

AGENDA
PUBLIC PROTECTION POLICY DEVELOPMENT
AND REVIEW PANEL

Date: Tuesday, 12 March 2013

Time: 6:00 pm

Venue: Collingwood Room - Civic Offices

Members:

Councillor Mrs K Mandry (Chairman)

Councillor Mrs S Pankhurst (Vice-Chairman)

Councillors Mrs S M Bayford
Mrs P M Bryant
Mrs M E Ellerton
G Fazackarley
J S Forrest

Deputies: D J Norris

D L Steadman



1. Apology for Absence

2. Minutes

To confirm as a correct record the minutes of the meeting of the Panel held on 13 November 2012.

3. Chairman's Announcements

4. Declarations of Interest and Disclosures of Advice or Directions

To receive any declarations of interest from members in accordance with Standing Orders and the Council's Code of Conduct and disclosures of advice or directions received from Group Leaders or Political Groups, in accordance with the Council's Constitution.

5. Deputations

To receive any deputations of which notice has been lodged.

6. Review of Annual Work Programme for 2012/13 and Final Consideration of Draft Work Programme for 2013/14 (Pages 1 - 22)

To consider a report by the Director of Regulatory and Democratic Services reviewing the outcome of the current 2012/13 work programme and to agree a proposed draft work programme for 2013/14.

7. Food Standards Agency Food Safety Service Plan (Pages 23 - 54)

To consider a report by the Director of Regulatory and Democratic Services on the Food Standards Agency Food Safety Service Plan.

8. Contaminated Land Strategy Update (Pages 55 - 122)

To consider a report by the Director of Regulatory and Democratic Services on the Council's Contaminated Land Strategy.

P GRIMWOOD
Chief Executive Officer

Civic Offices
www.fareham.gov.uk
4 March 2013

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**Report to
Public Protection Policy Development and
Review Panel**

Date: **12 March 2013**

Report of: **Director of Regulatory and Democratic Services**

Subject: **REVIEW OF ANNUAL WORK PROGRAMME FOR 2012/13 AND
FINAL CONSIDERATION OF DRAFT WORK PROGRAMME FOR
2013/14**

SUMMARY

Following the cancellation of the meeting scheduled for 15 January 2013, this report reviews the outcome of the Panel's work programme for 2012/13 and suggests a draft work programme for 2013/14.

RECOMMENDATION

The Panel is now requested to:-

- (a) review the outcome of the work programme for 2012/13;
- (b) agree a proposed work programme for 2013/14; and
- (c) submit the proposed work programme for 2013/14 to the Council.

INTRODUCTION

1. This is the last cycle of meetings for this year and the Panel is invited to finalise its review of this year's work and confirm the draft programme for 2013/14.

THE PANEL'S TERMS OF REFERENCE

2. Under its terms of reference, the Public Protection Policy Development and Review Panel is responsible for:-
 - reporting and advising upon policies and proposals relating to the Public Protection portfolio;
 - assisting Full Council and the Executive in the development and formulation of policy; and
 - reviewing the performance of services provided directly or indirectly by the Council.

WORK PROGRAMME - CURRENT YEAR 2012/13

3. Appendix A to this report contains details of the current year's work programme for review by the Panel.

PUBLIC PROTECTION POLICY DEVELOPMENT AND REVIEW PANEL WORK PROGRAMME 2013/14

4. Appendix B sets out details of the proposed items for consideration during 2013/14. As the Panel now focuses on 'policy development', it is suggested that smaller working groups are allocated to work with officers on specific subjects. The Panel is also likely to consider reports on a specific subject on more than one occasion during the course of the year, as the policy is developed and before final recommendations are made to the Executive.
5. It is also for the Panel to consider whether any review of items under the Council's policy framework will be included in the 2013/14 programme.
6. Appendix C contains a list of the plans and strategies currently contained in the Council's policy framework.

RISK ASSESSMENT

7. There are no significant risk considerations in relation to this report.

CONCLUSION

9. To summarise, the Panel is now invited to:-
 - (a) review the outcome of its work programme for the current year 2012/13;
 - (b) agree a draft work programme for 2013/14, having considered the proposed draft set out in Appendix B and, at the same time, add to the Panel's draft programme for 2013/14 any proposed strategy or policy reviews and also any additional items agreed generally by the Panel or put forward by individual members and accepted by the Panel; and

- (c) submit the work programme for 2013/14 to the Council.

Background Papers:

None.

Reference Papers:

- (i) Report to Council – 13 December 2012 – “Schedule of Meetings 2013/14”.

Enquiries:

For further information on this report please contact Garry White (Ext 4395).

APPENDIX A - Progress on Actions Since Last Meeting of 2011/12

APPENDIX B - Draft Work Programme for 2013/14

APPENDIX C - Policy Framework

**Public Protection Policy Development and Review Panel – 13 November 2012
Progress on Actions Since Last Meeting**

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|------------------------|---|
| Date of Meeting | 13 March 2012 |
| Subject | Review of 2011/12 Work Programme and Draft 2012/13 Work Programme |
| Type of Item | Monitoring/Programming |
| Action by Panel | <p>The Panel considered a report by the Director of Regulatory and Democratic Services reviewing the outcome of the current 2011/12 work programme and proposing a draft work programme for 2012/13 (copy of report ppp-120313-r01-gwh circulated with the agenda and appended to the signed minutes).</p> <p>It was AGREED that:-</p> <ul style="list-style-type: none"> (a) the review of the work programme for 2011/12, as shown in Appendix A to the report, be noted; (b) the proposed work programme for 2012/13, as set out in Appendix A to these minutes, be approved; and (c) the proposed work programme for 2012/13 be submitted to the Council for approval. |
| Outcome | On 26 April 2012 the Council confirmed the work programme. |
| Link Officer | Garry White |
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| Subject | Eyes and Ears Programme |
| Type of Item | Update and Consultation |
| Action by Panel | <p>The Panel considered a report by the Director of Regulatory and Democratic Services on the Eyes and Ears Programme (copy of report ppp-120313-r04-nba circulated with the agenda and appended to the signed minutes). The report provided an update on the initiative that was being developed in conjunction with the Corporate Customer First project and the new approach in dealing with Comments, Compliments and Complaints.</p> <p>At the invitation of the Chairman, Councillor A Mandry addressed the Panel during the consideration of this item.</p> <p>It was AGREED that:-</p> |

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| | <p>(a) the work being undertaken in connection with the Eyes and Ears Programme, as detailed in the report, be noted;</p> <p>(b) the recommendations contained in paragraphs 28 to 34 of the report be supported; and</p> <p>(c) the importance of monitoring the number and type of matters communicated and the Council's responses be noted.</p> |
| Outcome | Actions being progressed |
| Link Officer | Narinder Bains |
| | |
| Subject | Food Standards Agency Food Safety Service Plan |
| Type of Item | Consultation |
| Action by Panel | <p>The Panel considered a report by the Director of Regulatory and Democratic Services on the Food Standards Agency Food Safety Service Plan (copy of report ppp-120313-r02-jtr circulated with the agenda and appended to the signed minutes).</p> <p>It was noted that the Plan was to be submitted to the Executive at its meeting on 2 April 2012 and to the Council on 26 April 2012.</p> <p>It was AGREED that the Food Safety Service Plan, as shown in Appendix A to the report, be commended to the Executive for approval.</p> |
| Outcome | On 2 April 2012 the Executive resolved that the Council be recommended to approve the Food Safety Service Plan 2012/13, as detailed in Appendix A to the report (xpp-120402-r11-gwh refers). On 26 April 2012 the Council |
| Link Officer | Juli Treacy |
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| Subject | Challenges Facing Fareham Community Safety Partnership |
| Type of Item | Information |
| Action by Panel | The Panel considered a report by the Director of Regulatory and Democratic Services on the challenges facing Fareham Community Safety Partnership (copy of report ppp-120313-r03-nba circulated with the agenda and appended to the signed minutes). |

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| | It was AGREED that the challenges identified in the report be noted. |
| Outcome | Actions being progressed |
| Link Officer | Narinder Bains |
| Date of Meeting | 22 May 2012 |
| Subject | Presentation on Services Falling Within the Public Protection Remit |
| Type of Item | Presentation |
| Action by Panel | <p>The Panel received a presentation from the Director of Regulatory and Democratic Services, the Head of Environmental Health and the Head of Community Safety and Enforcement about the services falling within the Public Protection remit. The presentation made reference to the functions of the Panel and the areas of work undertaken within the Public Protection Portfolio, including: Environmental Health and the Fareham and Gosport Environmental Health Partnership, incorporating Air Quality, Contaminated Land, Pollution, Out of Hours Service, Dog Control, Pest Control and Food Safety; Community Safety and Enforcement, incorporating Fareham's Community Safety Partnership Priorities, measures to combat Anti-social Behaviour, CCTV, Parking Enforcement, Traffic Management, Emergency Planning and General Enforcement; and the Fareham and Gosport Building Control Partnership.</p> <p>It was AGREED that:-</p> <ul style="list-style-type: none"> (a) the officers be thanked for their presentation; (b) the Director of Regulatory and Regulatory Services be requested to provide Panel members with a list of service heads and their areas of responsibility; (c) members wishing to visit the CCTV Control Room be requested to pass their names to the Committee Services Officer or the Head of Community Safety and Enforcement; and (d) copies of the presentation slides be circulated to the members of the Panel. |
| Outcome | Actions being progressed |
| Link Officer | Garry White |
| Subject | Annual Health and Safety Performance 2011/12 |

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| Type of Item | Monitoring |
| Action by Panel | <p>The Panel considered a report by the Director of Regulatory and Democratic Services on the Council's Health and Safety performance during 2011/12 (copy of report ppp-120522-r03-tro circulated with agenda and appended to signed minutes).</p> <p>It was AGREED that:-</p> <ul style="list-style-type: none">(a) the work undertaken by the Council's managers in maintaining health and safety standards during 2011/12 be acknowledged;(b) it be noted that the Council as an employer continues to achieve a standard of health and safety management within its activities that meets statutory requirements and demonstrates competence in health and safety management; and(c) it be noted that the report would be submitted to a future meeting of the Executive. |
| Outcome | <p>Report submitted to the meeting of the Executive on 11 June and resolved that the Executive notes:</p> <ul style="list-style-type: none">(a) the work undertaken by all employee's to maintain health and safety standards and, where necessary, improve health and safety performance for the benefit of all concerned during 2011/12, and(b) that the Council as an employer continues to achieve a standard of health and safety management within its activities that meets statutory requirements and demonstrates competence in health and safety management. |
| Link Officer | Tom Rodgers |
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| Subject | Unauthorised Encampment Policy |
| Type of Item | Policy Review |
| Action by Panel | <p>The Panel considered a report by the Director of Regulatory and Democratic Services on the Council's approach to dealing with unauthorised encampments (copy of report ppp-120522-r01-kwr circulated with agenda and appended to signed minutes).</p> <p>It was AGREED that:-</p> |

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| | <p>(a) it be noted that the Statement of Policy in Relation to Unauthorised Encampments, as shown in Appendix A to the report and the Fareham Borough Council Procedure for Dealing with Unauthorised Encampments, as shown in Appendix B to the report, would be submitted to a future meeting of the Executive; and</p> <p>(b) a recommendation be made to the Executive that an audit be undertaken of the Council's car parks and other vulnerable Council owned land in order to identify what practical measures could reasonably be undertaken to prevent unauthorised encampments taking place.</p> |
| Outcome | At its meeting on 11 June 2012, The Executive received comments from the Leisure and Community Policy Development and Review Panel on the Leisure Strategy for 2012/13 and NOTED that the report will be brought to the Executive meeting of 16 July. |
| Link Officer | Kevin Wright |
| Subject | Emergency Planning - Annual Report 2011/12 |
| Type of Item | Monitoring |
| Action by Panel | <p>The Panel considered a report by the Director of Regulatory and Democratic Services on the Council's emergency planning arrangements (copy of report ppp-120522-r02-gwh circulated with agenda and appended to signed minutes).</p> <p>It was AGREED that it be noted that the report would be submitted to a future meeting of the Executive.</p> |
| Outcome | Report submitted to the meeting of the Executive on 11 June 2012. It was RESOLVED that the Executive agrees that this annual report be used as a record/update of the work that has been undertaken to enhance the Council's emergency response capability |
| Link Officer | Garry White |
| Subject | Public Protection Policy Development and Review Panel Work Programme 2012/13 |
| Type of Item | Programming |
| Action by Panel | <p>The Panel considered a report by the Director of Regulatory and Democratic Services on the Panel's work programme for 2012/13 (copy of report ppp-120522-r05-gwh circulated with agenda and appended to signed minutes).</p> <p>It was AGREED that:-</p> |

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| | <p>(a) the programme items, as set out in Appendix A to the report, be confirmed; and</p> <p>(b) the progress on actions since the last meeting, as set out in Appendix B to the report, be noted.</p> |
| Outcome | Complete |
| Link Officer | Garry White |
| Date of Meeting | 24 July 2012 |
| Subject | Public Protection Policy Development and Review Panel Work Programme 2012/13 |
| Type of Item | Programming |
| Action by Panel | <p>The Panel considered a report by the Director of Regulatory and Democratic Services on the Panel's work programme for 2012/13 (copy of report ppp-120724-r01-gwh circulated with agenda).</p> <p>It was AGREED that:-</p> <p>(a) the programme items as set out in Appendix A be confirmed;</p> <p>(b) the progress on actions since the last meeting as set out in Appendix B be noted;</p> <p>(c) the officers be thanked for arranging the recent visit to the CCTV Control Room for some members; and</p> <p>(d) the officers be requested to include an item in the members' newsletter giving an update on the CCTV Control Room and inviting any other members who wished to visit the Control Room to inform the officers.</p> |
| Outcome | Invitation to visit the CCTV Control Room included in Newsletter 15/12 on 26 July 2012 and repeated in Newsletter 16/12 on 16 August 2012. |
| Link Officer | Garry White |
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| Subject | Enforcement Policy |
| Type of Item | Policy Review |
| Action by Panel | The Panel considered a report by the Director of Regulatory and Democratic Services on the Council's Enforcement Policy (copy of report ppp-120724-r02-iri circulated with agenda). The Policy was being reviewed to take into account of and reflect the requirements of the latest guidance and legislation and also the joint Fareham and Gosport Environmental Health Service. |

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| | <p>It was noted that the draft revised policy would go through a consultation process, the results of which would be reported to the Panel meeting on 13 November 2012, before being submitted to the Executive and the Licensing and Regulatory Affairs Committee for approval.</p> <p>It was AGREED that:-</p> <ul style="list-style-type: none"> (a) it be noted that the Licensing and Regulatory Affairs Committee had requested that the officers include a reference in the policy to the joint working between Environmental Health and other agencies, such as the Hampshire Fire and Rescue Service and Hampshire County Council Trading Standards; (b) the revised Regulatory Services Environmental Health Enforcement Policy, as shown in Appendix A to the report and subject to (a) above, be approved for consultation insofar as it relates to the functions of this Panel; (c) the results of the consultation be considered at the November meeting of the Panel prior to it being considered by the Executive in respect of those functions that fall within its responsibility; and (d) the officers be requested to supply members with contact details for the Environmental Health Out of Hours Service to assist them in dealing with any out of hours queries from members of the public. |
| Outcome | In progress. |
| Link Officer | Ian Rickman |
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| Subject | Annual Report on Fareham Parking Enforcement Service |
| Type of Item | Monitoring |
| Action by Panel | <p>The Panel considered a report by the Director of Regulatory and Democratic Services on Fareham Parking Enforcement Service (copy of report ppp-120724-r04-kwr circulated with agenda).</p> <p>It was noted that the report would be submitted to the Executive for approval.</p> <p>Members received a presentation from the Head of Community Safety and Enforcement illustrating various aspects of the report, including an overview of the service, the costs of on/off street enforcement, the volume of related correspondence and statistical information about Penalty Charge Notices (PCNs) issued in respect of parking offences.</p> |

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| | It was AGREED that the content of the report be noted. |
| Outcome | Report to be submitted to the Executive meeting on 3 September 2012. |
| Link Officer | Kevin Wright |
| Date of Meeting | 11 September 2012 |
| Subject | Policing in Fareham |
| Type of Item | Presentation |
| Action by Panel | <p>The Panel received a presentation from Chief Inspector Jason Kenny, Fareham and Gosport District Commander, Hampshire Constabulary, on policing in Fareham.</p> <p>Members were informed of the current administrative structure, with Fareham, Park Gate and Gosport forming one district in the Eastern Policing Area. Portsmouth, Havant and the Isle of Wight were the other districts in the Area. The current structure had been in place for about a year and had been introduced as part of the measures to achieve the requirement to make savings of £54 million in four years and to achieve the Chief Constable's vision to improve efficiency, effectiveness and service provision. Fareham/Park Gate and Gosport had been separate policing areas prior to the restructure.</p> <p>The district establishment consisted of approximately 240 officers/staff divided into the following areas: Targeted Patrol Teams; Safer Neighbourhood Teams; and Secondary Investigation Teams. Approximately 35% of the establishment provided the policing in Fareham and Park Gate. The Targeted Patrol Teams (TPTs) provided responses to incidents and were based at Park Gate. The secondary investigation teams consisted of Custody Investigation staff, who took responsibility for suspects being brought into custody, thus enabling other officers to return to their patrol and other duties as soon as possible; and the Criminal Investigation Department (CID) officers. There were five Neighbourhood Policing Teams, based at both Fareham and Park Gate, consisting of a sergeant and a combination of police constables (PCs) and Police Community Support Officers (PCSOs). These teams were responsible for community engagement, crime prevention and crime reduction.</p> <p>In response to an enquiry, it was reported that on average there were 15 - 20 special constables operating in the Fareham and Park Gate sectors.</p> <p>Those present received details of the Fareham and Park Gate sectors' performance against their 2012/13 targets and a comparison between their 2011/12 and 2012/13 performances in respect of All crime, Violence against the person (VAP),</p> |

Serious acquisitive crime (SAC) and Anti-social behaviour (ASB). The performance figures showed crime was down in all areas.

In response to a further enquiry, it was reported that the detection rate in the district was currently 31%, which compared very favourably with other areas. The secondary investigation teams had two inspectors, one uniformed and one detective inspector, whose responsibility it was to drive up the detection rates.

To supplement the Chief Inspector's presentation, officers presented a number of slides illustrating various aspects of the work of the Fareham Community Safety Partnership (CSP) and the Community Safety Manager and the Director of Regulatory and Democratic Services joined the Chief Inspector in responding to members' questions and comments.

The slides included statistics relating to the reduction in total crime from 2007/08 through to 2011/12, updated versions of each incorporating figures from 2012/13, the annual performance, performance in comparison with the other district authorities in Hampshire and in the most similar family group of local authorities nationally. It was noted that Fareham was currently third in both groups.

The CSP carried out regular Strategic Assessments and the most recent had identified four priority areas - Drug and Alcohol Abuse, Anti-social Behaviour, Criminal Damage and Vehicle Crime.

Reference was made to the effective way the partnership approach in Fareham had improved the Night-time economy.

In response to an enquiry concerning crime hot spots, it was reported that the SNT sergeants were expected to be aware of and target emerging issues in order to prevent them developing into problems. There were fortnightly Community Tasking and Co-ordination Group (CTCG) meetings between the police, Community Safety Team, Fire Service and other partners to analyse data collected and identify issues and actions.

At the invitation of the Chairman, Councillor Cartwright addressed the Panel during the consideration of this item.

During the consideration of this item, Councillor Mrs Bryant declared a non-pecuniary interest, indicating that her husband was a member of Hampshire Police Authority.

