

## **Environment and Sustainability Committee**

Inquiry into Energy Policy and Planning in Wales

EPP 167 – The Coal Authority

### **THE COAL AUTHORITY'S RESPONSE TO THE INQUIRY INTO 'ENERGY POLICY AND PLANNING IN WALES' BEING UNDERTAKEN BY THE NATIONAL ASSEMBLY FOR WALES' ENVIRONMENT AND SUSTAINABILITY COMMITTEE**

**Date of Submission: 22 September 2011**

#### **BACKGROUND ON THE COAL AUTHORITY**

1. The Coal Authority ("the Authority") is a Non-Departmental Public Body sponsored by the Department of Energy and Climate Change (DECC). The Authority was established by Parliament in 1994 to undertake specific statutory responsibilities associated with the licensing of coal mining operations in Britain; handle subsidence claims which are not the responsibility of licensed coalmine operators; deal with property and historic liability issues and provide information on coal mining.
2. The Authority operates within the three planning systems across Wales, England and Scotland. The main areas of planning interest to the Authority in terms of policy making relate to:
  - the safeguarding of coal as a mineral in accordance with the advice contained in Planning Policy Wales, Minerals Planning Policy Wales and Minerals Technical Advice Note 2: Coal (MTAN2) in Wales; and
  - ensuring that future development is undertaken safely and reduce the future liability on the tax payer for subsidence and other mining related hazards claims arising from the legacy of coal mining in accordance with the advice in Planning Policy Wales, Minerals Planning Policy Wales and MTAN2 in Wales.
3. The Authority is also obliged to help to ensure that the aims of UK Energy Policy published by our sponsor DECC is also delivered, both in relation to energy mix and energy security.

#### **BACKGROUND TO UK ENERGY POLICY**

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4. The Energy White Paper, published in May 2007, estimated that *“by 2020 fossil fuels are expected to supply the great majority of UK energy needs and 14% of primary energy demand will be met by coal.”*
5. In March 2008, the Rt Hon. John Hutton MP, Secretary of State for Business Enterprise and Regulatory Reform stated that *“...Fossil fuels will continue to play an important role in ensuring that flexibility of the electricity generation system as well. Electricity demand fluctuates continually, but the fluctuations can be very pronounced during winter, requiring rapid short term increases in production. Neither wind nor nuclear can fulfil that role. We therefore will continue to need this back up from fossil fuels, with coal a key source of that flexibility....”*
6. The UK Low Carbon Transition Plan White Paper published in July 2009 sets out the national strategy for climate and energy and suggests that by 2020, clean coal will contribute 22% to the overall energy mix (this is an increase on that predicted in the 2007 Energy White Paper). The 2009 White Paper re-confirms that *“coal and gas will remain important to ensure our electricity supply is reliable and secure as we move towards greater dependence on intermittent sources like wind...The UK needs to maintain security of supplies of fossil fuels, which will remain an essential input to our electricity supplies for many years to come. Around a third of this is supplied by the UK coal industry.”*
7. In February 2010, Lord Hunt reiterated the role for coal within the UK’s future energy mix and stated that: *“Take the 3 week cold spell after Christmas and over New Year as an example, coal generation accounted for a weekly average of nearly 40% and a daily average of 36% [of the UK’s total electricity supply]. ... Coal has been fundamental to UK energy needs for more than two centuries, and will continue to be so. Providing that its carbon by-products can be managed. Fossil fuels are abundant and relatively cheap, are able to respond flexibly to variations in demand, and are likely to remain an important part of our energy supply for some time to come.”*
8. In March 2011, Rt Hon Chris Huhne MP, Secretary of State for Energy and Climate Change confirmed that the Blueprint for our energy future rests on three pillars: renewable energy; nuclear energy without public subsidy; and clean coal and gas delivered by carbon capture and storage.
9. In looking to help deliver UK Energy Policy, the Authority works with the planning system in Wales both in relation to the Local Development Plan (LDP) process and the Development Management Regime.

