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Llywodraeth Cymru  
Welsh Government

Welsh Government

Consultation – summary of response

## Coal Tip Safety (Wales) White Paper

A new regulatory framework for disused coal tips in Wales

November 2022

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

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# 1. Introduction

## Background

- 1.1 Storms Ciara, Denis and Jorge in February 2020 clearly illustrated the devastating impact flooding can have on our communities. The landslide of a disused coal tip in Tylorstown during Storm Denis demonstrated further the potential impact climate change can have on Wales' industrial mining legacies. The First Minister's Coal Tip Safety Task Force was established shortly after the Tylorstown landslide to deliver a programme of works, including reviewing the safety of coal tips across Wales, inspections and maintenance of the higher rated tips. The Welsh Government also undertook a policy review of the existing arrangements for oversight of coal tip safety, including assessing the effectiveness of the current legislative framework.
- 1.2 This initial review led to the Welsh Ministers inviting the Law Commission to undertake an independent assessment of the relevant legislative framework for coal tip safety and provide recommendations for a future bill. Following the Law Commission's review and consultation paper '*Regulating for Coal Tip Safety in Wales*'<sup>1</sup> the final report<sup>2</sup> was published on 24 March 2022. In summary, the Law Commission found the current regime primarily relates to an active industry and is no longer appropriate for managing disused tips.
- 1.3 The White Paper consultation on *Coal Tip Safety (Wales) – A new regulatory framework for disused coal tips in Wales*<sup>3</sup> followed the publication of the Law Commission's report and ran from May to August 2022. The White Paper drew on the Law Commission's recommendations and included further analysis undertaken by the Welsh Government on areas not addressed in the Commission's report or where it had recommended were for the Welsh Government to consider. The White Paper set out our aims to address the gaps in the existing regime for disused tips, as provided in the Mines and Quarries (Tips) Act 1969 ('Tips Act'). The paper set out legislative proposals for the introduction of a new statutory management framework to support tip safety and help mitigate the potential impacts from climate change. This includes a new consistent approach to the management, monitoring and oversight of disused coal tips. The aim is to protect communities, critical infrastructure and the environment by introducing appropriate management of tips, which will help reduce the likelihood of landslides.
- 1.4 The White Paper sought views on the key elements of the proposed new statutory regime and the responses are summarised in Chapter 2 – 10 of this paper.

## Communications and Engagement

- 1.5 Views were invited as part of a consultation period which ran from 12 May to 4 August 2022. Respondents were able to respond via an online survey form, a dedicated email address or by post.

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<sup>1</sup> [Law Commission Documents Template](#)

<sup>2</sup> Law Com 406, 24 March 2022, [Regulating-Coal-Tip-Safety-in-Wales-Report.pdf](#)

<sup>3</sup> [Coal Tip Safety \(Wales\) White Paper | GOV.WALES](#)

- 1.6 The communications and engagement strategy for the consultation built on the Law Commission's 2021 consultation on *Regulating Coal Tip Safety in Wales*<sup>4</sup>. The Welsh Government sought to engage with many of the same stakeholders, as well as seeking the views of a wider audience in relation to specific proposals.
- 1.7 A wide range of communications channels informed all target stakeholder organisations of the White Paper's publication, scope and duration. This included Welsh Government channels; media; and stakeholder channels such as newsletters.
- 1.8 The Welsh Government held a number of bespoke presentations on the White Paper proposals to engage with a wide spectrum of interested parties from farming organisations and landowners; extractive industries; academic researchers; and young persons. In addition, two online public events were also held.

### **Consultation responses**

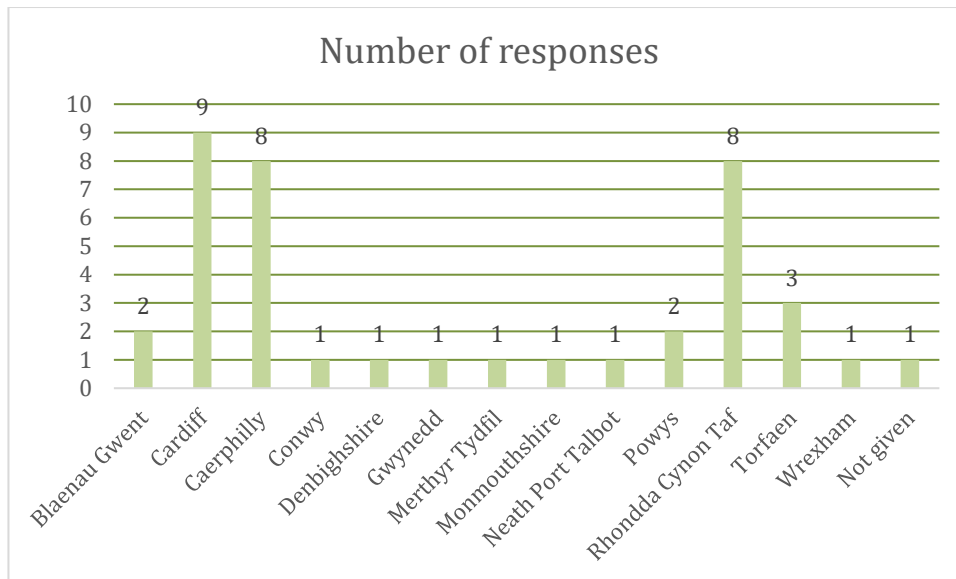
- 1.9 In total the consultation received 44 responses from a range of stakeholders. A total of 40 responses came from Wales, with 4 from respondents in England.

Chart 1 shows the breakdown of responses from Wales by local authority area.

