

## F Biodiversity Impact Assessment

The overarching aim of the Disused Mine and Quarry Tips (Wales) Bill (the Bill) is to protect human welfare, by introducing a consistent and robust system of assessment, registration, management, monitoring and oversight of disused tips in Wales. The purpose of the Bill is to make provision to prevent disused tips from threatening human welfare by reason of their instability. The Bill will achieve this by establishing a regime for the assessment, registration, monitoring and management of disused tips.

The Bill will establish a new body, the Disused Tips Authority for Wales (the Authority) and confers functions on the Authority. The Authority's main objective, as provided for in the Bill, is to ensure that disused tips do not threaten human welfare by reason of their instability. The Authority will undertake a range of activities, including the assessment and subsequent categorisation of disused tips, monitoring functions and the creation and maintenance of an electronic register of disused tips.

The Bill also provides the Authority with the ability to require an owner of land to carry out operations on land where it considers such operations to be necessary to prevent or deal with threats to the stability of a disused tip, or to stabilise a disused tip or prevent it from becoming more unstable, so as to avoid or reduce threats, where it considers such operations necessary to achieve the objective set out in the Bill. The Authority must provide advice and assistance to Welsh Ministers in relation to disused tips and can give information and advice to any person in relation to disused tips.

The Authority will be duty bound to comply with existing legislation which includes:

1. The Well-being of Future Generations (Wales) Act 2015 which will require the Authority to set and publish objectives that are designed to maximise its contribution to achieving each of the well-being goals (defined by section 4 of the Act). One of those goals is "a resilient Wales," that is, "A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic, and ecological resilience and the capacity to adapt to change (for example climate change)."
2. The Environment (Wales) Act 2016 (section 6) requires that public authorities maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, as far as consistent with the proper exercise of those functions.
  - The Welsh Government [Natural Resources Policy](#) (NRP), a statutory policy linked to the implementation of the Environment (Wales) Act 2016. NRP sets out the main principles of the Welsh Government's approach to the delivery of 'Prosperity for All - the national strategy' and Wales's international commitments.

One of the key challenges addressed by the policy is to enhance the resilience of ecosystems by improving their conditions and reducing the pressures on them and by building ecological networks.

- The Welsh Government’s [Nature Recovery Action Plan](#) states its ambition to reverse the decline in biodiversity, for its intrinsic value, and to ensure lasting benefits to society. The plan includes six objectives for reversing the decline of biodiversity, which should be used to help develop and guide actions to comply with the section 6 duty.

The projected increase in impacts from climate change, as reflected in the [Climate Change Risk Assessment for Wales \(CCRA3\)](#), has led to the increased prospect of landslides, which can cause significant damage to communities, critical infrastructure, and the environment.

In addition to the potential impacts of climate change on disused tips, many of the disused tips in Wales provide, or are adjacent to, thriving ecosystems as well as supporting habitats and wildlife of considerable local, regional, and national importance. A tip failure could have a negative impact on Wales’s biodiversity. Improved management of disused tips can help reduce the likelihood of instability and as such reduce the risk of impact on existing ecosystems, habitats, and wildlife.

The Authority will undertake a wide range of activities such as assessment and monitoring of disused tips, and the development of management plans. While not a requirement under the Bill, management plans will be important to the application of the regime. These plans will provide a proactive, proportionate management strategy for a disused tip. They will take into consideration the biodiversity of each disused tip and highlight relevant environmental legislation<sup>1</sup>.

Management plans will consider the uniqueness of each disused tip and consider the site-specific constraints which may dictate emergency preparedness, incident response and remedial strategy. Such constraints will include the proximity of ecologically designated sites, location of adjacent critical infrastructure or interactions with designated water courses. The Bill aims to reduce the probability of future failures and consequentially reduce these negative impacts. Additionally, there are other wider incidental biodiversity benefits in improving the management of disused tip sites (e.g. reducing soil erosion, pollution prevention and encouraging the establishment of vegetation).

Based on the current information there are the following number of disused coal tips, wholly or partly, within each of the environmental designations listed (Table 1). These numbers are subject to change.

Table 1 – Current number of tips per designation

<b>Designation</b>	<b>Number of tips within site</b>
Local Nature Reserve	28

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<sup>1</sup> Regulating Coal Tip Safety Summary Report

National Nature Reserve	7
Special Protection Area	3
Areas of Outstanding Natural Beauty	20
Special Areas of Conservation	32
Sites of Special Scientific Importance	99
National Park	69

### **Embedding biodiversity**

#### **1. How will your proposal integrate biodiversity into decision making?**

- ***Have you considered the impacts and positive opportunities for action for biodiversity at the early stages of thinking or project design?***

The Authority as a public authority under the Environment (Wales) Act 2016 must seek to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions and prepare and publish a plan setting out what it proposes to do with to comply with this (section 6(6) of the 2016 Act).

