrangements in place for managing their tips.

Table 9 also assigned owners as responsible party for carrying out maintenance work. If works are completed by the owner, the Authority would need a mechanism to assure itself that the works were appropriate to the correct standard and have rectified any risks identified.

In relation to minimal content of inspection report, detailed in sub-heading 7.21, it is suggested that signs of damage, e.g., anti-social behaviour, fire, and vegetation damage, are added.

Consultation Question 13. Do you agree with the tiered approach and the proposed frequencies of checks? If not, please specify your reasons.

We are reasonably content with the tiered approach and the proposed frequencies of checks. Although, we question the need for separate inspections and appraisals. A simplified approach would be a merger of the two; the inspection being more than a 'tick box exercise'. An inspection/appraisal should inform maintenance works required or whether something must change. If they are to be separated, we feel that inspection should not be required for category 4 tips.

For higher category tips, instrumentation, where it is identified as useful, should be included as part of the inspection/monitoring regime. The Annex 3 research should

be developed, and instrumentation become more widely used to improve the current visual inspection visits. Such increased usage may provide the information to raise/reduce a Hazard categorisation.

There should also be an allowance for spot checks, which are not inspections, on critical parts of Category 1 & 2 tip drainage systems, prior to and post anticipated storm events. As we have declared climate emergency and with it changing weather effects, improved resilience is required across the whole system. These spot checks would highlight essential simple maintenance where blockages may have occurred, and which can be cleared prior to the event. If these can be telemetered or by using IOT communication, it would be very beneficial but so far these technologies are not yet in place. The post event checks would be simply to detect deterioration or movement. If fires are a risk factor, then there may be an additional need for checks during periods of excessive dryness, such episodes now being more likely due to climate change.

Us having the largest number of tips of any single organisation places a much-increased inspection and new appraisal regime on NRW which will likely double the required resource. We would also need additional capital to accommodate this which can be twice our current capital for this area of work & at least 1 FTE to accommodate the administration/contract management and maintenance. If there is to be an extension to non-coal tips, then NRW would have to revise upward still further its requirement for capital and revenue expenditure. The stability at overly steep tips at several lead mines is demanding attention presently often with nature conservation designation constraints. Incident reports on stability at other quarries or slate mines have also been received.

An illustrative initial estimation on travel costs, inspection, appraisal, assessment, and categories of 113 WGWE sites shows that the yearly cost would be £1.2 - 1.5M if preparation of management plans described are also to be included.

We cannot absorb such costs into our current budgets, which are already at least fully allocated to service levels agreed with the Welsh Government. We would need additional funding from the Welsh Government to resource the additional services for us to deliver as implied by the White Paper.

Consultation Question 14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

We understand the thinking, but we have some concerns regarding the split of responsibilities for inspections and appraisals. The chapter mainly focus on responsibility of Local Authorities rather than that of NRW in the case where it retains responsibilities for all its tips. However, it is relevant in places where NRW partially own a tip and the rest of it is either the responsibility of the Local Authority or an adjacent private landowner. At present, NRW is inspecting a tip to the boundary of its estate. We require clarification for such boundary tips on responsibility – as they should inspected and maintained as a whole. The responsible party needs to be specified.

The current proposal is reasonable for rationalising the large-scale problem but as the White Paper has identified, land ownership is often fragmented. Therefore, it is likely that it would be difficult for the owners to practically arrange and maybe unmanageable for the appraisal stage.

Consultation Question 15. Do you agree with the proposal for minimum content of reports and if so, what do you consider is essential information?

We do not agree with the proposal for minimum content of reports because we believe that a scoring mechanism needs to be developed for the whole tip site, not just individual features, so that the level of risk can be scored at any one time. For example, the number and size of defects would indicate the risk of a slope failure. This risk score is normally calculated using a tick sheet which gives a score to each point on the tick sheet. The result of this would give an overall condition score for the tip and show the likelihood of a failure. Individual defects found on the tip also need mapping, geospatial date of each feature needs to be captured.

Chapter 8: Oversight, Enforcement, Charging and Appeals

We recommend that the legislation is clear for all concerned including the staff of the organisation that has to enforce any potential breaches. The offences also need to be clear so appropriate level of enforcement can be taken. For example, if the civil sanctions are not accepted then it is assumed this will lead to the consideration of criminal proceeding subject to evidence and it being in the public interest to do so. We recommend that the Law Commission should consider whether a summary offence stated under sub-heading 8.22 is a sufficient deterrence or should they consider certain offences to be either way so the matter can be tried in crown court and/or sent to crown court for sentence. If it is to remain summary offences, then they could consider the penalty for the summary offence to be statutory maximum, so the magistrates court has the power for unlimited fine where appropriate.