At the conclusion of Chief Inspector Kenny's presentation, the Community Safety Manager completed the presentation by illustrating examples of collaborative working between the Fareham Community Safety Partnership and the Gosport

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| | <p>Community Safety Partnership in the delivery of the Summer Passport scheme and the SNAP (Say No And Phone) dance nights.</p> <p>It was AGREED that:-</p> <ul style="list-style-type: none"> (a) Chief Inspector Kenny would make available for Panel members through the Community Safety Manager details of the boundaries between the five Safer Neighbourhood Team areas; (b) Chief Inspector Kenny be asked to convey members' appreciation of the information supplied to ward councillors by the Safer Neighbourhood Team Sergeants to the officers concerned; (c) it be noted that a Community Safety Conference would take place on Monday 24 September 2012, that the theme was 'how do community safety partners contribute to reducing anti-social behaviour?' and that Panel members were invited to attend; (d) it be noted that the next SNAP dance night would be held on Friday 28 September 2012 at Ferneham Hall and that Panel members were invited to attend; and (e) members' comments on the success of the Summer Passport activities and the SNAP dance nights be passed on to the officers involved. |
| Outcome | (a) and (b) complete. |
| Link Officer | Garry White |
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| Subject | Public Protection Policy Development and Review Panel Work Programme 2012/13 |
| Type of Item | Programming |
| Action by Panel | <p>The Panel considered a report by the Director of Regulatory and Democratic Services on the Panel's work programme for 2012/13 (copy of report ppp-120911-r02-gwh circulated with agenda).</p> <p>It was AGREED that:-</p> <ul style="list-style-type: none"> (a) the programme items as set out in Appendix A to the report be confirmed; |

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| | <p>(b) the progress on actions since the last meeting, as set out in Appendix B to the report, be noted;</p> <p>(c) the Panel was in favour of some future agenda items not being accompanied by written reports, such as the item on Policing in Fareham, referred to in minute 6 above but provided as discussion items that could stimulate discussion on certain topics and help in the development of policies; and</p> <p>(d) members be requested to inform the officers of any items which they thought should be included on the work programme, particularly with reference to (c) above.</p> |
| Outcome | Complete. |
| Link Officer | Garry White |
| Date of Meeting | 13 November 2012 |
| Subject | Public Protection Policy Development and Review Panel Work Programme 2012/13 |
| Type of Item | Programming |
| Action by Panel | <p>The Panel considered a report by the Director of Regulatory and Democratic Services on the Panel's work programme for 2012/13 (copy of report ppp-121113-r01-gwh circulated with agenda).</p> <p>It was AGREED that:-</p> <p>(a) the programme items as set out in Appendix A to the report be confirmed; and</p> <p>(b) the progress on actions since the last meeting, as set out in Appendix B to the report, be noted.</p> |
| Outcome | Complete |
| Link Officer | Garry White |
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| Subject | Enforcement Policy Review - Results of Consultation |
| Type of Item | Policy Development and Review |
| Action by Panel | The Panel considered a report by the Director of Regulatory and Democratic Services on the results of the consultation on the Enforcement Policy Review (copy of report ppp-121113-r04-iri circulated with agenda). |

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| | <p>It was noted that no responses had been received to the consultation. It was further noted that the Licensing and Regulatory Affairs Committee would also be considering the revised Enforcement Policy in respect of those services which were its responsibility at its meeting on 20 November 2012. The revised policy would then be submitted to the Executive for approval.</p> <p>It was AGREED that, subject to: the formatting of paragraph 51 of the policy; and the amendment of paragraph 125 of the policy and the Enforcement Policy Leaflet to show that all complaints will be investigated and a written response provided in accordance with the relevant Council's Corporate Complaints Procedure; the Revised Enforcement Policy (Appendix A to the report) and Enforcement Policy Leaflet (Appendix B to the report) be commended to the Executive for approval.</p> |
| Outcome | The Executive considered the Revised Enforcement Policy at its meeting on 3 December 2012 and resolved that the revised enforcement policy, attached as Appendix A to the report be approved (xpp-121203-r08-iri refers). |
| Link Officer | Ian Rickman |
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| Subject | Traffic Management Programme |
| Type of Item | Programming |
| Action by Panel | <p>The Panel considered a report by the Director of Regulatory and Democratic Services on the Traffic Management Programmes for 2012/13 and 2013/14 (copy of report ppp-121113-r02-kwr circulated with agenda).</p> <p>At the invitation of the Chairman, Councillors T M Cartwright and A Mandry addressed the Panel during the consideration of this item.</p> <p>It was AGREED that:-</p> <ul style="list-style-type: none"> (a) a new assessment factor termed "Highway Code" be added to the existing criteria for prioritising the TRO programme; (b) the Proposed Traffic Regulation Order Programme, as shown in Appendix B (table 4) to the report, be approved; (c) the work undertaken on the deployment of the Speed Limit Reminder signs, as detailed in Appendix D to the report, be noted; |

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| | <p>(d) details of the Community Speedwatch programme referred to in paragraph 67 of the report be included in the members' newsletter;</p> <p>(e) the flowchart shown in Appendix E to the report be amended to show that, in the event of consensus not being reached concerning a proposed TRO following the consultation process, there was the option to refer the matter to the County Council for determination; and</p> <p>(f) the officers be requested to check the information in the Programme for Speed Limit Reminder Signs in respect of the inclusion of Red Barn Lane in both Table 6 (page 19) and Table 7 (page 23).</p> |
| Outcome | <p>The Executive considered the matter at its meeting on 11 February 2013 and resolved that the Executive notes the progress on the current 2012/13 programme, and planned work for 2013/14 identified in Appendices A to D to the report and approves:</p> <p>(a) that a new assessment factor termed "Highway Code" is added to the existing criteria for prioritising the TRO programme;</p> <p>(b) the Proposed Traffic Regulation Order Programme for 2013/14, as shown in Appendix B (Table 4) to the report;</p> <p>(c) work undertaken on the deployment of the Speed Limit Reminder signs, as detailed at Appendix D to the report, be noted; and</p> <p>(d) that the use and deployment of the Council's Speed Limit Reminder signs are co-ordinated with the Community Speedwatch programme and that this is undertaken through the Community Tasking and Co-ordinating Group (CTCG).</p> |
| Link Officer | Chris Oldham |
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| Subject | CCTV Strategy Update |
| Type of Item | Monitoring |
| Action by Panel | <p>The Panel considered a report by the Director of Regulatory and Democratic Services on the CCTV Strategy (copy of report ppp-121113-r03-kwr circulated with agenda).</p> <p>At the invitation of the Chairman Councillor A Mandry addressed the Panel during the consideration of this item.</p> <p>It was AGREED that:-</p> |

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| | <p>(a) the progress that has been made to date in delivering the CCTV Strategy and Action Plan be noted; and</p> <p>(b) members are requested as part of the Council 'eyes and ears' initiative to bring any matters that they consider require action to the attention of the officers.</p> |
| Outcome | Complete. |
| Link Officer | Kevin Wright |
| Date of Meeting | 15 January 2013 - meeting cancelled |
| Date of Meeting | 12 March 2013 |
| Subject | Review of 2012/13 Work Programme and Draft 2013/14 Work Programme |
| Type of Item | |
| Action by Panel | |
| Outcome | |
| Link Officer | Garry White |
| | |
| Subject | Food Standards Agency Food Safety Service Plan |
| Type of Item | |
| Action by Panel | |
| Outcome | |
| Link Officer | Juli Treacy |
| | |
| Subject | Contaminated Land Strategy Update |
| Type of Item | |
| Action by Panel | |
| Outcome | |
| Link Officer | Wendy Shakespeare |

APPENDIX B

**PUBLIC PROTECTION POLICY DEVELOPMENT AND REVIEW PANEL - DRAFT
WORK PROGRAMME 2013/14**

| Date | Subject | Type of Item | Training Session/Workshop |
|-------------------|---|--------------------------|----------------------------------|
| 21 May 2013 | Work Programme 2013/14 | Information/Consultation | |
| | Services Falling Within the Public Protection Remit | Presentation | |
| | Annual Health and Safety Performance 2012/13? | | |
| | Emergency Planning - Annual Report? | | |
| | Unauthorised Encampment Policy? | | |
| 23 July 2013 | Work Programme 2013/14 | Information/Consultation | |
| | Annual Report on Fareham Parking Enforcement Service? | | |
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| 10 September 2013 | Work Programme 2013/14 | Information/Consultation | |
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| 12 November 2013 | Work Programme 2013/14 | Information/Consultation | |
| | Traffic Management Programme? | | |
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| Date | Subject | Type of Item | Training Session/Workshop |
|-----------------|---|--------------------------|----------------------------------|
| 14 January 2014 | Preliminary review of work programme for 2013/14 and preliminary draft work programme for 2014/15 | Monitoring/Programming | |
| | Community Safety Update? | | |
| 11 March 2014 | Review of annual work programme for 2013/14 and final consideration of draft work programme for 2014/15 | Monitoring/Programming | |
| | Food Standards Agency Food Safety Service Plan? | Consultation | |
| | Contaminated Land Strategy Update? | Information/Consultation | |

To be assigned/possible items for 2014/15:

- Parking Enforcement Policy

FAREHAM BOROUGH COUNCIL

POLICY FRAMEWORK

Under the Constitution, the plans and strategies to be adopted or approved by the full Council are:-

- (a) Sustainable Community Strategy;
- (b) Housing Strategy;
- (c) Food Safety Service Plan;
- (d) Licensing Policy;
- (e) Development Plan:
 - Fareham Core Strategy
 - Fareham Borough Local Plan Review 2000
- (f) Development Plan Documents;
- (g) Community Safety Strategy;
- (h) Corporate Vision, Values, Objectives and Priority Actions.

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**Report to
Public Protection Policy Development and
Review Panel**

Date: **12 March 2013**

Report of: **Director of Regulatory and Democratic Services**

Subject: **FOOD STANDARDS AGENCY FOOD SAFETY SERVICE PLAN**

SUMMARY

The Food Standards Agency is responsible for directing, monitoring and auditing of local authorities' work in respect of food law enforcement. The Agency requires that local authorities produce an annual Food Safety Service Plan in line with guidance issued by the Agency in delivering its Food Safety Service. The plan should be reviewed on an annual basis.

This is the Annual Review, looking back on what has been achieved in 2012-2013 and the aims and objectives for 2013 - 2014.

RECOMMENDATION

Members are requested to consider the Food Safety Service Plan and make any comments that they feel should be taken into account when the Executive considers the plan on 15 April 2013.

INTRODUCTION

1. The Food Standards Agency is responsible for directing, setting and monitoring standards and auditing local authorities' enforcement activities in order to ensure that these activities are effective and undertaken on a consistent basis and in line with current guidance. Powers enabling the Agency to monitor local authorities are contained in the Food Standards Act 1999.
2. As part of its role the Agency issued a Framework Agreement on Local Authority Food Law Enforcement which provides guidance on how local authorities are expected to undertake their duties in respect of Food Law enforcement.
3. Fareham's current Food Service Plan is based upon this guidance and was reported to the Public Protection Policy Development and Review Panel on 13 March 2012, to the Executive on 2 April 2012 and approved by Council on 26 April 2012.

SERVICE PLANS

4. The Food Standards Agency requires a detailed service plan for Food Safety Enforcement and this is produced and updated annually. The Agency has provided detailed guidance as to how these should be set out and the information they should contain. This plan provides the detail in which to satisfy the information requirements of the Agency. It also provides the evidence to satisfy the Agency that the Council has adequate arrangements in place to meet its statutory obligations in respect of Food Safety Enforcement.
5. It is important that the Food Safety Service Plan is submitted to and is approved by the Executive and the Council as it details the work and demands on the service and ensures transparency and accountability.
6. The Service Plan contains:
 - Information about the services provided;
 - The means by which the service will be provided; and
 - A review of performance in order to address any variances from meeting the requirements of the Service Plan.
7. The Spending Plan for delivering the food safety service for 2013/2014 was reported to the Executive on 7 January 2013.
8. The Food Standards Agency requires each Authority to submit the Service Plan for approval by Members and to review it annually. Appendix A contains the Council's proposed Food Safety Service Plan for 2013/2014.

SUMMARY OF CHANGES TO PLAN FROM 2012/2013

9. The format for this plan, as prescribed by the Food Standards Agency, has remained the same since its inception in 2001. Each year the previous year's plan is updated and presented to the Panel for the following year. A summary of the changes from last year's plan is given below:-

- i) The details of the Food Analyst has been updated as the HPA has had a structural change and the laboratory has moved to Porton Down from Southampton General. (*para 20*)
- ii) The Food Premises Register has been updated for 2013. (*para 26*)
- iii) The Food Hygiene Rating Scheme information has been updated to provide the Panel with current data. (*para 43*)
- iv) The Enforcement Policy has been updated and details of the Executive Approval are included. (*para 47*)
- v) The details of Lord Young's Report have been removed from the Service Plan, as practice guidance and procedures have been updated to incorporate the recommendations of these reports.
- vi) The Intervention Plan has been amended to reflect the work for 2013/2014. (*para 66*)
- vii) Details of the Home Authority Principle have been removed as this is incorporated into the Primary Authority Scheme. (*para 85*)
- viii) Details of the Food Sampling Programme 2013/2014 and results for 2012/2013 have been included. (*para 102*)
- ix) A Reflection on performance for 2012/2013 has been added (*para 137*)
- x) The Areas for improvement has been updated to reflect those planned for 2013/14. (*para 138*)
- xi) Appendix 3 to the plan has been updated to show the proposed food Sampling Activity for 2013/2014.

DOCUMENTED FOOD POLICIES AND PROCEDURES

- 10. The Food Safety Service Plan requires a number of policies and procedures which local authorities should have in place to ensure compliance with the Agency's Standards. The Council's Food Safety policies and procedures are all kept under review and are in the process of being updated to ensure that they comply with national guidance issued by the Food Standards Agency and also to align the services between Fareham and Gosport as the partnership continues to move to a single computer system.

PERSONNEL IMPLICATIONS

- 11. The service detailed within the Plan can be delivered in accordance with the budget that was reported to and approved by the Executive at its meeting on 7 January 2013.

LEGAL IMPLICATIONS

- 12. The adoption of a Food Safety Service Plan demonstrates that the Authority is meeting its statutory responsibilities in relation to food law enforcement.

CORPORATE STRATEGY

13. The Food Safety Service Plan will promote measures that contribute to achieving the Council's Priority of ensuring that Fareham remains a safe and healthy place to live and work with respect to food that is produced and sold within the Borough.

RISK ASSESSMENT

14. The Council has a statutory duty to provide a food safety service. If it fails in its duty, the Food Standards Agency has the power to take over the service and charge accordingly. This may also result in bad publicity for the Council.

CONCLUSION

15. The Food Safety Service Plan attached to this report has been produced in accordance with the requirements of guidance issued to local authorities by the Food Standards Agency. The plan details how Fareham undertakes its food safety enforcement responsibilities.

Background Papers:

Report to Health and Environment Committee 6 March 2001, Framework Agreement on Local Authority Food Law Enforcement.
Framework Agreement on Local Authority Food Law Enforcement

APPENDIX A – Proposed Food Safety Plan 2013/2014

Enquiries: For further information on this report please contact Juli Treacy (Ext 2403).



FAREHAM BOROUGH
COUNCIL

www.fareham.gov.uk

Food Safety Service Plan

2013/2014

as required by

The Food Standards Agency

INTRODUCTION

1. This Food Safety Service plan has been produced as required by and in accordance with the Food Standards Agency Framework Agreement on Local Authority Food Law enforcement. It is written in the format prescribed by the Agency, its purpose being to demonstrate that Fareham Borough Council has in place adequate and effective arrangements to meet its statutory obligations in respect of Food Safety.
2. Fareham Borough Council is designated as a Food Authority under the European Communities Act 1972, the Food Hygiene (England) Regulations 2006 and the Food Safety Act 1990. This places a statutory duty on the Authority to enforce the Acts. The delegated Authority to do this lies with the Director of Regulatory and Democratic Services, who has further delegated relevant Authority to staff within the Food, Health and Safety team within Environmental Health in that Department.
3. This plan covers the following:
 - i) The Food Safety Service Aims and Objectives
 - ii) Background Information
 - iii) Service Delivery
 - ii) Resources
 - iii) Quality Assessment
 - iv) Service Review.

SERVICE AIMS AND OBJECTIVES

4. The Council's vision is to ensure that people who live in, work in or visit the Borough of Fareham are confident that sound measures are in place to protect their health and safety. Protecting people's health and safety is an important contributor to the Council's key priority to ensure that the Borough of Fareham is a **safe and healthy place to live and work**. The Food Safety Service is an important contributor to helping to secure the above.
5. The Service objectives are as follows:-
 - i. Ensure that all businesses involved in the preparation, sale, distribution or handling of food comply with food safety legislation and the requirements of codes of practice issued by the Food Standards Agency.
 - ii. To minimise the spread of incidents of infectious diseases including incidents of food poisoning by investigating relevant cases and taking action to control the spread of disease.

Links to corporate objectives and plans

6. In respect of Food Safety, the Council's Public Protection Policy Development and Review Panel, Scrutiny Board and the Executive are responsible for this function.
7. The Spending Plan for delivering the Food Safety Service for 2013/2014 was

reported to the Executive on 7th January 2013.

8. Reports are considered by the Public Protection Policy Development and Review Panel throughout the year as required in order to ensure the service is able to adapt to changing demands e.g. changes to legislation/guidance.

BACKGROUND

Profile of Fareham

9. The Borough of Fareham has a population of approximately 112,000 people. It covers almost thirty square miles of southern Hampshire between Portsmouth and Southampton on the south coast. With the town of Fareham at its centre, the Borough extends from Portchester in the east, which borders the northern side of Portsmouth harbour, to the River Hamble in the west. From south to north, it reaches from the Solent coastline at Hill Head and extends northwards into rural Hampshire towards Wickham.
10. The Borough has grown rapidly in recent years, with the development of extensive areas of housing, shops and commerce. The town centre consists of shops including a large Superstore, leisure facilities and a cinema complex, bars and restaurants.
11. In addition to the town centre, there are several other important local centres based on former villages. Portchester lies to the east of Fareham town with Stubbington and Hill Head to the south. To the west are Titchfield, Warsash, Park Gate, Locks Heath, and Whiteley.
12. With the New Community North of Fareham (NCNF) due to commence in the next few years to the north of Fareham, this will result in not only additional properties, residents but also more commercial food business.
13. The economic downturn has affected Fareham Borough Council and the Council is taking steps in particular to manage the shortfall in income. The Food Safety Service has sufficient resource to meet the Council's statutory responsibilities. It is important to note however that during difficult economic times it can become difficult for businesses to maintain standards, so the service becomes even more important to ensure that standards are maintained.

Organisational Structure

14. The Council is run by an Executive, supported by a Scrutiny Board and review panels. The Executive operates like the Government's cabinet. It is made up of six councillors, including one who is appointed as the Executive Leader. It is responsible for almost all the functions and services of the Council, but is not allowed to deal with certain matters like planning and licensing applications. These are dealt with by Committees. The Council also has Audit and Standards Committees.
15. Each member of the Executive has responsibility for a specific range of Council activities (sometimes called portfolios) and acts as the Council's spokesman for those functions. The portfolio which currently incorporates the Food Safety function is Public Protection.
16. The Council has a Scrutiny Board and several review panels, which broadly

mirror the portfolio areas of the Executive members. The job of the review panels is to take a leading role in the development and review of policies, related to particular services. All of the review panels report to the Council's Executive Committee. The review panel currently responsible for Food Safety is the Public Protection Policy Development and Review Panel.

17. The Food Safety function is undertaken by the Food, Health and Safety and Licensing Enforcement team of the Environmental Health Section, within the Regulatory and Democratic Services Department, which reports to the Public Protection Policy Development and Review Panel. The Director of Regulatory and Democratic Services is the officer responsible for the Food Safety Service delivery, with the Head of Environmental Health being responsible for the day to day management of the team and the service, supported by a Team Leader. The Director of Regulatory and Democratic Services reports directly to the Chief Executive Officer.

Fareham and Gosport Environmental Health Partnership Initiative

18. Since January 2011, the Fareham Environmental Health Section has been working in partnership with Gosport Borough Council Environmental Health Section. The Head of Environmental Health is now Head of both Fareham Borough Council's and Gosport Borough Council's Environmental Health Services. The Partnership is developing and the Food Safety Teams from both Councils continue to work closely together to develop joint working practices and deliver projects across both Boroughs. This ensures consistency across the Boroughs which is a particular benefit for those businesses that have premises in both Boroughs. It also allows for better use of the joint resource to deliver the priorities of both Services.
19. The Fareham Food Safety enforcement team consists of 1 full time Team Leader, 2 part-time (3 days a week each) Senior Environmental Health Officers, and 1 Technical Officer. These officers also undertake Health & Safety and Licensing enforcement and Infectious Disease control work. The Environmental Health Partnership now provides greater flexibility and resilience as the team has access to a larger food safety team based in Gosport.
20. The provisions made for specialist services are as follows:-

Food Examiner:

Hampshire Scientific Service
Hyde Park Road,
Southsea
Hants
PO5 4LL Tel No. 023 9282 9501

Food Analyst:

HPA Microbiological Services
FW&E Microbiology Laboratory - Porton
Salisbury
Wiltshire
SP4 0JG Tel No: 01980 616766/ 6161776

21. These are used as and when necessary where expert and specialist advice is required.
22. From time to time, consultants may be required to undertake food hygiene inspections. This may be because of staffing shortages, special projects, prosecutions or food poisoning investigations; all of which impact directly upon the employee resource available. It is unlikely that consultants will be required in 2013/2014, particularly in light of the partnership with Gosport Borough Council Environmental Health Team, which can provide any additional resource to deal with peaks in workload and vice versa.

