

**NEATH PORT-TALBOT COUNTY BOROUGH COUNCIL
CABINET**

1st September 2021

Appendix 1 – Exempt Under Paragraph 14 - Tip List with Categories

Not for publication pursuant to Regulation 5(2) & (5) of Statutory Instrument 2001 No. 2290 and Paragraph 14 of Part 4 of Schedule 12A to the Local Government Act 1972. Pursuant also to Paragraph 21 of the Schedule, and in all the circumstances of the case, the public interest in maintaining the exemption, is considered to outweigh the public interest in disclosing the information.

**Report of Head of Engineering & Transport
D. W. Griffiths**

Matter for Decision

Wards affected: All

**Management of Risk and Liabilities of disused Mine and Quarry
Tips within the Authority and the future management of Coal
Tip Safety.**

Purpose of Report

- 1 To advise members of the risks and liabilities associated with historic coal and quarry waste tips within the Authority. The work of the Welsh Government Coal Tip Safety Task Force and the Law Commissions consultation exercise on the future management of Coal Tip Safety in Wales.

Executive Summary

- 2 There are two distinct sub-groups of disused tips within NPT's boundary:-
 - a. Those where the Authority is the landowner (and thus the owner of the tip) and has particular responsibilities under the Mines and Quarries Act 1969-Part II.
 - b. Tips owned by others. All tips have the potential to endanger the public and the Authority has powers (but not duties) under the Mines and Quarries Act to require tip owners to carry out remedial works to make the tip safe, or to carry out such works itself and recover the costs.
- 3 Between 2017 & the summer of 2020 there have been 172 tips catalogued in the NPT area. Of these, at least 33 have been remediated to some degree (our inventory may be out of date regarding this aspect). There are 33 tips (at present) owned by the authority and of these, at least 9 have been remediated. During this period, we have been identifying the ownership & footprint of each tip, creating a database for each tip, monitoring and risk rating them.

Background

- 4 Members may recollect the national media coverage of the Tylorstown coal tip slide in February 2020 which brought down 60,000 tonnes of coal tip waste into the Rhondda Fach River in Rhondda Cynon Taf. The slide followed Storm Dennis, which saw unprecedented levels of rainfall across Wales. In response, the First Minister and the Secretary of State for Wales commissioned an urgent programme of work to ensure the safe and effective management of coal tips across Wales. This led to the creation of the Coal Tip Safety Task Force, headed by the Department for Environment and Rural Affairs. As part of this work, the Welsh Government commissioned the Coal Authority to carry out an immediate review of all coal tips in Wales.
- 5 Following the setting up of the Coal Tip Safety Taskforce in 2020 the Coal Authority in conjunction with NPT undertook an audit of all existing data, Lidar & aerial photography and have established that

there are now over 404 sites in NPT. The majority of these new sites are due to tip complexes being broken down and recorded as individual tips. Many of which require investigation and inspection to establish if they still exist and their status. Currently 38 of these tips are within NPT ownership.

- 6 The Coal Authority have also undertaken a comprehensive investigation with Land Registry and has identified 93% of coal tip owners and are in the process of attaching Land Ownership to each tip and feeding this back to each Local Authority. Initial results show 7% of tips remain unregistered and 38% are in public ownership i.e. LA, Coal Authority, WG and Natural Resources Wales.
- 7 Whilst there are no *statutory* requirements in the Mines and Quarries act for inspection of disused tips, it is considered good practice to inspect them on a regular basis and to keep records of such inspections. The Act specifically states that we have a duty to be in possession of all information pertaining to the extent and condition, to assess whether a disused tip in its area is stable and whether any instability of the tip is or is likely to constitute a danger to members of the public.
- 8 The Welsh Government have subsequently invited the Law Commission to undertake an independent review of coal tip safety legislation. The project began in November 2020. The agreed terms of reference are:
 - To review the law governing coal tips in Wales and consider options for a modern legislative framework, in line with Wales' existing legislation, including the Well-being of Future Generations (Wales) Act and Environment (Wales) Act, for regulating their safety.
 - To recommend a coherent, standardised and future-proofed system for identifying, recording, inspecting and maintaining coal tips throughout their lifecycle, identifying an overarching set of duties and adopting a uniform approach to risk assessment.

- 9 Any new legislation is likely to require improved monitoring of tips and spell out the responsibilities of the owner & the Local Authority, with more prescriptive duties.

The consultation process which invites all interested parties to express their opinions was opened up by The Law Commission on 9th June 2021 (<https://www.lawcom.gov.uk/project/regulating-coal-safety-tips-in-wales>) and is due to close on the 10th September 2021. The Law Commission's intention is to report to WG in early 2022 with recommendations.