Consultation Question 17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

In view of difficulties accessing sites and undertaking remediation, when they are privately owned or in multiple ownership, it would be of benefit if the Supervisory Authority had compulsory purchase order powers.

Chapter 9: Activities on Disused Coal Tips

Consultation Question 18. Do you agree with the list of activities? If not which activities, do you consider need to be controlled on disused coal tips?

If it is being extended to non-coal tips, we should consider the robbing or removal of mine spoil as aggregate for tracks or other usages by landowners. Similarly, livestock control can be important as this can disturb or mobilise polluting matter. This is more often associated with upland Wales.

Consultation Question 19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

We suggest that the supervisory authority would need to approve any construction or proposed development on or near a coal tip. In addition, the Fire Service may consider activities/recommendations for managing risk level of fire on tips including

fire break management. We recommend that they become a statutory consultee in management plans linking to fire management in high-risk areas.

Consultation Question 20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

We agree with the proposals relating to development activities in the vicinity of higher status tips. All the listed activities need to be controlled. NRW has a particular issue with built unauthorised mountain bike trails in South Wales. They are prevalent on tip inspections and have the potential to divert water to places which may cause difficulties and prevent the natural drainage of a tip. Unauthorised mountain bike trails are also problems on metal mine tips.

We believe that all risks associated with fire are important to consider in areas of high risk. Management activities can be undertaken under the recommendation of bodies such as the Fire and Rescue Services which may install fire break and fire management plans accordingly. South Wales has a high level of anti-social behaviour linked to arson, and this poses a threat to tip stability through vegetation removal and higher surface erosion after a fire.

Chapter 10: Tip Safety and Environmental Legislation

It is recommended that the term emergency situation needs defining. More powers are given to authorities in an emergency situation. If this were not clearly defined, authorities would be hesitant to use these powers or declare an emergency. From a waste management perspective as well as other regimes, we would welcome sight of the mentioned report following the project undertaken by Birmingham University into potential conflicts between tip safety and environmental legislation. I hope these comments are useful. Overall, as you know, we are strong supporters of and, indeed, partners in the Task Force and look forward to continuing to work with you and others.

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Name: Roger Waters, Director Frontline Services
Organisation (if applicable): Rhondda Cynon Taf County Borough Council

Officers of RCTCBC have engaged with the consultation process and attended a series of workshop events hosted by Welsh Government to engage with local authorities, The Coal Authority, Natural Resources Wales, Welsh Local Government Association and other partners and stakeholders

This response represents the views of senior officers in consultation with the Cabinet Member with responsibility for Coal Tip Safety. In addition, Senior Welsh Government Officials have presented an overview of the

White Paper to the Council's Overview and Scrutiny Committee on 20th July 2022 and responded to detailed questions of committee members. A separate response will be submitted on behalf of Overview and Scrutiny Committee.

1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

A. Yes. It is important prevent any delay in implementing the new regime and as coal tips present the most immediate risk (particularly within the South Wales valleys) it makes sense to phase in other types of spoil heap over time – particularly given the enormity of the task.

2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

Yes. It should provide a consistent approach to tip safety management and would be independent of any tip owner thereby providing an unbiased and transparent approach with no conflict of interest. It should be accountable to WG, provide value for money, a high level of expertise and instil public confidence. Whilst noting NRW (and Coal Authority) will continue to have responsibility for its own tips, there should still be an element of supervision to ensure consistency of tips management across all owners. Governance arrangements should include representation from local authorities.

3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

Yes. However, 'de minimis' by definition means "too small to be meaningful". A small tip could still pose a risk (possibly the terminology is misleading) – therefore it is not enough in itself to define the tip only by size or other physical property alone in order to exclude it from the process.

Attributes for a "de minimis" tip should include – Height, Area footprint, Material composition, Gradient and type of underlying topography and or strata, Water table, Risk assessment – linked to proximity to critical infrastructure, homes, etc. The Definition of a Tip needs to be clear as there are examples whereby the current footprint of tips does not cover wholly the area where there is colliery spoil material, for example – where it has been used to create embankments near the location of the tip.

4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

In principle yes. This response is dependent on the assessment and attributes included in Q3 which should result in a "de minimis" tip requiring little or no further interventions and to pose little or no risk.

Tip definition should also include all infrastructure on the tip including adits, culverts, channels etc. Consideration should also be given to including powers to maintain water flows onto and off the tip outline. For example – how can water management on adjacent land that potentially has an impact on a tip stability be captured within this process or is reliance on existing legislation sufficient?

5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

In general yes, however, a plan of the tip indicating major infrastructure and access routes should be considered as part of the minimum requirement for all tips. Landownership should be included as this information is relevant to tip safety and management, as well as a requirement to notify changes in ownership. For the highest category tips an Emergency Response Plan should be considered as part of the minimum requirement.