Scope of the Food Service

23. The food service consists of the following elements:-
 - Ensuring that all food premises within the Borough are identified and inspected on a risk-assessed basis;
 - Implementing and maintaining the National Food Hygiene Rating Scheme.
 - Reviewing planning and building control applications to ensure that food hygiene requirements are considered at the design and build stages of development;
 - Providing advice to food businesses and members of the public on issues relating to food safety;
 - Investigating all complaints relating to food and food safety and taking appropriate enforcement action to prevent potential outbreaks of food poisoning;
 - Undertaking sampling in order to determine the quality and fitness of food that is available for purchase throughout the Borough;
 - Minimising the spread of incidents of infectious diseases, including incidents of food poisoning by investigating relevant cases and taking action to control the spread of disease.
24. In order to provide an efficient and cost effective service, officers who undertake food safety duties also undertake other duties such as Health & Safety at Work, Licensing, Infectious Disease and Health Act enforcement. Whenever possible visits to premises for different purposes are combined to ensure that officer time is used efficiently and that the time spent with proprietors and managers of businesses is kept to a minimum.

Demands on the Food Service

25. There are approximately 728 registered food premises within the Borough, mainly composed of restaurants, takeaways and retailers. There are no specific unusual or seasonable demands on the food safety service, such as tourism or large numbers of food premises run by proprietors whose first language is not English.

26. As at February 2013, the 728 registered food premises within the Borough were made up of the following food premises types:

| | |
|----------------------------------|------------|
| Catering | 139 |
| Distributors/warehousing | 9 |
| Farm/smallholding | 3 |
| Hospital/rest home/schools | 121 |
| Hotel/pub/guest house | 58 |
| Manufacturers/processor | 4 |
| Moveable premises | 14 |
| Multiple businesses | 2 |
| Others | 10 |
| Private house as a food business | 129 |
| Restaurant café/ snacks | 102 |
| Retailer | 122 |
| Staff restaurant/canteen | 7 |
| Wholesale cash and carry | 5 |
| Total Registered Premises | 728 |

Incorporated in the above are the 5 'Approved Premises' which are all cold stores. These require additional control due to the increased regulation of these businesses.

27. The Authority has Procedures in place that ensure that the Food Standards Agency's Code of Practice and Practice Guidance document is followed. In addition, these Procedures also refer to the various Guidance Notes from the Local Government Regulation which gives guidance on Food Safety issues. Officers of the Council must and do have regard to these Codes and Guidance in undertaking the food safety function as they ensure consistent enforcement. These Procedures are embedded into our electronic business processes.
28. The Team, in addition to undertaking the Food Safety function, also has responsibility for Health and Safety, Infectious Disease Control, Health Act and Licensing enforcement.
29. These functions are covered by a separate service plan. In order to maximise the use of limited resources and to ensure a more coherent service to business, the same officer deals with all food safety, health and safety and licensing issues relating to any single premises, where appropriate interventions in relation to these activities are combined.
30. The service is provided 9.00am to 5.15pm Monday to Friday by officers based at the Civic Offices. An Environmental Health Out of Hours service also operates (between 5.15pm to 9.00am Monday to Friday and 24-hours a day at weekends and Bank/Public Holidays) to deal with requests relating to food safety which requires an emergency response as detailed in the Out of Hours Service Procedures. Planned out of hours inspections and visits are also made by Officers on the basis of the trading times of food businesses and perceived need.

31. The majority of the Food Safety officers take part in the Out of Hours Service. At times the administration associated with this service impacts on the food safety service provision.

Licensing

32. This team is a designated Responsible Authority for the purposes of the Licensing Act 2003, which came into effect on 7 February 2005. The team are required to make relevant representations regarding licence applications and this additional work, together with licensing inspections to check compliance with conditions will impact upon the team's normal food duties. It should be noted however that these inspections are done in conjunction with food inspections where possible,
33. In addition to the above, the team is responsible for licensing all of the following:
 - riding establishments, pet shops, Licensing Act 2003 premises, dangerous wild animals and the licensing of people and premises where skin piercing is carried out.

Gambling Act 2005

34. The above Act came into force on 31 August 2007. Whilst there are only a small number of licensed gambling premises in the Borough, e.g. betting shops, entertainment centres etc., the Act encompasses the provision of gaming machines in licensed premises. There is some limited enforcement by members of the Team necessary, in relation to such machines.

The Health Act 2006

35. The above Act came into force on 1 July 2007 and there is on-going enforcement in relation to this and the Smoke free provisions of the Act, which is also carried out by members of the Food Team.

Shellfish

36. The Authority is responsible for the shellfish beds located between the mean high water mark and the Southampton Port Health Boundary to the west and south and Gosport Borough Council boundary in the east. Whilst there are no sampling points within the Authority's responsibility, demands are placed on the service to provide information to local fishermen and failed sampling results occasionally means the temporary closure of the shellfish beds.

Approvals

37. The Authority approves premises which are required to be formally Approved under specific EU Legislation due to the increased risk posed by their particular food activities e.g. cold store or food premises producing meat products for other food businesses.

The Food Hygiene Rating Scheme

38. The Food Hygiene Rating Scheme (FHRS) is a Food Standards Agency/Local Authority partnership initiative. It is a national scheme which provides consumers with information about hygiene standards in food business establishments using information gathered by officers at the time they are inspected to check compliance with legal requirements on food hygiene. The food hygiene rating given reflects the inspection findings.
39. The purpose of the FHRS is to allow consumers to make informed choices about the places where they eat or shop for food and, through these choices, encourage businesses to improve their hygiene standards. The overarching aim is to reduce the incidence of food-borne illness and the associated costs to the economy.
40. There are six different food hygiene ratings ('0' up to '5') - the top rating represents a 'very good' level of compliance with legal requirements and all businesses irrespective of the nature or size of their operation should be able to achieve this.
41. Food hygiene ratings are published online at <http://ratings.food.gov.uk/> and businesses are encouraged to display certificates and stickers showing their food hygiene ratings at their premises where consumers can easily see them. Although there is no legal requirement currently to display either.
42. The FHRS incorporates safeguards to ensure fairness to businesses. This includes an appeal procedure, a 'right to reply' for publication (together with the food hygiene rating) at <http://ratings.food.gov.uk/> and a mechanism for requesting a re-inspection/re-visit for the purposes of re-rating when improvements have been made.
43. Fareham and Gosport joined the scheme in June 2011. The following Table shows the current list of Ratings for Fareham:

| Rating | No of Food Businesses | | |
|----------------------------------|-----------------------|-----------|-----|
| | 2012-2013 | 2011-2012 | |
| 0 – Urgent Improvement Necessary | 5 | 1 | +4 |
| 1 – Major Improvement Necessary | 29 | 20 | +9 |
| 2 – Improvement Necessary | 15 | 14 | +1 |
| 3 – Generally Satisfactory | 68 | 133 | -65 |
| 4 – Good | 126 | 134 | -8 |
| 5 – Very Good | 287 | 241 | +46 |
| Exempt | 50 | 51 | -1 |
| Totals | 580 | 594 | -14 |

44. The Council have received 11 requests for a re-inspection after the food business operator has addressed the issues raised during 2012/13.

You can see from the figures that the scheme has had some success in improving hygiene standards as a lot of businesses have moved from the 3 and 4 categories into the 5. It is disappointing however that 47 businesses remain in the 0-2 category. It is worth noting that businesses that have acceptable hygiene practices but have no written procedures will fall into this category.

Food officers are working on formal action cases for 3 of the premises in the 0 to 1 Category, and enforcement notices have been served on others.

The requests for a re-inspection is increasing the workload of the team although not significantly.

The Hampshire Better Regulation Partnership

45. The Hampshire Better Regulation Partnership has been running throughout 2012/13. When Fire Officers and Trading Standards Officers carry out visits to low risk premises in the Borough they gather information on the Council's behalf regarding health and safety, food hygiene standards and licensing conditions. Council officers do the same for them. There have been a number of problems with the IT systems in the last half of the year which should be rectified shortly however it has resulted in less data sharing by the enforcement agencies. There are however clear lines of communication established between the Agencies and issues of serious concern are passed on by email or phone calls. It is pleasing to note that in addition to the original partners, a number of other Local Authorities including Gosport and the New Forest have now joined the partnership. The data base for the system is hosted by Hampshire County Council, thus reducing the costs and those low costs are being met by a grant.

Enforcement Policy

46. The Council has signed up to the Central and Local Government Enforcement Concordat. One of the requirements of this concordat is that the Council has an enforcement policy.
47. In December 2012, The Executive approved an updated general enforcement policy to cover all the work undertaken by the Department.
48. All food safety enforcement decisions are made following consideration of the Enforcement Policy. Any departure from the Policy will be documented.
49. A copy of the Enforcement Policy and/or a summary leaflet explaining the key elements is available on request. In addition, where formal action is being considered, a copy of the summary leaflet is provided to the business concerned. The policy is also available on the Council's [website](#).

50. All food law enforcement will be carried out in accordance with the relevant Food Standards Agency Code of Practice and Practice Guidance and other Official Guidance produced by Local Government Regulation or the Food Standards Agency.
51. Food premises owned by the Council need a separate method for achieving compliance. Usually, an informal approach should be successful. However, if difficulties were to be encountered, these would be reported to the Director of Democratic and Regulatory Services, who would, in turn, raise those issues at a Chief Executive's Management Team meeting, if necessary after liaison with the relevant Chief Officer/Director for the premises concerned.

SERVICE DELIVERY

Food Safety Interventions

52. A summary of the estimated number of interventions and resource requirements are detailed in Appendix 1 to this plan.
53. The enforcement of Food Safety legislation is governed by a Statutory Food Law Code of Practice and Practice Guidance. This specifies procedures and forms to be used by employees when enforcing the legislation. In particular, there is a risk rating scheme which is used to assess the risk associated with each food business and thereby its priority for inspection. Traditionally all categories of premises were included in the formal inspection regime. As well as inspection, there are a range of other interventions which may take place, auditing, verification visits, as well as visits to carry out sampling or to investigate food or food hygiene complaints,
54. In April 2012 the Food Standards Agency issued a revised Food Law Code of Practice.
55. This Code of Practice gives very specific advice regarding Interventions and has considerably revised the requirement to include all of the premises in the traditional inspection regime. Broadly Compliant Category C premises can be inspected alternately. So every other intervention is a traditional inspection, all of Category D premises can receive alternate inspections and Category E need not be inspected at all, but can be the subject of an alternative intervention strategy.
56. The purpose of this revision is to ensure that interventions are risk based and acknowledges that a range of other interventions can be employed to achieve the same result, e.g. surveys, formal training and interventions including sampling, auditing, verification visits, as well as visits to investigate food or food hygiene complaints.

Performance Management Monitoring

57. The Food Standards Agency monitors the performance of the Council with respect to food hygiene management and gathers the performance data using the Local Authority Enforcement Monitoring System (LAEMS). LAEMS is a web-based system used to report local authority food law enforcement activities direct to the FSA. Local authorities upload data that has been generated from

the local system (Ocella) to LAEMS. The FSA then evaluate and publish the performance of each Local Authority. The FSA also use the Food Hygiene Rating Scheme data as a means of monitoring performance and the Local Authority is required to return data annually regarding its Approved Premises.

FOOD SAFETY INTERVENTIONS PLAN

Inspections

58. Inspections are carried out in accordance with the Food Law Code of Practice (Feb 2012).
59. Following each inspection, the premises are attributed a Risk Rating Score in accordance with Food Law Code of Practice, which determines the minimum inspection period before the next inspection. The risk score is entered on the Ocella Computer system and each month a list of premises due for inspection is produced.
60. This requires Category A and B premises to receive an inspection at the appropriate frequency.
61. In September 2005 the largest ever outbreak of E. coli O157 in Wales occurred; it was the second largest ever in the United Kingdom (UK). Thirty-one people were admitted to hospital and a five year old boy tragically died. The Food Standards Agency has published Guidance to be followed by Food Enforcement Officers over the last several years which has been incorporated into the procedures.
62. Category C premises are divided into 2 groups as defined by the guidance, those broadly compliant and broadly non-compliant.
 - i) Broadly complaint premises will receive a full inspection every other time it is due for an inspection. An alternative intervention such as a sampling visit or visit for another food matter will be carried out for the other due inspection. There is however clear guidance on what the alternative intervention must be detailed in the Code of Practice.
 - ii) Broadly non-compliant premises will continue to receive an inspection every time it is due.
63. Category D premises will be treated the same as Broadly Compliant C premises.
64. Category E premises may not receive traditional inspection at all, but may receive one of the other intervention types as appropriate.
65. All new food premises will receive an initial inspection and thereafter treated as above depending on the initial category.

66. The inspection programme for 2013/2014 by risk category is as follows:-

| Risk Category | Inspection Interval | No. of Premises due for Inspection | |
|--------------------------|--------------------------------|------------------------------------|------------|
| | | 2013/14 | 2012/13 |
| A, B and non-compliant C | 6, 12 and 18 months | 70 | 78 |
| Compliant C, D and E | 18 months, 2 years and 3 years | 311 | 304 |
| Total | | 381 | 382 |

67. It is intended over time to develop an alternative intervention plan for those premises not requiring a full inspection. For the coming year it is intended to tackle these as follows:-

- Combined visits by multi-skilled officers who may be visiting for other reasons;
- Use complaint interventions to defer inspections;
- Use sampling interventions to defer inspections.

68. For the year 2012/2013, it is anticipated that all of the high risk premises that were due for inspection will have been inspected by the deadline of 31 March 2013.

69. The Team have had a very busy year in terms of investigating circumstances around poor conditions found during inspections, investigating serious accidents and complaints and serving formal Enforcement Notices for poor performance. This has impacted on the routine inspection programme and may result in not all of the lower risk inspections being completed by 31st March 2013. Any outstanding inspections will however be done by the end of April 2013.

70. Revisits are made in order to check on compliance with Enforcement Notices and to ensure poor standards and serious defects are addressed by the food business operator. This is at the officers' discretion, but in line with Departmental Enforcement Policy.

71. Currently, the profile of premises in Fareham is detailed in paragraph 26. The use of the risk assessment scheme ensures that the highest priority is given to food manufacturers and caterers where conditions are below standard and premises that cater for vulnerable groups.

72. The Council maintains a Register of all food premises within the Borough in accordance with regulations. The register is held on the Ocella Computer system which is maintained by the Head of Environmental Health. In addition, the original registration forms are held in electronic form and copies are sent to Hampshire County Council Trading Standards on receipt.

73. The Food, Health & Safety and Licensing Team has received appropriate training to ensure knowledge of food specific legislation which relates to premises within the Borough.

74. All new food premises receive an initial inspection generally within one month of opening. Full inspections are carried out, occasionally following food and food hygiene complaints. The decision to make such inspections depends upon the nature and circumstances of any complaint.
75. There is a time recording system in place and this system indicates that about 65% of the team's time is spent on food safety. This equates to three Full-Time Equivalent (FTE) members of the team. Food safety, however, includes dealing with food hygiene complaints as well as food complaints and food premises inspections.
76. The Food, Health and Safety and Licensing Team holds regular team meetings to help ensure that inspection targets are being met and also to enable the team to respond quickly to changes in legislation/guidance and develop and improve the methods of operation within the team. In addition a meeting is held every two months with the Head of Environmental Health to address any issues that may have arisen, that cannot be resolved amongst the team e.g. changes to operating procedures as a result of changes to legislation/guidance.
77. At the time of every food premises inspection, a pro-forma is completed which is attached to the electronic premises file. Following each inspection, a written report is sent to the proprietor of the business. The report has a standard format, which includes all of the information contained in Annex 6 of Food Law Code of Practice.
78. Over the last five years, the section has achieved 97-100% completion of the inspection programme and is on course to achieve 95-100% for 2012/2013.

Food Complaints

79. It is the responsibility of the Council to enforce the provisions of the Food Safety Act 1990 as far as food complaints concerning the following are concerned:
 - Food which does not comply with the food safety requirements i.e. food which is unfit; food which has been rendered injurious to health; or food which is so contaminated.
 - Food which is not of the nature or substance demanded by the purchaser.
80. The Council also enforces the provision of the Food Labelling Regulations 1984, which relates to 'Use-by' date labelling and quality issues, in co-operation with the trading standards authority.
81. All food complaints are investigated in accordance with guidance issued from Local Government Regulation- 'Guidance on Food Complaints' and Codes of Practice, which forms the basis of our in house procedure.
82. Initial investigations into food complaints are given high priority, since these can give an indication of where the food supply chain has broken down. Such breakdowns may be one-offs or can indicate a problem that, if left unattended, could have serious consequences. Arrangements are in place to contact the Food Standards Agency where food complaints may have wider implications.
83. Where companies involved are unable to provide a satisfactory defence that they take all reasonable precautions and exercise all due diligence to prevent such a complaint, legal proceedings may be instigated. The decision to

prosecute would be taken at the recommendation of the officer concerned, in consultation with the Head of Environmental Health, the Director of Regulatory and Democratic Services and the Council's legal representative, in accordance with the Food Safety Enforcement Policy. In each case the company/business and complainant will be kept informed as to the progress of the complaint.

84. Dealing with food complaints is a relatively small part of the workload; to date (25th February 2013) we have received 14 complaints.

Primary Authority Principle

85. In April 2009 the Regulatory Enforcement and Sanctions Act introduced the Primary Authority Scheme. This is an arrangement where a Local Authority agrees to provide specialist advice to a company regarding its Food Safety arrangements and acts as a point of contact for other local authorities where its food may be sold. The Primary Authority is usually where the head office for a company is situated. The Originating Authority is the Authority where the unit which manufactured a product is situated. In principle any Authority shall observe the following:-

- An Authority shall have regard to any information or advice it has received from any liaison with home and/or originating authorities.
- An Authority, having initiated liaison with any home and/or Originating Authority, shall notify that Authority of the outcome.

86. Currently this Council does not act as Primary Authority for any local business.

87. If a business requests a Local Authority to be its Primary Authority for any regulatory function, the Local Authority must agree to the request, although it may charge for the cost of doing so. Fareham isn't currently a Primary Authority.

Advice to Business / Food Hygiene Complaints

88. Whilst the Council will utilise its powers to enforce the food legislation, it is realised that, where food businesses break the law, it is often due to ignorance rather than design. As a consequence, it is the Council's policy to provide advice to business in a number of different ways.

89. The Food, Health and Safety and Licensing team does not provide formal food hygiene training, as there are many local providers. Advice is also provided on training courses offered throughout Hampshire and the Isle of Wight, by other authorities and training centres and particularly for courses offered in ethnic languages.

90. Training is however organised on an ad hoc basis for businesses depending on need, e.g. in response to new legislation.

91. Advice is also given during routine inspections and visits and followed up in writing. Advice is provided to direct queries received either by telephone or letter. Where necessary, it is followed up with a visit and or a letter. Provisional advice is given prior to the setting up of a food business. Free advisory leaflets are provided, where appropriate.

92. Where a business requires consultancy-type advice a small charge is levied.
93. Building Control and Planning applications are inspected by the Food, Health and Safety and Licensing Team and advice given to the developers/applicants regarding issues relating to Food Safety and Health and Safety.
94. A magazine called 'Fareham Today' is produced by the Council periodically. It is sent to all residents and businesses within the Borough. Information on food safety issues is occasionally included in this publication.
95. Information is also available on the [Council's website](#).
96. In addition, the Team responds to complaints from members of the public regarding the hygiene of premises/food handling practices. This may result in anything from a telephone call to prosecution for any offences.
97. In 2012/13 the team received around 150 food hygiene and food complaints and allegations of food poisoning.

Food Sampling

98. The Authority believes that a proactive, point of sale, food sampling programme can provide useful information about the microbiological fitness of food for sale within the Borough. The Sampling Policy can be seen at Appendix 2 to this plan and the Sampling Programme for 2013/2014 can be seen at Appendix 3 to this plan.
99. The Council participates in the Portsmouth and South East Hampshire sampling group which has a co-ordinated food-sampling programme based on Food Standards Agency, Local Government Regulation and agreed local priorities.
100. The sampling programme consists of the following:-
 - i) Participation in Local Government Regulation/Public Health Laboratory Service sampling initiatives.
 - (ii) Participation in the European Union initiatives, when they occur.
 - (iii) Participation in the Wessex Shopping Basket programme, when funds permit.
 - (iv) Participation in local initiatives devised by the local sampling group (Wessex Environmental Monitoring Service (WEMS) User Group (East) or by problems highlighted within the Borough).
101. Following the E.coli outbreak in Wales in 2005 and the subsequent recommendations by Professor Pennington and the Food Standards Agency, the team adopted an amended approach to inspecting high risk food premises (butchers shops and those handling high risk and raw products). Now, microbiological samples (swab of a food contact surface, a cleaning cloth and a food sample) are obtained from the premises and a desk top review of their HACCP system undertaken. Once the sample results are known these are used to inform the subsequent full inspection. the highest risk food premises now receive a sampling visit and a desk top study of their HACCP (Hazard Analysis and Critical Control Point) system, prior to receiving their full physical inspection

102. In 2012/13 sampling was undertaken at high risk premises in the month prior to their routine food safety inspection up until October 2012, when due to an increase in reactive work and formal investigations, this area of work was put on hold to ensure the inspection programme could be delivered. . Up to October 2012 Fareham Borough Council sampled at 19 premises, collecting samples of ready to eat foods, cloths and taking Environmental swabs.