As part of the consultation, the Coal Authority, on behalf of WG, has written to all landowners who have category C & D tips on their land to make them aware of the consultation process.

It is proposed due to the timescales that NPT's response to the consultation, be endorsed by the Cabinet Member for Streetscene and Engineering prior to submission.

Previous Management of Disused Tips within the County

- 10 Until April 2015 the Planning Section held the responsibility for Mineral Planning and the management of the disused tips was carried out by the Engineering Section.
- 11 With the retirement of NPT's Mineral Planning specialist, the Mineral Planning inspection function has transferred to Carmarthen County Council under a Service level Agreement. NPTCBC still retain the responsibility and the decision making power. The engineer who dealt with the tips management also retired around this time. A review was subsequently initiated in 2017 of disused tips monitoring and inspection to ensure that the Authority fulfils its obligations.
- 12 All tips have been risk-rated into four categories, 'A' being lowest risk, 'D' being highest. Most tips within NPT are currently rated as 'A' but there are 6 'B', 7 'C' and 3 'D'. Inspection frequency have been based on these categories, with the highest risk sites being inspected every 6 weeks.
- 13 The tips are inspected based on the following categorisation:

Group A - Remote from habitable property, unlikely to give risk to life or property and with no history of movement. (Inspected every 2 years).

Group B - Stable with no history of movement but any movement may interfere with watercourses etc. which, in turn, may adversely affect habitable properties. (Inspected every 12 months).

Group C - Site located in proximity of habitable property, watercourses etc. (Inspected every 6 months).

Group D - Site located in proximity to habitable property, watercourses etc., with known history of movement or obvious signs of instability. (Inspected every 6 to 8 weeks, supplemented by more frequent visits during periods of heavy rainfall).

Inspections will identify any deterioration in the tip since the previous inspection and will inform the potential reclassification of a tip to a higher or lower risk category.

- 14 The Coal Authority were engaged in 2017 to undertake a joint inspection with our engineers of the 33 tips in NPT's ownership and to produce a condition report for each tip. These inspection were carried out between 2017 & 2019.
- 15 These reports were developed into a programme of maintenance work on NPT owned tips. Capital funding of £250K was allocated to start dealing with engineering works identified to mitigate the risks and profiled over 2 financial years 2019/20 & 2020/21, This work is on going.
- 16 The catalogue of tips is stored on the authority's Asset Management System (AMX) with individual boundaries. These are currently being updated in line with the data supplied by the Coal Authority. At present, it is not known what system the Coal Tip Safety Taskforce will recommend for the standardisation of records for the South Wales Coalfield's tips.
- 17 The Engineering Section are utilising drones to capture 3-D models of some of our larger tips so that we can more easily identify areas of movement.

Proposals for Future Management

- 18 It will be important to continue working closely with the Coal Tip Safety Taskforce to ensure that our experiences help to shape the new legislation and best practice guidance. A review of our procedures will be required following the introduction of the new legislation in order to ensure future compliance.
- 19 To maintain and update the existing database of tips and inspect tips within our County Council ownership. Working with the Coal Authority, will help to compile a definitive list, including boundary and risk category by mid-August 2021, prior to a map layer being placed on the data Map Wales website. <https://datamap.gov.wales/>

In preparation for the publication of the Map of Coal Tips in South Wales there will be a joint communications plan developed by the Task Force Communications Team and stakeholders on the data to be made publically available.

It should be noted that we do not inspect any of the tips owned by Natural Resources Wales as they have employed the Coal Authority to inspect them on their behalf.

- 20 It is important that capital maintenance work to NPT owned tips continues, as one of the major factors in tip instability is the impact of water ingress.
- 21 Continue to further develop our survey and monitoring techniques with the assistance of the Coal Authority in accordance with best practice.

In this regard the recent grant funding from Welsh Government during 2020/21 in the sum of £25,115.83 for the purchase of a new drone and Lidar unit (Appendix 5 award letter) will enable remote coal tips to be inspected much more efficiently and accurately. The benefit of these surveys are that they are able to penetrate vegetation more effectively than the current 3 - Dimensional modelling techniques employed. Officers within the structures teams already hold drone pilot licences and they will be fully trained in the use of the new Lidar surveying techniques in order that the tasks can continue to be delivered by the in-house team.

Financial Impact

- 22 As part of the Coal Tip Safety Taskforce, Welsh Government agreed to make funds available to Local Authorities for the costs associated with tip management following Storm Dennis.

The grant funding from Welsh Government (Appendix 4 award letter) in the sum of £189,490.20 was provided to NPT for the work carried out during the financial year 2020/21.