There is a large amount of additional information which could/should be held on a tip record e.g. geological, mining data, monitoring information, drainage infrastructure, ecological, historical, safety, Inspection risk assessment, photography, survey, H&S plans, construction drawings etc. However as much of this information would not be available for many tips it would not be considered necessary for minimum content.

6. Do you agree with the approach to adding new tips to the register?

Yes

7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

In principle yes. However, this is a massive logistical undertaking and will require considerable input to ensure it operates efficiently. Updating the Register is fundamental to the efficient operation of the whole regime and will require a high degree of quality control. At this stage it is not set out how this process is to be monitored or managed by the Supervisory Authority and should be considered as a high-risk element to the process. The process should be specified to ensure consistency in data recording, format, software, presentation, etc.

8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

Yes, though consideration needs to be given to potential blight issues.

9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

In Principle Yes – However – RCT currently use a hazard/risk based approach with a matrix system for risk/severity/likelihood when assessing tip safety based on inspections and other data. The RCT approach utilizes a quantitative and qualitative approach. The quantitative element gives a non-subjective base line assessment which can then be reviewed by experienced competent assessors and modified if required.

The proposal is for a qualitative approach only. This allows a degree of subjectivity depending on the assessor. The hazard matrix lends itself to a partially

quantitative approach (as in the RCT model) which removes a significant amount of subjectivity giving a consistent base approach. Further assessment can then be made by competent assessors to amend the base result if required. This should be considered.

The use of the word “significant” in the assessment needs defining.

There is no definition of what determines the effect on a receptor or how this is assessed. Is it localised? Is it flow path – and if so, how is this calculated? Is it knock on effect from other infrastructure e.g., blocked culverts and flooding? This needs to be addressed.

Four major hazard types are noted but the inclusion of “Combustion” as one of these is possibly unnecessary. Tip combustion – while in itself is a major issue – is thankfully a rare occurrence so should possibly not be included in any minimum content assessment and assessed on a tip-by-tip basis instead.

Table 2 Hazard level matrix ‘Rare’ should be described as ‘Highly Unlikely’ for consistency in descriptors. ‘Minor’ could read ‘Low’

Table 4 Receptors – the use of the effect of the hazard for People/Communities is different for the other Receptors. Should this be the number/density of communities and housing; location of schools; hospitals rather than the risk presented by the hazard?

10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

In principle Yes – but as in Q9 above the determination of the effect on a receptor and how this is quantified is critical to the process and needs clarification.

11. Do you agree with the approach for interdependent and proximate clusters of tips?

In principle yes – however – the classifications need further definition. Is there a cut off? (Interdependent distance? Interdependent infrastructure? Flow paths?). How are these managed if there are multiple owners?

12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

In principle yes. For management plans to have a consistent approach, as they will be produced by various sources (e.g. Supervisory body, LA,s private landowners etc,) there should be some form of standard reference documentation (Specifications, Conditions of Contract, standard details, etc.) and potentially a list of approved contractors / consultants.

Consideration should be given to developing and producing a framework approach.

This would greatly assist non-technical landowners in accessing and delivering the requirements and allow a consistent approach in checking/challenging or monitoring management plans

13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

In principle yes - A tiered approach to inspection/ appraisal is sensible.
However:- The assessment / appraisal process also links back to points raised in Q9 and Q10.

Would an initial assessment in conjunction with the landowner be beneficial?
Inspections / appraisals need to take account of many varied aspects such as ecology and habitat however this process must not lose sight of the fact that it is the structural integrity of the tip and the risk it poses to life and critical infrastructure should it fail which must take precedence and should carry the most weight in the decision making process.

Inspection Frequency – No we do not agree with the suggested 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.

14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

In principle this is an acceptable approach however consistency must be achieved in the quality of reporting. Consideration of funding is required as the legacy of tips and their consequent liabilities does not fall evenly across Wales and some LAs will face hugely disproportionate levels of demand in resources, expertise and commitment – which leads to huge exposure to costs.

Whilst there are basic competencies listed for those undertaking these tasks, how are non-technical owners (or even LAs with resource issues) expected to produce them? :-

1. Will there be an approved list of competent inspectors?
2. Is a Tip Inspectorate Service a possibility?
3. Will LA's or other bodies provide these services for a fee?
4. Will training for owners be provided to undertake these inspections?
5. Would any training be free, subsidised or charged?
6. Would WG consider grant funding for inspections?

Some LA's and other independent bodies currently undertake and manage tip inspections and have in house expertise – Is there scope to offer these resources to non-technical clients/owners (potential funding stream) either as a centralised resource or through the individual bodies and would this require authorization from the Supervisory body?