47 surfaces swabs were taken of worktops and hand contact surfaces, 57.4% failed, with 4.2% contaminated with Ecoli, 25 Cloths were sampled 80% failed, with 52% being contaminated with Ecoli. 27 Ready to eat food samples were taken 18.5% failed, with Ecoli detected in 7.4% of samples.

Control and Investigation of Outbreaks and Food Related Infectious Disease

103. The measures to be taken to control the spread of infectious diseases are contained in various Acts of Parliament and their associated Regulations. This legislation includes the control of food poisoning and food and water borne diseases. Although the number of cases reported locally is comparatively low, it is widely acknowledged that the vast majority of cases go unreported. Moreover, a single case may lead to the discovery of an outbreak and could lead to a further outbreak if the person concerned is a food handler.
104. The investigation of food poisoning cases is therefore given a high priority and in an outbreak situation can necessitate utilising qualified employees from the Pollution/Housing Team, in addition to those in the Food, Health and Safety and Licensing Team.
105. All investigations will follow those procedures laid out in the Hampshire and Isle of White Health Protection Unit Joint Outbreak Control Plan and associated procedures and guidance issued by the Health Protection Unit and the Communicable Disease Surveillance Centre. Such investigations will be overseen by the Head of Environmental Health and liaison will take place with the Health Protection Unit.
106. The Council supports the Portsmouth and South East Hampshire Infectious Disease Forum and the Portsmouth Water Company Liaison Groups, which exist to promote best practice and consistency of approach in this area of work, between the neighbouring local authorities.
107. There are excellent links with the local Health Protection Unit and the public health laboratory, which come to the fore during outbreaks. All notifications are actioned on the day of receipt, by a telephone call, visit or a letter. Up to 25th February 2013 we have dealt with 37 allegations of food poisoning and infectious disease notifications that were received either from the HPU or as a complaint directly from the person who is ill. (see the following table). It should be noted that these are only the tip of the iceberg. The Council is not notified of cases of Campylobacter generally as there is no follow up action required.

| Organism | No's | Cause |
|------------------------|------|---|
| Norovirus | 5 | These are all associated with nursing homes. |
| Alleged food poisoning | 6 | These came from people who had eaten at food businesses in the Borough and were ill after their meal. An investigation is always undertaken and in most cases the Food Business is not implicated in the illness. |
| Campylobacter | 2 | A questionnaire is completed for all these isolated cases to establish whether a food business is implicated or whether there is larger problem. In a lot of cases the person has become infected with the bacteria during a foreign holiday. It is not always possible to identify the cause due to long incubation periods. |
| Salmonella | 11 | |
| Giardia lamblia | 10 | |
| Shigella sonnei | 1 | |
| E Coli | 2 | |

Liaison with Other Organisations

108. To ensure that enforcement action taken in the area of this Council is consistent with national guidance and neighbouring local authorities, liaison arrangements are in place with the following organisations:

- The Food Standards Agency
- Local Government Regulation
- Chartered Institute of Environmental Health, Hampshire and Isle of Wight Branch Food Advisory Group (bimonthly meetings)
- Wessex Environmental Microbiology Services User Group East (meetings every four months)
- Southern Shellfish Liaison Group (annual meeting with interim newsletters as necessary)
- Portsmouth and South East Hampshire Infectious Disease Forum (Quarterly meetings).
- Health Protection Agency

109. The Council fully supports the work of the Hampshire and Isle of Wight Food Liaison Committee. This body, which has representatives from all Hampshire and Isle of Wight Food Authorities, Hampshire Scientific Services and the Wessex Public Health Laboratory Service, has amongst its objectives, 'ensuring that any enforcement action taken is consistent with other neighbouring local authorities'.

Food Safety and Standards Promotion

110. The Council education and promotion activities can have a direct impact on food safety standards. The Council is therefore committed to providing advice and information both to business and the public through a number of initiatives:
- Food Safety information leaflets – these are available from the Civic Offices.
 - Food Safety Week/Food Link – this is normally held in June every year. The Council supports a number of activities designed to promote food safety during this week, as resources allow.
 - Use of 'Fareham Today', the Council's quarterly magazine, sent to all homes in the Borough.
 - Link to food safety information on the [Council's website](#).

Food Alerts

111. Food alerts are notified by EHCNET (national computer link), by a pager from the Food Standards Agency and directly to health@fareham.gov.uk by email. There is a duty officer system and the duty officer decides upon the appropriate action in each case, which may include mailshots, visits, local press releases, etc. The resource implication is unknown, as it depends upon the nature and type of alerts, but existing resources usually perform this work as and when required.

Equality and Diversity

112. The equality Act 2010 replaced many separate anti-discrimination laws with a single Act. It also strengthened the law in important ways and extends protection against discrimination on the basis of: race, disability, sex gender re-assignment, marriage and civil partnership, sexual orientation, age religion or belief, and pregnancy and maternity.
113. There is a general duty under the act and some specific duties which include the need for public bodies to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity and foster goods relations. In addition there is a duty to publish certain information top demonstrate compliance with the Act.
114. In respect of the Food and Health & Safety team there is an Equality Impact Assessment in place which details the various measures employed by the team to meet the requirements of the Act and ensure the Service does not discriminate and is equally accessible to all.

RESOURCES

Financial / Staffing Allocation

115. The Food, Health and Safety and Licensing Team consists of 1 FT Team Leader, 2 P/T Senior Environmental Health Officers (3 days each), 1 FT Environmental Health Technical Officer. The team also has access to the wider Gosport food safety resource through the partnership.
116. All employees (except The Licensing officer) involved in food safety work are fully competent to inspect all risk categories of premises as required by the Code of Practice. Officers only carry out work which is permitted by the qualification requirements of the code of practice.
117. There is a list of delegations to officers, annexed to the Council's Constitution. This is constantly reviewed and updated as new regulations are made.
118. A summary of the estimated number of interventions and resource requirements is shown in Appendix 1 to this plan. The current resource allocation is sufficient to provide the service as detailed in this plan

Staff Development Plan

119. Training has recently been centralised and a training plan for all employees is being developed by the Personnel Section in consultation with each section. This plan recognises the need for Professional Officers to meet Continuing Professional Development (CPD) requirements.
120. The basic principles and ideals are:
 - The Section has a duty to the Council to ensure that it is able to meet all the demands that are placed upon the Section.
 - The Section has an obligation to develop the potential of all its employees.
 - Regular and continual training and updating of skills in order to undertake "the job" are necessary.
 - The Council is committed to continuous development of employees and services to ensure it is properly equipped to deal with future challenges.
 - To ensure workforce and succession planning.
 - To ensure all staff receive appropriate Customer Service training, to enable the Services to be designed and delivered to meet our customers needs.
121. This training may be provided through attendance at externally organised courses and seminars or through in-house training activities.
122. All training received will be documented as part of the Council's central training plan.
123. Core regulator skills will be achieved by the use of the "Regulators Development Needs Analysis tool".

QUALITY ASSESSMENT

124. Food Safety Act Code of Practice on Food Hygiene Inspections requires Authorities to have internal monitoring systems.

125. The Section has a set of Food Safety Procedures aimed at meeting the requirements of the Food Safety Code of Practice and Official Guidance. This is regularly kept under review and is used to ensure consistency and improvements in service delivery. The document management system ensures consistency and performs management review.
126. The Council has in place procedures for achieving and monitoring the consistency and quality to ensure that its food safety service is provided in a way that is consistent with the Food Standards Agency Standard, Statutory Codes of Practice and nationally issued guidance.
127. The Hampshire and Isle of Wight Food Advisory Committee has historically had a system of Inter Authority Auditing that is carried out although due to a loss of continuity following significant changes to key personnel within the County Authorities, audits have not taken place for some time. The Hants and Isle of Wight EH Manager group have tasked the Food Advisory Committee with producing a revised audit system based on the Food Standards Agency Inter Authority Audit documents.

The Food Standards Agency undertakes Audits of Local Authorities and Fareham is to be audited on 12th-14th March 2013. This will be an in depth audit of the Food Safety Enforcement procedures and work undertaken over the last 2 years.
128. In addition, the team operates a system of peer review and quality checks where officers carry out joint inspections to ensure a consistent interpretation of legislation, codes of practice and national guidance.

Benchmarking

129. The team is committed to supporting the Hampshire and Isle of Wight Environmental Health Benchmarking Club. The aim of this group is to provide a simple and effective means of comparing services provided by different Authorities. The results of this will be used as part of the Best Value review and continuous improvement of this service.
130. The Food Service in Fareham has been benchmarked against all the other local authorities' Food Services in Hampshire. The results of this have been used in developing the service. Further, the results of time recording, process maps and the use of the Quality Matrix have all been useful in identifying processes and practices that can lead to an improvement in service delivery.

REVIEW

Performance against Plan

131. The Food Safety Service Plan is produced and reviewed annually by members.
132. The performance of the food service is reported annually to the Food Standards Agency, via the Local Authority Monitoring System (LAEMS). The performance will be compared with other Local Authorities nationally and within Hampshire.
133. The Food Standards Agency then reports this performance data to Government and Europe.

Reflection on 2012/2013

134. Between April 2012 and February 2013 the Team have:

- i) Carried out 362 food hygiene inspections (we are on target to complete 100% of the high risk inspection programme and between 95 – 100% of the low risk programme)
- ii) Served 24 Improvement Notices for food hygiene failures – lack of food safety management procedures, lack of food hygiene training and poor practices demonstrated during inspection, poor facilities in the kitchen such as lack of hot water.
- iii) Received 147 food hygiene requests for service. This includes new food businesses that require inspection as well as food hygiene complaints and allegations of food poisoning.
- iv) Received requests for and issued 111 Export certificates which resulted in additional income of £7,770.
- v) Investigated 14 food complaints.
- vi) Detained a large volume of yellow fin tuna due to high levels of cadmium that was being stored in a cold store in Fareham. It was re-exported back to Ecuador.
- vii) Supervised voluntary surrender and disposal of a large volume of high risk food that was stored in unsafe conditions on 2 separate occasions by a market trader.
- viii) Issued a Simple Caution to a Café for a pest infestation and dirty kitchen.
- ix) Currently investigating 4 cases of extremely poor hygiene practices and standards of cleanliness to decide whether to recommend prosecution.
- x) A case is in Court at the end of February for food hygiene offences noted during several visits to a Market Stall in the summer of 2012.
- xi) Officers now have joint warrants to enable Fareham and Gosport Staff to assist each other where there are peaks in workload

Areas for improvement

135. The service is performing very well at present. However, in 2013/2014 the following areas will receive further consideration:-

- Further development of the Environmental Health Partnership with Gosport BC Environmental Health Section.
- Completion of the review of the Food Procedures
- Continuation and development of the Hampshire Better Regulation Partnership.
- Working from Home project.
- Further development of a lower risk premises strategy

- Identification of areas for efficiency savings
- Provide support to businesses and removal of unnecessary bureaucracy in enforcement.
- Devise an action plan to implement any recommendations that arise out of the Food Standards Agency audit (March 12th-14th 2013)

Fareham Borough Council Interventions Plan 20012/2013

| Priority | What | How | Where (When) |
|---------------------------|--|--|---|
| FSA Requirement | Complete Higher risk inspection program | 70 Inspections | Existing Category A, B and C premises throughout the year |
| FSA Requirement | Carry out Interventions at Lower risk premises | 311 Interventions | Existing Broadly compliant Category C, D and E premises |
| FSA Requirement | Re-visits to premises to check compliance | 120 revisits | Throughout the year |
| FSA Requirement | Investigate complaints about food and food hygiene and food alerts (1 st response within 2 days, same day for food alerts.) | Approx 200 Service Requests (estimate) | Throughout the year |
| FSA Requirement | Consult on Building Regulation applications (within 10 days) | 30 requests (estimate) | Throughout the year |
| FSA Requirement | Undertake Sampling Program | 1 day per month + 12 days for re-samples | monthly |
| Local / County Initiative | To continue with Hampshire Better Regulation Partnership project | 30 Inspections | Between April 2012 and March 2013 |
| County Groups | Attend Hants and IOW Food Safety, sampling, Infectious disease and shellfish Advisory Groups | Attend quarterly meetings | Quarterly/biannual |
| FSA Requirement | Development, training and team meetings | As required | Throughout the year |

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| | | | |
|------------------------------|---|--------------------------|---------------------|
| FSA Requirement | Investigate food poisoning notifications (On day of receipt) | As required | Throughout the year |
| Legal Requirement | Formal action | As required | throughout the year |
| FSA Requirement | General advice and enquiries (Response within 2 days) | As required | throughout the year |
| Local Requirement | To manage and co-ordinate work of the team | Day to management duties | daily |
| Health & Safety Enforcement | The detail regarding this area of work is reported to the Licensing And Regulatory Affairs Committee through the Health & Safety Service Plan | | |
| Licensing / Smoking Projects | A separate plan for this work area is not currently required by an outside organisation. | | |
| | To implement changes to guidance in respect of high risk premise and to allow flexibility so as resources can be redirected to areas within Regulatory Services as demand requires. | | |

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FAREHAM BOROUGH
COUNCIL

www.fareham.gov.uk

Food Sampling Policy for Fareham Borough Council

1. The Sampling Policy document is written for Fareham Borough Council's Food, Health and Safety and Licensing Team, within Regulatory Services.
2. Food samples will be taken throughout the year both on a programmed and random basis. The department will participate in National, European and local studies, where appropriate and as resources allow.
3. Samples can be taken during routine food inspections by authorised officers or as part of a compliant based inspection. In addition, samples can be taken from random premises that fulfil the sampling programme criteria. Samples can be taken on a formal and informal basis. Formal samples can be taken following a complaint, during an inspection and as part of any Home Authority agreement within Fareham Borough Council. Informal samples are normally taken as part of on-going national, European and local sampling initiatives and for monitoring purposes.
4. This policy refers to the Sampling Programme that is held within the Regulatory Services Department. This sampling programme is produced for each financial year. The plan is produced in conjunction with the Hampshire and IOW sampling group. The sampling Group decides on the years sampling plan in accordance with the National (LGR), European plans and any local studies that the group wishes to undertake.
5. The purpose of sampling and associated actions:-
 - i. The Food, Health and Safety and Licensing Team, within Regulatory Services, will identify any foods that pose a hazard or risk to health of the consumer; this may be due to contamination of significant pathogenic bacteria and/or associated toxins.
 - ii. To identify any contraventions of Food Safety legislations.
 - iii. To use results to educate and inform the local businesses and, in addition, to inform the public regarding food safety issues.
 - iv. Sampling is used to evaluate effectiveness of food handling and associated processes at food premises in relation to their food safety management system requirements.
 - v. Investigate food complaints and food poisoning incidents.
 - vi. To assist in any potential formal action case.

6. Routine sampling is an important part of the work of Fareham Borough Council's Food, Health and Safety and Licensing Team, within Regulatory Services.
7. All samples are taken in accordance with the following legislation and guidance documents:-
 - i. Food Safety Act and associated codes of practice.
 - ii. Local Government Regulation Guidance Notes on microbiological food sampling, first issued in January 2002, but revised and re issues in January 2006.
 - iii. Health Protection Agency Guidance
 - iv. Food Safety (Sampling and Qualification) Regulations 1990

WEMS (EAST) Sampling Group Program for 2013/14

| MONTHS OF SAMPLING | APR | MAY | JUNE | JULY | AUG | SEPT | OCT | NOV | DEC | JAN | FEB | MAR |
|---|-------------------------------|-----|------|------|-----|------|-----|-----|-----|-----|-----|-----|
| LGR sampling study | To be confirmed in April 2013 | | | | | | | | | | | |
| Imported foods | All year - Sampling Period | | | | | | | | | | | |
| Alternative strategies from Broadly Compliant premises or from local intelligence | All year - Sampling Period | | | | | | | | | | | |
| Water sampling | Sampling Period | | | | | | | | | | | |
| Butchers and high risk premises | All year - Sampling Period | | | | | | | | | | | |

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| | Study Name | Aim of Study | Type of Sample required | Total Number of samples per authority | Individual Amount |
|----|--|---|--------------------------------|---------------------------------------|----------------------------|
| 1. | Effectiveness of cleaning in High Risk Premises (those in the 0-3 FHRS Categories or Category A&B) | To check the effectiveness of cleaning techniques and chemicals used having regard to the Ecoli 0157 guidance | Environmental swabs and cloths | As many as possible | 1 cloth Max 3 swabs |
| 2. | Imported Foods | The FSA set a guide | Any imported Food | As many as | 100g per |

| | | | | | |
|----|----------------|--|---|---|---|
| | | that 10% of our samples should be imported foods. This study will focus on imported food from Non EU countries | from Non EU Country Food of animal origin from catering premises | possible | product, Note only 1 can at a time to lab due to sampling issues |
| 3. | Water Sampling | To check the quality of drinking water caravan sites and marinas | Water sample | Minimum of 1 per site (up to 3 taken from larger sites) | 1 water container |
| 4. | Water Sampling | To check the quality of swimming pool water at pools and spa pools. | Water sample | Minimum of 1 per site (up to 3 taken from larger sites) | 1 water container |

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- ❖ The Sampling Programme has fewer studies than in previous years however the studies are more focused and targeted on actual food safety issues in Fareham. Programme 1 has been taking place in 2012/13 and has identified a lot of poor practices in food premises. The results have been extremely useful to demonstrate to Food Business Proprietors how important it is to use suitable cleaning chemicals and disposable cleaning cloths and the level of detailed cleaning that is required to ensure food safety.
- ❖ LGR European and National Studies for 2013/14 haven't been published at time of writing report however it is anticipated that we will participate where relevant to local businesses.

**Report to
Public Protection Policy Development and
Review Panel**

Date: **12 March 2013**

Report of: **Director of Regulatory and Democratic Services**

Subject: **CONTAMINATED LAND STRATEGY UPDATE**

SUMMARY

Part 2A of the Environmental Protection Act (EPA) 1990 came into force in April 2000. It places a mandatory duty on local authorities to inspect their areas to identify contaminated land that is causing unacceptable risks to health or the environment and secure the remediation of that land.

The Council has had a Contaminated Land Inspection Strategy in place since 2001 and this has been updated periodically as required. The Government has recently amended the Statutory Guidance that local authorities are obliged to follow whilst carrying out their duties. As a result the Department of Environment, Food and Rural Affairs (Defra) requires all local authorities to revise their inspection strategies to take account of these changes.

The purpose of this report is to present the revised strategy attached as Appendix A to this report and provide members with an update on contaminated land issues.

RECOMMENDATION

The Panel's views and comments are requested on the Contaminated Land Inspection Strategy, attached as Appendix A prior to it being reported to the Executive.

INTRODUCTION

1. The Government's long-term aim is to work towards a future where all the contaminated land in England has been identified and dealt with. To achieve this, the Government has three objectives:
 - To identify and remove unacceptable risks to human health and the environment;
 - To seek to bring back damaged land back into beneficial use; and
 - To seek to ensure that the cost burden faced by individuals, companies and society as a whole are proportionate, manageable and economically sustainable.
2. The Government has a wide range of policies and legislation to achieve these objectives. However, it is most likely that the clean-up of land contamination will occur under the control of three main regimes:
 - Planning and Building Control;
 - Environmental Protection Act 1990 part 2A;
 - Environmental Damage Regulations 2009.
3. Remediation of land may also take place through other legislative powers depending upon the scenario of how the contamination occurred.
4. The preference is that voluntary remediation takes place, either through market driven scenarios such as redevelopment of land or via negotiation with polluters and or landowners. If voluntary remediation is not forthcoming local authorities are required to assess which legislation is most applicable to secure remediation of the land on a case by case basis. To date the Council has made effective use of the planning and building control regimes to address contaminated land issues.

PART 2A OF THE ENVIRONMENTAL PROTECTION ACT 1990

5. Part 2A of the Environmental Protection Act 1990 s.78B places a duty on local authorities to inspect their areas to identify contaminated land and s.78E places an obligation on local authorities to secure the remediation of contaminated land.
6. Contaminated land is defined 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 a significant possibility of such harm being caused; or*
 - *Pollution of controlled waters is being, or is likely to be, caused.*
7. All local authorities were required to produce a strategy for inspecting their area to identify and remediate contaminated land. The inspection strategy is required to:
 - Be rational, ordered and efficient;

- Be proportionate to the seriousness of any actual or potential risk;
 - Seek to ensure that the most pressing and serious problems are located first;
 - Ensure that resources are concentrated on investigating in areas where the authority is most likely to identify contaminated land; and
 - Ensure that the local authority efficiently identifies requirements for the detailed inspection of particular areas of land.
8. A report detailing the Council's first Contaminated Land Inspection Strategy was reported to and approved by the Health and Environment Committee on 22 May 2001. Three subsequent revisions were approved in 2005, 2007 and 2009. This latest revision is required as a result of recently amended Statutory Guidance.
9. The Contaminated Land Inspection Strategy explains the legislation, the duties placed on local authorities, the inspection strategy for Fareham, identifies priorities, details local circumstances, and sets priority actions for the period 2013-2018.