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10. The Authority seeks to ensure that a fair, reasonable and equitable policy basis exists for the future consideration of coal extraction proposals (by underground and surface mining methods). This needs to be accompanied by appropriate recognition and policy flexibility to cater for emerging new coal technologies such as coal bed methane, abandoned mine methane, underground coal gasification or the utilisation of mine water as an underground heat source. To complement this there also needs to be an appropriate policy framework addressing the safeguarding of surface coal resources from sterilisation by non-mineral surface development and promotion of the prior extraction of surface coal ahead of development where sterilisation would occur.
11. The Authority is keen to ensure that coal resources are not unduly sterilised by new development. In cases where this may be the case, the Authority would be seeking prior extraction of the coal. Prior extraction of coal also has the benefit of removing any potential land instability problems in the process. This is a wider policy issue that is particularly pertinent in Wales where substantial mining legacy is concentrated.
12. The Authority owns almost all of the coal on behalf of the nation. If a development is to intersect, disturb or otherwise interfere with coal or mines of coal then the prior written permission of the Authority is required. A licence is required from the Authority to extract coal. Many of the new coal technologies fall within the sphere of 'Oil and Gas' regulation such that appropriate licences are required from both DECC and the Authority.
13. Although mining legacy is prevalent in Wales the Authority is seeking to ensure through the planning system that such land is subjected to beneficial re-use and appropriately remediated. This also helps to remove future liability from the public purse.

#### **SPECIFIC PROBLEMS ENCOUNTERED IN THE WELSH PLANNING SYSTEM**

14. The coalfields in Wales are located within 19 out of the 22 local planning authority areas (including 2 of the 3 National Parks). The coalfield covers some 2,876 sq km of Wales, which is some 17% of the total land area 16,698 sq km.
15. The Authority comments on individual planning applications consulted in accordance with its prescribed criteria and responds to all Local Development Plans produced. We have been actively involved in the LDPs that have been adopted so far. Our comments are based upon our experiences of interacting with the planning system in Wales.

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16. We would like to make submissions under the following headings taken from the series of Welsh National Planning Policy Documents (Planning Policy Wales; Minerals Planning Policy Wales; and MTAN2: Coal):

### **Areas Where Coal Operations Would Not Normally Be Acceptable**

17. This is an aspect of policy which is utilised in Wales but not in England and Scotland. As the Committee will be aware there is a private members bill currently being promoted in the Westminster Parliament on the issue.
18. Whilst the Authority has no objection to the underlying principles that have prompted this tool, namely the protection of communities and local residents from the potential effects of mineral extraction, as a planning tool this is highly inflexible. The policy framework in Minerals Planning Policy Wales paragraph 15 and MTAN2 paragraphs 26 to 31 and 49 to 54 are not applied consistently by LPA's. This area is generally utilised as a 500m zone around settlements where LPA's try to impose a blanket ban on coal extraction, despite MTAN2: Coal clearly setting out exceptional circumstances where coal extraction should be permitted.
19. A number of LPA's have promoted new development proposals including site allocations within 500m of existing permitted coal extraction sites contrary to the principles of the buffer zones which are supposed to be designated around these sites.
20. The Authority advocates that all sites should be considered on an individual basis taking account of local topography and the types of policy considerations set out in paragraphs 49 to 54 of MTAN2. These types of circumstances should be utilised to determine when new and extensions to existing coal extraction may be permissible within close proximity of settlements and that defined 'Areas Where Coal Working May Not Be Acceptable' are not required.
21. The Authority is concerned that the 500m buffer zone effectively sterilises a large proportion of the workable reserves in South Wales. The Authority has undertaken an impact assessment across South Wales in collaboration with the British Geological Survey (BGS) in relation to the surface mining licences granted since privatisation in 1994. The BGS at the Coal TAN Working Group on the 27 July 2006 highlighted that their research showed that a 350 metre buffer zone in Wales would sterilise 55% of the known coal resource and 66% of the resource would be sterilised by the use of a 500 metre buffer around settlements. The Authority is gravely concerned that the use of the 500m defined 'Areas Where Coal Working May Not Be

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Acceptable' 'buffer strip' by LPA's can mislead communities and will effectively sterilise 66% of the coal resource in Wales contrary to the aims and principles of National Policy.