Policing of inspections and reporting of issues particularly on lower category tips may become an onerous task if not coordinated / managed centrally.

15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

A. Yes – The reports should include a plan. This could include:-

1. Access routes
2. Route of Inspection
3. Asset locations

In relation to “inspection reports” which will take the form of a simpler approach - the inclusion of whether sub surface drainage is satisfactory or adequate would not realistically be a question that could be answered without CCTV surveys and / or capacity calculation which would be beyond the scope of the inspector or the inspection report.

16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

Yes

17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

Yes – the minimum value / type of the sanction should be stipulated but the Supervisory Authority should have discretion on their use.
There should be a sliding scale of penalty for repeated non-compliance.

18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

In general yes – Such a list has the potential to become endless so it needs to focus on those activities which have the potential to significantly increase the risk to tip safety. Local residents and members perceive the use of scramblers and quad bikes to be a significant problem. It is also recognised that this type of unauthorised use is difficult to control.

19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

Tips by their nature tend to be, in general, largely open – often remote areas which are impractical to police. Therefore, targeted policing of certain activities is often difficult if not impossible. Public engagement and information as to what is trying to be achieved and educating (in schools, through social media etc) on the effects of certain activities and their potential consequences may be a way forward.

There are civil and criminal enforcement powers available for specific incidents.

20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

In principle yes – it may be appropriate to deal with this issue via a new TAN. Large swathes of the valleys in RCT are influenced by coal spoil tips, with increased understanding of the potential impacts of climate change, detailed

guidance is required to inform developers of the suitability of sites for development and the steps that may be required to demonstrate suitability/mitigation.

The impact zone of the tips needs to be defined / established – similar to the approach taken for other aspects in the White Paper.

How will developers undertake assessments for Cat 1 & 2 tips? Ownership / access issues – competencies (refer to Q14 above).

Lower category tips should also be included as a development could have an impact on a lower category tip which raises its risk rating.

21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

A few standard matters such as ensuring all communication, signage, official notices, publicity etc are available bilingually, Welsh first.

Simultaneous translation needs to be made available for all public meetings to ensure people can contribute in Welsh. The paper also discusses opportunities for appeal (8.32) so simultaneous translation would need to be available for that and an active offer for people to participate in Welsh in all meetings.

3.31 – 3.32 – It's important that cultural and social consideration is given to the names, so that Welsh is respected and not treated less favourably, where there is strong evidence. The Local Authority's list of official place names would also need to be used to ensure consistency.

9.8 – There is discussion of future developments. In all such cases an Impact Assessment should be carried out to measure the impact of such developments on the Welsh Language. This procedure should be carried out in line with the responsible body's (be it Welsh Gov or the LA) usual arrangements for conducting Welsh Language Impact Assessments.

5.13 – agree. Good practice (positive/enhancement in terms of the Welsh language)

22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Generally, there is a need to consider the Welsh language in all aspect of the works. One key element is knowing with whom the responsibility lies in terms of ensuring Welsh Language Standards are adhered to – Welsh Gov or LAs – as different bodies will be bound to different standards.

23. Do you have any other comments or useful information in relation to

any of the proposals in this White Paper?

1. Conflict with environmental legislation needs to be addressed and a hierarchy of priorities established particularly in the event of an emergency or management of a tip to avoid such an emergency.

2. Whilst a “Protocol” has been agreed between WG, NRW, The Coal Authority and local authorities, it fails to address the scenario that RCT faced with the Tylorstown slip. It is broadly acknowledged that action to resolve a threat to public safety should be taken at the earliest instant and not be delayed by slavish adherence to complex waste legislation. However, the White Paper does not resolve this tension and in similar circumstances, any LA taking prompt action to resolve a threat will still find themselves exposed to potential prosecution under waste management regulations.

3. There should be a review of the permitting and licensing regime to reflect the emergency nature of certain activities. These may need to be undertaken within a matter of days to deal with any risks to public safety. The definition of waste materials and the content of waste management regulations also need to be revisited for such scenarios to ensure they facilitate rapid response and avert the possibility of potential prosecution for emergency actions that are taken. NRW’s timescales for determination in this area should be reviewed to ensure permits are issued in a timely manner, so that they don’t affect funding windows or create unnecessary delays.

4. There is the potential to over complicate and bureaucratise what is already a complex issue. As previously mentioned, the Tip Management process must not lose sight that the basic aim of this process is to ensure the safety of the tip stock and the risk some tips pose to the general public and critical infrastructure. So at least in the shorter term this needs to be the focus over “softer” issues.