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<sup>4</sup> [Regulating Coal Tip Safety in Wales | Law Commission](#)

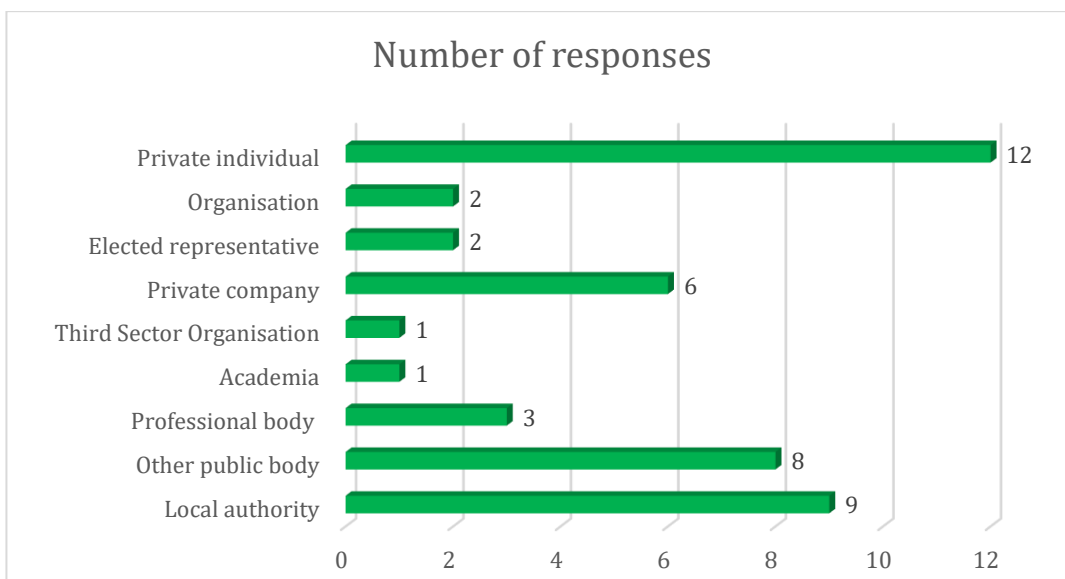
**Chart 1 – Breakdown of responses from Wales by local authority area**



1.10 All respondents were invited to request anonymity and 10 respondents have been anonymised throughout this document.

1.11 Chart 2 shows the number of responses by respondent category. For a full list of organisations that contributed to the consultation, please see Annex 1.

**Chart 2 – Number of responses by respondent category**



## 2. Scope and Supervisory Authority

### Question 1

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

- 2.1 Of the 43 responses received to this question, 38 (88%) agreed that the proposal to phase in non-coal tips over time is appropriate.
- 2.2 Overall, many respondents agreed phasing non-coal tips in over time is a pragmatic approach, which would prioritise coal tip safety and ensure that other types of tips that could pose similar risks are not overlooked. Respondents noted the potential advantages of this approach, such as: enhancing protections to both people and the environment; minimising ambiguity; reducing complexity and ensuring clear and consistent definitions and guidance. However, a number of respondents still clearly recognised this approach requires careful consideration and a proportionate approach given the potential enormity of the scale of this task and possible future resourcing requirement. For example, one respondent noted: *"...this approach would require collation of datasets from currently unknown sources"*.
- 2.3 Several respondents recognised the appropriate approach for different geotechnical site types may vary. There are also potential geographical differences, with one respondent noting:  
*"The majority of coal tips are in the South Wales Valleys, other mining spoil tips such as slate and other heavy metals are in North Wales"*.
- 2.4 One respondent noted the need to proceed sensitively as *"both coal and non-coal tips are historic in origin and retain important heritage significance"*. A further respondent raised:  
*"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.... which could be classified as the equivalent of coal tip risk category D"*.
- 2.5 Two respondents (5%) did not support the proposal. One respondent noted the scope of the legislation should focus on disused coal tips only, as is intimated in the consultation document's title, and not introduce non-coal tips 'by the back door'. In addition, three respondents (7%) were unsure of the proposed approach, with one respondent noting a preliminary study of non-coal tips is first required. Overall, a recurrent theme was that more data is required before key decisions are taken on the process and timeframe for incorporating non-coal tips. Several respondents also reflected on how it would significantly expand the resource requirements and potentially result in the loss of focus on the main issues.
- 2.6 One respondent provided no response.

## Question 2

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

- 2.7 Of the 41 responses received to this question, 36 (88%) agreed with the proposal.
- 2.8 Broadly, respondents welcomed the creation of a new Executive Welsh Government sponsored body and recognised that such a body would provide the arms-length independent oversight required. One respondent commented: *“The Supervisory Authority should be free of any conflict of interest as a tip owner...”*
- 2.9 Respondents noted several additional benefits including:
- *“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 tips”.*
  - *“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”.*
- 2.10 Other comments included that the supervisory authority should be accountable to the Welsh Government; it should provide value for money and a high level of expertise. In addition, one respondent commented:
- “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”.*
- 2.11 Three respondents (7%) did not support the proposal. One additional theme to emerge is the recognised shortage of skills within this area, with a respondent noting the *“...creation of an “Executive Welsh Government Sponsored Body” will dilute this area of expertise even further”*. Two respondents considered the Coal Authority the best placed body to take forward the proposed new duties, with one respondent noting:
- “The Coal Authority has proven it has the knowledge, skills and expertise” and*  
*“Whilst we appreciate the Coal Authority is a UK wide body, it makes sense to tap into this area of expertise...”*
- 2.12 Two respondents (5%) noted they were unsure on the proposal, with one commenting: *“... a consistent approach to the management of tip safety around the UK should be aspired to”.*
- 2.13 Three respondents provided no response.