22. The Authority considers that this could seriously threatening future UK energy security and the future viability of the indigenous coal industry. It is important to safeguard the whole coal resource in order to prevent sterilisation in line with National Policy and the Government's future energy policy, and facilitate extraction in appropriate circumstances.

23. The Authority recommends that National Policy on this matter should be reconsidered with the focus of emphasis moved to proposals for new coal extraction close to or within communities having to meet the requirements set out in paragraphs 49 to 54 of MTAN2, these would include for example:

- where coal working provides the most effective solution to prevent risks to health and safety arising from previous mineral working;
- to remediate land damaged by shallow coal workings or mine waste, where coal extraction appears to be the most sustainable option;
- where topography, natural features such as woodland, or existing development, would significantly and demonstrably mitigate impacts;
- where major roads or railways lie between the settlement and the proposed operational area and coal working would not result in appreciable cumulative and in- combination effects;
- where the surface expression of underground working does not include the significant handling or storage of the mineral or waste;
- when the proposal is of overriding significance for regeneration, employment and economy in the local area; or
- where extraction would be in advance of other, permanent, development which cannot reasonably be located elsewhere.
- the proposal would be the most sustainable way to prevent hazards from the migration of gas or water or the collapse of unstable ground;
- it is necessary for physical access to reserves on the original site, including for reasons of stability;
- the proposal would stabilise the ground in advance of planned development;
- the reclamation of the original site would sterilise the resource in the proposed extension;
- it would lead to a significantly improved reclamation scheme;
- the cumulative effect would be acceptable;

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24. Without change the Authority considers that surface coal resources are effectively being sterilised, particular the primary and secondary resources which tend to be historically where the settlements grew. The current policy can also be utilised by LPA's and communities to prevent the important prior extraction of surface coal ahead of new development, particularly urban extensions. It is also likely to prejudice the ability to remediate land within communities to address mining legacy which is fundamentally necessary to facilitate regeneration and redevelopment of sites. In many cases extraction of the coal is the most practical and viable option to address mining legacy. It is also more sustainable than undertaking hard engineering works such as 'grout and fill' which can utilise massive amounts of concrete for stabilisation works. In economic terms it is possible for prior extraction to be undertaken at nil cost to the developer, or for them to sell the coal and generate income. Whereas hard engineering works such as 'grout and fill' can be expensive and can seriously threatening the viability of undertaking development.

#### **Mineral Safeguarding and Local Environmental/Cultural Designations and Urban Areas and Prior Extraction**

25. This is an area of National Planning Policy where there is disparity across the UK, in particular between Wales and England. In England the whole surface coal resource is safeguarded, including within urban areas and within designated areas such as National Parks, Green Belts and SSSIs etc.

26. Given that mineral safeguarding is a very long-term planning tool, not linked to the acceptability or otherwise of future extraction there is no clear justification for excluding designated areas of Environmental or Cultural Importance. Safeguarding needs to have sufficient flexibility to ensure that coal as an important energy mineral is not sterilised by surface development in case it is needed in the future. Energy security and worldwide energy supply could make the future extraction of energy minerals viable and acceptable in designated areas. Policy written now should not preclude the flexibility that safeguarding is designed to facilitate.

27. The Authority has successfully lobbied in England through public examinations that the surface coal resource should be safeguarded even within major urban conurbations such as Bristol and the West Midlands. We are also working with the LPA's on safeguarding across Greater Manchester, South and West Yorkshire and the North East conurbations. This has not resulted in any undue delays to the planning system or development, nor has it provided any unreasonable additional burden on developers.