5. Careful consideration should be given to the type of drainage management implemented on tips – particularly higher category ones – Where does legislation surrounding SABS and SUDS fit with tip management as the techniques favoured and employed under these can be at odds with tip stability and the need to keep water out of a tip body to ensure internal structural integrity.

6. This is a huge undertaking and both logistically and financially – Infrastructure (particularly drainage) on many of these tips is coming to the end of its useful life, if not so already, and to not maintain this will only increase the risk that some of these tips pose.

Many private owners may not be aware of these assets on their land or the condition of them.

7. RCT welcomes the capital and revenue funding that Welsh Government has provided to date to support the effective management of coal spoil tips since Storm Dennis. However, this White Paper does not address the funding needs associated with the responsibilities set out therein.

RCTCBC requests that detailed consideration of the proposed framework for funding is made at the same time as the legislation is developed, in consultation with LAs and WLGA, to ensure the successful implementation of any legislation enacted

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Name: Christian Hanagan, Service Director, Democratic Services and Communications

Organisation (if applicable): Rhondda Cynon Taf County Borough Council

1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

Yes we agree with the proposal for non-coal tips to be phased into the regime as soon as practically possible so the potential hazards these tips present can also be managed

2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

Yes. The current legislation is not fit for purpose and so we believe, in line with the Law Commission's recommendations, establishing a new supervisory body is the best way forward to manage, maintain and monitor Coal Tip Safety in Wales

3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

Agreed. The Committee agree with the proposal that in addition to the three attributes (surface area, height, tip gradients) a fourth attribute of gradient of natural strata (basal plane) may be beneficial to include.

4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

Yes, agreed

5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

Members agreed with the proposals in 3.26

6. Do you agree with the approach to adding new tips to the register?

The Committee agree to this approach to ensure a comprehensive and accurate picture is collated

7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

The Committee agreed with the proposed approach to update the asset register following incidences such as inspection and appraisal reports, and maintenance and remedial works.

8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

The Committee agreed with the proposals outlined for what information should be made publically available. Members specified that information such as personal information, calculations and costings should remain confidential. The disclosure of information under a new statutory regime may have implications for the insurer and the insured, which may in turn have consequences for the respective Council.

9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons

Members were supportive of this proposal as they believed it supported the supervisory Authority in developing a management plan for the tips and will ensure fairness to all land owners

10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

Members were supportive of these proposals in general, though they did comment on public perception and that this will need to be carefully managed, particularly where there is a high category tip in a specific area as residents may have safety concerns.

11. Do you agree with the approach for interdependent and proximate clusters of tips?

Members were in agreement with the approach and the proposal will provide a clear approach to the management of these clusters and will consider the wider potential impacts on nearby tips

12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

The Committee agreed with the proposed three tier approach to the development of the Management plans

13. Do you agree with the tiered approach and the proposed frequencies of checks? If not, please specify your reasons.

Yes, Members agreed with the tiered approach

14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

Members agreed with the proposals and commented that a consistent approach is needed across all Authorities and public bodies.

15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

Members agreed with the minimum contents listed and suggested that a list of locations should also be included

16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

As the regulator, the Committee agreed the sanctions should be utilised by the supervisory Authority

17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

Yes

18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Yes, Agreed. The list will provide assurance to our residents that a clear list of activities is in place to ensure their safety

19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

The Committee commented that education as a preventative measure should be the first priority in terms of what activities were banned.

20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

Yes

21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

The Committee commented that in line with the Welsh Language Wales Measure 2011, the Welsh language should not be treated less favourably and therefore all communications should be made available bilingually, with the Welsh language displayed first. The public should be encouraged to participate in any meetings/discussions in Welsh.

22. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Negative effects can be mitigated by ensuring ALL Local Authorities are given a clear direction and take a consistent approach in ensuring the Welsh Language Wales Measure is applied and followed.

23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

042

Name: NFU

1. NFU Cymru welcomes the opportunity to respond to the Welsh Government consultation on the Coal Tip Safety (Wales) White Paper that sets out a new regulatory framework for disused coal tips in Wales.
2. NFU Cymru is the voice of Welsh farming, championing, and representing farmers throughout Wales and across all agricultural sectors. NFU Cymru's vision is for a productive, profitable, and progressive farming sector producing world renowned climate friendly food in an environment and landscape that provides habitats for our nature to thrive. Welsh food and farming delivering economic, environmental, cultural, and social benefits for all the people of Wales whilst meeting our own ambition for net zero agriculture by 2040.
3. With a high percentage of disused coal tips located on private land, including farmland, we would wish to contribute to this consultation with the following points:
 4. The consultation mainly refers to owners of tips when discussing management agreements and other duties and liabilities. With approximately 30% of agricultural land in Wales tenanted, it is important for us to see how this will work in the case of a landlord and tenant situation where the landlord is the owner, but the tenant is in occupation of the tip.
 5. Whilst we can see the benefit of a maintenance regime that is proactive, this does though place a considerable duty on the owner of the tip to continually be carrying out such works.
 6. Maintenance agreements must allow for flexibility.
 7. For example, who carries out the work should be at the discretion of the owner in most cases where for example, the owner feels he has the relevant expertise or vice versa.
 8. Completion of maintenance and/or remedial works may be very difficult for some owners at certain times of the year e.g. where the land is required for certain activities or where the owner is very busy at certain times of the year with for example lambing or harvest.