### 3. Asset Register and Register of Professionals

#### Question 3

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

- 3.1 Of the 37 responses received to this question, 33 (89%) agreed with the proposal to include a 'de minimis' tip definition.
- 3.2 Most respondents supported the attributes set out in the White Paper (that is the size of the tip, the height of the tip, the gradient of the tip and the gradient of the land). Some respondents thought the attributes should be expanded further. For example, one respondent listed the following factors:
  - *“Proximity to critical infrastructure and apparatus, property and other vulnerable receptors*
  - *The presence and condition of any existing drainage infrastructure and its importance in relation to maintaining the integrity of the tip*
  - *The tip volume should be limited*
  - *The tip height should be limited*
  - *Its location relative to water courses or ditches should be considered and the interrelationship between these features and the tips should be reviewed*
  - *Its proximity to utility service runs and type of utility should be considered i.e. high pressure water mains.”*
- 3.3 Several respondents noted that the definition of 'de minimis' is 'too small to be meaningful' and considered this could be misleading as a small tip could still pose a risk. A further suggestion raised by some respondents is that a hazard assessment would still be required to confirm the status of the tip. One respondent noted: *“...the definition may need to be revisited when the regime expands to all disused tips”*, and others raised whether the definition could consider other impacts, for example pollution potential or impact on health.
- 3.4 Three respondents (11%) disagreed with the proposal, with the majority noting that the definition of tips should reflect the risk assessment *after* an appraisal of the tip has been made, and even small tips can pose significant risk in specific circumstances. One respondent commented:
  - *“If the risk is ‘negligible’, then the management of it should reflect this, e.g. 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”.*
- 3.5 Seven respondents provided no response.



#### 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.

3.6 Of the 37 responses to this question, 31 (84%) agreed with the proposal that an owner of a 'de minimis tip' should be excluded from the duties outlined.

3.7 Most of the respondents who agreed did so on the basis that the risk level of 'de minimis tips' must be demonstrated as being insignificant or negligible, as summarised by the following comment:

*"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...."*

3.8 Many of the respondents who agreed also raised the need to be able to capture any future changes to a 'de minimis tip' and placed this responsibility on the tip owner. One respondent noted:

*"The importance of maintaining a duty for a tip owner to report any condition change with the potential to alter how a tip performs, even for a ['de minimis'] tip".*

3.9 A further respondent noted the need 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."*

3.10 Six respondents (16%) disagreed with the proposals. A third of these respondents noted that although a tip may be identified as a negligible risk, this may change in the future and should still be monitored and/or the risk should be reviewed. One respondent noted:

*"[De minimis] categorisation should not remove all tip-owner obligations, but requirements be less onerous"*

3.11 A further respondent noted:

*"... the tip owner should be included in the duties and the risk reviewed at an interval decided by the previous review".*

3.12 Seven respondents provided no response.

## 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?

3.13 Of the 38 respondents to this question, 26 (68%) agreed with the minimum content proposed for the asset register.

3.14 A number of respondents noted additional information which could also be considered. This included:

- nearby critical/major infrastructure – schools, leisure centres, hospitals, roads etc. (2 respondents)
- topographical information (and any aerial photographs) (2 respondents)
- (i) additional data, for example papers including the South Wales Landslide database held by BGS, (ii) geological/hydrogeological context, (iii) land use, and (iv) alternate names (1 respondent)
- Any known past operations on the tip; significant hazards should be flagged or separate emergency plan if required (3 respondents)
- mitigation measures, including name of the appropriate/relevant responsible party (3 respondents)
- *“statutory historic environment designations and reference to non-designated heritage assets”*; *“historic information such as location of mine workings...”*; *“records of historic inspections and maintenance”* (4 respondents)
- *“A geographical area or OS Plan for coal tips could also be included as it would add more clarity than a number or a point”*. (5 respondents)
- *“If other non-coal tips are to be included, a definition on the content of the tip would be appropriate.... The Mineral Rights Owner could also be added”*.

3.15 Six respondents (16%) commented on ownership information, in particular the link with HM Land Registry and how this will work in practice. Of particular importance was the need to keep ownership information up to date. Two respondents commented that land ownership information should be included as this information is relevant to tip safety and management.

3.16 Five respondents (13%) disagreed with the proposed minimum content. Most of these respondents noted that they felt the minimum content proposed was limited or missing a specific section. The following suggestions were made by individual respondents to include in the proposed minimum content:

- *“Site characterisation... geology, geotechnical conditions (etc.) ... and previous history, especially any works carried out”*.
- *“No reference is made to the considerable safety works to tips (and former colliery sites) undertaken by the Welsh Development Agency Land Reclamation Department”*

- *“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”.*
- *“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”.*

3.17 One respondent (3%) noted they did not agree it is necessary to hold owner information on the register on the basis this would duplicate information held by Her Majesty’s Land Registry. The respondent considered the liabilities associated with coal tips rests with the Coal Authority and not the landowner.

3.18 Six respondents provided no response.

### **Question 6**

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

3.19 Of the 38 responses to this question, 36 (97%) agreed with the proposed approach for adding tips to the register.

3.20 Several respondents acknowledged that disused non-coal spoil tips may be required to be added to the register. One respondent noted that such tips are likely to have different geotechnical properties, and another that the definition of a ‘de minimis’ tip may need to be amended for non-coal tips. Another respondent noted that industry collective memory is likely to be important to ensure all tips are captured. One respondent noted that previously reclaimed tips may need to be revisited as new techniques emerge to deal with contamination.

3.21 Other further suggestions included: there should be a prompt to notify key stakeholders when additions are made, and there should be a mechanism by which third parties can inform the supervisory authority of the suspected presence of a tip. Other comments included the need to assess the potential health impacts when adding a new tip, and a comment of support for the proposal that the new body should have a legal right to enter land to make a determination on any new tip.