CHANGES TO THE REGIME

10. The legislation was reviewed by the coalition government and considered to be fit for purpose and necessary. The Statutory Guidance however was deemed to be confusing and failed to provide advice on the legal test that is required to be made when determining land as contaminated land.
11. The new guidance released in April 2012 excludes background concentrations of chemicals in soil from causing land to be contaminated land except in exceptional circumstances. It requires sites to be categorised based on risk. It brings the definition of pollution of controlled waters in line with European directives and adds in a requirement for significant pollution of controlled water. New guidance allows local authorities to be more flexible when determining land and serving remediation notices. Local authorities are now required to provide 'Plain English' risk summaries following determination of land as contaminated land and local authorities must ensure that remedial action results in a net benefit, financially, health wise and environmentally.
12. The Contaminated Land Inspection Strategy attached as Appendix A has been updated accordingly to take account of the changes highlighted above.

DETAILED INSPECTION

13. Detailed inspection of the presence of contaminants in soil predominantly occurs via the planning process and this is the main method by which contaminated land issues are addressed. Environmental Health is a consultee of the planning process and each site that it is consulted on is checked for the possible presence of contamination of land and the requirement for conditions is recommended to the planning department as appropriate. Once information in response to the condition is submitted, this information is again sent to Environmental Health for comment; this is usually in the form of a series of reports.
14. Since October 2011, 263 planning applications were consulted upon and 108 recommendations for a condition were made. Approximately 30 sites have been subject to some form of investigation and/ or remediation in the same period. Since the

contaminated land regime was introduced approximately 150 sites have been addressed through the planning process.

15. The planning regime has enabled the Council to deal with a number of land contamination issues including a gasworks, petrol stations, an oil depot, laundry site, vehicle repair workshops, haulage yards, landfilled areas, tanneries, a paint and glue factory, industrial land, MOD land, former pubs, oil tanks, hospitals and horticultural nurseries.
16. Future priorities for dealing with potential contaminated land under the planning regime include developments such as those at Daedalus.
17. Every opportunity is taken to fund site investigation and remediation work through external funding. £70,000 has been secured from Defra through Natural England to undertake preliminary investigations at 3 former Council owned landfill sites. This is a joint project with the Eastern Solent Coastal Partnership and the results will be useful under a number of different projects. This highlights how the opportunity to address potential contaminated land issues can be dealt with as part of wider schemes and by working in partnership with other agencies.

CORPORATE CONTRIBUTIONS

18. Environmental Health continues to be consulted on and contribute to planning policy strategies such as the pre submission Development Sites and Policies Plan, as well as supporting and advising the Council's Estates Team in relation to land disposals and purchases where land contamination may be a matter for consideration.
19. Officers within the Council also work corporately in dealing with land that the Council owns, for example, undertaking soil investigations such as on public open space to assist Leisure Services in making decisions about site drainage and site development. In addition, monitoring continues to be undertaken on a former Council owned landfill site to ensure that measures installed in 2001 to ensure the dispersion of methane gas continue to work effectively.

PRIORITISATION

20. In order to determine if contaminants are present, physical investigations of the land have to be undertaken; the Government requires that the most serious sites are investigated first. There is no prescribed process on how local authorities should prioritise sites in their area for detailed inspection; however, the aim should be to ensure that sites that present the greatest risks to health or the environment are inspected before sites that present a low risk. Therefore, a simple assessment of potential hazard and receptor sensitivity has been undertaken to assist in deciding the approximate order of detailed inspections. This is not set in stone and may change over time.
21. Work continues to be undertaken on prioritising sites for detailed inspection, using the extensive data collated and using the principles of risk assessment.

FINANCIAL CONSIDERATIONS

22. Under planning and building control the developer pays for investigation and remediation of the land. This is the main method the Government sees by which potentially contaminated land can be addressed.
23. Under part 2A all investigation costs up to the point of determining land as Contaminated Land must be borne by the Council. In terms of remediation costs: the Council will be required to pay; the polluter will be required to pay; the current landowner/ occupier will be required to pay; or the Council will pay for works in default and will then recover all or part of the costs from the polluter or current owner/ occupiers.
24. Costs are highly dependent upon the site and type of investigation/remediation required, but could range from thousands to hundreds of thousands of pounds. Where this course of action has to be taken and where the costs cannot be met from the existing budget a report will be presented to the Executive requesting the necessary funding.
25. In certain circumstances the Council may be required to fund remediation, for example, if remediation notices are not complied with, or if the polluters and landowners cannot be found or, indeed, where the Council is the polluter or where hardship is claimed and accepted.
26. Local authorities are recommended to have in place a transparent policy for assessing hardship and officers are currently working on this policy, which will be reported to the Panel for consideration at a future date.
27. The potential cost of dealing with contaminated land has been highlighted in the Council's Finance Strategy, but it is recognised that at this stage a figure cannot be put against this. However, it is clear that the costs the Council may have to meet in dealing with specific contaminated land sites will need to be considered on a site by site basis and where necessary these will be the subject of specific reports to the Executive.

RISK ASSESSMENT

28. There is a high risk that government funding will not be obtained due to the cut in the Defra Contaminated Land Capital Grant Scheme and that investigation and remediation costs under part 2A will need to be financed by Council budgets.
29. There is a potential risk of legal action if remediation causes risks to health and the environment. This will be addressed through risk assessment at the time of any future works.
30. External government funding is not available to address potential contaminated land on sites that have been previously developed since 1994 but which did not use the planning regime to address the contamination.

THE WAY FORWARD

31. The priority actions for the years 2013 -2018 include:
 - Detailed inspections under the part 2a regime should take place in accordance

with any agreed programmes;

- The cost recovery and hardship policy needs to be approved;
- The corporate contaminated land strategy needs to be updated;
- Inspections and remediation should continue via the planning and building control regimes where appropriate to encourage market driven solutions;
- Alternative funding sources and legislation should be used where appropriate to progress detailed inspection and remediation;
- Voluntary remediation should be encouraged prior to any regulatory action to reduce burdens on local taxpayers.

CONCLUSION

32. Work continues on the Contaminated Land Inspection Strategy; however, this is a long-term strategy and it is important that it is kept up to date and relevant to what needs to be achieved. There could be significant financial implications for the Council depending upon the issues that need addressing, but the emphasis has been on addressing contaminated land through the planning and building control regimes and this has been effective.
33. Complaints or concerns about land contamination are all investigated and are dealt with in accordance with the strategy. Issues are often resolved informally but where necessary and if appropriate a range of enforcement options are available to deal with the problem.
34. Members' views and comments on the Strategy attached as Appendix A are sought prior to it being reported to the Executive.

Appendices

[Appendix A](#) Contaminated Land Inspection Strategy 2013-2018

Background Papers:

Report of Director of Customer and Community Services to the Health and Environment Committee, 23 May 2000, Contaminated land.

Report of Director of Customer and Community Services to the Health and Environment Committee, 22 May 2001 Contaminated land Inspection Strategy.

Report of Chief Health and Regulatory Services Officer to the Health and Environment Overview Panel, 18 November 2002, Corporate Contaminated land Strategy.

Report of Chief Health and Regulatory Services Officer to the Health and Environment Overview Panel, 9 September 2003 Contaminated land Inspection Strategy.

Report of the Chief Health and Regulatory Services Officer to the Health and Environment Review Panel 6 September 2005 Contaminated land Inspection Strategy Update and Revision.

Report of the Director of Regulatory Services to the Public Protection Review Panel 4 September 2007. Contaminated land.

Report of the Director of Regulatory Services to the Public Protection Policy Development and Review Panel 8 September 2009. Review of Contaminated Land Inspection Strategy.

Report of the Director of Regulatory and Democratic Services to the Public Protection Policy Development and Review Panel. 8 November 2011. Contaminated Land Update.

Reference Papers:

None

Enquiries:

For further information on this report please contact Wendy Shakespeare (Ext 4394).

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Contaminated Land Inspection Strategy
2013-2018

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Executive Summary

This Contaminated Land Inspection Strategy is intended to explain how Fareham Borough Council will implement the contaminated land regime as required by part 2A of the Environmental Protection Act 1990 over the period 2013-2018. It has been amended to take account of changes made to the Statutory Guidance.

Contaminated land is defined at section 78A(2) of Part 2A of Environmental Protection Act 1990 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:

- a) significant harm is being caused or there is a significant possibility of such harm being caused: or*
- b) pollution of controlled waters is being, or is likely to be, caused.¹*

Local authorities are tasked with inspecting their areas to identify contaminated land and securing the remediation of that land.

Assessing whether or not land is contaminated land requires a risk based approach. Risk is the combination of;

1. The likelihood that harm or pollution of water will occur as a result of contaminants in, on or under the land; and
2. The scale and seriousness of that harm or pollution?²

In deciding what constitutes significant harm or pollution of controlled waters the Council will act in accordance with the relevant Statutory Guidance.

The starting point for all land is that despite the potential for contaminants to be present, land is not contaminated land until it has been determined as such by the local authority.

The local authority has sole responsibility for determining whether land is contaminated land. This responsibility cannot be delegated except in accordance with section 101 of the Local Government Act 1972. Local authorities can rely on information or advice provided by another body such as the Environment Agency or a suitably qualified experienced practitioner appointed for that purpose.²

It is likely that the Council will need to undertake detailed inspections to obtain detailed desk based information and soil, water, and gas samples for analysis. The results of which are assessed to establish risk to health and the environment. It should be noted however that there are no legally binding standards to which soil must comply. Each site must be assessed on a site by site basis.

Once the Council has made a determination that land is Contaminated Land it will need to identify who is responsible for paying for remediation. The persons considered liable for these costs are called appropriate persons. The statutory

guidance provides guidance on determining which persons should bear liability for remediation. This will need to be undertaken for each significant pollutant linkage. More than one person may be liable for a significant contaminant linkage; in this instance all those liable are termed a liability group.

If land is determined as contaminated land then the Council must secure remediation of the land. The Statutory Guidance provides guidance on the remediation of contaminated land, Fareham Borough Council will act in accordance with statutory guidance when considering remediation requirements.

All information will be stored, managed, shared and released in accordance with Council policies relating to the Data Protection Act 1998 and the Freedom of Information Act 2000.

The Environmental Information Regulations 2004 (S.I 2004/3391) set out specific provisions with regards to public access to environmental information, refusals to disclose, charging, disclosing and timescales.

The Council has a duty to maintain a register of remediated sites. The register is a public document and can be accessed free of charge in the Department of Regulatory and Democratic Services, Fareham Borough Council, Civic Offices, Civic Way, Fareham during the period of 8:45am till 5.15pm Monday-Friday. The aim is to provide this electronically in the future.

Priority Actions

The priority actions for the years 2013-2018 include;

- Detailed inspections under part 2A regime should take place in accordance with any agreed programmes.
- The cost recovery and hardship policy needs to be approved.
- The Corporate Contaminated Land Strategy needs to be updated.
- Inspections and remediation should continue via the planning and building control regimes where appropriate to encourage market driven solutions.
- Alternative funding sources and legislation should be used where appropriate to progress detailed inspection and remediation.
- Voluntary remediation should be encouraged prior to any regulatory action.

1.0 Introduction

1.1 Background

England has a considerable legacy of historical land contamination involving a wide range of substances. On all land there are background levels of substances, including substances that are naturally present as a result of the varied and complex geology and substances resulting from diffuse human pollution. On some land there are greater concentrations of contaminants often associated with industrial use and/or waste disposal. In minority of cases there may be sufficient risk to health or the environment for such land to be considered contaminated land.²

In many cases land can be investigated and clean up as part of redevelopment, this is based on market forces and the developer pays for the clean up of the land. In some cases redevelopment is not an option and in such cases if there is a potential for significant harm to health or the environment Part 2A of the Environmental Protection Act 1990 can be used to secure the remediation of the land. The Act requires local authorities to inspect their areas to identify areas of contaminated land and secure remediation of that land.²

The legislation came into force in 1st April 2000 and all local authorities were required to have an Inspection Strategy in place by July 2001. The first Inspection Strategy was reported to and approved by the Health and Environment Committee on 22 May 2001. Periodic reviews were carried out in 2005, 2007, and 2009. Following a recent amendment to the Statutory Guidance all local authorities have been asked by Defra to review their strategies to take account of the changes.

This strategy is intended to explain how Fareham Borough Council will implement the contaminated land regime as required by part 2A of the Environmental Protection Act 1990 over the period 2013-2018, it includes amendments resulting from the recent revision of the Statutory Guidance.

The strategy presents objectives, a discussion of the legislation, explains the duties and roles of the Council, explains risk assessment, defines contaminated land, explains the process of determination, details the strategy for finding, prioritising and inspecting potentially contaminated land, discuss liability issues and remediation. It looks at the financial implications and discusses the issues surrounding information management and information disclosure.

2.0 Objectives

2.1 Government Objectives of Part 2A of the Environmental Protection Act 1990

The overarching objectives of the Government's policy on contaminated land and the part 2A regime are:

- a) To identify and remove unacceptable risks to human health and the environment;
- b) To seek to ensure that contaminated land is made suitable for its current use;
- c) To ensure that the burdens faced by individuals, companies and society as a whole are proportionate, manageable and compatible with the principles of sustainable development.²

Enforcing authorities should only seek to use part 2A of the EPA 1990 where there is no appropriate alternative solution, and should take account of the following;

- Uncertainty in decision making and how to act in these circumstances
- Striking a balance between the risks of the contamination and the benefits of remediation
- The impacts of regulatory intervention including impacts to the following; finance, health, environment, property blight and burdens on affected people.
- A precautionary approach
- Achieving a net benefit following regulatory intervention.²

2.2 Corporate Objectives

The Council has a strong corporate vision which is;

Fareham is a prosperous, safe and attractive place to live and work.

This vision is guided by a set of values;

- Listening and being responsive to our customers;
- Recognising and protecting the identity of existing settlements;
- Enhancing prosperity and conserving all that is good;
- Being efficient and effective and providing value for money;
- Leading our communities and achieving beneficial change.

There are seven corporate priorities.

- Protect and enhance the environment
- Maintain and extend prosperity
- A safe and healthy place to live and work
- Leisure for health and fun
- A balanced housing market
- Strong and inclusive communities
- Dynamic, prudent and progressive Council.³

For each priority the Council has identified a set of required improvements for the local community, these can be viewed in more detail in the Corporate Strategy 2011-2017 on the Council website.³

http://www.fareham.gov.uk/about_the_Council/strategies/keystrategies.aspx

The Contaminated Land Inspection Strategy will take account of the requirements of the Corporate Strategy 2011-2017 and other key Council strategies which can be viewed on the Council website.

2.3 Aim of the Contaminated Land Inspection Strategy

The aim of this strategic document is to identify how Fareham Borough Council will manage risks associated with contaminated land as required under part 2A of the environmental protection Act 1990 and land contamination in a wider sense.

2.4 Objectives of the Contaminated Land Inspection Strategy

- To communicate and comply with the statutory duty placed on this authority.
- To identify local priorities and characteristics
- To identify key roles of the enforcing authorities for the contaminated land regime
- To describe the approach to strategic inspection
- To describe the approach to prioritisation, detailed inspection and remediation
- To describe the broader Council approach to managing risks from land contamination
- To summarise how the authority will minimise unnecessary burdens on the taxpayer, businesses and individuals.

3.0 Legislation, Statutory and Non Statutory Guidance

3.1 Contaminated Land Regime

The contaminated land regime provides a means for local authorities to identify areas of significantly contaminated land and secure the remediation of the land either voluntarily or via enforcement. The regime provides a means to address contamination that occurred historically and is now causing significant harm to health and/ or the environment.

The Government requires that the Contaminated Land regime under part 2A of the Environmental Protection Act 1990 is a last resort and should only be used when there are no appropriate alternative solutions.² The main legislation for the part 2A regime is listed below and in addition there is a summary of other legislation that can be used to mitigate land contamination risks in certain contexts.

3.1.1 Parliamentary Acts and Regulations

The contaminated land regime, inserted into Part 2A of the Environmental Protection Act (EPA) 1990 by s.57 of the Environment Act 1995, was introduced in 1995. It came into force in England on 1st April 2000 following the release of the DETR statutory guidance Circular 02/2000 (circular now withdrawn).

The Radioactive Contaminated land (modification of Enactments)(England) Regulations 2006 (SI 2006/1379), make provision for Part 2A to be extended for the purpose of identification and remediation of radioactive contaminated land where it is causing harm to human health only.

The Contaminated Land (England) Regulations 2006 (SI 2006 No. 1380) elaborate on details of the regime such as definitions of special sites, the contents of remediation notices, appeals and the required contents of public registers.

The Contaminated Land (England) (Amendment) Regulations 2012 (SI 2012 No.263) amends details in relation to pollution of controlled waters.

The Water Act 2003 (Commencement No.11) Order 2012 (SI 2012 No.264) (C.8) amends details in relation to significant pollution of controlled waters.

3.1.2 Statutory Guidance

The statutory guidance has recently been revised and currently resides in the DEFRA publication *Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance*, April 2012.

<http://www.defra.gov.uk/publications/files/pb13735cont-land-guidance.pdf>

In relation to radioactive Contaminated Land, the statutory guidance resides in the DECC publication *Environmental Protection Act 1990: Part 2A Contaminated Land Radioactive Contaminated Land Statutory Guidance*, April 2012.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48325/4472-draft-statutory-guidance-covering-radioactive-cont.pdf

As required by central Government, Fareham Borough Council shall act in accordance with the statutory guidance when implementing this regime.

3.1.3 Non Statutory Technical Guidance

Technical guidance is released by numerous organisations; the statutory guidance requires that when determining land as Contaminated, local authorities must carry out an appropriate, scientific and technical assessment of all the relevant and available evidence.

There are numerous non statutory guidance documents, which can be found on the Environment Agency website.

<http://www.environment-agency.gov.uk/research/planning/33706.aspx>

Some other organisations that may hold appropriate scientific and technical information include, but are not restricted to; DEFRA, The Health and Safety Executive, Food Standards Agency and the Health Protection Agency/ Public Health England. Advisory committees including the Committee on Carcinogenicity (COC), Committee on Mutagenicity (COM), Committee on the Medical Effects of Air Pollutants (COMEAP). European and International Government bodies such as the United States Environmental Protection Agency (US EPA), the Dutch National Institute for Public Health and the Environment (RIVM); The World Health Organisation (WHO), universities and peer reviewed literature may also be of assistance.

Fareham Borough Council will carry out appropriate, scientific and technical assessment when determining land as contaminated land.

3.2 Interaction with other Regulatory Powers

There are a number of other legislative controls that give powers to regulatory authorities to take action to prevent, identify, assess and require remediation of land contamination.

In some cases action is precluded under Part 2A where other controls exist, or action may be quicker or more relevant using other legislation.

The appropriate regulatory control should be assessed on a case by case basis.

3.2.1 Planning and Development Control

Government policy recognises that it can often be more effective, appropriate and less of a burden on local taxpayers if land contamination is dealt with during redevelopment. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

Government guidance in the form of the National Planning Policy Framework requires that policies and decisions ensure that

- The site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;
- After remediation, as a minimum, land should not be capable of being determined as contaminated land under Part 2A of the Environmental Protection Act 1990; and
- Adequate site investigation information, prepared by a competent person, is presented to the Local Planning Authority.⁴

Developers should be aware that actions or omissions on their part could lead to liability being incurred under Part 2A.

Failure to control contamination through the development control process can lead to property blight, risks to health and the environment, and financial hardships for the public and the Council. The Government expects local authorities to ensure adequate investigation and remediation under the planning regime, if a site has been granted a planning permission since 1994 and land contamination has not been taken into account the Council are unlikely to be able to obtain any funding from the Contaminated Land Capital Projects Programme to assist with investigation costs.⁵

In some circumstances remedial activities may require planning permission; this should be assessed on a site by site basis.

3.2.2 Building Control

The Building Act 1984 is the enabling act under which The Building Regulations 2010 (SI 2010 No 2214), the Building (Approved Inspectors etc.) Regulations 2010 (SI 2010 No. 2215) and The Building (amendment) Regulations 2011 (SI 2011 No. 1515) are made.

The regulations require developers to take reasonable precautions to avoid danger to health and safety caused by contamination on or in the ground covered or to be covered by the building and any land associated with the building.

The technical requirement of the building regulations are broad and The Department for Communities and Local Government (DCLG) publishes guidance on meeting the requirements of the regulations in what are known as Approved Documents. Approved Document C - *Site preparation and resistance to contaminants and moisture* (2010 edition) is the current approved document that provides guidance on land contamination issues.⁶

Developers should be aware that actions or omissions on their part could lead to liability being incurred under Part 2A.

