



# **Contaminated Land Strategy**

**Woking Borough Council**

**2018 – 2023**



**Version: Draft v.3 October 2018**

**Produced by: Contaminated Land Officer on behalf of Estate Management**

## **Contents Summary Page**

<b>1.0</b>	<b>Introduction</b>	<b>1</b>
<b>2.0</b>	<b>Characteristics of the Local Area</b>	<b>3</b>
<b>3.0</b>	<b>Historical Land Use in Woking</b>	<b>6</b>
<b>4.0</b>	<b>Holistic Approach by the Council</b>	<b>8</b>
<b>5.0</b>	<b>Council's Approach &amp; Review</b>	<b>12</b>
<b>6.0</b>	<b>Determination and Remediation of Contaminated Land</b>	<b>17</b>
<b>7.0</b>	<b>Review Mechanisms</b>	<b>22</b>

# 1 Introduction

The contaminated land regime in Part IIA of the Environmental Protection Act 1990 (hereafter referred to as Part IIA) was introduced by Section 57 of the Environment Act 1995. The regime came into force in April 2000. Under this regime local authorities in England are required to prepare, implement and keep under periodic review, a Contaminated Land Inspection Strategy.

The Council's first strategy was published in December 2001 (version 1). The strategy was reviewed in November 2015 (but not published). This strategy supersedes the original 2001 version and the 2015 review.

## 1.1 Definition of Contaminated Land

Section 78A(2) of the Environmental Protection Act 1990 defines contaminated land for the purposes of Part IIA as any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land that:

- significant harm is being caused or there is significant possibility of such harm being caused; or
- pollution of controlled waters is being, or is likely to be, caused.

## 1.2 Strategy Aims & Objectives

This strategy outlines how the Council will meet its statutory duties as required by Part IIA and the Contaminated Land Statutory Guidance issued by the Department for Environment, Food and Rural Affairs (Defra) in April 2012. This strategy will work in tandem with the wider aims and objectives of the National Planning Policy Framework and the Council's corporate current vision of: *Towards Tomorrow Today*. This vision has a number of value aims under the three key thematic areas of **people, place and us** (WBC), as follows:

**PEOPLE** - A healthy, inclusive and engaged community

**PLACE** - An enterprising, vibrant and sustainable place

**US** - An innovative, proactive and effective Council

## 1.3 General Aims of the Contaminated Land Strategy

The overall aims and objectives are stated overleaf. It is evident that there is a strong complementary relationship between the Strategy and WBC vision/objectives.

## **Aims**

1. To identify unacceptable risks to human health, controlled waters and wider environment;
2. To prevent damage to property;
3. Minimise property blight as far as reasonably practicable;
4. To prevent any further contamination of land;
5. To encourage voluntary remediation of contaminated land; and
6. To encourage re-use of brownfield land.

## **Objectives**

1. To maintain and refine the Council's contaminated land inspection strategy;
2. To ensure compliance and enforcement of the new statutory requirements of the Environmental Protection Act 1990;
3. To encourage market confidence in the redevelopment of brownfield sites in the Borough and thus promote the recycling of brownfield sites rather than greenfield sites;
4. To ensure where redevelopment of sites take place in Woking Borough Council that the process deals effectively with any land contamination; and
5. Minimise financial or reputational risks to the Council.

## 2 Characteristics of the Local Area

This section provides some background information on Woking Borough Council area mainly in relation to the types of potential pathways that are present in the Borough and how this influences the Council's approach to inspection for contaminated land.

### 2.1 Geographical Location

The Woking Borough area covers 6,359 hectares. It mainly comprises a continuous urban area centred on Woking town centre but stretching from Byfleet and West Byfleet in the east to Knaphill in the west surrounded by open Green Belt countryside. Within the countryside, there are small settlements, the largest of which are the villages of Brookwood and Mayford. The area protected by Green Belt comprises about 60% of the Borough.

The Borough includes the valleys of the River Wey, Bourne and Hoe streams. The Wey Navigation which links Guildford with the Thames River, meanders along the southeastern boundary of the Borough and the Basingstoke Canal crosses from west to east. The Hoe Valley runs through the centre of Woking from Mayford to Old Woking. The population of the Borough is around 99,500 (Mid 2011 census estimate) and has been rising steadily over the past thirty-five years with the construction of new housing throughout the Borough.