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28. The Authority is aware of numerous circumstances where prior extraction of surface coal resources across urban areas has taken place, ranging in size from 0.3Ha to 28Ha or more, with the majority of such schemes being less than 1Ha in scale. Prior extraction can be undertaken within a matter of weeks on most sites as part of normal groundwork activities. The environmental, health and amenity impacts it raises are those akin to general groundworks, rather than traditional surface mining. The potential for the prior extraction of surface coal in urban areas is different to the potential for prior extraction for many other minerals which may require blasting or other intrusive extraction methods.
29. At present whilst MTAN2 paragraph 42 promotes prior extraction for all development on the resource irrespective of whether it is safeguarded or not, in practice it can only realistically be planned for in Mineral Safeguarding Areas. The concept of defined 'Areas Where Coal Working May Not Be Acceptable' could perceivably preclude prior extraction in such areas. MTAN2 also is generally interpreted as precluding coal extraction within settlements which has been acknowledged by officers of the Welsh Government at public examinations as being an area where current National Planning Policy appears to internally conflict.
30. The Authority considers that mineral safeguarding for coal should include urban areas and settlements in order to facilitate the prior extraction of coal where appropriate. This would allow mining legacy to be addressed and the potential for coal extraction to be built into the economic viability of new development. It will also prevent the unnecessary sterilisation of surface coal resources in line with National Policy.

### **Safeguarding of Tertiary Surface Coal Resources**

31. This is a further area of National Planning Policy where there is disparity across the UK, in particular between Wales and England. In England the whole surface coal resource is safeguarded, including tertiary resources.
32. The national requirement for energy minerals is increasing and is likely to continue for the foreseeable future given that the UK Government has committed to fossil fuels including clean coal being a fundamental part of the energy mix for at least the medium term. There is need for significant investment in new generating capacity, including clean coal, to replace the aging fleet of existing power stations. Mineral operators are also continuing to invest in developing new surface mining operations across the Welsh, English and Scottish coalfields.
33. The economic viability of indigenously produced coal is increasing such that resources that have not previously been of interest are now becoming economic. It is important to safeguard

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the coal resource to allow its potential use for alternative technologies such as underground coal gasification and coal bed methane.

34. The Authority as the licensing body for the coal resource in Britain considers that the entire surface coal resource shown on the Coal Authority/BGS resource maps across Wales is both proven and economically viable for potential extraction in the foreseeable future, such that safeguarding is both appropriate and necessary in line with the objectives of MPPW and MTAN2. This requirement is heightened when the need for UK energy security is taken into account, and in overall sustainability terms the carbon footprint of indigenously produced coal is substantially lower than coal imported from other countries.
35. Safeguarding is a long-term planning tool extending well beyond the plan period and as such any approach chosen should be sufficiently flexible to deal with the changing energy market.
36. The Authority recommends that the safeguarding area for coal should include the primary, secondary and tertiary coal resources in line with our comments made at all the consultation stages in order to protect the overall resource from potential sterilisation. Whilst we acknowledge the requirements set out in MTAN2 in relation to safeguarding only primary and secondary coal resources, the Authority have consistently sought its wider application in Wales to include the tertiary resource in order to prevent the possible sterilisation of the resource which may be vital to the nation's future energy security. Inspectors have sympathised with our position, however in the absence of a change in National Policy they have not felt able to recommend the safeguarding of tertiary resources.
37. In many circumstances parts of the tertiary coal resource will be within safeguarding areas for other minerals such as sandstone, as are parts of the primary and secondary coal resources. This will not therefore lead to any significant additional burden on the planning system.
38. Given the environmental and amenity constraints imposed by National Policy in PPW, MPPW and MTAN2, future coal extraction is likely to need to consider extraction opportunities within the tertiary resource in order to stand any potential favourable consideration by the MPA. The tertiary coal resource tends to be located in the more remote parts of South Wales. Without adequate safeguarding this resource may be sterilised thereby prejudicing future opportunities for environmentally acceptable coal extraction. Many of the potential areas identified by British Coal Corporation as future surface mining sites actually lay on the tertiary coal resource, and many areas that have been extracted also lie in this resource.