3.2.3 Environmental Damage

The Environmental Damage (Prevention and Remediation) Regulations 2009 (SI 2009 No. 153) came into force on 1st March 2009 recently amended in 2010 (SI 2010 587) they implement the European Environmental Liability Directive 2004/35/EC. They are based on the polluter pays principle requiring those responsible to prevent and remedy damage.

This damage only applies to businesses and only applies to damage that occurs after 1st March 2009.

Environmental Damage has a specific meaning within the regulations and it only refers to;

- Damage to Land
- Damage to Water
- Damage to Ecosystems⁷

In relation to damage to land, local authorities are the enforcing authority for this type of damage, the damage must result in a significant risk of adverse effects on human health. To assist local authorities in making decisions DEFRA have released non statutory guidance entitled *The Environmental Damage (Prevention and Remediation) Regulations 2009*, May 2009.

Operators should inform the relevant enforcing authorities if possible environmental damage occurs, enforcing authorities can require information from operators and serve prevention and/ or remediation notices on operators to require certain action to be taken to prevent damage or remediate damage that has occurred.

There are offences for:

- Failing immediately to take all practicable steps to prevent damage or notify the authority where there is an imminent threat of environmental damage (or of damage that there are reasonable grounds to believe will become environmental damage).
- Failing immediately to prevent further damage or notify the authority where the operator of an activity has caused environmental damage or has caused damage where there are reasonable grounds to believe that the damage is or will become environmental damage’.
- Failing to comply with a notice to prevent damage or further damage;
- Failing to comply with a remediation notice;
- Failing to provide information pursuant to these Regulations required by an authority;
- Failing to comply with instructions given under Regulation 31 (powers of entry etc.);
- Providing false or misleading information to an authorised officer.⁷

Enforcing authorities can recover costs from operators in accordance with the regulations.

Operators of economic activities should be aware that pollution of land may incur a liability under both the Environmental Damage Regulations 2009 and Part 2A of the EPA 1990.

If pollution of the land is observed or there is an imminent risk of pollution occurring this should be reported to the Department of Regulatory and Democratic Services.

3.2.4 Illegal Waste Deposits on Land

Part II of the Environmental Protection Act 1990 (section 59 as amended by the Clean Neighbourhoods and Environment Act 2005 (and the Environmental Permitting Regulations 2007)). This legislation applies to illegal deposits of controlled waste on land, the Environment Agency or Waste Regulation Authority may serve notice on the occupier of the land requiring them to remove the waste and take steps to eliminate or reduce the consequences of the deposit, costs can be recovered in accordance with the legislation. This may be particularly useful in cases of fly tipped hazardous waste that has leaked or spread onto the land.

3.2.5 Industrial Processes

The Environmental Permitting Regulations (England and Wales) 2010 were introduced on 6 April 2010 replacing the previous 2007 regulations, these were amended in 2012 (SI 2012 No 630). They introduce a system for issuing environmental permits and exemptions for industrial activities, waste operations, water discharges, groundwater activities, radioactive substances. They set out the powers, functions and duties of the regulators. Conditions can be applied to permits to control activities and discharges to land, air and water.

Part 2A may not be applicable where authorisations are in place under the Environmental Permitting Regulations.

The Environmental Damage Regulations 2009 places a strict liability on operators of permitted processes with regards to preventing and remedying environmental damage.

3.2.6 Statutory Nuisances

Prior to Part 2A of the Environmental Protection Act 1990 coming into force, Part III of the same Act dealing with Statutory Nuisance was the main mechanism for enforcing remediation of contaminated land. The enforcement controls of this legislation now only apply to land that is not in a contaminated state as specified by Part 2A of the same Act.

3.2.7 The Water Environment

The Water Framework Directive 2000/60/EC, The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (SI 2003 No. 3242), The Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 and Anti Pollution Works Regulations 1999 enforced by the Environment

Agency are only some of the legislation aimed at controlling and preventing pollution of controlled waters.

The Environment Agency is a key partner in addressing land contamination issues and in cases of special sites take over from the Council as the enforcing authority. Where water is being polluted by contaminants in, on or under the land the Environment Agency will be consulted by Fareham Borough Council.

4.0 Duties, Roles, Liaison and Contacts

4.1 Department of Regulatory and Democratic Services

Local authorities are the principal regulators under the contaminated land regime.

The key roles and duties of local authorities will be to:

- Prepare and publish an inspection strategy;
- Inspect their areas to identify contaminated land;
- Determine whether any particular site is contaminated land;
- Act as the enforcing authority for all sites except "special sites";
- Transfer "special sites" to the Environment Agency;
- Establish who should bear responsibility for the remediation of contaminated land
- Decide what remediation is required and ensure that remediation takes place;
- Decide who should bear what liability for meeting costs of remediation work
- Maintain a public register of regulatory action.

The Department of Regulatory and Democratic Services has been selected as the principal department at Fareham Borough Council to lead the contaminated land regime. An officer is employed to manage the responsibilities of land contamination issues for the Council.

The designated officer will be responsible for;

- The day to day management and implementation of all duties under Part 2A of the Environmental Protection Act 1990;
- Maintaining and updating the Remediation Register;
- Dealing with contaminated land enquiries and complaints;
- Responding to planning and building control consultations and technical material submitted through these regimes relating to land contamination issues;
- Liaising with and reporting to internal departments and external organisations;
- Maintaining and updating information in relation to land contamination;
- Reporting information to the Environment Agency, Health Protection Agency, Natural England and other statutory or non statutory bodies;
- Reporting to managers, review panels, the Executive and liaising with/ updating Councillors
- Dealing with and/ or assisting other departments as required with land contamination issues via other legislative powers.

The designated Officer will report to a Principal Environmental Health Officer, the Head of Environmental Health and the Director of the Department of Regulatory and Democratic Services, specifically this must happen when;

- Changing and updating policies and strategies;
- Writing committee reports;
- Prior to and during detailed inspections;
- A determination of contaminated land needs to be made;
- Agreement of remediation actions;
- Agreement of voluntary remediation actions;

- Urgent remediation action;
- Assessment of remediation;
- Service of a remediation notice;
- Procurement of services, financial commitments;
- Advice;
- Updates of work activity.

Any complaints, enquiries or information requests should be directed in the first instance to:

regulatory@fareham.gov.uk

Department of Regulatory and Democratic Services
 Fareham Borough Council
 Civic Offices
 Civic Way
 Fareham
 PO16 7AZ

Tel. 01329 236100

4.2 Matters Referred to Elected Members

Certain matters will need to be referred to elected members. This may include but is not restricted to the following;

- Approval of the Contaminated Land Inspection Strategy and updates thereof;
- Detailed Inspection Programmes;
- Where private or Council owned property is determined as contaminated land;
- Where the Council proposes to carry out urgent work or work in terms of remediation;
- Circumstances requiring significant financial commitment of the Council ;
- Where the appropriate person(s) are to be prosecuted/ have been prosecuted.

4.3 Responsibilities of Other Departments

Corporate uptake and understanding of the local authority's responsibilities in terms of land contamination is essential as issues of land quality impact upon other functions within the Council. The development of an integrated corporate approach will ensure that the aims and objectives of the strategy are achieved.

The Corporate Contaminated Land Strategy was approved by the Health and Environment Overview Panel on 18th November 2002 and the Executive on 16th December 2002. The purpose of the document was to raise awareness of developing a corporate approach to managing contaminated land from a landholder and polluters point of view.

It should be recognised that internally a number of Departments support the work of the Department of Regulatory and Democratic Services to ensure that the Council fulfils its statutory duty, manages any existing liabilities and does not take on future

liabilities. A brief overview of how internal departments may become involved with contaminated land issues is listed below;

Business Transformation -Data management support.

Communications - strategies, press releases, media management, site specific communication plans.

Estate and Facilities - Liaison regarding contamination on certain Council owned sites, Land disposals and purchases, land charge enquiries.

Finance and Resources - grant applications, financial assessments, hardship claims, and insurance.

ICT - GIS, data management support.

Legal - Legal support, prosecutions, Council liabilities.

Building Control - Consultations on building control applications.

Planning Development Control - Consultations on planning applications, relating to planning permission and discharge of conditions, planning enforcement.

Planning and Transportation - Policy, land allocations, conservation.

Leisure and Environment - Ongoing maintenance and/ or monitoring costs of remediation, liaison regarding contamination on certain Council owned sites.

Council Housing - Investigation and remediation projects on Council housing land.

Strategic Housing - Building projects on brownfield land.

4.4 Fareham Borough Council Land

As a land owner Fareham Council is required to assess its own land holdings and implement remediation where it is liable for contamination. Throughout the inspection process and remediation of any Council owned Contaminated Land, Fareham Borough Council will:

- Assess its land holdings for potential land contamination
- Take responsibility for the remediation of land contamination where it is liable;
- Assess, investigate and remediate Council owned Contaminated Land in accordance with Statutory Guidance;
- Be open and transparent through out the decision making process;
- Take account of innovative techniques, sustainability issues and climate change;
- Ensure best value in relation to costs.
- Assess each site on a site specific basis.

4.5 External Agencies

4.5.1 The Environment Agency

The Environment Agency is the Government's principal scientific and technical advisor on contaminated land. The Environment Agency produces Government backed non statutory technical guidance and assesses applications made under the contaminated land capital projects programme.

In relation to the contaminated land regime the Environment Agency is a joint enforcing authority with local authorities. The key roles and duties of the Environment Agency will be to:

- Assist and advise local authorities in assessing and investigating contaminated land, in cases where water pollution is involved;
- Provide advice to the local authorities on the remediation of contaminated land;
- Act as the enforcing authority and ensure remediation of “special sites”;
- Maintain a public register of regulatory action for special sites;
- Prepare a national report on the state of contaminated land.⁸

Contacts have been established within the Environment Agency, members of local Environment Agency teams meet with Local Authority representatives at the Hampshire and Isle of Wight Contaminated Land Liaison Group every three months.

The Environment Agency local office will be consulted during preliminary risk assessment stages, prior to and during detailed inspections, prior to submitting applications for DEFRA grants and prior to and during remediation. They will be sent formal notification as required by guidance at appropriate stages. Fareham Borough Council will respond to annual state of contaminated land returns.

The Environment Agency play an active role in providing technical advice to Fareham Borough Council in relation to controlled waters and contaminated land issues arising during redevelopment.

The Contact Details for the Environment Agency are;

Tel 03708 506 506

National Customer Contact Centre
PO Box 544
Rotherham
S60 1BY

Or

South East Regional Office
Kings Meadow House,
Kings Meadow Road,
Reading
Berkshire
RG1 8DQ

Details of other external agencies are listed in Appendix 1.

5.0 Risk Assessment

Assessing whether or not land is contaminated land requires a risk based approach. Risk is the combination of;

1. The likelihood that harm or pollution of water will occur as a result of contaminants in, on or under the land; and
2. The scale and seriousness of that harm or pollution?²

Risk assessments must be based on information that is;

1. Scientifically based;
2. Authoritative;
3. Relevant to the assessment of risks arising from the presence of contaminants in soil;
4. Appropriate to inform regulatory decisions in accordance with part 2A and the statutory guidance.²

The risk assessment should only take account of the current use of the land. Further guidance on this is issued in the Statutory Guidance.

In order to assess whether land should be determined as contaminated land, the local authority must firstly satisfy itself that a contaminant linkage exists in relation to a particular piece of land. A contaminant linkage requires each of the following to be identified:

- A **contaminant** - *a substance with a potential to cause harm or pollution of controlled waters.*
- A **receptor** - *an organism, ecological system or property which can be harmed by a contaminant and/ or controlled waters.*
- A **pathway** - *a route by which a receptor is exposed or could be exposed to a contaminant.*²

There may be numerous contaminant linkages present on one site at any one time.

5.1 Normal Background Concentrations of Contaminants

The Part 2A regime was introduced to help identify and remediate land which poses unacceptable levels of risk. The Government is clear in that Part 2A does not apply to land with levels of contaminants in soil that are commonplace and widespread throughout England; and for which in the majority of cases there is no reason to consider that there is an unacceptable risk. Unless there is a particular reason to consider otherwise, normal levels of contaminants in soil should not result in land being determined as contaminated land. Therefore, if it is established that land is at or close to normal levels of particular contaminants, it should usually not be considered further in relation to the part 2A regime.

The British Geological Society have undertaken a survey across England to establish normal background concentrations of contaminants in soils. A

concentration in soil above a background concentration does not mean that the land is contaminated land.²

In deciding whether contaminant levels are normal, Councils are required to consider the following;

- Is it due to the natural presence of contaminants from geological processes which have not been shown to pose an unacceptable risk to health or the environment?
- Is it a result of diffuse pollution due to common human activity and not as a result of an industrial process?
- Is the concentration typical or widespread throughout the area or are concentrations significantly different?
- Do similar circumstances exist regionally or nationally that display similar soil types, hydrogeology and form of contaminant?
- Is there a reason to consider that concentrations and form of the chemical are likely to pose an unacceptable risk to health, property or the environment?²

Groups of contaminants that behave in the same manner can be treated as a single contaminant linkage if there are scientifically robust reasons for doing so.

Depending upon what information comes out of the risk assessment at various stages local authorities can decide whether or not to continue investigations but should document their decision making.

5.2 Generic Assessment Criteria

With the exception of radioactivity there are no guidelines on what concentration of a chemical in soil constitutes significant harm or significant possibility of significant harm. Local authorities are required to use judgement and expertise on a site by site basis

However, the statutory guidance does recognise the use of generic assessment criteria (GAC) but restricts their use, guidance states they can be used provided;

- Local authorities understand how they were derived and how they can be appropriately used
- They have been produced in an objective, scientifically robust and expert manner by reputable organisations
- They are only used in accordance with part 2A and the Statutory Guidance.

A concentration in soil above a generic assessment criteria does not mean that land is contaminated land.²

Further advice on the use of GACs is given in section 3.29 of the Statutory Guidance.

5.3 Uncertainty

All risk assessments of potentially contaminated land involve uncertainty, for example due to the scientific uncertainty over the effects of substances, and/ or the

assumptions that lie behind predicting what might happen in the future. As required this Council will seek to minimise uncertainty as far as is relevant, reasonable and practical.

The Government recognises that due to uncertainty there is unlikely to be a single correct conclusion on the precise level of risk posed by land, different suitably qualified people may reach different conclusions. Local Authorities are required to use judgement to form a reasonable view of the risks on the basis of robust assessment. Only the local authority can determine land as contaminated land.²

5.4 Risk Summaries

If a site is determined as contaminated land, local authorities are required to produce a risk summary, Government requires that these include the following;

1. A summary of the authority's understanding of the risks, including a description of: the contaminants involved; the identified contaminant linkage(s), or a summary of such linkages; the potential impact(s); the estimated possibility that the impact(s) may occur; and the timescale over which the risk may become manifest.
2. A description of the authority's understanding of the uncertainties behind its assessment.
3. A description of the risks in context, for example by setting the risk in local or national context, or describing the risk from land contamination relative to other risks that receptors might be expected to be exposed to in any case. This need not involve a detailed comparison of relative risks, but the authority should aim to explain the risks in a way which is understandable and relevant to the layperson.
4. A description of the authority's initial views on possible remediation. This need not be a detailed appraisal, but it should include a description of broadly what remediation might entail; how long it might take; likely effects of remediation works on local people and businesses; how much difference it might be expected to make to risks posed by the land; and the authority's initial assessment of whether remediation would be likely to produce a net benefit, having regard to broad objectives of the regime set out in section 2.1 of this document. In the case of land which (if it were determined as contaminated land) would be likely to be a special site, the authority should seek the views of the Environment Agency and take any views into account in producing the description.²

5.6 Communicating Risk

Risk communication is an extremely important aspect of the decision making process. Decisions about contaminated land are not based on purely technical issues. There are a variety of regulatory, commercial, financial, legal, and societal factors that all affect how a site should be managed. This can mean that decisions can cause conflicting views. In addition decisions about land contamination can affect people's health, their family's health, their homes, people's finances, local

businesses and jobs. In order for people and communities to accept decisions made about risk they need to feel included, in the decision making process and need clear information that explains how and why decisions have been made.

All sites investigated under Part 2A of the Environmental Protection Act 1990 will have a site specific communication plan. Communications plans will be developed in conjunction with the Council communications team and Councillors, consultations may also need to take place with relevant external organisations.

6.0 Determination of Contaminated Land

6.1 Definition of contaminated land

The requirements of and the enforcement powers of the EPA 1990 Part 2A will only apply to particular areas of land in accordance with the definitions given in the legislation and statutory guidance.

Contaminated land is defined at section 78A(2) of Part 2A of Environmental Protection Act 1990 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:

- c) significant harm is being caused or there is a significant possibility of such harm being caused: or*
- d) pollution of controlled waters is being, or is likely to be, caused.¹*

For radioactive contaminated land the definition is modified slightly;

Contaminated land is 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

- a) harm is being caused, or*
- b) there is a significant possibility of such harm being caused;¹*

Harm from radioactivity relates to human health only.

6.2 Determining that land is contaminated land

The starting point for all land is that despite the potential for contaminants to be present, land is not contaminated land until it has been determined as such by the local authority.²

The local authority has sole responsibility for determining whether land is contaminated land. This responsibility cannot be delegated except in accordance with section 101 of the Local Government Act 1972. Local authorities can rely on information or advice provided by another body such as the Environment Agency or a suitably qualified experienced practitioner appointed for that purpose.

There are four possible grounds for determination of land as contaminated land (not including radioactivity).

- a) Significant harm is being caused to a human or relevant non-human receptor.*
- b) There is a significant possibility of significant harm being caused to a human or relevant no human receptor.*
- c) Significant pollution of controlled waters is being caused.*
- d) There is a significant possibility of significant pollution of controlled waters being caused.¹*

In deciding what constitutes significant harm or pollution of controlled waters the Council will act in accordance with the relevant Statutory Guidance.

6.3 Human Receptors

6.3.1 Significant Harm - Human Receptors

Guidance states that the following health effects should always be considered to constitute significant harm to human health:

- Death;
- Life threatening diseases (e.g. cancers);
- Other diseases likely to have serious impacts on human health;
- Serious injury;
- Birth defects;
- Impairment of reproductive functions.²

Other health effects on their own or in combination might be considered to constitute significant harm to human health:

- Physical injury (from the chemical),
- Gastrointestinal disturbances;
- Respiratory tract effects;
- Cardiovascular effects;
- Central nervous system effects;
- Skin ailments;
- Effects on organs such as the liver or kidneys; or
- A wide range of other health impacts.²

The local authority should consider:

- The seriousness of the harm in question, including
- The impact on the health and quality of life, of any person suffering the harm;
- The scale of the harm.²

The Government requires that the local authority should only conclude that harm is significant if it considers that treating the land as contaminated land would be in accordance with the broad objectives of the regime as identified in section 2.1.

6.3.2 Significant possibility of significant harm to health (SPOSH)

In some cases significant harm might not be occurring, but it might occur over the long term. In such instances local authorities can consider whether there is a possibility of significant harm to health and whether this possibility is significant. This only relates to substances in, on or under the land and where there is a contaminant linkage.

When assessing the **possibility of significant harm** the local authority should take account of:

1. The estimated likelihood that significant harm might occur to an identified receptor, taking account of the current use of the land in question.
2. The estimated impact if the significant the significant harm did occur for example the nature of the harm, the seriousness of the harm to any person who might suffer it, and where relevant the extent of the harm in terms of how many people might be affected.²

When estimating the likelihood that a specific type of significant harm might occur the local authority should consider;

1. The estimated probability that the significant harm might occur in its current use or if the land is used in a different way (but within the bounds of planning permission) and the strength of the evidence underlying the risk estimate
2. The strength of the evidence underlying the risk estimate, and key assumptions on which the estimate of likelihood is based, and the level of uncertainty underlying the estimate.
3. The timescale that over which significant harm might manifest.²

6.3.3 Deciding whether a possibility of significant harm is significant (human health)

Local authorities should decide whether the risk is sufficiently high that regulatory action is required to reduce it.

In deciding whether a significant possibility of significant harm to health exists local authorities should consider categorising sites according to the Statutory Guidance.

Category 1: Human Health

A significant possibility of significant harm exists in a case where it considers there is an unacceptably high probability, supported by robust based evidence, that significant harm would occur if no action is taken to stop it. Examples of category 1 cases may include;

- a) Similar land or situations are known, or are strongly suspected on the basis of robust evidence, to have caused harm before in the United Kingdom or elsewhere; or
- b) Similar degrees of exposure (via any medium) to the contaminant in question are known, or strongly suspected on the basis of robust evidence, to have caused such harm before in the United Kingdom or elsewhere;
- c) Significant harm may already have been caused by contaminants in, on or under the land, and that there is an unacceptable risk that it might continue or occur

again if no action is taken. There may not be sufficient evidence to be sure of meeting the balance of probability test for demonstrating significant harm or that the time needed to demonstrate such a level of probability would cause unreasonable delay, cost or disruption and stress to affected people.²

Result: A determination of contaminated land is likely to be made.