Figure 1 - Map of Woking



## **2.2 Current Land Use Characteristics**

Outside the main urban area, the remaining 60% of the Borough is Green Belt. Current industrial activity is generally restricted to a number of small-medium size industrial estates with only a handful of large manufacturing operations. There are currently no operating extractive industries such as brickwork clay pits, gravel pits or landfills in the Borough.

Woking Borough has a varied environment and contains over 30 areas that are designated for their ecological value such as the Thames Basin Heaths (potential Special Protection Area) and Thursley, Ash, Pirbright and Chobham (candidate Special Areas of Conservation). There are 8 Sites of Special Scientific Interest within or adjacent to Woking Borough as follows:-

- Ash to Brookwood Heaths
- Basingstoke Canal
- Colony Bog to Bagshot Heath
- Horsell Common
- Ockham and Wisley Commons
- Paparcourt
- Smarts and Prey Heaths
- Whitmoor Common

## **2.3 Protected Properties**

There are five Scheduled Ancient Monuments in the Borough. The Sites and Monuments Record List records 81 archaeological sites in Woking. Woking contains 24 Conservation Areas designated for their historic interest, special architectural character or appearance.

Woking also contains over 160 buildings statutorily listed for their architectural or historic merit with a number of these located within Conservation Areas. The statutory Listed Buildings are complemented by a list of 330 buildings of character that the Council considers to be of local significance.

## **2.4 Controlled Waters & Hydrogeology**

Natural waters can be both sensitive receptors and pathways for the transport of contaminants. It is therefore important to consider ground and surface water features from both perspectives.

The Environment Agency is responsible for the protection of 'controlled waters' from pollution under the Water Resources Act 1991. These controlled waters include all watercourses and

groundwater contained in underground strata. Affinity Water Company supplies drinking water within the Borough.

#### **2.4.1 Groundwater**

Groundwater source protection zones are designated zones around public water supply abstractions and the Environment Agency publication. The zones are determined by the travel time of a substance to the point of abstraction.

- Zone I (Inner Source Protection - 50 day travel time)
- Zone II (Outer Source Protection – 400-day travel time)
- Zone III (Source Catchment - complete catchment)

There are no public water supply abstraction points or source protection zones located in this Borough. The groundwater in the Borough is classed as a Secondary Aquifer, formally a minor aquifer. There are some private water abstractions from this water source but these are not registered with the Council as private drinking water supplies.

#### **2.4.2 Surface Waters**

Woking Borough falls within the surface water catchment area of the Wey River and controlled surface waters include the River Wey, Hoe stream, Bourne stream and the Basingstoke Canal. Surface waters are more susceptible to contaminants than groundwater because of the direct influences of surface run-off and are ecologically sensitive in this Borough. The Borough contains several areas of at Risk of Flooding.

### **2.5 Geological Characteristics**

The geology and soil types present across the Borough are important elements in determining if significant contaminant pathways are present on individual sites.

Much of the Borough is underlain by Bagshot, Bracklesham and Barton Beds comprising mostly sands and gravels interlaced with pipe clay, which give rise to dry soils low in nutrients. Much of the Wey valley is covered by river gravel and alluvium deposits. The poor sandy soils over the Bagshot beds support heathland vegetation and have mostly remained as areas of common land. Such sand and gravel geology can provide a potential conduit for mobile contaminants. The remainder is underlain by London Clay that provides heavy, poorly drained soils susceptible to flooding in the river valleys.



## **3.0 Historical Land Use in Woking**

The historical land use data on the Graphical Information System (GIS) of the Woking Borough area provides information on the types of potential contamination sources present in the Borough and how this influences the Council's approach to inspection for contaminated land. The earliest forms of industrial activity in the Borough were focussed in the areas around the navigable waterways of the Wey Navigation and the Basingstoke Canal and included timber yards, brickworks, tanneries, breweries and printworks as well as agricultural and military related industries.

### **3.1 Sand/Brick Earth Extraction**

Sand and brick earth was an important mineral resource in the Borough. Some of the Borough's area has been subject to brick earth extraction activities close to the navigable waterways. Worked out sand/brick earth pits often became points for uncontrolled or poorly controlled waste disposal activities.