In pursuance of its main objective, the Authority must promote high standards in relation to the management of disused tips. Whilst not a statutory obligation, management plans will form an important part of the new regime. Welsh Ministers will develop guidance for the Authority on management plans<sup>2</sup>. The guidance will make it clear that the Authority when developing management plans will need to take account of current legislation and guidance, such as the Environment (Wales) Act 2016. In addition, the guidance will sign post to current best practice and advise the Authority on working with other bodies to develop management plans where appropriate, including seeking input from relevant stakeholders, such as environmental and ecological groups.

There will be ongoing evaluation through the statutory obligations of the Authority, as set out in the Bill, including to prepare a corporate plan of how it intends to discharge its functions and prepare an annual report to be laid before the Senedd. As part of these obligations the Authority will be able to consider its interaction with other environmental regimes and its effectiveness of working relationships with the statutory bodies of related regimes. This will include how it has under the Environment (Wales) Act 2016 (section 6) maintained and enhanced biodiversity in the exercise of its

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<sup>2</sup> Welsh Ministers will make it clear in the guidance an expectation that the Authority will produce management plans for the highest risk category of tips (categories 1 and 2), and on a case-by-case basis whether a plan is appropriate for the lower rated category disused tips (category 3 and 4).

functions and promoted the resilience of ecosystems, as far as consistent with the proper exercise of those functions.

### **Has your proposal ensured biodiversity is accounted for in business decisions?**

Yes, the Authority as a public authority under the Environment (Wales) Act 2016 must seek to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in so doing promote the resilience of ecosystems, as far as consistent with the proper exercise of those functions (see response to question 1 above).

### **2. How does your proposal improve understanding and raise awareness of the importance of biodiversity, encouraging others to act?**

The new regime will establish and encourage best practice in the management of disused tips in Wales with wide ranging incidental benefits, this will include raising awareness of the importance of biodiversity. The Authority will seek to engage stakeholders and establish strong working relationships to promote best practice.

The unique, sensitive and often thriving ecosystems supported by disused coal tips is well documented, and it is recognised that they support habitats and wildlife of considerable local, regional and national importance.

The Authority as a public authority under the Environment (Wales) Act 2016 must seek to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in so doing promote the resilience of ecosystems, as far as consistent with the proper exercise of those functions.

- ***Have you used the best available evidence of biodiversity to inform your proposal and this assessment?***

Considerable resource has been dedicated to the comprehensive mapping and appraisal of disused coal tips in Wales. This has, for example, allowed for detailed geospatial analysis to support proposal development. High level outputs from this analysis can be observed in **Table 1**.

Evidence received from stakeholders, industry and recognised subject matter experts has been used to inform proposal developments for instance the lists of species and habitats of principal importance published under section 7 of the Environment (Wales) Act 2016; the [State of Natural Resources Report 2016](#) and relevant NRW published area statements.

As part of the Bill proposals, we have also considered information relating to the species, habitats and wider ecosystems which have become established on, or benefit from, the disused tips estate.

### **3. Have you used up to date knowledge of the key impacts on biodiversity to make evidence-based decisions?**

- ♦ Do you know what the drivers of change and key negative factors are which could arise from your proposal?

- ◆ Are you satisfied that these do not apply or have been avoided?

Comprehensive mapping and appraisal of disused coal tips in Wales has created a first of its kind dataset which has supported proposal development. The tips dataset has allowed appraisal and assessment against relevant environmental, and biodiversity related geospatial datasets.

Evidence received from stakeholders, industry and recognised subject matter experts has been used to inform proposal developments. This includes information relating to the species, habitats and wider ecosystems on or which benefit from the disused tips estate.

We are satisfied that potential impacts on biodiversity have been considered and substantially mitigated or avoided.

#### **4. Can your proposal potentially contribute to our body of knowledge for biodiversity?**

The duty on the Authority to assess and monitor disused tips could consequentially contribute to an improved understanding of biodiversity on disused tip sites and adjacent land in so far as this is consistent with the exercise of the duties of the Authority. Information held by the Authority will include information relating to the biodiversity at disused tip sites, which has been captured and recorded as part of the function and operations of the regime.

Utilising powers under section 58A of the Government of Wales Act 2006, Welsh Ministers intend to issue guidance to the Authority on several areas including inspections and monitoring, appeals, compensation, charging and management plans. Welsh Ministers will ensure guidance for the Authority will be cognisant of current environmental and biodiversity legislation and guidance. In addition, all appropriate impact assessments will be undertaken and engagement and consultation with stakeholders where appropriate will be undertaken. Section 69 of the Bill will require the Authority to have regard to such guidance in exercising its functions.