Category 2: Human Health

These are cases where land is capable of being determined as contaminated land on grounds of significant possibility of significant harm. This should take into account the broad objectives of the regime and that the decision is a positive legal test. Examples of category 2 cases may include;

- a) There is a strong case for considering that the risks from the land are of sufficient concern that the land poses a significant possibility of significant harm. There may be little or no direct evidence of similar land, situations or levels of exposure have caused harm before, but on the basis of evidence, including expert opinion, there is a strong case for taking action under part 2A on a precautionary basis.²

Result: A determination of contaminated land is possible.

Category 3: Human Health

These are cases where land would not be capable of being determined on the grounds of significant possibility of significant harm. This should take into account the broad objectives of the regime and that the decision is a positive legal test. Examples of category 3 cases may include;

On the basis of evidence there is not a strong case for taking action under part 2A, the legal test for significant possibility of significant harm is not met. Risks on site may not be low but regulatory intervention under part 2A is not warranted.²

Result: A determination of contaminated land is unlikely to be made.

For categories 2 and 3, local authorities are required to take into account the following;

- The estimated likelihood of such harm;
- The estimated impact if it did occur;
- The timescale over which it might occur;
- The levels of certainty attached to these estimates.²

If a decision cannot be made local authorities are required to consider the following;

- The likely indirect and direct health benefits and impacts of regulatory intervention;
- Benefits of reducing or removing the risk posed by contamination;
- Risks from contaminants being mobilised during remediation;

- Stress related health effects that may be experienced by affected people;
- Whether health benefits outweigh health impacts;
- An estimate of what remediation may involve;
- How long remediation would take;
- The benefits of remediation;
- Whether the benefits outweigh the financial and economic costs;
- Any impacts on local society or environment from taking action.²

In deciding the above local authorities should make a broad consideration of the above factors, and are not required to quantify the impacts or carry out detailed cost benefit or sustainability analysis. If a decision cannot be made, the legal test has not been met and the site should be placed in category 3.²

Category 4

These are cases where there are no risks or that the level of risk is low. Examples of category 4 cases may include;

- a) Land where no relevant contaminant linkage has been established.
- b) Land where there are only normal levels of contaminants in soil.
- c) Land that has been excluded from the need for further inspection and assessment because contaminant levels do not exceed relevant generic assessment criteria or relevant technical tools or advice.
- d) Land where estimated levels of exposure to contaminants in soil are likely to form only a small proportion of what a receptor might be exposed to through other sources of environmental exposure e.g. in relation to average estimated national levels of exposure to substances commonly found in the environment throughout the course of a normal life.
- e) Following detailed quantitative risk assessment the level of risk posed is sufficiently low.²

Result: A determination of contaminated land is unlikely to be made.

However statutory guidance states that sites falling into b) and d) above may be placed into categories other than category 4, in such instances this should be supported by robust evidence.²

6.3.4 Radioactive Contaminated Land

The radioactive contaminated land regime applies to sites where contamination has resulted from the after effects of a radiological emergency, or past work activities. It does not apply to natural radiation, nuclear sites, MOD nuclear sites or if remediation is to occur under emergency plans. The inspection duty is more limited than for non radioactive contaminated land.

The local authority should regard harm as being caused where lasting exposure gives rise to doses that exceed one or more of the following:

- a) An effective dose of 3 millisieverts per annum;
- b) An equivalent dose to the lens of the eye of 15 millisieverts per annum; or
- c) An equivalent dose to the skin of 50 millisieverts per annum. The skin limit shall apply to the dose averaged over any area of 1cm², regardless of the area exposed.⁹

The term “possibility of harm” should be taken as referring to a measure of the probability, or frequency, of the occurrence of circumstances which would lead to lasting exposure being caused where;

- a) The potential annual effective dose is below or equal to 50 millisieverts per annum; and
- b) The potential annual equivalent dose to the lens of the eye and to the skin are below or equal to 15 millisieverts and 50 millisieverts respectively.

The local authority should regard the possibility of harm as significant if, having regard to any uncertainties; the potential annual effective dose from any lasting exposure multiplied by the probability of the dose being received is greater than 3 millisieverts.⁹

6.4 Non Human Receptors

The types of non human receptors that can be considered under Part 2A of the Environmental Protection Act 1990 are restricted, these are discussed below.

6.4.1 Ecological Systems Receptors

The types of ecological receptors that can be considered under part 2A include;

- A site of special scientific interest (under section 28 of the Wildlife and Countryside Act 1981)
- A national nature reserve (under s.35 of the 1981 Act)
- A marine nature reserve (under s.36 of the 1981 Act)
- An area of special protection for birds (under s.3 of 1981 Act)
- A European site within the meaning of regulation 8 of the Conservation Habitats and Species Regulations 2010)
- Any habitat or site afforded policy protection under paragraph 6 of planning policy statement PPS9 on nature conservation (i.e. candidate Special Areas of Conservation, potential Special Protection Areas and Listed Ramsar Sites); or
- Any nature reserve established under section 21 of the National Parks and Access to the Countryside Act 1949.

6.4.2 Significant harm of ecological receptors

Is predominantly based upon irreversible or substantial adverse changes or endangering the long term population of a species.²

6.4.3 Significant possibility of significant harm to ecological receptors

This should be considered if significant harm is more likely than not and if there is a reasonable possibility that if significant harm occurred it would be practically impossible to restore it.²

For further information on harm to ecological receptors reference should be made to Table 1 on page 24 of the Statutory Guidance.

Fareham Borough Council will consult Natural England in regard to ecological receptors.

6.4.4 Property Receptors

The types of property receptors that are can be considered under part 2A include;

- Crops, including timber;
- Produce grown domestically, or on allotments, for consumption;
- Livestock;
- Other owned or domesticated animals;
- Wild animals which are the subject of shooting or fishing rights;
- Buildings.²

6.4.5 Significant harm of property receptors

Is considered when there is: a substantial diminution of yield; or substantial loss of crops or crop value; if pets die; develop a serious disease or serious physical damage; if a building suffers structural failure, substantial damage or interference with occupation; or if a scheduled ancient monument is damaged to a point that it impairs the reason for which it was scheduled, all as a result of a contaminant linkage.²

6.4.6 Significant possibility of significant harm to property receptors

This should be considered if significant harm is more likely than not and if there is a reasonable possibility if significant harm occurred it would be practically impossible to restore it.²

For further information on harm to property receptors reference should be made to Table 1 on page 25 of the Statutory Guidance.

6.4.7 Controlled Waters Receptors

The types of controlled waters that are can be considered under part 2A include;

Controlled waters are defined by part 3 of the Water Resources Act 1991 and include territorial waters, coastal waters, lakes, ponds, rivers or watercourses and ground waters. However, there is a slight difference in that groundwater, for the purpose of part 2A ground waters refers to water above the saturation zone.

6.4.8 Significant pollution of controlled waters

Significant pollution of controlled waters consists of;

1. Pollution equivalent to "environmental damage" to surface or groundwater defined by the Environmental Damage (Prevention and Remediation) Regulations 2009.
2. Inputs resulting in deterioration of water quality abstracted or intended for human consumption such that additional treatment would be required to enable use.
3. A breach of statutory surface water Environmental Quality Standard.
4. Input of a substance into groundwater resulting in a significant and sustained upward trend in concentration of contaminants (as defined in article 2(3) of the Groundwater Daughter Directive (2006/118/EC)).²

In determining the above, local authorities are required to consider that substances are continuing to enter controlled waters; or that they have already entered the waters and are likely to do so again to the extent that significant pollution occurs.²

Fareham Borough Council will consult the Environment Agency in relation to contamination impacting upon controlled waters.

6.4.9 Significant possibility of significant pollution of controlled waters

In deciding this, as with human health cases the local authority must first decide if there is a possibility of significant pollution of controlled water, before deciding if that possibility is significant.

In making the decision local authorities are required to consider;

- a) The estimated likelihood that the potential significant pollution of controlled waters would become manifest; the strength of evidence underlying the estimate; and the level of uncertainty underlying the estimate.
- b) The estimated impact if significant pollution occurred and whether this would cause a breach of European waters legislation.
- c) The estimated timescale over which this would occur.
- d) An estimate of whether remediation is feasible, what it would involve, the extent to which it provides a solution to the problem; how long it would take; what benefit it would bring; whether benefits would outweigh the costs and the impacts on local society.²

Local authorities must take into account the broad objectives of the regime when making the decision as discussed in section 2.1. In deciding whether a significant possibility of significant pollution of controlled waters exists local authorities should consider categorising sites according to the Statutory Guidance.

Category 1 (water)

Strong and compelling cases with robust science based evidence that indicates that pollution would cause a high impact if nothing is done to stop it.²

Result: A determination of contaminated land is likely to be made.

Category 2 (water)

Strength of evidence as for category 1 does not exist, but scientific and expert opinion is that the risks posed by the land to water are significant.²

Result: A determination of contaminated land is possible.

Category 3 (water)

It might be preferable that risks were not present but the strength of evidence does not indicate that regulatory action under part 2A is required.²

Result: A determination of contaminated land is unlikely to be made.

Category 4 (water)

The local authority concludes there is no risk or the risk is low. For example where there is no contaminant linkage, the pollution is not significant, there are no discernable discharges downstream compared to upstream, contaminants have completely entered the water and no longer (and will not in future) come from the land, the discharge is permitted under the environmental permitting regulations, or pollution that is as a result of "normal" concentrations.²

Result: A determination of contaminated land is unlikely to be made.

Once land has been subject to investigation and a risk assessment a decision will be made as to whether the land falls under one of the grounds for determination and which category of harm it falls under where relevant.

6.5 Physical extent of land to be determined

The local authority will decide the physical extent of the land to be determined. This can be reviewed if information suggests this is necessary. Land can be sub divided depending upon;

- The nature of contamination,
- The degree of risk posed,
- Whether this varies across the land,
- The nature of remediation which might be required,
- The ownership of land,
- The likely identify of those who may bear responsibility for the remediation.²

6.6 Making determinations in urgent cases

If there is urgent need, the determination will be made in a timescale appropriate to the urgency of the situation.

6.7 Formal notification of the determination of contaminated land

When land is determined as contaminated land the Council will notify in writing the Environment Agency, owners of the land, occupiers of any part of the land, any other person who appears to be liable to pay for remediation and adjacent local authorities if the site is within 250m of their boundary. This notification will include the following;

1. The reason why they are being sent the notification
2. A copy of the written record of determination
3. A copy of the risk summary
4. Information on the availability of site investigation data or copies of this information
5. For those people who are liable the reasons why they are considered to be an appropriate person
6. Details of tests for exclusion from, and apportionment of liabilities.²

Consideration should be given to;

- a) Whether to give such persons time to make representations or the grounds for determination, or to propose a solution that avoid the need for formal determination taking into account: the broad aims of the regime; the urgency of the situation; any need to avoid unwarranted delay; any other factor appropriate.
- b) Whether to inform other interested parties, for example owners and/ or occupiers of neighbouring land.²

6.8 Postponing determination

A local authority can postpone determination of contaminated land if;

- a) A land owner or other person undertakes to deal with the problem without determination, and
- b) The local authority is satisfied that remediation will be to an appropriate standard and timescale, any agreement though should not affect its ability to determine land in future.

or

- c) A significant contaminant linkage would only exist if the circumstances of the land were to change in the future, either land use; a more sensitive receptor were to move to site; a pathway is interrupted.²

In above cases local authorities are required to keep the status of the land under review and take reasonable measures to ensure that the postponement does not create conditions under which significant risks could go unaddressed in the future.

Alternatively the local authorities may decide to determine the land but postpone remediation.

6.9 Written record of determination of contaminated land

Local authorities are required to prepare a written record of determination that land is contaminated land which is publicly available and understandable to non specialists. The record should include;

- Clearly and accurately identify the location, boundaries and area of the land in question,
- Make appropriate reference to Ordnance Survey grid references,
- Explain why the determination has been made,
- The risk summary,
- A relevant conceptual model,
- A summary of the relevant assessment of the evidence,
- A summary of why the requirements of the statutory guidance have been satisfied.²

6.10 Reconsideration, revocation and variation of determinations

If information becomes available that significantly alters the basis of the determination, the local authority should decide whether to retain, vary or revoke the determination, written reasons for the decision making process should be maintained. If land is no longer considered contaminated land the local authority should issue a written statement to this effect. Interested parties should be informed of these amendments.

Fareham Borough Council will take into account possible issues of property blight when making decisions.

7.0 The Strategy for Finding, Prioritising and Inspecting Potentially Contaminated Land

7.1 Strategic approach to finding and inspecting land

As required by Government, Fareham Borough Council will take a strategic approach to inspection. This approach will be;

- Rational, ordered and efficient;
- Proportionate to the seriousness of any actual or potential risk;
- Seek to ensure that that pressing and serious problems are located first;
- Ensure resources are concentrated on investigating in areas where the authority are most likely to identify contaminated land;
- Ensure that the authority efficiently identifies requirements for the detailed inspection of particular areas of land.²

The Contaminated Land Inspection Strategy first adopted in 2001 and was subsequently reviewed in 2005, 2007 and 2009. This current version continues to centralise policy for how Fareham Borough Council will inspect its area for the time period 2013-18.

7.2 Review of the Strategy

Statutory guidance requires that local authorities keep their inspection strategies under periodic review; the next review is programmed for 2018.

7.3 Priority Actions

The priority actions for the years 2013-2018 include;

- Detailed inspections under part 2A regime should take place in accordance with any agreed programmes.
- The cost recovery and hardship policy needs to be approved.
- The Corporate Contaminated Land Strategy needs to be updated.
- Inspections and remediation should continue via the planning and building control regimes where appropriate to encourage market driven solutions.
- Alternative funding sources and legislation should be used where appropriate to progress detailed inspection and remediation.
- Voluntary remediation should be encouraged prior to any regulatory action to reduce burdens on local taxpayers.

7.4 Local Priorities

7.4.1 People

People are the main priority in Fareham. Residential properties, schools, children's nurseries and playgroups will be considered to be the most sensitive properties.

There is a public water supply in the North Fareham area at the Maindell pumping station, this is managed by Portsmouth Water. There is also a private water supply in

the north east of the borough; both would be particularly vulnerable should they be affected by contamination.

There are a number of abstractions across the borough authorised by the Environment Agency which are used for farming and horticultural uses, information on their locations is provided by the Environment Agency.

Consultation will take place with the Environment Agency regarding all water abstraction receptors and also Portsmouth Water with regards to public water abstraction at Maindell and the relevant water authority for water affected in the drinking water distribution system. Consultation will take place with those responsible for private water supplies if found to be affected by contamination from land.

7.4.2 Ecosystems

There are a number of ecosystems in the Fareham Borough area that fall within the definition of receptor including;

- Upper Hamble Estuary and Woodlands - SSSI;
- Lee on the Solent to Itchen Estuary - SSSI;
- Titchfield Haven - NNR and SSSI;
- Portsmouth Harbour - SSSI;
- Downend Chalk Pit - SSSI;
- Portsdown Hill - SSSI.
- Solent and Southampton Water - Special Protection Area and Ramsar site
- Solent Maritime Candidate Special Area of Conservation
- Hook with Warsash - Local Nature Reserve
- Kites Croft - Local Nature Reserve

Consultation will take place with Natural England regarding ecological receptors.

7.4.3 Controlled waters

The upper cretaceous chalk that outcrops in the north east of the borough is a primary aquifer and is classed an important water resource.

Streams and rivers can be affected by contamination from land. The rivers Wallington, Meon and Hamble are the main rivers in the Fareham Borough.

Smaller streams are noted throughout the borough including, the streams that feed Brownwich Pond and Lake, Hoeford Lake, Hook Lake and the Gillies

Consultation will take place with the Environment Agency regarding controlled water receptors.

7.4.4 Property

In this group allotment sites are particularly vulnerable to contamination and there are implications in terms of people's health. The majority of allotments in Fareham are owned by the Council but are managed by three allotment associations;

Fareham, Portchester and Western Wards Allotment Associations. The sites are listed below;

- The Gillies, Fareham
- Salterns Lane, Fareham
- Stroud Green Lane, Fareham
- Wickham Road, Fareham
- Red Barn, Portchester
- Roman Grove, Portchester
- Sarisbury Green
- Hunts Pond Road, Titchfield Common
- Lodge Road, Locks Heath
- Warsash Road, Warsash
- Posbrook Road, Titchfield

Two private allotments, one in Titchfield and one in Segensworth are run by Titchfield Allotment Association.

In relation to buildings it is important to consider that if contamination is discovered on land with a scheduled ancient monument or a listed building, their protected status will need to be considered prior to undertaking any investigation.

Scheduled Ancient Monuments in Fareham:

- Titchfield Abbey, Titchfield
- Stony (Anjou) Bridge, Titchfield
- The Tithe Barn at Fern Hill Farm, Titchfield
- Portchester Castle, Portchester
- Fort Fareham, Fareham
- World War II heavy anti aircraft gun site, Monument Farm, Portchester

Listed Buildings

- The borough has nearly 600 listed of buildings of special architectural or historical interest.

Consultation will take place with English Heritage and the Council Conservation Team in relation to historic buildings and ancient monuments.

7.5 Overview of the Strategy of Inspection

The stages of Fareham Borough Councils inspection strategy are listed below;

1. Undertake a strategic desk based inspection of the Borough to identify areas with a potential for contaminants to be present and the locations of potential receptors.
2. Broadly rank the potential hazard of the contaminants and the sensitivity of the receptor.
3. Identify a number of sites for detailed desk top evaluations based on highest priority.

4. Based on the detailed desk top evaluations, identify the highest priority site requiring detailed intrusive site investigation.
5. Obtain funding for detailed intrusive investigation.
6. Undertake detailed intrusive investigation or review any investigation already undertaken.
7. Undertake a risk assessment and a review of all the evidence.
8. Decide if sufficient information is available to make a determination as to whether the land is contaminated land or not contaminated land.
9. Inform interested parties with decision.
10. Decide if further information is required.
11. Repeat any stage of the process as required.
12. Make a Determination and record this.
13. Enter negotiations about remediation of the land.
14. Assign liabilities, exclude any groups and apportion between groups.
15. Secure remediation either voluntarily or via regulatory action.
16. Local authority carry out remediation if required
17. Cost recovery
18. Maintain the public register
19. Repeat the process from stage 4 for remaining sites identified, then repeat from stage 3 for a further batch of sites.

7.6 Finding and prioritising potentially contaminated sites for detailed Inspection.

The strategic desk based inspection of the Borough has been completed in so far as a number of readily available sources of information have been interrogated and areas with a potential for contaminants to be present as a result of a former industrial/ waste disposal use have been identified. This has identified approximately 2500 former uses (some of which are on the same piece of land) and includes everything from small electrical substations right up to large former landfills.

In reality only a small percentage of sites will be investigated under the Part 2A regime, other sites will be investigated during redevelopment, some may not warrant investigation at all. This information is used to respond to enquiries by members of the public or external agencies/ organisations and assist the council in decision making for numerous functions.

In order to determine if contaminants are present, physical investigations of the land have to be undertaken, the Government requires that the most serious sites are investigated first. There is no prescribed process on how local authorities should prioritise sites in their area for detailed inspection, however the aim should be to ensure that sites that present the greatest risks to health or the environment are inspected before sites that present a low risk. Therefore, a simple assessment of potential hazard and receptor sensitivity has been undertaken to assist in deciding the approximate order of detailed inspections. This is not set in stone and may change over time.

7.7 Detailed Inspection of Potentially Contaminated Land

The purpose of detailed inspections is to gather information to determine whether or

not land appears to be contaminated land and whether the site is a potential special site. Further information about special sites is given in section 7.13.

Detailed Inspection may include any or all of the following;

- The collation and assessment of documentary information, or other information from other bodies e.g. historic maps, aerial photographs, previous site investigation reports;
- A visit to the particular area for the purposes of visual inspection and, in some cases, limited sampling (e.g. surface deposits);
- Intrusive investigation of the land (e.g. by exploratory excavations).²

Consultations will take place with relevant organisations prior to carrying out detailed inspections which may include but is not restricted to;

- Health Protection Agency/ Public Health England
- Environment Agency
- Portsmouth Water
- Southern Water
- Natural England
- Food Standards Agency
- English Heritage

Intrusive inspections will be carried out in accordance with appropriate technical procedures to ensure;

- They are effective;
- Do not cause unnecessary damage or harm; and
- Do not cause pollution of controlled waters;
- Appropriate health and safety measures are taken;
- They take account of sustainability and climate change issues.

The Council will seek to encourage voluntary inspections by appropriate persons such as land owners in the first instance, where liability issues appear straightforward.

All inspections will be documented, attention will be given to relevant and appropriate technical guidance, records will be stored in accordance with Council guidelines.

7.8 Review Mechanisms

This document lays the framework for deciding a programme of inspection but in some circumstances detailed inspections will occur outside of this programme.