9. There should be some level of financial contribution towards any maintenance works required to be carried out by an owner. This could either be a percentage contribution to the cost or where the cost required is in excess of a certain amount. Alternatively, for farmers, payment could be made by way of including the maintenance in a wider agri-environment scheme.

10. In terms of inspections, we note that following an initial hazard assessment / risk assessment, tips are subject to a three-tiered approach in terms of inspections, appraisals, and assessments.

11. Although inspections of smaller tips can be done on a self-assessment basis by the owner, some will not fall into this category. For Category 1 tips, it is probable that there will be at least three site visits per year by a Supervisory Authority. This frequency of course could increase dramatically with other inspections required pre and post heavy rainfall.

12. Whilst the maintenance of the safety of tips is crucial, the number of site visits required in a year may be burdensome on a tip owner, particularly at certain times of the year and where the tip is in a relatively inaccessible location. The time required per inspection is unclear, but we'd assume in some cases can be quite a lengthy process. This could therefore require a tip owner to have to take a number of hours out of a working day with no remuneration.

13. Careful thought is required as to how banning or severely controlling certain activities on tips may impact on the private property rights of the owner and/or occupier and a balance will need to be struck.

14. Banning certain activities in some cases could render the land useless where the banned activity is the only feasible activity which could be carried out. This could have severe impacts on small businesses. As well as becoming defunct, the land will then also potentially attract an ongoing liability in terms of maintenance.

15. We'd also highlight the likely impact on insurance cover and probably the inability of owners to get cover as well as the impact on land value should owners want to sell. Welsh Government need to give due consideration to these likely consequences.

16. Finally, we would wish to highlight that the current owners of disused coal tips must not be held responsible and burdened with the cost of removing any dangerous coal tip. This potential liability would not have been highlighted at the point of purchase and therefore Welsh Government must budget accordingly to cover these costs in full.

043

Name: Tim Wilkinson
Organisation (if applicable:) Arup

Q2. 1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

Yes

Q3. 2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

Yes. Although it could be NRW to administer as with dams.

Q4. 3. Do you agree a 'de minimis' tip definition should be included in the Bill? If you agree – what attributes should be included?

Yes. We agree that the 4 attributes should be included.

Q5. 4. Do you agree an owner of a 'de minimis tip' should be excluded from the duties outlined? If not please state your reasons.

Yes. Where a tip is defined not to pose any risk and will not pose a risk in the future we agree that the owner could be excluded from the duties outlined.

Q6. 5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

Yes. We agree that holding details of owners would be prudent, particularly where a tip crosses multiple landownership boundaries.

Q7. 6. Do you agree with the approach to adding new tips to the register?

Yes.

Q8. 7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

Yes.

Q9. 8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

Yes. It will be important that current and historical inspection data and other report / information can be made available from the supervisory authority when requested to landowners or for example consultants looking at nearby sites to help inform assessments.

Q10. 9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons

Yes.

Q11. 10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

Yes. There should be a requirement to clearly set out the link between hazard level and categorisation level, including any site specific factors so the process is transparent and a land owner etc. is able to appeal the classification.

Q12. 11. Do you agree with the approach for interdependent and proximate clusters of tips?

Yes.

Q13. 12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

Yes.

Q14. 13. Do you agree with the tiered approach and the proposed frequencies of checks? If not please specify your reasons.

Yes.

Q15. 14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

Yes.

Q16. 15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

Yes. Description and location for changes in ground movement, drainage, erosion, pollution etc and urgency of intervention if required.

Q17. 16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

No comment.

Q18. 17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

No comment.

Q19. 18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

Yes

Q20. 19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

No comment.

Q21. 20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

Yes. We agree that approval / consultation with the supervisory authority should be undertaken before activities on high risk tips

Q22. 21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment.

Q23. 22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment.

Q24. 23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

Is there a risk that tip owners may look to get their tips classified into a higher category so as to avoid being responsible for inspection, maintenance and remediation?

Q25. If you want to receive a receipt of your response, please provide an email address.