3.22 One respondent (3%) disagreed with the approach. Another respondent commented: *“...there is insufficient information at present to justify widening the scope of the proposed legislation”.*

3.23 Six respondents provided no response.

## 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.

- 3.24 Of the 40 responses to this question, 32 (80%) agreed with the proposed approach for updating the asset register.
- 3.25 Several respondents commented on the importance of not underestimating the enormity and logistically complexities involved in the proposal. One respondent noted:  
*“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”.*
- 3.26 Another respondent noted the need to ensure the proposals are properly resourced and skilled.
- 3.27 In addition, several respondents noted that there are existing systems that are already widely used by local authorities for inspection and maintenance. The recording fields and database format should be agreed by all parties from the offset. One respondent commented:  
*“We recommend this is looked at for integration into the proposed new system. The new system must provide significant benefits to the inspection and maintenance programme for the tips to justify moving from an existing system”.*
- 3.28 Another respondent noted:  
*“We would encourage the WG to scope out the potential platform and database and liaise with local authorities to ensure IT compatibility. Many local authorities are already using an AMX system [for] inspections and maintenance”.*
- 3.29 One respondent raised the importance of the emergency services having access to the register and noted:  
*“DataMapWales already serves as a good function for sharing of data, for example: fire and rescue services access and management plans.”*
- 3.30 Some respondents raised that the proposed reporting timescales may potentially be too tight – for example, there may be delays if a land ownership issue arises. One respondent noted:  
*“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”.*

3.31 Two respondents (3%) disagreed with the proposal, commenting the proposed approach to updating the asset register appears to lack control of records and their quality. The respondent commented:

*“We consider that it would be best for reports to be submitted (in the stated timelines) 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 [be] suitably qualified and experienced...”*

3.32 Seven respondents (17%) noted they were unsure on the proposal.

3.33 Five respondents provided no response.

### **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?

3.34 Of the 39 responses to this question, 29 (74%) agreed with the proposal for the type of information to be made publicly available and which to be classed as excluded.

3.35 Most respondents agreed that access to the register should be limited at different levels of input. Several respondents commented technical reports and maintenance plans should be excluded as considered easy for the public to misinterpret, and others noted some information does need to remain confidential to owners or businesses (including any commercial information or costings). One respondent noted:

*“...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”*

3.36 Several respondents raised concerns as to how the publication of data or technical information may affect home or business insurance and property values. One respondent commented:

*“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. As with other publicly available risk mapping (for example, Flood Risk Assessment Wales), this register is likely to create an increase in public concern.... A joint communication strategy and impact assessment should be developed....”*

3.37 Respondents repeatedly highlighted the way this information and any perceived risk is communicated is critical. One respondent commented:

*“Once made public there will be public and subsequently local political pressure to remediate sites near homes and businesses regardless of their risk”*

3.38 One respondent (3%) noted that all publicly available information should be accessible to all, including, for example, children and young people, people with disabilities, and

consideration given to the language needs of the local population. Another respondent noted that the availability of publicly accessible information should be actively promoted.

3.39 Other comments included the need to ensure local authorities can access information on neighbouring authorities if required if tips are close to or straddle boundaries. One respondent noted in the interests of transparency, consideration should be given to having live enforcement actions on the public register.

3.40 Two respondents (5%) disagreed with the proposals. One respondent considered no information should be withheld, and another considered the specific owner details should be included. A final respondent noted:

*“There is no way the risks 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”.*

3.41 Seven respondents (19%) noted they were unsure on the proposal.

3.42 Five respondents provided no response.

## 4. Hazard Assessment

### Question 9

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

4.1 Of the 37 responses to this question, 33 (89%) agreed with the proposed approach to measure hazard level.

4.2 Several respondents noted that the approach is clear and consistent, with one respondent commenting: *“We find the recommendations here clear and easily understandable by the communities that have tips on their doorstep”.*

4.3 Several respondents noted the need for training, guidance and checking of hazard level at a professional level, with two respondents also noting the initial assessment will be based on a subjective judgement. Recruitment challenges were raised by some respondents, in particular highlighting a shortage of professionals in the field. One respondent noted: *“...the Supervisory Authority may be best placed to prescribe minimum professional competency levels for appraisers and specialists”.*

4.4 One respondent noted the term ‘hazard’ required clearer definition, and another that the categories need to be further broken down. One respondent noted:

*“Terminology may require clarification in the context of hazard, impact, receptor and hazard”.*

- 4.5 One respondent noted the approach does not specifically cover financial hazard, and another queried who will pay for the hazard assessment (particularly if a private landowner is unable or unwilling to do so).
- 4.6 Further individual suggestions for consideration included:
- adding climate change risk assessment
  - adding pollution and flooding as a consideration when determining receptor levels
  - adding as a consideration associated mining features on the site (including mineshafts and the potential for shallow workings and their interaction with the tip)
  - ensuring sufficient assessment of the potential health and wellbeing effects of the tips (taking a broad view of health effects)
  - moving leisure centres from Medium Low to Medium High receptor (as many of these sites are designated Emergency Rest Centres)
  - whether the inclusion of combustion as a hazard type was proportionate to the other hazards listed.
- 4.7 Four respondents (11%) disagreed with the proposals. Individual comments included:
- *“... the measurement of 'hazard' levels is something to be set as part of the remit by the independent body for their actions”;*
  - *“...greater transparency is required over the determinants used for Table 2 and 3... the consultation is not clear on this matter”;* and
  - *“....how hazard levels will be ranked where there is more than one receptor”.*
- 4.8 Seven respondents provided no response.

## 5. Categorisations

### Question 10

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

- 5.1 Of the 36 responses to this question, 33 (92%) agreed with the approach to developing categorisations.
- 5.2 Of the respondents who agreed, there were the following comments:
- *“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.”*

- *“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.”*
- *“Yes having numerical categories with 1 as the highest seems logical and easier to explain than the current system. A staged approach also seems pragmatic based on the information initially held which can be reviewed as further information is gathered however it might be confusing if this provisional categorisation is given to the public...”*
- *“....support the move to categorise by numbers not letters to comply with Welsh language requirements”.*

5.3 One respondent also noted:

*“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 landowner etc. is able to appeal the classification”.*

5.4 Several respondents raised points regarding the potential for an owner to have a right to appeal. Approval for a staged approach in implementation was also acknowledged in several responses.