Section 6 of the Environment Act 2016 places a duty to the Authority as a public authority to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in doing so promote the resilience of ecosystems, as far as consistent with the proper exercise of those functions. The duty places biodiversity as a natural and integral part of policy and decision making within a public authority. Welsh Ministers will develop guidance for the Authority on management plans which will make it clear that the Authority is expected to produce management plans for the highest category of disused tips (category C and D), and to consider on a case-by-case basis whether a management plan is considered appropriate for the lower rated category of disused tips (category A and B).

Management plans will record detail relating to biodiversity, as well as advice and recommendations regarding information gathering, knowledge transfer and good practice. The Authority will refer to information about biodiversity (such as habitats, ecosystems and species records) when developing management plans for disused

tips and will be cognisant of relevant environmental and biodiversity legislation and guidance.

For example, the Authority will consult with ecologists in relation to citing engineering on disused tips with the planning authority. Engagement with stakeholder groups, where appropriate, will be undertaken whilst policy is being developed.

## **Governance and support for delivery of biodiversity action**

### **5. Can your proposal support biodiversity action in any way?**

The Bill aims to reduce the probability of future disused tip failures and consequentially reduce associated negative impacts on Wales's biodiversity and tip ecosystems.

The Authority as a public authority under the Environment (Wales) Act 2016, must seek to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in so doing promote the resilience of ecosystems, as far as consistent with the proper exercise of those functions.

The new regime will establish and encourage best practice in the management of disused tips in Wales with the potential for incidental benefits for delivery of biodiversity action. For instance, better management of disused tips, as explained in the Regulatory Impact Assessment, may also enhance the existing biodiversity value of collieries because by nature they are nutrient-poor preventing dominant plant species from taking over.

The Authority will refer to information about biodiversity (such as habitats, ecosystems and species records) when developing management plans for disused tips and will be cognisant of current environmental and biodiversity legislation and guidance. The Bill does not repeal any legislation that is in place to protect species and habitats. Where there are legal requirements now the Bill has been designed to work with these.

Biodiversity found on disused tip sites includes over 900 invertebrate species recorded, 22% of which are of conservation priority level in the UK. Importantly, physical interventions required to make some disused tips safer should be carried out in a manner which reduces the impact on biodiversity and restores appropriate habitats for the future.

### **6. Can your proposal help to build capacity for biodiversity action?**

In some cases, the new system will protect existing habitats and support the maintenance and enhancement of resilient ecological networks, through reducing the likelihood of tip instability and establishing better land management practices on the disused tips estate in Wales.

Guidance issued by Welsh Ministers will promote practices and principles to build capacity for biodiversity action.

The establishment of the Authority as a new expert body in the management and regulation of disused tips will indirectly benefit biodiversity action.

## **7. Have you recorded decisions and actions to maintain and enhance biodiversity?**

No specific provisions are made in the Bill relating to maintaining or enhancing biodiversity.

However, the Authority, as a public authority under the Environment (Wales) Act 2016 in Wales, must seek to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in so doing promote the resilience of ecosystems, as far as consistent with the proper exercise of those functions (section 6(1)). Under section 6(6), the Authority must prepare and publish a plan setting out what it proposes to do to comply with s.6(1). Under section 6(7), the Authority must publish a report on what it has done to comply with subsection 6(1), every three years.

In its corporate plan, the Authority must set out how it intends to discharge its functions under the Bill during each planning period. The Bill also requires that as soon as is reasonably practicable after the end of each financial year, the Authority must prepare and publish an annual report on the exercise of its functions during that financial year. Where relevant to functions of the Authority, the corporate plan and annual report may include reference to decisions and actions to maintain and enhance biodiversity.

**If your proposal concerns construction or management of land and/or sea, please also consider Questions 10 – 16:**

### **Safeguarding species and habitats of principal importance**

## **8. Is all legislation complied with to ensure protection of marine and terrestrial species and habitats?**

- ♦ Has any requirement for licences, monitoring and/or enforcement been considered and actioned?
- ♦ Has any requirement for EIA/SEA/HRA been identified and actioned?
- ♦ Have any impacts or opportunities for positive action for Section 7 species and habitats been identified and actioned?

The Bill does not repeal any legislation which ensures the protection of marine and terrestrial species and habitats. The Bill has been designed mindful of the existing environmental legislative landscape. As mentioned above, the Environment (Wales) Act 2016 (section 6) requires a public authority to seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, as far as consistent with the proper exercise of those functions. All relevant statutory authorities have been consulted and have contributed to the policy development, ensuring detailed consideration has been given to all legislation relating to the protection and species and habitats.