Q26. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

044

Name: Nick Horsley, Director of Planning,
Organisation (if applicable): Industrial Minerals and MPA Wales

Question 1. Do you agree with the proposed approach to phase in non-coal tips over time, where this is appropriate?

No. At present there is insufficient information in the consultation to justify widening the scope of the proposed legislation. The legislation should seek to tackle the problem at hand as referenced in the title of the consultation document “Coal Tip Safety (Wales) White Paper - A new regulatory framework for disused coal tips in Wales” and not seek to extend the scope of the document beyond the Law Commission’s original remit. Whilst there may well be justification to review non-coal tips, outside the scope of the Quarry Regulations 1999 and the Mining Regulations 2014, this should not be done by the back door. This is clearly reflected in para 4.4 of the consultation. At present, non-coal tips is a step too far and the focus should be on disused coal tips only.

Question 2. Do you agree the new supervisory body should be a new Executive Welsh Government Sponsored Body?

No, we firmly believe the establishment of an “Executive Welsh Government Sponsored Body”, is wholly unnecessary. The Coal Authority has proven it has the knowledge, skills and expertise to address the first phase of the study, by identifying the disused coal tips and by identifying the levels of risk.

This should continue as WG seeks to address the fundamental problem of Coal Tip stability. Whilst we appreciate the Coal Authority is a UK wide body, it makes sense to tap into this area of expertise, but focus on the challenges in Wales identified in the White Paper. Furthermore, whilst a Welsh specific body is a “nice to have”, what the consultation does appear to overlook in this context is the shortage of skills within this area and we believe the creation of an “Executive Welsh Government Sponsored Body”, will dilute this area of expertise even further. Welsh Government should work with the Coal Authority to establish an integrated team within the Coal Authority which can address the challenges faced, rather than set up another under-resourced, under-skilled quango which will struggle to deliver the challenges identified in the White Paper. The skills shortage is recognised in para 3.61 of the consultation. We note reference is made to discussions with Environment Platform Wales regarding the skills shortage. We suggest early dialogue with the Geological Society and the Institute of Civil Engineers for advice on geotechnical matters. Disappointingly, it would appear from paragraphs 2.29 to 2.34, that the establishment of the Executive Welsh Government Sponsored Body” is a fait accompli. Whilst we agree that there is a need for the regulatory body to have a general duty to perform its functions so as to ensure the safety of coal tips, without limitation to specified risks, we recommend WG continue to use the services within the Coal Authority which has the proven skills to address this.

Question 3. Do you agree a ‘de minimis’ tip definition should be included in the Bill? If you agree – what attributes should be included?

No Comment.

Question 4. Do you agree an owner of a ‘de minimis tip’ should be excluded from the duties outlined? If not please state your reasons.

No Comment. We are however, disappointed that the report does not consider the fundamental issue raised in our previous response, of who owns the tipped material and if his is the same as the land owner. Mineral rights may be separate to surface land ownership and it would stand to reason that the owner of the coal, is also the owner of the tipped material associated with the extraction of the coal. WG must seek clear legal definition as to who owns the tipped material, not just who owns the surface of the land.

Question 5. Do you agree with the minimum content set out in this chapter? If not, please state what you consider would be appropriate minimum content?

No. We disagree with the Law Commission it is not necessary to hold the particulars of owners on the register on the basis this would duplicate information held by Her Majesty’s Land Registry. It is our understanding that the Coal Authority assumed responsibility for all the interests in respect of unworked coal and coal mines and for the liabilities associated with past coal mining and unworked coal. The main functions of the Coal Authority are to manage the coal resources under its control, encourage economically viable operations to work these resources, grant licences for coal exploration and extraction, provide effective management of subsidence damage claims, and provide information on past, present and proposed future coal mining activities. One should consider, whether or not the liabilities of coal tips lies with the Coal Authority and not the land owners.

Question 6. Do you agree with the approach to adding new tips to the register?

No. Again, this section is pre-empting the findings of this consultation. At present there is insufficient information in the consultation to justify widening the scope of the proposed legislation. The legislation should seek to tackle the problem at hand as referenced in the title of the consultation document “Coal Tip Safety (Wales) White Paper - A new regulatory framework for disused coal tips in Wales” and not seek to extend the scope of the document beyond the Law Commission’s original remit. Whilst there may well be justification to review non-coal tips, outside the scope of the Quarry Regulations 1999 and the Mining Regulations 2014, this should not be done by the back door.

Question 7. Do you agree with the proposed approach to update the asset register? If not, please provide details on how you consider the asset register should be updated and by whom.

In general, yes, however, this is a huge commitment and the body needs to be properly resourced, properly funded and properly skilled. It must have long term strategic goals and free from political interference and gerrymandering.

Question 8. Do you agree with the proposal for the type of information to be made publicly available and which will be classed as excluded?