5.5 Three respondents (8%) disagreed with the proposals. Of the respondents who disagreed with the proposals, there were the following comments:

- *“No - again this is something to ensure the validity and independence of the body.”*
- *“Basing them on the level of damage they could do and not their actual risk of slipping is misleading”*
- *“Box 1 C and D are confusing. What is the definition of potential to cause risk to life or property? .... 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”.*

5.6 Eight respondents provided no response.



## 6. Tip Clusters and Management Plans

### Question 11

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

- 6.1 Of the 38 responses to this question, 37 (97%) agreed with the approach for interdependent and proximate clusters of tips
- 6.2 Of the respondents who agreed with the approach there were the following individual comments:
- *“...the proposal will provide a clear approach to the management of these clusters and will consider the wider potential impacts on nearby tips”;*
  - *“The proposed approach appears logical”;*
  - *“This appears sensible and consistent with integrated management principles”;*
- 6.3 One respondent noted:
- “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”.*
- 6.4 A number of respondents noted the need to give further consideration to tip clusters which may span different owners or boundaries. Comments included:
- *“Consideration will need to be given to the potential for clusters spanning Council boundaries, different ownerships and classifications. Potential for more responsibility to be given to local authorities for proximate clusters”;*
  - *“Consideration should be given to ownership when agreeing clusters”;* and
  - *“Consider including potential for an owner to apply for management within a cluster”.*
- 6.5 One respondent (3%) disagreed with the proposal.
- 6.6 Six respondents provided no response.

### Question 12

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

- 6.7 Of the 40 respondents to this question, 37 (92%) agreed with the proposals for developing management plans.
- 6.8 Of the respondents who agreed, several respondents queried whether grant funding will be available, with one respondent noting: *"...how and where this will be funded from in practice?"*
- 6.9 A number of respondents considered that all management plans should be approved by the supervisory advisory. One respondent queried who determines whether a party has the appropriate level of expertise to develop a management plan, and another raised the need to ensure a consistent approach to the development of management plans.
- 6.10 Several respondents queried the length of the timescales for developing management plans, with one noting:  
*"...18 months seems a long time for a management plan to be produced for a higher rate[d] tip. Once a system has been developed it should be sufficiently interactive to produce and revise a management plan extremely quickly".*
- 6.11 One respondent noted that given the timescales prior to the Supervisory Authority commencing duties an interim approach should be put in place. Another respondent noted:  
*"Timescales onerous considering current resources for preparing approx. 90 management plans in 36 months. Maybe worth having a staged approach with cat 4 / 5 tips having longer than 36 months initially".*
- 6.12 Two respondents queried whether low risk, no risk or remediated tips should require a management plan, or repeat inspections (and if not, this would significantly reduce resource requirements).
- 6.13 One respondent noted: *"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"*. A further respondent commented:  
*"... 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"*.
- 6.14 Two respondents commented on the need for a clear link between the development of a management plan and the need to develop emergency plans. One respondent noted management plans must: *"...account for and acknowledge the potential risks, mental and physical of the tip, and its presence, to the health of the local population"*.
- 6.15 Three respondents (8%) disagreed with the proposals. The following comments were provided:
- *"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"; and*
  - *"... 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.”*

6.16 Four respondents provided no response.

## **7. Inspections/Appraisals and Maintenance and Maintenance Agreements**

### **Question 13**

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

- 7.1 Of the 40 responses received to this question, 27 (68%) were in agreement with the tiered approach and proposed frequency of checks.
- 7.2 Overall, although the majority agreed with this question, many respondents wanted to ensure that higher category tips which may need more frequent checks during winter months, heavy rainfall, storms and any other situation specific to that tip, can still carry these out.
- 7.3 Some respondents queried whether the order of the tiered approach was correct and asked whether the appraisal should be carried out at the beginning of the regime and followed by an inspection. Another respondent queried whether the inspection and appraisal could be merged into one single inspection which would inform maintenance works and include instrumentation when relevant.
- 7.4 Four respondents (10%) disagreed with this approach and nine respondents (22%) neither specifically agreed or disagreed with the proposal.
- 7.5 One area of concern related to resources and this included the cost of the regime to both organisations and landowners, availability of professional and qualified persons to carry out the checks and the capacity of public bodies to carry out the work. In addition, several respondents felt the regime could be too onerous for the lower category tips, particularly category 4 and questioned whether these could be removed from the regime.
- 7.6 There were also some concerns about the ability to carry out the inspection in densely vegetated land where it can be almost impossible to carry out a visual inspection on the tip.
- 7.7 Four respondents did not answer this question.

#### Question 14

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

- 7.8 Of the 37 responses received to this question, 21 (56%) of those who directly answered the question agreed with the split of responsibilities for inspections and appraisals.
- 7.9 Whilst agreeing with the proposal there were some suggestions on how the responsibilities split could be improved. Some respondents felt that all the higher rated tips (categories 1 and 2) should be the responsibility of the Supervisory Authority to ensure consistency. They also felt the Supervisory Authority would be seen to have higher authority in terms of access onto private tips.
- 7.10 Other respondents who agreed with the proposals did so with the caveat there needs to be further discussions on resources. The level of funding available was questioned, both for private landowners and the local authority. There also needs to be a clear line of responsibility on who is ultimately responsible if a tip fails.
- 7.11 A local authority respondent queried whether local authorities could work on a regional basis to share their resources. They felt there would be a capacity issue for some authorities; they may not have the requisite skills in house and there is a difficulty to recruit those that have the skills already.
- 7.12 One respondent felt that the split of responsibilities seemed sensible provided the local authorities or NRW did not inspect their own tips. The respondent stated that there needed to be independent monitoring when completing an inspection.
- 7.13 Eight respondents (21%) disagreed with the proposal and a further eight respondents (21%) neither specifically agreed or disagreed with the proposal.
- 7.14 The majority of negative responses were focussed around the use of landowners for the inspections for category 3 and 4 tips. There were concerns that owners may not have the necessary skills to recognise potential warning signs. One respondent noted:  
*“...the standard for inspections cannot be maintained with members of the public making judgements of a professional nature”.*
- 7.15 One respondent suggested that the supervisory authority or local authority could arrange to accompany landowners on the first inspection to advise on what the requirements are and ensure they are inspecting accurately. A further respondent noted if resources are considered scarce then there is a need for a focussed programme in association with academic and professional institutions to train personnel.
- 7.16 One respondent (2%) who disagreed with the approach noted the Welsh Government needed to be mindful that inequalities are not created where a tip is managed by a private owner versus a public sector one.
- 7.17 Eight respondents did not provide a response.