## **9. Does the proposal seek first to maintain and enhance biodiversity?**

- ♦ Have you selected the option which avoids loss and/or damage to biodiversity, and promotes the resilience of ecosystems?

- ◆ Only where the balance of environmental, economic, social and cultural benefits<sup>3</sup> provided by your proposal is such that there may be some loss of habitat or species, have you sought to enhance biodiversity elsewhere on the site, or, where there is no other option, offsite?
- ◆ Does your proposal contribute to maintaining and enhancing biodiversity across Wales?

The new system does not directly impact on or contribute towards loss or damage to biodiversity.

The proposals will incidentally contribute to maintaining and enhancing biodiversity across mining legacy estate in Wales on which disused tips are situated or land in the vicinity. In turn, promoting the resilience of ecosystems.

### **Increasing the resilience of our natural environment**

#### **10. Does your proposal contribute to building the resilience of our ecosystems?**

- ◆ Does it work with nature, and consider the use of nature-based solutions first and foremost?
- ◆ Are any nature-based solutions native and bio-diverse?
- ◆ Can it restore or contribute to the restoration of degraded habitats?
- ◆ Can it contribute to building resilient ecological networks of habitats?
- ◆ Does the proposal improve site management to improve habitat or species condition at **any** scale? e.g. planting native species, providing wildflower areas for pollinators, leaving areas of unmown grass; and improving connectivity between valuable habitats?

The unique, sensitive and often thriving ecosystems supported by disused coal tips is well documented, and it is recognised that they support habitats and wildlife of considerable local, regional and national importance.

The new system will indirectly protect existing habitat and support the maintenance and enhancement of resilient ecological networks in line with statutory duties on the Authority and in the context of national policy on these issues, through reducing the likelihood of tip instability and establishing better land management practices.

It will establish and encourage best practice in the management of disused tips in Wales with wide ranging incidental benefits which could include raising awareness of the importance of biodiversity.

#### **11. Does your proposal contribute to the creation of new habitat?**

- ◆ Does your proposal support the creation of new habitats, such as local orchards, native hedges, wildflower meadows or other areas of native, bio-diverse green space?

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<sup>3</sup> Taking proper account of the benefits and intrinsic value of natural resources, including biodiversity, and ecosystems



- ♦ Can habitat creation contribute to developing resilient ecological networks?

The new system will not directly contribute to the creation of new habitats; however, it will indirectly support the creation of new habitats through the improvement of management practices on mining legacy estate in Wales where disused tips are situated.

### **Tackling key pressures on species and habitats**

#### **12. Will the proposal have any negative impacts on habitats or species through**

- ♦ change in land use?
- ♦ causing air, Water, light, noise or vibration pollution?

No foreseeable negative impacts on habitats or species are anticipated in connection with the proposals.

Where operations are required due to a threat to human welfare, there may be instances where impacts associated with such operations occur (e.g. noise, vibration pollution and drainage). However, decisions made as part of the regime introduced by the Bill will ensure proposed operations are carried out in the context of national policy on these issues.

The system aims to reduce the likelihood of such operations through appropriate monitoring and management of disused tips. Further, the regime aims to reduce the likelihood of tip failures. This will reduce negative impacts on ecosystems.

#### **13. Has all legislation regarding the pressures on species and habitats been complied with? This would include:**

- ♦ Pollution control
- ♦ Invasive non-native species
- ♦ Sustainable Urban Drainage Systems
- ♦ Climate Change etc.

The Authority as a public authority under the Environment (Wales) Act 2016 must seek to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in so doing promote the resilience of ecosystems, as far as consistent with the proper exercise of those functions.

During the Bill's development, environmental legislation has been considered in detail by Welsh Government, the Law Commission and by Birmingham University. Consideration has been given to areas including waste management, environmental permitting, habitat protection, ecological assessments, and conservation requirements.

The [Coal Tip Safety \(Wales\) White Paper](#) was subject to a 12-week public consultation in 2022, during which returns were made on environmental legislation from stakeholders, industry and subject matter experts.

#### **14. How will any negative impacts be mitigated?**

- ◆ Have whole system approaches and native, bio-diverse nature-based solutions been used to reduce pollution and mitigate climate change?
- ◆ Does your proposal employ best practice for the sustainable management of agriculture, fisheries, forestry and construction?
- ◆ Does your proposal include action to support pollinators?

The Authority as a public authority under the Environment (Wales) Act 2016 must seek to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in so doing promote the resilience of ecosystems, as far as consistent with the proper exercise of those functions. The new regime introduced by the Bill will establish and encourage best practice in the management of disused tips in Wales. This will mitigate against the potential impacts and likelihood of disused tip failure which could significantly disturb and/or harm biodiversity in Wales.