- 23 WG have also agreed to allocate funds for works identified in the Coal Authority Tip Inspection Reports undertaken and the additional requirements of increased inspections and surveying/monitoring equipment during the 2021/2022 financial year.

It is noted that WG have also agreed that this funding will cover the inspection of privately owned tips in the C & D high risk categories.

A bid of £1,157,243 has been submitted to WG to fund this year's work (See Appendix 3). A bid of £216,401 was also submitted to fund flood recovery resulting from the storms in 2020 (See Appendix 6).

WG have given a strong indication that funding will be made available to meet these costs. It is therefore proposed that the projects be added to the Council's Capital Programme and that the works be progressed in advance of the grant.

- 24 The annual cost of routine inspection of the NPT owned tips is currently £30k. Subject to any potential new requirements in the draft legislation in 2022 being accepted, then the inspection regime and costs to deliver these functions in the future are likely to be doubled to in the region of £60K. It should therefore be noted by Members that this will be a new revenue pressure that will need to be considered in the autumn budget review in readiness for the budget setting process for 2022-2023 and beyond.
- 25 At present it is not known whether the cost of undertaking work to privately owned tips may have to be borne by NPT, WG and/or UK Government. This will become more apparent following the publication of the new draft legislation in 2022 which will be a further financial burden but in line with WG funding protocol they should

also provide additional funding and this should be part of the response.

Equality Impact Assessment

- 26 A Screening Assessment has been undertaken to assist the Council in discharging its Public Sector Equality Duty under the Equality Act 2010. After completing the assessment, it has been determined that this function does not require an Equality Impact Assessment.

Workforce Impact

- 27 There will be an impact on the workforce resulting from an increased tips inspections regime. Additionally if the Council are required to inspect privately owned tips then additional resources will be required to either employ additional staff or to appoint external technical support from the private sector to discharge the functions. There could also be impacts on the Council's Legal team should it be necessary to take any court action in ensuring compliance with the new legislation.

Legal Impact

- 28 At present the Authority has defined responsibilities under the Mines and Quarries Act 1969-Part II as Landowner for a number of the tips and general duty of care to residents for the remainder. It is important that there be a formal, recorded process of monitoring all tips within the county boundary in order to minimize any risk of prosecution for negligence. These responsibilities may change with any new requirements in the new draft legislation in 2022.

Risk Management

- 29 The level of physical risk posed by old tips has reduced considerably over the years as many have been re-graded and reclaimed. However, there are always processes acting on the tips, which can increase the risks they pose – extreme weather, drainage issues, geological processes, ill-advised alterations by private owners etc. The only way to manage these risks is through a formal inspection regime by suitably qualified and experienced personnel. It is better in the longer term that the necessary expertise be

developed and kept in-house for the sake of continuity of records and background knowledge. However it is recognised that specialist expertise will be needed to deal with particular technical problems from time to time.

Consultation

- 30 There is no requirement under the Constitution for external consultation on this item.
- 31 Internal Directorate Service Management teams, who are also stakeholders in terms of their respective land portfolios have been made aware of the potential changes to the legislation.

Recommendation(s)

- 32 Having due regard to the Integrated Impact Screening Assessment it is recommended that:
- 33 NPT inspect privately owned C & D high risk tips in conjunction with the Coal Authority until the new legislation comes into force.
- 34 The Bridges section continue to use their current Asset Management database to store records of the tips and monitoring regime, until a unified system is agreed and implemented.
- 35 That due to the timescales involved in preparing NPT's response to the Law Commissions consultation, that delegated power be granted to the Director of Environment and Regeneration to prepare and submit a response to the Law Commissions consultation exercise in consultation with the Cabinet Member for Streetscene and Engineering.
- 36 The coal tips and flood recovery projects be added to the Council's Capital Programme and the works be progressed in advance of the grant.

Reasons for Proposed Decision

- 37 To manage the risks and liabilities associated with historic coal and quarry waste tips within NPTCBC.

The response to the Welsh Government Coal Tip Safety Task Force and the Law Commissions consultation response will assist and inform the future management of Coal Tip Safety in Wales.

The planned programmes of work for the coal tips and flood recovery projects undertaken in advance of the grant award will help mitigate the associated risks early.

Implementation of Decision

- 38 The decision is proposed for implementation after the three day call in period.

Appendices

- 39 Appendix 1 - Tip List with Categories – July 2021
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Appendix 2 - NPT Coal Spoil Tip Costs 2020/21

Appendix 3 - NPT Coal Spoil Tips Expenditure 2021/22 - Bid Work

Appendix 4 – NPT Grant Award Letter 2020/21

Appendix 5 – NPT Technology Trials Grant Award letter 2020/21

Appendix 6 – NPT Flood Recovery Expenditure 2021/22 – Bid Work

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