### **3.2 Railway, Gasworks, Sewage Treatment and Electricity Production**

The construction of the railway in the 1850's with the significant railway junction, at what is now the centre of Woking town, caused an increase in development activity. The town of Woking itself was built on the excess land acquired for the Brookwood Cemetery that was subsequently sold on to property developers for housing. With the development of the urban areas came the development of gasworks, sewage treatment plants and railway engineering works. Unique to Surrey, Woking Electricity Supply Company was supplying Woking and much of Surrey with electricity from as early as 1889.

### **3.3 Prisons, Hospitals and Ministry of Defence**

The development of the town included the building of prisons and hospitals. During the period of the First and Second World Wars Ministry of Defence activities and barracks also came to be located within the Borough. Works and factories associated with aircraft and weapons manufacture are known to have occurred at this time.

### **3.4 Petrol, Diesel & Oil Storage**

Factories, transportation industries and works were built in designated industrial areas and many of these uses may have included boilers and/or fuel storage with associated underground and above ground storage tanks. Surrey County records show 35 past and present petrol stores in the Borough including the present day petrol stations.



### **3.5 Landfills**

Landfills did occur in the Borough and there were two officially Council-owned landfills, which have both now closed. Anecdotal historical information suggests that prior to the Waste Management Licensing provisions of the Environmental Protection Act 1990, worked out sand/brick earth pits and other naturally occurring depressions such as streambeds often became points for uncontrolled or poorly controlled waste disposal activities.

It is also worthy to note that there may be other areas within the Borough where landfilling has occurred in order to adjust levels since there were large areas of land within the Borough that were very low lying. Often waste arising from industrial or commercial activities was used as landfilling material to make up levels. It has been noted that such practises have caused problems in relation to contamination, since some of the commercial waste that was provided to make up levels contained asbestos sweepings, shavings and machining dust within the waste.

### **3.6 Agriculture/Horticulture**

Nursery gardens have been and continue to be an important part of the local economy. These form the majority of arable land in the Borough and much of what is now Woking Town was built on what was nursery land.

### **3.7 Past Redevelopment**

Prior to the introduction of planning control, there was very little regulation to control redevelopment or require measures to treat or prevent contamination. Since the war, redevelopment has been subject to planning control and there are more extensive records of the history of redevelopment, including measures to remediate existing sites and control new activities.

### **3.8 Information on Past Contaminated Land Uses**

The Council holds information on contaminative uses in the Borough used as part of the development control process. If a development is proposed on an area of land where past use may have resulted in contamination, the Council can request a suitable site investigation/remediation report as a planning condition. Planning and Building Control records form a valuable resource during the dataset collection and site investigation programmes.

## **4.0 Holistic Approach by the Council**

### **4.1 Corporate Approach**

Dealing with contaminated land is approached as a corporate issue for Woking Borough Council and contaminated land has implications in the following service areas:

- Forward / Strategic - Planning
- Development Control - Planning
- Building Control
- Estate Management
- Environmental Health Services
- Legal Services
- Land Charges

Estate Management, with the Contaminated Land Officer taking the lead role, has carried out enforcement of Statutory duties in respect of the contaminated land regime and the application of the Contaminated Land Inspection Strategy. Estate Management have also taken the lead role in relation to contamination issues that could relate to Council-owned land.

The contaminated land regime complements the Council's existing powers to deal with contamination issues under the Town and Country Planning Act 1990 and the Building Act 1984.

### **4.2 Planning Services**

#### **4.2.1 Forward/Strategic- Planning**

Consultation takes place with the forward planners at various critical times in order to ensure that any structural planning matter has an appreciation of the requirements of the contaminated land regime and in so doing, appropriate consideration can be given to its incorporation into planning policy. Advice on contamination issues is provided on sites and projects as required, such as during the Urban and Green Belt Reviews.

#### **2.2 Development Control- Planning**

The vast majority of contaminated land issues have been and will continue to be directed towards and addressed through the Development Control regime, where contamination is a

material consideration for the purposes of the Town and Country Planning Act 1990. National Planning and Policy Framework (NPPF) provides advice to Local Authorities on dealing with contaminated land during the planning process.

Estate Management has provided the Planning Department with a Contaminated Land GIS layers, created using "Land Use" data. This is made up of data purchased from Landmark and the Contaminated Land Officers review of historic sources of information (which is ongoing) but has some limitations. Polygons have been placed over parcels of land where a former contaminative use (historic use of the site) may have led to soil and groundwater contamination, which may lead to adverse conditions/impact for the occupants of the present or adjacent sites. A polygon is a shaded patch that can be used to highlight an area on a GIS. The polygon is then linked to information and data on a database. However, current contaminative uses of land are not shown on this system. This is because for their current land use the risk is low, but changing from a contaminative use to a sensitive use, such as residential, leads to an increased risk that exposure of potential contamination will cause harm. Hence, if there is any application, which falls within areas identified by contaminative use polygons or has current commercial, industrial, or general urban use, then the planners consult with the Contaminated Land Officer to consider the application in terms of potential contaminated land issues and the risks posed.