## Question 15

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

- 7.18 Of the 36 responses received to this question, 23 (64%) agreed with the proposed minimum content of reports. Some of the responses stated that a standardised process will be valuable to ensure consistency. Respondents suggested that initial inspections will need to be referenced in subsequent reports and used to provide a baseline for any follow on work.
- 7.19 One respondent agreed with the suggested approach to prescribe the minimum content in subordinate legislation as:
- “By prescribing the minimum content in subordinate legislation, as proposed, there is scope to amend the minimum context in light of experience.*
- 7.20 One respondent noted the use of digital solutions should be considered to collect data in real time from smart phones and tablets. This would provide an efficient way of collecting information particularly in an emergency.
- 7.21 The question also asked for respondents to suggest what would be essential information to include in a report. Some of the responses included:
- Changes in vegetation, the presence of reeds could indicate higher groundwater or differences in health and vigour could indicate ground changes;
  - Surface drainage information from higher ground, such as on a hillside;
  - Land use by local communities particularly if there is a history of fires;
  - Geotechnical will need to include geological and groundwater so perhaps ‘ground engineering’ is a better term;
  - Drone survey or normal photos to prove worsening surface conditions;
  - Ecological data;
  - Proximity of receptors;
  - Access routes, inspection routes and asset location;
  - Mining history including the tip development and closure, method of tipping and the location of shaft caps;
  - Space to enter any comments following the review of historical reports or enter other observations or feedback;
  - Name of individual and organisation carrying out the inspection/appraisal; and
  - Mandatory completion of all sections even if there is no change and the response is N/A so the report does not look incomplete.

- 7.22 Five respondents (14%) who directly answered the question did not agree with the proposed minimum content and a further eight (22%) respondents neither specifically agreed or disagreed with the proposal.
- 7.23 A couple of respondents suggested a scoring system is used instead in order to assess the condition of the tip in more detail and highlight early progressive decline. This could also be used to score the level of risk of a slope failure. Another respondent felt that engineering geomorphological mapping is fundamental to the instability assessment and should be used.
- 7.24 Eight respondents did not provide a response.

## 8. Oversight, Enforcement, Charging and Appeals

### Question 16

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

- 8.1 Of the 33 responses received to this question, 30 (91%) who directly answered this question agreed with the proposal to allow the supervisory authority to use civil sanctions to ensure compliance.
- 8.2 Many of the responses felt that sanctions were essential to ensure compliance and that the regime could only work if there were appropriate measures to ensure owners comply. Sanctions were welcomed by one respondent as access requirements were not included in the Mines and Quarries (Tips) Act 1969 and they considered this had hindered the success of the Act.
- 8.3 Another respondent agreed with the use of civil sanctions with a criminal offence available as a last resort for persistent offenders or wilful non-compliance. However, they felt that local authorities must also be given appropriate powers if they are to be responsible for overseeing privately owned Category 2 tips or if work has been delegated by the supervisory authority. They also suggested:
- “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. Schedule 1 of the Flood and Water Management Act 2010 is an example of how a lack of powers and gaps in legislation can be detrimental to delivering a function and ensuring engineering integrity of key assets”.*
- 8.4 A common theme of the responses was that the sanctions should be appropriate, fair and have a strict timeline.
- 8.5 One respondent (3%) of those who directly answered the question did not agree with the civil sanction proposal, noting that local authorities should also have the same

powers as the Supervisory Authority. Two respondents (6%) neither specifically agreed or disagreed with the proposal.

- 8.6 Although not a negative response to the proposal, there were some concerns on the affordability of the measures. Several respondents wondered what would happen if the landowner was not able to afford the inspection or the required work. One respondent questioned the ability of all responsible parties to financially comply with any requirements.
- 8.7 Eleven respondents did not answer the question.

### **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?

- 8.8 Of the 31 responses to this question, 7 (23%) felt that the supervisory authority should have discretion over what sanction is used. Reasons given included affording discretion being given to the supervisory authority to allow a proportionate approach to sanctions being applied to higher and lower rated tips.
- 8.9 Ten responses (32%) preferred the sanction to be stipulated in the legislation. Several respondents felt this would ensure there was no mishandling, misinterpretation, ambiguity and all cases would be treated fairly.
- 8.10 One respondent (3%) felt that the sanctions needed to be communicated in a clear way so the offender was clear on what they were being charged with. They also felt the sanctions should be changed in line with the rate of inflation. There were some concerns on whether a compliance notice was appropriate for not undertaking remedial works.
- 8.11 Thirteen respondents (42%) had no preference but did offer some comments on the level of civil sanctions. They suggested any fines should be proportionate to the size of the organisation or incomes as the current speeding fines are calculated. Another suggested there should be a sliding scale of penalty for repeated non-compliance.
- 8.12 Thirteen respondents did not provide a response.

