

**National Assembly for Wales Petitions Committee
Request for oral evidence from Minister for Housing and Regeneration
February 2014**

Submission from the Minister for Housing and Regeneration

INTRODUCTION

1. This paper explains the basis for the buffer zone policy in MTAN 2 Coal and related matters.
2. The paper covers the following areas:
 - The characteristics of the planning system
 - The background to buffer zone approach
 - Exceptional Circumstances (paragraph 49 MTAN 2)
 - The role of the Local Development Plan
 - The position of Welsh Ministers on the terms of the petition

CHARACTERISTICS OF THE PLANNING SYSTEM

3. A central tenet of the British planning system is the statutory role of the development plan, which characterises the 'plan-led' process. When taking a decision on an individual application the planning authority should make a determination in accordance with the relevant Development Plan, unless material conditions indicate otherwise. National planning policy and technical advice notes can be a material consideration in relation to a particular case and regard must be had to national planning policy and technical advice notes in the preparation of development plans.
4. Another important characteristic of the British planning system is the discretion given to decision-makers to make judgements in the face of unique and complex circumstances and in the context of local democracy. This is deliberate and provides for flexibility and adaptability to different and changing situations. It both enables, and allows for, the right planning solution to be sought and obtained in any given circumstance.

NATIONAL PLANNING POLICY

5. Planning Policy Wales (PPW) and Minerals Planning Policy Wales (MPPW) set out national planning policy and reflect the Welsh Government's commitment to sustainable development. In particular, MPPW identifies the essential role that local planning authorities play in ensuring a proper balance between the prudent use of mineral resources, amenity and the environment, and provides the policy framework for them to fulfil that role. It sets out clearly how development plans should address the critical issues that inevitably

arise when we plan to meet the needs of society for minerals, including coal. An extract from MPPW outlining the policy position on coal is contained in the annex to this paper.

6. Technical Advice Notes explain how national planning policy should be delivered. Mineral Technical Advice Note 2 Coal (MTAN2) provides comprehensive advice in support of MPPW for opencast and deep-mine coal development. MTAN 2 delivered the commitments of the previous 'One Wales' Programme of Government with respect to buffer zones, health impact assessment and public involvement. The buffer zone policy in MTAN 2 states that surface coal developments will not generally be acceptable within 500m of settlements (and within protected areas), but contains certain exceptions.
7. National planning policy and technical advice notes are not prescriptive documents but are among the 'material considerations' to which a planning authority should have regard when making a decision. Although the planning authority is not bound by national policies, it should observe them and only depart from them if there are clear planning reasons for doing so. In this discretionary system, the planning authority gives material considerations the weight it thinks fit in coming to a decision.

BACKGROUND TO THE POLICY IN MTAN 2

8. MTAN 2 was developed in association with a technical advisory group, which included representatives of coalfields communities and environmental groups, and was informed by independent research. The buffer zone approach was subject to robust scrutiny during the development of the MTAN, including two public consultation exercises.
9. Many South Wales valley communities developed to support the coal industry and the closeness of communities to the coal resource has an influence on how the resource can be used. On the basis of all available evidence it was clear that MTAN2 had to be sufficiently flexible to respond to a changing financial and employment background, but at the same time robust enough to protect communities and the environment.

EXCEPTIONAL CIRCUMSTANCES

10. The factors which may constitute exceptional circumstances are outlined in the MTAN in a section entitled '*Exceptional Circumstances*' (paragraph 49, p 10). An exception is not about allowing unacceptable impacts on communities as any impact must always be acceptable. The exceptions are there to identify where coal extraction can lead to genuine and clear benefits for the community and the environment.

THE ROLE OF LOCAL DEVELOPMENT PLANS

11. The Local Development Plan (LDP) process is the key way of ensuring the MTAN 2 buffer zone policy is implemented. The MTAN provides a comprehensive framework in which future coal working, and the legacy of past working, can be addressed as part of the LDP process and in doing so provide greater certainty for communities about coal working. Participating in the LDP process is also a key way in which local communities can influence the setting of the strategy for the sustainable management of coal resources in their area.

THE WELSH GOVERNMENT POSITION ON THE TERMS OF THE PETITION

12. The planning system must balance different interests in reaching a sustainable solution. In this regard, legislation cannot address every conceivable circumstance and the discretion given to decision-makers to reflect different and changing situations is a key strength of the system. Without this solutions may not come forward with the net result that investment could be directed elsewhere and with it any prospect of securing community benefits.
13. The draft Planning Bill does not contain planning policy. Planning policy will continue to be set out in Planning Policy Wales, Minerals Planning Policy Wales and technical advice notes. Planning policy needs to be flexible and capable of timely amendment in response to changing circumstances rather than included in primary legislation. Making planning guidance part of an act of the Assembly would mean that an amending act of the Assembly would be required every single time the planning guidance was changed. This is not a sensible approach.
14. It follows that it is not possible or appropriate for MTAN 2 to be made law. The factors which need to be considered are complex and being able to obtain the right solution in the right place requires an approach whereby the unique circumstances facing any particular locality can be fully considered. For this reason, a policy based approach is a more appropriate, and effective, mechanism than legislation for securing buffer zones.