The Contaminated Land Officer may use the information held with the planning files. These records are in various formats e.g. microfiles, digital etc. These are an important information resource related to the history of potentially contaminated sites and remediation works that have occurred in the past.

Planner case officers take due regard of the contamination advice, provided through consultation with the Contaminated Land Officer and the Environment Agency (water issues). Where contaminated land is identified as a potential risk, the Council seeks to secure the investigation and remediation of that land through the use of appropriate conditions.

#### **4.3 Building Control**

It is a requirement of the Building Regulations that *'reasonable precautions shall be taken to avoid danger to health and safety caused by substances found on or in the ground to be covered by the building'*. Guidance on satisfying this requirement is contained within the *'Building Regulations Approved Document C, Site preparation and resistance to moisture'*. This document outlines appropriate means of dealing not only with solid and liquid contaminants

arising out of previous use of land, but also gases which may be harmful to buildings and persons which includes proposed occupants.

The requirements apply to all buildings that fall within the control of the Building Regulations, which have been amended to include the ground to be covered by that building (which is stated to include ground to be covered by its foundations) and any land associated with the building.

Close liaison has been created with building control officers not only of the Borough Council but also with the other approved building control regulators.

#### **4.4 Estate Management**

Details are held of the land that is and has been owned, may be acquired, and/or leased by the Council. These records are administered by Estate Management and can be examined to identify any land that may have been contaminated by former Council activities.

Where land is identified as being potentially contaminated, it will be prioritised for more detailed inspection by Estate Management, via the Contaminated Land Officer.

#### **4.5 Environmental Health Service**

A service request regarding contaminated land will be passed to the Contaminated Land Officer in Estate Management and dealt with following the same procedure as currently used by the Environmental Health Service to deal with any environmental control service enquiry.

All clients are asked to supply their names and addresses and if appropriate, the address giving rise to the issue. The identity of the client remains confidential. The only circumstance, in which this information might be made public, would be in the case of a remediation notice being appealed in a court of law.

The Contaminated Land Officer does not normally look to undertake any investigation based on anonymously supplied information and this general policy will be adopted for contaminated land issues. This policy does not however, preclude investigation of an anonymous complaint in exceptional circumstances based on likely risk.

Any anecdotal evidence provided to the Council relating to contaminated land is recorded but no determination of statutory Contaminated Land will occur without robust scientific evidence. In all cases, the Contaminated Land Officer will use knowledge and experience to decide whether further investigation is required. Where information indicates that there is an imminent danger of

serious harm, or serious pollution of controlled waters as a result of the presence of a significant pollution linkage being present, the Council will notify the Environment Agency and other external consultees and consider the need for urgent action. Should it be decided that urgent action is required, this shall be entered into as soon as reasonably practicable.

#### **4.6 Legal Services**

Legal Services are responsible for providing advice on the Council's duties under Part 2A, in particular with regard to legal agreements on contaminated land (and planning issues), and assisting with identifying appropriate persons who may be responsible for the remediation of land.

#### **4.7 Land Charges**

The Land Charges Section has four standard enquiries on the land search form relating to information that will be held on the Public Contaminated Land Register.

Should a site be entered on the Public Register then Land Charges will be informed as soon as practicable.

#### **4.8 Data Protection**

The Council takes immense care to ensure that it complies with all the requirements of the Data Protection Act 2018.

## 5.0 Council's Approach & Review

The Inspection process is broken down into seven stages, which are outlined below.

### 5.1 Stage 1 – Resource Allocation

The Contaminated Land Officer would ensure:

- Purchase of up-to-date reference materials on site investigation and remediation;
- Purchase of historical land use information, geological information, and appropriate hardware/software to run a GIS –Land Use Information Database (Uniform module); and
- Purchase of risk prioritisation and risk assessment database package linked to GIS System.-external contractors to undertake specific duties.

