



APPENDIX 1

ENVIRONMENT AND SUSTAINABILITY SCRUTINY COMMITTEE – 22ND MARCH 2022

SUBJECT: COAL TIP CONDITION STATUS AND INSPECTION REGIME

REPORT BY: CORPORATE DIRECTOR FOR ECONOMY AND ENVIRONMENT

1. PURPOSE OF REPORT

- 1.1 This Report to Scrutiny Committee is provided, to give an update on the current condition status and inspection regimes that are in place for coal tips located within Caerphilly County Borough, ahead of its presentation to Cabinet.

2. SUMMARY

- 2.1 The report summarises the backdrop to the current Welsh Government drive to set up a robust risk-based management system for tip inspection and tip maintenance for all tip assets in Wales and to understand the legacy posed by the tip sites in private ownership.
- 2.2 Following storm Dennis officers working collaboratively with the Coal Authority undertook a data cleanse exercise to determine the exact number of colliery spoil tips both Local Authority (LA) owned and privately owned within Caerphilly. This exercise reduced the believed number of 249 tips down to 201.
- 2.3 Caerphilly has developed its own robust tip inspection policy and procedures which are risk based and have been in place since April 2013. Tips are classified 'A' to 'D', low to high risk, and inspections undertaken at intervals of 24 months, 12 months, 6 months and monthly respectively based on the risk assessment.
- 2.4 Since storm Dennis in February 2020 inspection and tips maintenance moved to Engineering Projects Group, and 141 inspections were undertaken in 2020, 95 inspections in 2021 and 134 are programmed for 2022 in accordance with the risk assessment profiles.
- 2.5 A term service contractor, Jim Davies Civil Engineering Limited was appointed in 2020 to undertake all tips maintenance works with the authority. In 2021/22 just over £1M

was spent on tips maintenance within the borough.

- 2.6 Welsh Government have engaged the services of the Coal Authority to undertake inspections of all privately owned category 'C' & 'D' tips (highest risk rating). The first round of those inspections was undertaken in the period April to August 2021, the second round of inspections started in October 2021 and is currently ongoing.
- 2.7 The inspections have identified maintenance work requirements at 20 of the sites inspected as well as further monitoring at 13 sites. Only one site was identified with evidence of large-scale movement, this was the subject of a further joint inspection. Further monitoring and some investigation work has been recommended for this site, however, it should be noted that there are no imminent issues of concern.
- 2.8 Welsh Government has indicated that funding is available to undertake works to tips, with LAs taking the lead. Currently legislation does not give LAs power to enter private land, the suggestion is to negotiate with owners to agree access if works are required on private tips.
- 2.9 Welsh Government has appointed the Law Commissioner to develop new legislation on Regulating Coal Tip Safety in Wales, consultation finished in September 2021 with recommendations anticipated early 2022. Recommendations are likely to include the setting up of a new supervisory board responsible for the registration of all tips, their classification and agreeing tip management plans. This will provide a consistent approach to tips inspection and maintenance across Wales.

3. RECOMMENDATIONS

Scrutiny is asked to consider the content of this report and endorse the following recommendations, ahead of these being presented to Cabinet:

- 3.1 The continued use of Caerphilly's policy and procedures for managing tip inspections and maintenance programme which was originally supported by the Regeneration and Environment Scrutiny Committee on 2-4-2013.
- 3.2 Continued collaborative working with Welsh Government and the Coal Authority.
- 3.3 Continued exploration of options for addressing maintenance requirements for privately owned spoil tips.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 To ensure the continued safety of all local authority and privately owned spoil tips within the Caerphilly County Borough area.

5. THE REPORT

- 5.1 The dramatic failure of a spoil tip in Tylorstown, Rhondda Cynon Taf, triggered by Storm Dennis in early 2020 prompted Welsh Government (WG) to review all tip assets both publicly and privately owned along with the policies in place to manage coal tips. To take the reviews forward WG appointed the Coal Authority to undertake a technical audit and the Law Commission a legislation review.

- 5.2 Working collaboratively with local authorities the first aspect addressed was to determine the actual number of colliery spoil tips within each authority. Historically, local authorities had included a number of sites which fell outside of the coal tips definition such as sandstone quarries and disused refuse sites, the results of the exercise were to reduce the overall number recorded in Caerphilly from 249 to 201.
- 5.3 Prior to the recent events of 2020, Caerphilly had recognised the importance of having a robust tip inspection and management procedure in place and in 2013 developed a risk-based management approach for tip inspections. The approach developed uses a risk rating system which considered a number of criteria and characteristics of a tip and the influence these factors have on tip stability or risk posed to user and public alike.
- 5.4 The risk matrix used produced a numerical risk rating which was aligned to a tip classification, categorising the tips from 'A' to 'D'. The 'A' to 'D' reference indicates risk, with 'A' & 'B' being low risk tips and 'C' & 'D' high risk tips, a further category of 'R' is used which identifies a site as reclaimed. The categorisation is then linked to inspection frequency which follows a 24, 12, 6 or month cycle for risk rating 'A' to 'D'.
- 5.5 The Coal Authority were consulted during the development of this procedure and provided their endorsement, commenting that the approach adopted by Caerphilly was robust and represented best practice. It is worth noting that the categorisation now adopted by the Coal Authority and WG for the ongoing tip review is based on the Caerphilly system with just some minor revisions.
- 5.6 The number of tips and the respective categorisation known to be present within the Caerphilly area following the most recent review are:

Categories	LA Tips	CCBC Inspection Frequency	Private Tips	Coal Authority Inspection Frequency
A (Lowest Risk)	49	24 months	30	Not inspected
B	29	12 months	34	Not inspected
C	9	6 months	35	6 months
D Highest Risk)	4	Monthly	3	6 months
R (Reclaimed)	1	Not inspected	7	Not inspected
Total	92		109	

Note: Private tips have only been inspected at the frequency shown over the last 12 months, at the time of compiling this report it is not known if this inspection frequency will be maintained. The current process where the Coal Authority undertake these private tips inspections has been instructed by Welsh Government.

- 5.7 Since the introduction of the tips management procedure in 2013 inspection and maintenance has been undertaken by Caerphilly's Highway Operations Group, with these inspections being undertaken by Highway Inspectors who had received appropriate training. Following the event of 2020 this responsibility was moved to Engineering Projects Group managed by one of the groups Principal Engineers and two inspectors, to ensure the highest level of technical specialism was in place.

- 5.8 Immediately following the Storm Dennis event all Caerphilly CBC owned tips were inspected. No serious areas of concern were identified at that time just general maintenance issues to be addressed in due course. Since the spring of 2020 inspections have been taken forward in accordance with Caerphilly established programme. In 2020 a total of 141 tip inspections were undertaken and 95 inspections were undertaken in 2021 on the category 'A', 'B', 'C' and 'D' tips. The inspections programmed for 2022 number 134; this work is currently ongoing.
- 5.9 Up until the events of storm Dennis, identified maintenance works were being undertaken by Caerphilly's in house contractors and while this had been sufficient at the time the greater emphasis now being placed on preventative maintenance along with available grant funding both increased the volume of works required and the complexity which has taken it beyond the resource availability of the in-house provider. A decision was therefore made to engage the services of a more specialist contractor to provide general, reactive, and emergency maintenance provision. In August 2020 a 5-year term service contract was awarded to Jim Davies Civil Engineering Ltd who incidentally are also the Coal Authority's maintenance contractor for spoil tips in South Wales.
- 5.10 A programme of maintenance works was put in place for the financial year 2020/21 and 2021/22 using grant funding made available by Welsh Government. The first tranche of works undertaken in this 2020/21 period focussed on quick wins so mainly dealt with drainage maintenance and focussed on clearing blocked or overgrown drainage channels.
- 5.11 The second tranche of works undertaken during 2021/22 concentrated on major maintenance works, in particular sites at Bedwas, Pontlloyn, Aberbargoed, Abertysswg and Penallta. The site at Bedwas required the largest investment where the quarry pond was dredged, and the hillside drainage re-established through the construction of a series of new channels and carrier pipes. In total the predicted spend on tips maintenance for the 2021/22 financial year is just over £1M.
- 5.12 For Caerphilly owned tips there is a well-established system of inspections which allied with the term service maintenance contract allows for the continued development and implementation of a tips focussed maintenance programme. The programme for 2022/23 is currently being developed and will form the basis for grant bids going forward.
- 5.13 Under the direction of the Welsh Government the Coal Authority implemented an inspection programme focussed on category 'C' and 'D' tips in private ownership. The first round of these inspections was undertaken between April and August 2021 during which a total of 52 tip sites were inspected out of 109 known to be present within Caerphilly. The remaining 57 sites are either category 'A', 'B' and 'R' sites and have not been inspected. The first round of inspection lead to a downgrading of 14 of the category 'C' tips to 'A' or 'B'
- 5.14 The second round of Coal Authority inspections commenced in October 2021 and is currently ongoing. During this round of inspections only 38 sites will be inspected the remaining 71 sites are not programmed for inspection. To date these inspections have identified maintenance work requirements on 20 sites and further monitoring on 13 sites. In respect to maintenance this relates to the cleansing of drainage channels and intake structures and some repair to washout and scour damage. In relation to monitoring this has identified features that although not problematic at present could at some future date lead to a maintenance intervention.