Annex: Extracts from National Planning Policy

MTAN 2 Coal

Exceptional circumstances (paragraph 49, p10)

49. Exceptionally, having considered the evidence put forward with a surface or underground coal working application, coal working may be permitted within 500m of settlements. Factors to be considered include:

- 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.*

50. Where such exceptions justify surface working within 500m of a settlement, the area of working should be restricted to the area reasonably necessary for remediation. The MPA should seek the best balance between the scale, working-method and the timing of individual phases, the opportunities for early restoration and aftercare, and hours of working. Strong evidence of the necessity for remediation, including the evaluation of options, is required to justify working within 200 m of a settlement, and the social and environmental impacts on the affected settlement must be carefully weighed.

51. There are occasions where the site boundary of an existing or proposed site is drawn widely to encompass conservation areas for wetland or tree planting, or where a rail access forms a part of the site. If it can be clearly demonstrated that such areas will generate only insignificant impacts, the MPA may wish to consider defining an operational boundary which excludes such non-operational areas. Such a boundary must be set out in the supporting evidence for any proposed site and identified clearly in any planning permission. Any subsequent application to alter the use of land outside the operational boundary would not meet the criteria for a minor extension.

Minerals Planning Policy Wales

Buffer Zones (paragraph 40, p18)

40. There is often conflict between mineral workings and other land uses as a result of the environmental impact of noise and dust from mineral extraction and processing, and vibration from blasting operations. Buffer zones have been used by mineral planning authorities for some time to provide areas of protection around permitted and proposed mineral workings where new development which would be sensitive to adverse impact, including residential areas, hospitals, schools, should be resisted. Within the buffer zone, there should be no new mineral extraction or new sensitive development, except where the site of the new development in relation to the mineral operation would be located within or on the far side of an existing built up area which already encroaches into the buffer zone. Other development, including industry, offices and some ancillary development related to the mineral working, which are less sensitive to impact from mineral operations, may be acceptable within the buffer zone. The maximum extent of the buffer zone would depend on a number of factors: the size, type and location of workings; the topography of the surrounding area; existing and anticipated levels of noise and dust; current and predicted vibration from blasting operations and availability of mitigation measures. Buffer zones will of necessity vary in size depending on the mineral being extracted and the nature of the operation, but must be clearly defined and indicated in Unitary Development Plans. This will ensure that there is unequivocal guidance on the proximity of mineral operations to sensitive land uses, and that the potential impact of existing and future mineral workings is recognised and planned for in the area around the mineral operations. Further guidance on the factors that should be taken into account when defining buffer zones for particular minerals will be provided in Technical Advice Notes.

Coal (paragraphs 61-62, p25)

61. The objective of the Government's central energy policy is to ensure a secure, diverse and sustainable supply of energy at competitive prices. This objective takes in the Government's concern for the environment, health and safety and a fair deal for all consumers, as well as its commitment to all aspects of sustainable development. While UK coal is available and the generators continue to choose it, UK coal contributes to energy diversity and supply. Opencast coal is generally more flexible and cheaper to produce than deep-mined coal, but there are important environmental and amenity issues involved, and these require very careful consideration. Early consultation should take place with planning authorities and other bodies including the Coal Authority regarding proposed operations to extract coal. Any disturbance of coal will require a licence or other permission from the Coal Authority, in addition to planning permission.

62. Proposals for opencast or deep-mine development or colliery spoil disposal will be expected to meet the following requirements otherwise they should not be approved:

- The proposal should be environmentally acceptable or can be made so by planning conditions or obligations, and there must be no lasting environmental damage;

- *If this cannot be achieved, it should provide local or community benefits which clearly outweigh the disbenefits of likely impacts to justify the grant of planning permission;6*
- *In National Parks and Areas of Outstanding Natural Beauty (AONBs), proposals must also meet the additional tests set out in paragraph 21 above;*
- *within or likely to affect Sites of Special Scientific Interest (SSSIs), National Nature Reserves (NNRs), Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar Sites must meet the additional tests set out in paragraphs 23 and 25 above;*
- *Land will be restored to a high standard and to a beneficial and suitable after-use.*