### 5.2 Stage 2 – Dataset Collection

- Purchase of up-to-date reference materials for assessment of site investigation, remediation and validation reports; and
- Dataset Collection Programme using GIS Land Information Database (GIS) being the primary tool used to manage contaminated land information).

### 5.3 Stage 3 – Site Prioritisation (desktop)

- Completed Prioritisation Inspection following consideration of the best available and suitable system; and
- All known potentially contaminated sites in Borough including Council owned land considered and given a risk priority rating.

### 5.4 Stage 4 – Detailed Site Investigation Following Prioritisation from Risk Assessment/ Conceptual Model to Identify Significant Possibility of Significant Harm (SPOSH)

- Various site investigations of high priority sites undertaken based on risk for high priority sites and using intrusive methods where necessary.

### 5.5 Stage 5 – Declaration and Registration of Statutory Contaminated Land

- Systems set up and put in place if any statutory declared land is required to be declared.

- Voluntary Remediation; The Council's approach to its regulatory duties is to seek voluntary action before taking formal enforcement action since more effective remediation can often be achieved by agreement rather than by enforcement. The regulations provide an incentive to undertake voluntary action in that any materials that require disposal as a result of voluntary remediation will be exempt from landfill taxes.
- Determination of Council-Owned Land or orphan sites as Contaminated Land; Elected members will be informed at the earliest opportunity of any plans to determine an area of Council-owned land or land where the Council is the 'appropriate person' and may be eligible for remediation costs.

### **5.6 Stage 6 – Liaison with Other Bodies & Reporting**

- Develop and implement a procedure for liaison & reporting to Council, Environment Agency (e.g., annual returns and reporting water pollution incidents), Surrey County Council, neighbouring Boroughs (eg contaminated land study group) & other statutory consultees eg. English Nature.

### **5.7 Stage 7 – Review and Inspections Falling Outside the Programme**

- A system has been implemented that should there be unplanned events, introduction of new receptors, supporting voluntary remediation and responding to information from other statutory bodies, owners, occupiers or other interested parties, then these matters may trigger a review of priorities.
- In addition, a scheme was considered in relation to reviewing previous inspection decisions. This can occur if there has been significant changes in legislation, establishment of significant case law or other precedent and revisions of statutory guidelines on exposure limits, risk prioritisation and risk assessment.

### **5.8 Comment of Actions and Approach Regarding Inspection Programme**

Woking Borough Council has within the last 17 years diligently implemented the inspection programme as set out in its initial vision of how to best deal with contaminated land. It has acquired appropriate resources in order to facilitate the approach. Overall, it must be commented on that the methodology of the Council in the setting up and implementation of the inspection programme corresponds to good practice and is considered as a robust and orderly approach and as an excellent way forward to strategically consider and deal with contaminated land.



## **5.9 Future Focus 2018 to 2023**

When carrying out our duties, the Council must consider the resources and funding it has available and the need to target limited resources to where they can be of most benefit. The Council considers it to be unacceptable to start a detailed site inspection without ensuring enough resources to fully see all aspects of the detailed site inspection through to conclusion.

Contaminated land investigations can take from a few months to several years to fully complete. Intrusive site assessments cannot feasibly be started until enough detailed data has been collected to suggest the site could meet the statutory definition of contaminated land. The Council will aim to investigate sites as quickly and efficiently as possible, to minimise any potential issues such as property blight or any stress to residents during investigations.

The priority inspection list is ever evolving. When sites are investigated and not deemed to meet the statutory definition of contaminated land, they will be effectively removed from the list by virtue of being relocated down the list. Where new sites are identified then these will be prioritised and added to the inspection list and database in a rational and orderly manner.

The detailed inspection of individual sites can be a large financial commitment, time consuming and potentially controversial, as affected properties may suffer from blight and financial burden during the overall investigation process. While this would likely be justified for sites where significant risks to sensitive receptors have been identified, certain sites may require a different approach. This would likely comprise the production and subsequent implementation of a risk management and mitigation strategy for the short, medium or long term. Decisions on the above will be taken on a case by case basis having full regard to our statutory duties, resources and information available to the Council at that time.

## **5.10 Investigatory Tools**

Below is a non-exhaustive list of the various investigatory tools open to the Council to investigate potentially contaminated land. They are listed in the order of priority the Council will aim to utilise the tools.

### **5.10.1 Overarching Aim**

The Council aims to, where practicable, to seek to work with third parties on a voluntary basis to manage the risks from land contamination without the need to exercise regulatory powers.