## **9. Activities on Disused Coal Tips**

### **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?

- 9.1 Of the 40 respondents who answered the question, 31 (77%) agreed with the list of types of activities which may require to be banned or require consent.
- 9.2 Respondents provided a number of comments, including the need to focus on those activities which have the potential to significantly increase the risk to tip safety. There was also a request for clarity in terms of how any proposed controls will work in practice, including the approach on lower rated or 'de minimis' tips. It was suggested that careful consideration will need to be given to ensure any proposed restrictions do not cause issues for any future remediation work. It was also suggested that any proposed restrictions do not impede emergency work which may be required on a site and clarity where there may be competing legislative regimes as to which should take precedence.
- 9.3 Respondents (18%) raised a number of other activities which may need to be controlled on disused coal tips. These included motor cycling and the use of 4x4 vehicles for recreation, and also organised or spontaneous events held on or near a tip. Livestock control was suggested as movement of livestock has the potential to disturb or mobilise polluting matter. The demolition of buildings or structures on land which may not have been subject to planning scrutiny was also suggested. One respondent raised the potential impact of adjacent developments and also utility infrastructure, both new and existing, which passes adjacent to, over or under a tip. Finally, it was suggested that in the context of the regime expanding to non-coal, consideration should be given to illegal removal of spoil.
- 9.4 Two respondents (5%) disagreed with the proposal, while one respondent (3%) expressed no preference. One respondent felt mineral extraction should not be included as a default example under excavation/ alteration of tip profiles as in reality these activities are routinely controlled and can be deemed to remedy problems associated with tipped material through its removal.
- 9.5 Ten respondents did not provide a response.

### **Question 19**

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

- 9.6 Respondents provided several suggestions for potential mechanisms to control certain activities on tips. Views ranged from a blanket ban on all activities to adopting a more proportionate risk-based approach, including the use of existing enforcement legislation. Restoration and remediation were also mentioned to remove potential risks. A summary of key themes raised is provided below.

#### Use of existing legislation

- 9.7 The use of existing planning legislation was proposed by several respondents as a mechanism to control some of the activities on tips. A number suggested the supervisory authority be a statutory consultee for planning applications on or in the vicinity of a tip. Respondents also pointed out existing enforcement measures for certain activities and the role of the police. It was suggested a more appropriate approach may 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.

- 9.8 It was also suggested there needed to be clarity where existing legislative regimes clash with the proposed coal tip safety regime to determine what would take precedence in certain scenarios.

### Access

- 9.9 Some respondents proposed access should be restricted to areas containing tips. Notices should be placed on access routes to areas setting out the possible enforcement actions and the possibility of criminal actions being taken against transgressors. 'Land locking'<sup>5</sup> was also mentioned to prevent public thoroughfare.

### The role of the Supervisory Authority

- 9.10 Several suggestions were made about the role of the supervisory authority. These included the supervisory authority being able to approve any construction or proposed development on or near a coal tip. The need for regular inspection by a suitable experienced engineer employed by the supervisory authority was proposed. It was suggested for lower-rated tips, there be a requirement to obtain consent from the Supervisory Authority or local authorities to undertake certain prescribed works (outside of maintenance agreements) on a disused tip
- 9.11 It was proposed the supervisory authority work closely with other partners for example the Fire Service who may consider activities/recommendations for managing risk level of fire on tips including fire break management. It was suggested they become a statutory consultee in management plans linking to fire management in high-risk areas.

### Education and awareness raising

- 9.12 Several respondents highlighted the need for education and general awareness raising, pointing out that several activities listed in the consultation paper were preventative. It was suggested there should be a general awareness raising campaign to communicate the objectives of the new regime to the wider public, including the potential impact of certain activities and their consequences. It was also suggested there should be targeted communication and education within schools. It was proposed the reform of the National Curriculum presented an opportunity to ensure schools in affected areas were able to educate and convey key messaging regarding the dangers and risks some of the activities can pose. The objective would be to show young people how they can take steps to minimise risk to themselves, others and the wider environment.

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<sup>5</sup> Landlocking in the context of real estate refers to a piece of property that is inaccessible via public thoroughfare, except through an adjacent lot.

## Difficulties of enforcement

- 9.13 Several respondents pointed out the potential difficulties around enforcement of these activities. For example, whether frequency of inspection on higher-rated tips would be sufficient to identify overgrazing or vegetation removal. The difficulties around enforcing existing legislation and policing unauthorised activities was also raised. It was pointed out that tips by their nature are often in remoter areas which are difficult to police particularly on private tips.
- 9.14 It was suggested the issue of who would be the consenting authority needed to be explored carefully. Any split responsibility between the supervisory authority and local authorities could pose another resource burden for local authorities.

### **Question 20**

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

- 9.15 Of the 38 responses we received to this question, 28 (74%) agreed with the proposals relating to development activities in the vicinity of higher status tips.
- 9.16 Key concerns included: development of wind farms, and how the work could potentially destabilise the tips and drainage management systems, especially where the tips would be on higher land. Several respondents noted an emergency situation needs to be defined – if not clearly delineated, authorities will be hesitant to use the powers or declare an emergency.
- 9.17 Three respondents (8%) did not agree with the proposals, with one respondent commenting this should not be limited to higher status tips. Seven respondents (18%) neither specifically agreed or disagreed with the proposal but offered the following comments:
- *“... focus should be on managing the tips, engineering better drainage, they only go when saturated with water”; and*
  - *“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”.*
- 9.18 Six respondents provided no response.

## 10. Additional Questions

### 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?

10.1 Of the 20 responses received to this question, 12 (60%) considered the proposals will have a positive effect on the Welsh language.

10.2 Several respondents noted the need for the supervisory authority to comply with existing measures under the Welsh Language Act. Respondents highlighted the need for a fully bilingual organisation and in particular the ability of the public to request and access information through the medium of Welsh. The need to maintain historic or traditional Welsh names for the tips was also raised. One respondent provided the following comment:

*“We think that the Legislation, Policies and Guidance should be bilingual along with the forms and 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 and the limited pool experienced staff, the time delays in translation could also mean non-compliance with the new legislation”.*

10.3 Five respondents (25%) considered the proposals would have no effect on the Welsh language, and three respondents (15%) were unsure. No respondents considered the proposals would have a negative effect on the Welsh language.

10.4 24 respondents did not provide a response.

