

## **DMQTWB 03 - Evidence from: Coal Action Network**

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Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Tomenni Mwyngloddiau a Chwareli Nas Defnyddir (Cymru) | Disused Mine and Quarry Tips (Wales) Bill

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### **1. What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?**

We broadly welcome this Bill and the intention behind the Bill. We agree with the Welsh Government that stronger provisions are needed to protect people living in Wales from coal tip instability, particularly due to the increasing pressures from climate change.

### **2. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?**

#### **▪ Part 1 - The Disused Tips Authority for Wales (sections 1 to 5 and Schedule 1)**

Given the public interest and stakes involved, the DTA must prioritise transparent and accountable public communications, with an eagerness to cooperate with environmental NGOs. If the DTA sees this as an impediment to its work, it will fail to create trust in the safety of coal tips for those living in their shadow.

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

Without the details of the desk-based assessment, it is difficult to assuage our concerns that stability risks could be missed, if they are – as a result – never escalated to a physical inspection, which may highlight those more effectively.

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

The technical detail in ownership, occupier status, and sale are outside our area of expertise. However, we have seen liability tied to ownership abused by Celtic Energy Ltd to evade tens of millions in restoring Selar, Margam, East Pit, and Nant Helen, which had the land ownership transferred to shell companies registered in the Cayman Islands. It should therefore not be made possible for land owners to sell the land on where the new owner would clearly be unable to fund stability works, and there should be stipulations about what must be declared in the sale of land containing registered coal tips.

We would also like to know how the current Bill proposal would be implemented in a real-world situation where, for example, in Bedwas where we understand there is a tip where the land under the tip is owned by one party but the surface of the tip is owned by another party.

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

55(1)(E) “the Coal Authority” should be updated to the new title of “the Mining Remediation Authority”

### ▪ **Part 5 - General (sections 71 to 88)**

No comment

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

To reduce opportunistic appeals by landowners to delay and avoid necessary stability works (in the vein of what we’ve seen mining companies do to stave off an enforcement notice recently), there should be clear and pragmatic eligibility grounds for appeal.

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#### **4. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)**

The power granted to Ministers within the Bill to amend the definition of a disused coal tip could greatly impact the reach and application of the Bill as this definition is core to the Bill's implementation. We are therefore of the opinion that Ministers should not be given the unfettered liberty to redefine what constitutes a disused tip. Given that the new Bill has not sought to amend the definition of a disused tip from the 1969 predecessor Bill, there is not a compelling practical case for creating this liberty, given the risks it raises.

We have even stronger concerns regarding S81(5), permitting Ministers to exempt an otherwise qualifying disused tip from the Act. This opens the door to an element of arbitrariness undermining the legislative aim of generating consistency and public trust in the application of a cohesive and even-handed regulatory regime.

#### **5. Are any unintended consequences likely to arise from the Bill?**

The Integrated Impact Assessment claims the Bill does not deal with coal tip remediation, and does not increase the likelihood of movement and potential combustion of coal that can accompany coal tip remediation. However, this Bill may inadvertently increase pressure on resource-strapped Local Planning Authorities by fuelling a new wave of coal extraction applications, such as the current proposal by ERI Ltd to 're-mine' two coal tips in Bedwas in a practice that dates back to at least 1984.

ERI Ltd is a private company offering to permanently remove tip stability risks at no charge to the landowner (Caerphilly Council) in return for selling the extracted 'waste coal'. Coal tip remediation involving coal removal and earthworks is presented as a solution to permanently prevent future coal tip instability. It does not substantively differ from other actions such as irrigation to prevent instability which is included within the remit of the Bill. The Explanatory Memorandum's separation of the two activities is arbitrary and doesn't reflect the present reality.

We believe similar proposals would be an attractive prospect to other landowners facing open-ended coal tip liabilities under the lower thresholds introduced by the new Bill. This is particularly true for landowners who may struggle to sell on land containing higher risk coal tips.

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The UK Government's promise of no new coal licences would fail to prevent this unintended consequence of the Bill because 're-mining' coal tips does not require a coal licence, merely planning permission (as the coal has already been extracted from the coal seam). Even if the patchwork of Welsh policies were sufficient to prevent planning permission for such projects, which we believe it is not, the applications coming forward would increase the burden on resource-strapped Local Planning Authorities as well as wasted resources of the private sector.

If this Bill stimulates the practice of 're-mining' coal tips across Wales, it could have significant consequences for Wales climate change emissions. Estimating coal content across the diverse tips distributed across Wales is very difficult, but extrapolating from ERI Ltd's estimate of 500,000 tonnes of coal contained within two coal tips in Bedwas, around 643 million tonnes of saleable coal could be extracted from the 2,573 coal tips in Wales. If burned, this coal would emit 1.8 billion tonnes of CO<sub>2</sub> – equivalent to 7x Wales national CO<sub>2</sub> emissions (2022). Given that this Bill was partly introduced in response to the predicted effects of climate change on the stability of coal tips, failure to safeguard against this unintended consequence could undermine the core legislative aim of public safety.

As a starting point, and in recognition of this unintended consequence, the Welsh Government must undertake a Carbon Impact Assessment and full Climate Change Impact Assessment, currently omitted.

## **6. What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?**

No comment

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

Over 85% of disused coal tips (and 90% of coal tips with higher stability risks) in Wales are located in the South Wales valleys, and – according to the Welsh Indices of Multiple Deprivation – are based in communities classed as amongst the 10% most deprived in Wales. As the Government's Integrated Impact Assessment outlines, preventing coal tip slips would benefit lives, land, and housing in these areas.

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To realise this benefit, though, it is vital that the design and execution of stability works on coal tips prioritise minimising potential impacts on the wellbeing of these socio-economically disadvantaged communities – for example in operating hours, HGV movements, flora clearance, restriction of public access to green spaces etc.