### 5.10.2 National Planning Policy Framework (NPPF)

The main tool to carry out statutory duties relating to the investigation of land contamination will be via the National Planning Policy Framework (NPPF) (the town and country planning process). Regard will also be given to the recently published Planning Practice Guidance.

Paragraph 121 of the NPPF states *Planning policies and decisions should also ensure that ... the site is suitable for its new use taking account of ground conditions ... including from ... former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation ... [and]... after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990.*

Should the Council identify a potential contaminated land issue with a site that is subject to a planning application, then it is likely detailed contaminated land and/or ground gas conditions will be required to be placed on any future planning permission (if granted) to mitigate these potential issues. These conditions will likely require the investigation of ground conditions across the site in question in a phased manner. This will likely start with a desktop study, then move onto phased intrusive site investigation (if required), whereby soil samples/gas monitoring is undertaken. Then should any issues become evident these will be remediated (cleaned up) to ensure the site is not capable of being determined as contaminated land.

### 5.10.3 Self Assessments

The notion of self assessments encourages residents to 'do it themselves'. We can relate this philosophy to residential property transactions. The Council supports 'self help' to facilitate property transactions on potentially contaminated land where little or no information exists on ground conditions, to ascertain the appropriate level of risk/liability. This is done with the view of facilitating a successful property transaction for all parties involved.

Self assessments would typically involve owners or prospective purchasers of property commissioning a suitably qualified person to carry out an appropriate intrusive site investigation, at their own cost, to ascertain the nature of ground conditions and thus qualify the environmental risk/liability associated with a property transaction.

It is strongly recommended this is done with prior consultation with the Council to ensure a robust assessment is undertaken. In addition, works would need to be carried out by a suitably

qualified environmental professional, to ensure best practice guidance, and the relevant British Standards are followed.

Assuming the investigation was carried out to the Council's satisfaction, the Council would determine whether or not the land in question constitutes contaminated land. Should land not constitute contaminated land then no further action by the Council would be required and this would be documented and recorded on relevant databases.

Should the site constitute contaminated land then the Council will carry out its duties as required by the relevant legislation and statutory guidance. Remediation of the land would likely be required.

#### **5.10.4 Proactive Investigation**

Where resources enable (both financial, staff and technical expertise), the Council will seek to investigate potentially contaminated sites and neighbouring areas (as required) that are present on our priority inspection list.

#### **5.11 Newly Identified Potentially Contaminated Sites**

There is the potential for the occasional newly identified potentially contaminated land site in the Borough to be brought to our attention either by a third party or identified by our own in house investigatory process.

Newly identified sites will be suitably researched, appraised and entered accordingly on our Contaminated Land Priority Inspection List. Where actual ground contamination is known to be present (rather than possibly present) the site is likely to have a higher ranking in the priority list, whilst still having regard to proximity to the sites sensitive and surrounding receptors.

#### **5.12 Contaminated Land Register Entries**

As of October 2018, the Council has not designated any land as meeting the statutory definition of contaminated land within the borough. Consequently the register is empty. Further information on the register can be found via the following link.

[https://www.woking.gov.uk/planning/envhealthservice/control/contam#contaminated\\_land\\_strategy](https://www.woking.gov.uk/planning/envhealthservice/control/contam#contaminated_land_strategy)

## 6.0 Determination and Remediation of Contaminated Land

### 6.1 Deciding if Land is Contaminated or Not

Under the contaminated land regime the starting point is that land is not contaminated land unless there is reason to consider otherwise. Where it is clear, following an inspection, that land does not meet the legal definition of contaminated land, the Council shall cease its investigations and issue a written statement to that effect to the owners of the property and other interested parties. A copy of this statement will be kept on file, along with the reasons for making the decision. The Council will not formally publish the information, but will keep a record of it in the event of receiving requests for information.

### 6.2 Determination of Contaminated Land

As the result of a detailed site inspection, should the Council identify that **a contaminant** (e.g oils or lead) **a pathway** (a way for the contamination to move and transfer) and **a receptor** (humans, wildlife and watercourses etc) with respect to the current use of land and the Council be satisfied that one or more of the following points, as outlined below, are met, then the site meets the statutory definition of contaminated land.

- Significant harm is being caused to that receptor; or
- There is a significant possibility of significant harm being caused to that receptor; or
- Significant pollution of controlled waters is being caused; or
- There is a significant possibility of pollution of controlled waters.