In the interests of transparency, we believe live enforcement actions should be on the public register.

Question 9. Do you agree with the proposed approach to measure hazard level? If not please specify your reasons.

No. We believe the consultation is pre-empting the competencies of professional institutions. Someone who meets the criteria of a professional institution to be competent should have the skills if they meet the prescribed competencies. Welsh Ministers do not have the necessary skills to prescribe competencies and the proposals in para 4.10 should therefore be reviewed. Further, greater transparency is required over the determinants used for Table 2 and 3.

Whilst we agree a matrix based approach is required, the consultation is not clear on this matter. In table 4 we recommend moving the second row "Property" one column to the left, i.e. building with high occupancy reflect a High Risk to Life.

Question 10. Do you agree with the approach to developing categorisations? If not please specify your reasons.

Yes. However, we believe some form of appeal process is also imperative. With the greatest respect, the Law Commission has little experience in the technical management of extractive waste or the permitting process and subject to technical competencies being verified some form of technical arbitration is paramount.

Question 11. Do you agree with the approach for interdependent and proximate clusters of tips?

Yes, the proposed approach appears logical.

Question 12. Do you agree with the proposals for developing management plans? If not, please provide your reasons.

No. We believe for consistency; the management plans should be produced by the supervisory authority. Many of the tips are legacy tips with the coal owned by the state.

The state should therefore bear the responsibility in the management and remediation of legacy tips. More money will be spent through legal challenges over ownership of the waste than through addressing the safety of the tips. One should consider whether or not the liabilities of coal tips lies with the Coal Authority and not the land owners.

Question 13. Do you agree with the tiered approach and the proposed frequencies of checks? If not, please specify your reasons.

Tentatively yes, however, it is not clear who pays for the visits or the costs associated with inspections. Para 7.6 is clearly inappropriate, as the White Paper should not be seeking to introduce wider tip inspections via the back door within a document entitled "Coal Tip Safety (Wales) White Paper - A new regulatory framework for disused coal tips in Wales". This would render any legislation introduced for non-coal tips open to legal challenge.

Question 14. Do you agree with the split of responsibilities for inspections and appraisals? If not please specify your reasons.

No, we vehemently oppose placing a duty on Local Authorities to undertake inspections. The duty should either be with the supervisory authority or by the owner of the waste material.

Question 15. Do you agree with the proposal for minimum content of reports and if so what do you consider is essential information?

Yes, there does need to be a standard approach to reporting. It is apparent that inspections would involve multi-disciplinary specialisms and as previously mentioned the elephant in the room is who will fund the inspections which have the potential to be costly. Table 9 again refers to Local Authorities and we reiterate our concerns over the skills and expertise within LAs to deliver such a service. This should be solely with the Supervisory Authority. We would reiterate our concerns that the responsibility should be with the owner of the waste who may not be the landowner. This is highlighted in Para 7.37. The state has benefitted from the removal of the coal and as such the duty should lie with the state who continues to own the coal. This matter has not been addressed by the Law Commission despite being raised in our previous response.

Question 16. Do you agree civil sanctions should be utilised by the Supervisory Authority to ensure compliance? If not please specify your reason.

The proposals are opening up a can of worms. The consultation has failed to consider, whether or not the liabilities of coal tips lies with the Coal Authority and not the land owners. We urge WG to clarify this matter, before it places a duty on landowners.

Question 17. Should the Supervisory Authority have discretion over what sanctions to use or should the sanction be stipulated in the legislation for each breach?

See above response.

Question 18. Do you agree with the list of activities? If not which activities do you consider need to be controlled on disused coal tips?

No. The list of activities includes Excavation/alteration of tip profiles (e.g. mineral extraction), when in reality should activities are routinely controlled and maybe deemed to remedy any problems associated with tipped material, through its removal. As such, there should not be a default "no go" to mineral extraction.

Question 19. What control mechanisms do you consider need to be introduced to control certain activities on tips?

Mineral extraction would be subject to planning permission and can properly be controlled through that mechanism. Restoration may ultimately remove any potential risk.

Question 20. Do you agree with the proposals relating to development activities in the vicinity of higher status tips?

No comment.

Question 21. We would like to know your views on the effects that the proposed new regulatory framework for disused coal tips in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment.

Question 22. Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment.

Question 23. Do you have any other comments or useful information in relation to any of the proposals in this White Paper?

In summary:

- We do not believe a new supervisory body is required and the issue should be integrated within the Coal Authority;
- Local Authorities should not be charged with any duties under this proposed regulation as it would cause confusion of responsibilities;
- The duty of remedy should be with the owner of the waste material
- This White Paper should not be used to extend the duty to cover non-coal tips