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39. In the LDP examinations held so far, a major site promoted for land remediation in Merthyr Tydfil at Heolgerrig (known as the Rhydycar West site) was on the tertiary coal resource. Despite this fact there was clear defined operator interest shown for extraction, which demonstrates that the proven and economic viability tests can be met within the tertiary resource.
40. It is unfortunate that this area was not able to be included within the coal safeguarding area. The nature of planning policies applicable to the potential for surface development outside of the settlements is the same, whether that is primary, secondary or tertiary resource. Consequently all three parts of the surface coal resource are equally at risk of potential sterilisation from surface development, therefore there seems to be no planning justification to deal with different parts of the coal resource differently in safeguarding terms.
41. The safeguarding approach pursued by the Welsh Government in MTAN2 is at odds with the policy adopted in England which is set out in MPS1. Given the recognition of MPPW that the UK demand for energy minerals is the driving factor, the Authority considers that a consistent approach to safeguarding the coal resource is necessary across Britain. The Authority would like the opportunity to work with the Welsh Government and other partners on the issue of mineral safeguarding in Wales.

### **National Policy Towards New Coal Extraction**

42. Minerals Planning Policy Wales in paragraph 15 recognises the highly volatile nature of the energy market and as such flexibility needs to be built into the Local Development Plan system. MPPW paragraph 10 also accepts that for the foreseeable future there will be a continuing requirement for minerals to meet society's needs. To achieve this there needs to be a flexible and positive set of planning policies in place. Paragraph 11 of MPPW requires consultation to be undertaken with the Authority regarding the future need for coal resources, and paragraph 12 makes it clear that the overall UK demand for a resource must be considered not just a local need.
43. MPPW sets out the required approach to energy minerals in paragraph 15 which states: *"The demand for energy minerals is largely based on power generation and is difficult to predict long term because of the highly volatile nature of current world markets and prices. This uncertainty makes planning to meet the needs for energy minerals very difficult. There is also limited information about the resources that are likely to be commercially viable for extraction. Mineral planning authorities should therefore consider all available information on the extent of energy mineral resources. They must provide as much guidance in their unitary development plans as*

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*possible to indicate where it is likely to be environmentally acceptable for these resources to be worked. To achieve this degree of certainty, policies should state where such operations would not be acceptable and should provide unequivocal statements as to why, and should also provide a set of clear criteria against which any future proposals will be assessed in those areas where there is a possibility of extraction.”* National Policy does not envisage a framework which will not permit any new extraction proposals; indeed it confirms the need for flexibility with regard to energy minerals.

44. The demand for coal as an energy mineral is expected to continue and increase across the plan period, not least due to the problem with the commissioning of new alternative energy sources and the need for greater energy security. Indigenous coal is also more sustainable than foreign imported coal both in terms of the proximity principle/mineral miles, and the impact on overall climate change. The Authority is aware, as an example, of a local demand for coal within the Brecon Beacons National Park having to be sourced from Russia due to a lack of a suitable indigenous supply. Due to the global price fluctuations affecting energy minerals and the political implications of restricting energy minerals at times elsewhere in the World market, the UK Government is keen to secure greater energy security through indigenous supply. To achieve this aim a suitable policy framework is required in line with the National Planning Policy.
45. This broad recognition of the role of coal extraction as part of future energy supply and energy security should continue as part of an overall suite of National Policy.
46. The focus of National Policy set out in MPPW paragraph 62 is now somewhat dated being from 2000, and having previously evolved from MPG3 before it ceased to apply in Wales. Given that a number of factors have moved on since this time it may be prudent to consider a review of this long-standing policy wording. MTAN2 provides a wider variety of planning issues including the need for energy minerals and economic considerations in addition to environmental and community considerations which would bring the treatment of coal into line with the rest of the minerals sector.

The Authority would be prepared to give oral evidence at sessions to be held in the Autumn Term 2011.

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