Should land be deemed contaminated land, then the Council will produce relevant detailed risk summaries for the site, as required by the statutory guidance and will give written notice of the intention to determine the land contaminated land to the following interested parties:

- The owner of the land;
- Any person(s) appearing to the Council to be in occupation of the land;
- Any person(s) appearing to the Council to be an 'appropriate person; and
- The Environment Agency.

### 6.2.1 Special Sites

Should a site meet the special site definition, as defined by the Act, (e.g former military base) the Environment Agency will be informed as soon as reasonably practicable and the Agency would normally carry out inspections to determine whether the land is contaminated or not.

Special sites include land that meets at least one of the typical requirements below:

- seriously affects drinking waters, surface waters and important groundwater sources;
- has been, or is being, used for certain industrial activities, such as making explosives;
- has been used to get rid of waste acid tars;
- is owned or occupied by the Ministry of Defence;
- is contaminated by radioactivity;
- is a nuclear site; and
- is being or has been regulated using a permit issued under the integrated pollution control or pollution prevention and control regimes.

The responsibility for formal designation remains with the Council at this stage. If the land has been determined as contaminated land and if the Council and the Environment Agency (if necessary the Secretary of State as well) agree that the site is a special site, the Environment Agency will take over the role of enforcing authority.

Where a special site is identified the Council will aim to work in partnership with the Environment Agency and include them early on in the decision making process.

### 6.3 Remediation

Remediation is the term used to describe the 'clean up' of contaminated land. There are many different ways land can be remediated but this essentially is concerned with removing a contaminant source or reducing the risk posed to receptors to an acceptable level. The Council will make reasonable enquiries in order to identify all of the appropriate persons to pay for any remedial action with respect to each pollutant linkage that may be required. These persons constitute the liability group for a pollution linkage. Thus, for each pollutant linkage that may be identified, either a Class A liability group comprising persons who caused or knowingly permitted the pollutant to be present, or a Class B liability group comprising persons who are the current owners or occupiers of the land, could take on liability for that pollution linkage.

Having regard to the statutory guidance, once the relevant people have been notified of the intention to determine the land in question as contaminated land, the Council has provision to postpone this determination. This can be done if the owner or some other person agrees to undertake to deal with the contamination issues in a suitable way and timescale. This is called “voluntary remediation”.

In such cases, the persons responsible for carrying out the remediation will usually be required to prepare a remediation statement and submit this to the Council for prior authorisation before remedial works commence. Depending on the nature of the site and size of the land affected the Council may prepare a remedial strategy (clean up specification) in-house. The strategy will detail the clean-up works required to be carried out by the land owner and the works would be required to be independently validated to ensure the necessary works have been carried out to an acceptable standard. It should be noted that these works would likely need to be completed by a suitably qualified person(s). If required the Council can validate remedial works.

After reasonable consultation, if appropriate remediation cannot be secured by an agreement, the Council has powers to serve a remediation notice on appropriate persons. The notice will state what measures need to be carried out to remediate the contaminated land and the timescale for the work to be carried out. For multiple appropriate persons, the notice shall state what proportion of costs each one is to bear.

It is an offence under Part IIA of the Environmental Protection Act 1990 not to comply with a remediation notice without reasonable reason. If the Council decides to carry out the remediation actions itself, it can recover its reasonable costs from the appropriate person. Any person who receives a remediation notice has 21 days from the date of the notice to appeal against the notice. The following sections explore in detail if the Council was to carry out remediation itself, how it would go about recovering these costs.

#### **6.4 Hardship and Cost Recovery Policy Statement**

This Hardship and Cost Recovery Policy Statement is aimed at the scenario that the original polluter (Class A Person(s)) can't be identified/found, a successful legal case against the Class A Person(s) has not been won or the relevant exclusion tests outlined in the statutory guidance are met. As such liability legally falls to the current legal land owner of the land in question (Class B Person(s)).

Specific contaminated land funding through the Capital Grants Programme has been withdrawn by Central Government. As a Local Authority the Council must have regard to how any future decisions can affect local tax payers and the impact on how the Council provides key services throughout the Borough.

As a result, the Council has appraised its various options regarding the possibility of waiving or reducing remedial costs. The Council will therefore not 'waive' or 'reduce' remediation costs that legally should be borne by the appropriate person(s) as defined in the primary legislation and with regard to the various exclusion tests outlined in the statutory guidance. As a result the Council will seek to recover **all** of its reasonable costs. This position will be subject to review in the future (as required).