- 5.15 Of the 52 tip sites inspected only one site was identified where there was evidence of possible large-scale instability. The site in question was Tip 105, Windsor Mountain Ropeway, which is a category 'D' tip. This site was the subject of a joint inspection attended by officers from both the Coal Authority and Caerphilly CBC. At the time of the inspections a visible back scar was observed across the south-eastern face of the tip with a noticeable drop in level within the slip area. Elements of drainage maintenance were also noted.
- 5.16 There were no imminent issues of concern relating to stability at this site, but it is a site which would benefit from a ground investigation to determine the cause of the observed movement. In this respect letters have been sent out to the three landowners of the site to open a dialogue in relation to agreeing an approach to deal with these concerns and ensure that at a minimum that safety inspections in accordance with Caerphilly's policy and procedures are implemented.
- 5.17 In terms of maintenance works on private tips Welsh Government has indicated that there is funding available to undertake these works. WG have stated that local authorities (LAs) should lead on this and engage with private owners to reach agreement with them to allow maintenance works to proceed. Current legislation does not give LAs the power to enter onto these private sites and undertake routine maintenance works as identified, it is only in a case where an imminent danger exists that LAs have a right to enter onto these sites.
- 5.18 Caerphilly CBC will write to individual tip owners to secure right of access and enter into an agreement to undertake any works highlighted by the Coal Authority inspections. Several neighbouring authorities have also adopted this approach and it has been suggested that best practice should be established and shared, leading to a common approach.
- 5.19 Welsh Government has appointed the Law Commission to look at new legislation on 'Regulating Coal Tip Safety in Wales', initial consultation ran on this up to September 2021 with a final report containing recommendations for new legislation expected early 2022. The timeline for implementation of this new legislation is not known at this time. The new legislation outlined in the consultation document seeks to put in place a regulatory framework that would achieve two main goals:
- Consistency of approach
 - Prevention of harm through a proactive rather than reactive action
- 5.20 The new legislation would only apply to disused tips and in its stated desire to achieve consistency it talks of setting up a single supervisory body consisting of a panel of Engineers with the requisite qualifications and experience relating to coal tip safety.
- 5.21 This new supervisory body would be responsible for holding and maintaining a register of all tip sites in Wales and agreeing tip classification. It would also be instrumental in agreeing and developing tip management plans for each site. There is a suggestion in the consultation document that the responsibility for higher designated tips 'C' and 'D' should sit within the new body in terms of inspection and maintenance works and that for lower risk tips 'A' and 'B' to remain within LAs. In addition to inspection and maintenance there is a further suggestion relating to reclamation of tip sites which talks of setting up a centre of excellence to take such projects forward.
- 5.22 While the outcome of this consultation is awaited there is a strong suggestion that the

broad outline set out above will form the basis of the new regulatory framework.

5.23 Conclusion

- 5.24 The current Caerphilly adopted tips management procedures, provide a robust, well-established framework for managing the risks associated with disused colliery spoil tips. The procedures are risk based and clearly set out the process for categorising tip inspection frequency and maintenance. Caerphilly management procedures are acknowledged as best practice and currently align with those adopted by the Coal Authority.

6. ASSUMPTIONS

- 6.1 Caerphilly will continue to manage its disused spoil tips in line with its own adopted management procedures until such time that new legislation is introduced which supersedes current procedures.

7. SUMMARY OF INTEGRATED IMPACT ASSESSMENT

- 7.1 The continued management of spoil tips risk is in line with Caerphilly's adopted tips management procedures and as such does not require an IIA

8. FINANCIAL IMPLICATIONS

- 8.1 Currently Welsh Government has made funding available for inspection and maintenance work for both LA and private tips, this has been in place since 2020 and there is a suggestion that this will continue into the 2022/23 financial year, beyond 2022/23 there is uncertainty as to the availability of this funding.
- 8.2 Caerphilly currently has its own capital and revenue budget of £246k and £55,630 respectively allocated to tips maintenance. While use of these budgets have been offset by Welsh Government funding over the financial year 2020/21 and 2021/22 and probably 2022/23, there is no guarantee that central funding would be forthcoming in future years. As such future funding levels will be determined against the risk-based inspection regime in place and the identified works required.

9. PERSONNEL IMPLICATIONS

- 9.1 While Caerphilly CBC currently manage our own tips there is limited expertise in this field of work nationally. Discussions are ongoing with WG and the CA to establish specific training modules related to tip maintenance to establish and maintain the highest level of technical skill.

The work currently being undertaken by the Law Commission on behalf of Welsh Government, to review the Coal Tips legislation, is anticipated to be able to provide recommendations in the summer. The outcomes of this work could propose a different management structure/process to maintain the national tips portfolio in the future.

10. CONSULTATIONS

- 10.1 All consultation responses have been considered and incorporated into the report where relevant.

11. STATUTORY POWER

- 11.1 The Mines and Quarries (Tips) Act 1969 Part II details the duties for the inspection and management of disused soil tips. Currently the authority is responsible for its own tips in terms of inspection and maintenance. In relation to private tips there is no such provision other than action relating to an emergency situation.

Author: Kevin Kinsey, Principal Engineer, Engineering Projects Group email: Kinsek@caerphilly.gov.uk

Consultees: Cllr Jamie Pritchard, Cabinet Member for Environment and Infrastructure
Christina Harray, Chief Executive
Mark S Williams, Corporate Director for Economy and Environment
Marcus Lloyd, Head of Infrastructure
Robert Tranter, Head of Legal Services and Monitoring Officer
Stephen Harris, Head of Financial Services & S151 Officer
Gareth Richards, Highway Services Group Manager
Chris Adams, Highway Engineering Group Manager
Anwen Cullinane, Senior Policy Officer – Equalities, Welsh Language
Lynne Donovan – Head of People Services
Robert Hartshorn – Head of Public Protection, Community & Leisure Services
Rhian Kyte – Head of Regeneration and Planning