### 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.

10.5 Seventeen responses were received to this question.

10.6 Several respondents noted the need to ensure the new Welsh Language Standards are met and for the authority to be bilingual. One respondent noted: “To encourage engineers to work in this environment there should be no language barriers in place”.

10.7 Another respondent noted the need for clarity in terms of which organisation (for example, Welsh Government, local authorities) is responsible for ensuring the standards are met. One respondent noted that all local authorities need to be given a clear direction in ensuring the requirements of the Welsh Language Act are met.

10.8 Finally, one respondent commented the publicly available asset 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.*

10.9 Two respondents commented they did not consider the proposals would impact on the Welsh language.

10.10 27 respondents provided no response.

### **Question 23**

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

10.11 Thirteen responses were received to this question. A summary of the following key themes raised is provided below:

- Historical Value
- Environmental / Climate Change & Ecosystems
- Responsibilities of the new supervisory body
- Financial & Funding
- Emergency Response procedures & Public Health
- Miscellaneous

### **Historic Value**

10.12 One respondent noted the need to ensure historical knowledge is captured, including the impact of reclamation/remediation schemes as part of the proposed assessment process. Another respondent suggested there may be merit in a protocol for information exchange between the new register and the historic environmental records.

## **Environmental/Climate Change & Ecosystems**

10.13 One respondent noted tips are now delicate ecosystems containing protected and unique species and any maintenance programme should be preceded by an ecologist report. Another respondent wrote that climate change should be a mandatory consideration and the determination of risk should include the completion of Climate Change risk assessment.

## **Responsibilities of the new Supervisory Authority**

10.14 Several respondents provided suggestions around other responsibilities the new supervisory authority should undertake. To provide an example, one respondent suggested supplementary definitions may be required for what constitutes a lagoon within tip boundaries.

## **Finance and Funding**

10.15 A number of respondents noted the need for financial contribution from the UK Government to ensure the long-term safety of tips. One respondent noted:

*“...in the longer-term Welsh Government requires additional funding from the UK Government to address the cost of remedial work in the remaining coal tips in Wales, as the vast majority (if not all) of them are the legacy of Wales pre-devolution industrial past”.*

10.16 Several respondents raised the need for the Welsh Government to address the long-term funding commitments required by the proposals, with the following comment:

*“... individual landowners and/or local authorities may not be able to fund additional responsibilities”.*

10.17 One respondent noted:

*“... the public purse should not be picking up the cost of private tips, as most landowners acquired the land from the National Coal Board for a peppercorn fee in the 1980s knowing the risks and obligations under existing laws”.*

## **Emergency Response procedures**

10.18 The need for appropriate emergency response procedures was raised by several respondents. One respondent noted further detail is required on:

*“.... ownership’ / authorship, timeframes and delivery of Coal Tip Emergency Response Plans. Our view being that the Tip Owner themselves are the ones responsible for ensuring an emergency plan is prepared/put in place – but should/can be directed to a responsible ‘organisation’ (legal entity) to ensure that ‘ownership’ of the plan is defined and clear”.*

10.19 Two respondents noted perhaps a similar approach is required to the COMAH planning regime:

*“...as this put the responsibility on site owners to prepare an “internal” plan should movement be detected, in a possible area that could be affected by a slip and actions taken by the owner in the case of an emergency”.*

### **Miscellaneous individual comments**

- *“...whilst the Integrated Impact Assessment published alongside this consultation makes reference to the impact of the proposals on children, it is underdeveloped and general in nature”.*
- *“...nothing in legislation should discourage or hamper the use of colliery discard to produce ceramic products or similar, or the transformation of colliery discard into secondary aggregates, or the recycling of colliery discard onto its components and the export of those components for use in the building construction industries or in fuel or use in industrial processes such as steel making”.*
- *“... all tools, guidance, and mechanisms to enable delivery of the legislation [should be] developed and shared alongside the enactment of the legislation as failure to do so will drive inconsistencies and create a range of issues. There should be a review of the permitting and licensing regime to reflect the emergency nature of certain activities”.*
- *“...consideration should be given as to how sites could be removed from the register post remediation or removal of the tip material”.*

## Annex 1

### Coal Tip Safety White Paper / List of respondents

Ref No	Respondent	Category
001	Clive Payne	Individual
002	Anonymous	Individual
003	Anonymous	Individual
004	Phil Thomas	Individual
005	Christopher Wright	Individual
006	Anonymous	Individual
007	Institution of Civil Engineers	Professional Body
008	Anonymous	Individual
009	Gwyn Papur	Individual
010	Hefin David MS	Elected representative
011	Anonymous	Organisation
012	CLA Cymru	Professional Body
013	John Davis & Scott O'Neill	Individuals
014	Stephen Smith	Individual
015	Anonymous	Local Authority
016	University of South Wales	Academic
017	Public Health Wales	Other public body
018	Elizabeth Aldworth	Individual
019	Network Rail Mining Team	Private company
020	WLGA	Other public body
021	Anonymous	Local Authority
022	Neath Port Talbot Local Authority	Local Authority
023	Torfaen Local Authority	Local Authority
024	Ivor Richards	Private company
025	Plaid Cymru	Elected representative
026	Transport for Wales	Other public body
027	Jacobs UK Limited	Private company
028	British Geological Survey	Professional body
029	Anonymous	Local Authority
030	Anonymous	Local Authority
031	Wales Flood & Coastal Erosion Committee	Other public body
032	Anonymous	Local Authority
033	Children in Wales	Third sector organisation
034	Pontypool Community Council	Other public body
035	Vivian Rees	Individual
036	Steve Parry	Private Company
037	Jenna Arnold	Other Public Body
038	Jenny Emmett & John Lawson	Other Public Body
039	Dominic Driver	Other Public Body
040	Roger Waters	Local Authority
041	Christian Hanagan	Local Authority
042	National Farmers Union	Organisation
043	Tim Wilkinson	Private Company
044	Nick Horsley	Private Company