The Council will have full regard to the relevant legislation and provisions laid out in the Primary Legislation and Statutory Guidance that relate to hardship and cost recovery issues. The Council will endeavour to make provisions to ensure the costs of remediation does not cause or add to existing hardships. Therefore the overall approach can be summarised as follows:

- Seek to recover in full reasonable costs incurred when performing statutory duties in relation to the remediation of contaminated land;
- Wherever possible, apply the "polluter pays" principle, whereby the costs of remediating pollution are borne by the polluter;
- Where this is not possible, seek all sources of finance (external to the Council) for remediation (if available);
- Have regard to the avoidance of hardship which the recovery of costs may cause; and
- Aim for an overall result which is as fair and equitable as possible to all who may have to meet the costs of remediation, including national and local taxpayers.

To allow the Council to be fair to our residents and assess individual cases, there are a number of options available that are explored in the following sections.

#### **6.4.1 Hardship**

Hardship in the terms of this policy relates to financial hardship that would be exacerbated or brought on as a result of an appropriate person(s) being liable and thus paying for proportionate remediation costs.



If the appropriate person(s) has been served a charging notice of the remediation cost payment/recovery by the Council, then they will have up to 21 days, from the date of the notice, to inform the Council that they wish to be considered as a hardship case. The Council will then send out an application form that will require the applicant to provide various financial information about income, expenditures and benefits etc, within 21 days from the date of the communication.

The Council will utilise this information and the steps provided in the Statutory Guidance to assess a hardship case using a Council approved means testing tool to assess each case individually. Should an applicant be successful they will be contacted and arrangements made to develop a suitable cost recovery programme that best reflects their needs. Should an applicant not be successful they have a right to appeal and further scrutiny of their situation will be required. The options of cost recovery are non-exhaustive and presented in Section 6.4.2 below.

#### **6.4.2 Cost Recovery**

The Council will seek to recover **all** reasonable costs associated with required remediation that can legally be recovered in a proportional manner. The Council will not waive or reduce costs that legally should be borne by another party. The Council will however have regard to any relevant requirements and tests set out in the legislation and statutory guidance relating to matters of hardship and cost recovery.

To compliment this policy statement the Council has several options available that are broadly outlined below. Note this list is non- exhaustive and other potential options may be available/considered.

1. Payment in full of relevant remediation costs within a specified time frame.
2. A percentage (%) part payment supplemented with regular monthly payments over a prescribed period of time.
3. If none of the above options are deemed feasible then the Council can consider the option of putting a 'charge' on the land in question. This is whereby the amount of the remediation costs is secured against the land in question and that money will be returned to the Council in full when the property legally changes ownership i.e sold.

## 7 Review Mechanisms

### 7.1 Strategy Reviews

The Council will review its written strategy periodically, ideally at least every five years, to ensure it remains up-to-date and reflects any significant changes in legislation, statutory guidance, best practice or any other relevant matters.

The next scheduled review of this strategy is during 2023. However, this may be brought forward should any statutory changes, new guidance or economic climate require it.

### 7.2 Decision Reviews

All decisions made with regard to contamination need to be made objectively, consistently, transparently and with proper regard to uncertainty. One important aspect of managing contaminated land is the need to review decisions made about particular sites, to establish whether any material changes have occurred. Examples of factors which influence the decisions and which have the potential to change include:

- Change of site use;
- New information comes to light (i.e site investigation report);
- Complaints from residents regarding ground conditions;
- Change of use of adjoining land;
- Climatic or meteorological change
- Change in physical characteristics e.g. the water environment;
- Legislative or internal or external policy changes;
- Changes to technical standards or procedures; and
- Actions taken by a third party to reduce the effectiveness of remedial measures.

All decisions made under Part IIA of the Environmental Protection Act 1990 will therefore be made and recorded in a consistent manner that will allow for the effective review, as and when circumstances require.

### **7.3 Decision Outcomes**

The main outcome of a decision is likely to involve the site in question being re-categorised in that its site investigation priority will change. This could either increase the priority for investigation or decrease the priority for investigation. However, should any new information come to light that indicates that there is a high risk of SPOSH or other imminent danger then consideration for immediate or emergency action may be required.

**Document End**

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