Certain events may trigger a change to the priority ranking of a site and may require the result of a determination to be changed.

In particular;

- **New Information**

From any source, statutory bodies, owners/occupiers of land, local community, businesses, discovery of significant contamination, strong odours within properties where it appears this could be from the land.

- **Voluntary Remediation**
Lower priority site may wish to pre-empt inspection process.
- **Health Effects**
Reports of localised health effects which appear to relate to a particular area of land.

Other circumstances;

- **Change to contamination**
Accidents, spills, natural attenuation, new scientific assessments.
- **Alteration of pathway**
Disturbance of site, change in groundwater levels, alteration of surface waters, introduction of pipelines.
- **Change to receptor**
New houses, buildings, designation of new ecosystem, persistent trespass esp. by children.
- **Changes to legislation**
Either statutory or case law.
- **Revision of guidance and best practice**
Release of guidance by DEFRA, EA, uptake of particular best practice by other local authorities.
- **Changes in the use of - the land or adjacent land**
Planning applications, changes not requiring planning permission.

7.9 Statutory Powers of Entry

The detailed inspection process will usually require entry onto land, in most instances the Council will discuss the requirements for inspection with landowners and will arrange in writing a convenient time/ date for inspection, giving at least 7 day notice, usually more. Permission will be obtained in writing to carry out any such works

If written approval is not forthcoming then the Council can exercise powers under section 108 of the Environment Act 1995, give reasonable notice and if the consent is not forthcoming, entry to the premises can be secured by a warrant issued by a magistrate.

Before using statutory powers of entry the Council will ensure it is satisfied on the basis of information it holds that;

- There is a reasonable possibility that a pollutant linkage exists on the land
- It is likely that the contaminant is present
- The receptor is present or is likely to be present.²

The Council will not carry out intrusive investigation by using statutory powers of entry where;

- The Council has already been provided with detailed information needed to make the determination, or
- A person offers to provide the necessary information within a reasonable and specified time and provides the information within that time.²

7.10 Emergency Situations

Powers of entry can be exercised without delay if it appears to the Council;

- That there is an immediate risk of serious pollution of the environment or serious harm to human health, or
- That circumstances exist which are likely to endanger life or health², and
- Immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy.¹⁰

7.11 Grants of Rights of Access

In some circumstances the Council or The Environment Agency may need to consult with people for the purpose of them granting rights of access to land. This may be prior to detailed investigation or prior to serving a remediation notice. In such cases those people granting rights are entitled to make an application to be paid compensation. Compensation would be paid by those responsible for remediation. Further information is provided in the Contaminated Land (England) Regulations 2006.

7.12 Appointment of Consultants

In the course of carrying out detailed inspections it may be necessary for the Council to employ a suitably qualified person to undertake this inspection. Consultants will be expected to demonstrate or provide the following;

- Experience with similar types of sites or situations
- Qualifications in appropriate disciplines
- Project management capability
- Communication skills
- Reporting skills
- Understanding of appropriate legislation
- Adherence/ adoption of quality assurance systems
- Ability to undertake risk assessment
- Ability to design site investigation programmes
- Knowledge and understanding of health and safety requirements
- Necessary professional indemnity insurance
- References

Strict procurement rules must be followed when procuring consultancy services.

Local authorities have powers under S108 of the Environment Act 1995 to authorise suitable persons to carry out detailed inspections of a site.

7.13 Special Sites

The conditions applicable to special sites are set out in regulations 2 and 3 of the Contaminated Land (England) Regulations 2006 (SI 2006/1380) and Schedule 1.

In short they include;

- Controlled waters intended for drinking water;
- Controlled waters that no longer meet the water quality classification;
- Controlled waters contained within listed rock structures are affected by certain families or groups of substances as listed in the regulations;
- Land contaminated by waste acid tars;
- Land used for the purification of crude petroleum or oil;
- Land used for manufacture of explosives;
- Land used for permitted process (PPC, WML);
- Land within a nuclear site;
- Land being used for naval, military or air force purposes and owned/ occupied by or on behalf of Secretary of State for Defence, Defence Council, international headquarters or defence organisation, service authority of a visiting force;
- Land used for the manufacture, production or disposal of chemical weapons, biological agents or toxins, and biological weapons, equipment or means of delivery;
- Atomic weapons establishments;
- Land to which section 30 of the Armed Forces Act 1996 applies;
- Land contaminated by radioactivity.¹¹

If the local authority has reason to believe that a site falls under the definition of a special site it will seek to arrange with the Environment Agency to carry out the remediation. The Local Authority will authorise a person from the Environment Agency to use powers of entry conferred under s.108 Environment Act 1995.

Land cannot be designated as a special site until it has been determined as Contaminated Land, the local authority must make this determination, but in such cases will take account of any advice/ information provided by the Environment Agency.²

If the Environment Agency agrees that the site is a special site, then the Environment Agency will become the enforcing authority for that site. If the Environment Agency does not agree with the decision that a site is a special site it must notify the Local Authority in writing within 21 days detailing reasons for the disagreement. Any disputes over the issue will be referred to the Secretary of State.²

When a site is designated as a special site the Council will notify in writing:

- The Environment Agency,
- The owner,
- Any occupier of all/part of the land,
- The person(s) responsible for remediation.²

Other parties may also be notified such as local water companies and the Health Protection Agency in the case of affected drinking water.

8.0 Liability

8.1 Apportionment of liability

Once the Council has made a determination that land is contaminated land it will need to identify who is responsible for paying for remediation. The persons considered liable for these costs are called appropriate persons. The statutory guidance provides guidance on determining which persons should bear liability for remediation. This will need to be undertaken for each significant pollutant linkage. More than one person may be liable for a significant contaminant linkage; in this instance all those liable are termed a liability group.²

This procedure of apportioning liability is made up of five stages;

1. Identify potential appropriate persons and liability groups,
2. Characterise remediation actions,
3. Attribute responsibility to liability groups,
4. Exclude members of a liability group,
5. Apportion liability between members of a liability group.²

Fareham Borough Council will undertake "reasonable enquiries" to identify and find appropriate persons. These enquiries might take account of;

- The effort required to obtain the information,
- The cost of obtaining the information,
- The significance of the information sought.²

There are two classes of people who can be liable for remediation costs;

- The polluter or persons who have knowingly permitted contamination to be present - **Class A**.
- Current owners and/ or occupiers - **Class B**.

If class A persons cannot be found the local authority is required to identify all class B persons, unless the significant pollutant linkage relates to pollution of controlled waters which in the absence of a class A liability group would become an Orphan site.

Explanations on the information used to identify liable groups and the reasons why a person is considered liable will be provided in writing during the formal notification of determination.

8.2 Exclusion from liability

There are six tests of exclusion, the details of which are provided in the Statutory Guidance, in short these are;

1. Excluded activities;
2. Payments made for remediation;
3. Sold with information

4. Changes to substances
5. Escaped substances;
6. Introduction of pathways and receptors.²

The Council will act in accordance with the provisions made in the Statutory Guidance when excluding appropriate persons or apportioning costs between appropriate persons. The Council is required to provide details of exclusions and apportionment of liability to appropriate persons; this will be provided during formal notification of determination.

9.0 Remediation of Contaminated Land

Following detailed inspection, if land is determined as contaminated land then the Council must secure remediation of the land.

9.1 Definition of Remediation

The Statutory Guidance provides guidance on the remediation of contaminated land, Fareham Borough Council will act in accordance with statutory guidance when considering remediation requirements.

Remediation is defined in s.78A (7) of the Environmental Protection Act 1990 Part 2A as meaning:

- *The doing of anything for the purpose of assessing the condition of*
 - *The contaminated land in question*
 - *Any controlled waters affected by that land: or*
 - *Any land adjoining or adjacent to that land;*
- *The doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose;*
 - *Of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land; or*
 - *Restoring the land or waters to their former state; or*
- *The making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters.²*

Remediation actions can be grouped into three categories;

- Assessment actions
- Remedial treatment actions
- Monitoring Actions

The broad aim of remediation should be to remove or take measures to remedy the identified significant contaminant linkages, or permanently to disrupt them to ensure they are no longer significant and that risks are reduced below an unacceptable level.²

9.2 Reasonableness of Remediation

Fareham Borough Council will take into account:

- a) The practicability, effectiveness and durability of remediation.
- b) The health and environmental impacts of remedial options.
- c) The financial cost.

- d) The benefits of remediation with regard to the seriousness of harm or pollution of controlled waters.

9.3 Voluntary Remediation

Once a piece of land is determined as being contaminated land, a three month period must elapse to allow consultation with the appropriate person; the owner of the land to which the notice relates; and the occupier of all or part of the land. This is to provide the appropriate person with an opportunity to agree voluntary remedial action.

Voluntary remediation of contaminated land will be encouraged, but requires the formal agreement of remediation schemes or actions between the appropriate person(s) and the relevant enforcing body. The Council and/or the Environment Agency have to be satisfied that voluntary remediation proposals will achieve an appropriate standard of remediation. If proposals are satisfactory a Remediation Statement will be agreed and kept on the public register. If proposals are not satisfactory further discussions will take place to agree additional work, or a remediation notice may be served.

9.4 Remediation Notices

A remediation notice will be served where the Council considers that the remediation actions;

- Have not been, are not being, and will not be carried out without the service of a remediation notice; and
- In respect of which the authority has no power under section 78N EPA 1990 to carry out itself and for which it is not, itself, the appropriate person.²

Prior to serving a remediation notice the Council will make reasonable efforts to consult with; the person on which the notice would be served; the owner of the land; the occupier of the land; any person who needs to grant rights for remediation to take place and any other person as deemed necessary.²

Notices cannot be served until three months after formal notification, unless urgent remediation is required. The information required to be included in a notice is specified in the Contaminated Land (England) Regulations 2006 as are details on appeals. A remediation notice can be revised or revoked if it is reasonable or necessary to do so.

Information on remediation notices served, appeals and offences will be recorded on a public register.

Remediation Notices will not be served if;

- a) There is nothing that can be done by way of remediation.
- b) The appropriate things will be done without the service of a notice - in such cases a "remediation statement" must be prepared by those responsible for the remediation.

- c) The Council caused or knowingly permitted the pollution and is therefore responsible for remediation - in such instances a "remediation declaration" must be prepared by the Council.
- d) The Council has powers to carry out works in default.²

9.5 Offences

It is an offence not to comply with a remediation notice.

Non compliance with a remediation notice may result in prosecution and a fine. The Council or the Environment Agency also has powers in some cases to carry out the necessary works and recover reasonable costs from the appropriate person(s).

9.6 Remediation of urgent sites

Urgent remediation may be required if there is imminent danger of serious harm or serious pollution of controlled waters being caused as a result of a significant pollutant linkage. Under this circumstance the Council is not required to

- Consult with; the person receiving the notice; the owner of the land; the occupier of the land; or any other persons deemed necessary.
- Wait for three months between the formal notification and the service of the remediation notice.²

9.7 Local Authority powers to carry out remediation

Before serving a remediation notice the Council or The Environment Agency must consider whether it has powers to carry out any of the remediation actions itself. Where this applies, the Council and the Environment Agency are precluded from serving a remediation notice requiring anyone else to carry out that remediation action. In general terms the Council has powers to carry out remediation itself in cases where;

- a) Action is needed to prevent serious harm or pollution of controlled waters.
- b) It has agreed in writing with the persons liable for remediation that the Council will carry out the work but at the cost of the liable persons.
- c) A remediation notice has not been complied with.
- d) The liability for a particular contaminant linkage is excluded under the exclusion tests.
- e) The Council has decided not to recover costs, or only to recover part of the costs.
- f) There is no appropriate person to bear responsibility for the action.²

9.8 Site specific consultations throughout the inspection and remediation process.

Site specific consultation will be extremely important throughout the inspection process and particularly at remediation stages, especially if notices are to be served and remedial works need to be specified. Discussions may take place regularly with

the organisations identified below however the need for consultation will be assessed on a site by site basis. Discussions could involve the following issues;

Environment Agency - pollution of controlled waters cases, special sites, landfill gas issues, sustainability issues, climate change issues, standard of remediation, remediation techniques, novel remediation techniques, requirements for other legislative control of the remediation process.

Health Protection Agency/ Public Health England - human health cases, remediation and reduction of significant risk of harm to human receptors, communication of risk, durability of remediation, where harm appears to be occurring and remediation timescales and the impact upon human health.

Natural England - designated ecosystem cases, issues related to the timing of remediation, standard of remediation, appropriate remediation techniques/ methods, novel remediation techniques, requirements for other legislative control of the remediation process. Whether remediation will cause adverse effects in its own right.

English Heritage - sites of archaeological importance, potential damage caused by remediation, requirement of other works/ controls to prevent damage.

Water Authorities - Portsmouth Water and Southern Water will be consulted in all cases where contamination may impact upon the quality of a public water supply.

Internal Departments - will be consulted on a case by case basis.

Hampshire County Council - Consultation will take place with the County Council where required.

Neighbouring Authorities

The Hampshire and Isle of Wight Environment Agency/ Local Authority Liaison Group meet on average every six to eight weeks; it is open to all Hampshire Local Authority and Environment Agency officers. The main function of the group is to:

- Provide a forum for liaison with the Environment Agency
- Provide training and a focus for information exchange
- Share experience of problems by presenting case studies with associated discussion
- Consider contaminated land in a broader context of EPA 1990 Part 2A.

Through this group it has been agreed that local authorities will inform neighbouring authorities should a site within 250m of their boundary be formally determined to be contaminated land, in reality consultation will take place in relation to these sites during initial inspection stages.

10.0 Financial Considerations

10.1 Costs of Implementing Contaminated Land Inspection Strategy

Fareham Borough Council will endeavour to ensure that appropriate finance is in place in order to carry out its statutory duties. In all cases officers will comply with the Councils financial policies and procurement guides.

10.2 Cost Recovery

In some circumstances where the Council or The Environment Agency has carried out remediation itself, it may be entitled to recover reasonable costs it has incurred in doing so.

Cost recovery must be as fair and as equitable as possible and it should be based upon the polluter pays principle. Local authorities have no power to recover any costs they incur in inspecting the land to determine whether it is contaminated land. Fareham Borough Council will have regard to the individual circumstances of each case.

In deciding whether to recover its costs and, if so, how much of its costs, the enforcing authority must have regard to:

- Any hardship which the recovery might cause to the appropriate person, and
- The statutory guidance.²

10.3 Hardship

In general local authorities should seek to recover their full costs wherever possible. However, they should consider whether to waive or reduce costs to avoid hardship and will take into account the considerations in the statutory guidance. Anyone seeking a waiver or reduction in the remediation costs will need to present information to the Council to support this request. This information may include but is not restricted to;

- Bank statements
- Personal/ company accounts
- Land valuations
- Details of company assets

The actual information required will be discussed with each person/ company at the time.

The term hardship is not defined in Part 2A of the EPA 1990, ordinarily it means a hardness of fate or circumstance, severe suffering or privation.

10.4 Cost Recovery Considerations in Addition to Hardship

Hardship is not the only circumstance where the Council should consider reducing or waiving its costs, guidance should be followed when one of the following

circumstances applies;

- Threat of business closure or insolvency;
- Trusts;
- Charities;
- Social Housing Landlords;
- Where other potentially appropriate persons have not been found;
- Costs in relation to land values; and
- Precautions taken before acquiring a freehold or a leasehold interest;
- Owner-occupiers of dwellings.²

Due to the complexities of cost recovery and in order to promote fairness, transparency and consistency Fareham Borough Council will prepare, adopt and make available a policy statement about the general approach it intends to follow in making cost recovery decisions.

This policy will outline the circumstances in which the Council would waive or reduce cost recovery.

10.5 Claims for Compensation for Rights of Entry

In some cases remediation may need to be carried out on land not owned by the liable persons for example because it has been sold on or because contaminants have leaked onto neighbouring land, in this case the new landowner or the neighbour will need to grant the necessary rights for the work to be carried out.

Regulation 6 and Schedule 2 of the Contaminated Land (England) Regulations 2006 set out the codes for compensation claims and payments. It should be noted that grant of rights are not required where remediation has been carried out voluntarily and a remediation notice has not been served.

The above may be important in circumstances where the Council has to carry out works in default where a remediation notice has not been complied with or in instances when the Council is required to grant rights for access to Council owned land.

10.6 External Sources of Funding

10.6.1 DEFRA Grants

Local authorities can apply to Defra for a grant under the Contaminated Land Capital Projects Programme (CLCPP) to assist with costs associated with detailed inspection and remediation. This programme has a limited budget, all applications are assessed according to risk and there are strict eligibility criteria that have to be complied with. Currently local authorities are invited to apply for funding during time restricted funding windows in autumn and summer. There are no guarantees that applications will be successful.

Grants will not be awarded for investigation or remediation work on sites that have been redeveloped under the planning system since 1994 and remediation work has

not been sufficient to remove significant risks to health, the environment or resolve pollution of controlled waters.

10.6.2 Alternative Funding Programmes

Fareham Borough Council will consider alternative funding programmes and where such funding is obtained may inspect sites outside of planned programme if it is appropriate and in accordance with broad strategic approach and helps to reduce the burden on local taxpayers.

10.7 Costs associated with Council Liabilities

Apart from costs arising from implementing the inspection strategy the Council may become liable for costs related to either the investigation or remediation of land as a result of acts or omissions in other areas of responsibility this may include;

- Causing or knowingly permitting the presence of contaminants, historically or currently e.g. pre 1974 waste disposal;
- Purchasing or taking possession of land that may be contaminated;
- Leasing land that becomes contaminated as a result of a actions by the tenant(s);
- Failing to require remediation of land through the development control process.

Appropriate action in accordance with the Statutory Guidance should be taken to address Council owned contaminated land, all investigations and remediation should be documented, with justifications documented in a transparent manner. Any Council owned contaminated land will be reported to department Directors and necessary Panels/ Executive. Further information is provided on Council owned land in section 4.4.

Steps should be taken to manage liabilities, these could include;

- Pre purchase assessments and due diligence checks prior to purchasing land and buildings;
- Due diligence checks prior to accepting gifted land;
- Reviews of leases and applications of appropriate conditions on tenancy agreements;
- Appropriate planning and building control consultations and use of planning conditions and
- Use of enforcement powers during the development control process where appropriate.
- Undertaking investigation and remediation in accordance with relevant guidance;
- Maintenance checks and environmental audits for chemical storage and fuel storage areas on Council land holdings.

11.0 Information Management, Disclosure and Complaints

11.1 Information Management

Information will be stored and distributed electronically where possible to reduce paper. Information will be stored in a manner so that;

- Information about a site can be linked to a geographic area or property address,
- Site information is easily accessible, and
- Site information is referenced to enable retrieval of disparate information related to one particular site.

A geographic information system will be used to manage spatial data.

11.2 Information Disclosure

All information will be stored, managed, shared and released in accordance with Council policies relating to the Data Protection Act 1998 and the Freedom of Information Act 2000.

The Environmental Information Regulations 2004 (S.I 2004/3391) set out specific provisions with regards to public access to environmental information, refusals to disclose, charging, disclosing and timescales.

11.3 Public Registers

The Council has a duty to maintain a register of remediated sites, the contents of which are specified in the Contaminated Land (England) Regulations 2000 but in summary will include details of:

- Remediation Notices,
- Appeals against remediation notices,
- Remediation declarations,
- Remediation statements,
- Appeals against charging notices,
- Designation of special sites,
- Notification of claimed remediation,
- Convictions for offences under section 78M of EPA 1990,
- Guidance issued under section 78V(1) EPA 1990,
- Other environmental controls.¹¹

The Statutory Guidance states that there are some instances where information can be excluded from the Register on the basis that:

- Inclusion would be against the interests of national security;
- The information is commercially confidential

The register is a public document and can be accessed free of charge in the Department of Regulatory and Democratic Services, Fareham Borough Council, Civic Offices, Civic Way, Fareham during the period of 8:45am till 5.15pm Monday-

Friday.

Charges can be made for copies of the register.

The public register is not be a list of contaminated land, the information contained on the register is associated with the process of remediation. The aim will be to also provide this register electronically in future.

11.4 Complaints, Enquiries and Service Requests

All complaints/ enquiries will be dealt with according to the existing procedures of the Department of Regulatory and Democratic Services. All complaints/ enquiries will:

- Have the details of the complaint/ enquiry recorded;
- Record the address or site reference of the property/land being complained/enquired about;
- Record the address and contact details of the complainant/ enquirer;
- Be assigned to the appropriate officer.

As with all other services the Department of Regulatory Services aims to respond to public complaints and requests for information and correspondence promptly and efficiently. Existing targets are that;

- A response is given within 2 working days to service requests
- A holding reply is provided within 5 working days
- A detailed reply is provided within 10 working days
- Investigations are concluded within 60 working days or at the conclusion of prosecution process

Due to the complexity of the work, some cases may take longer than 60 days to conclude especially during the remediation phase of sites. Action taken will be completely site specific as the circumstances affecting contamination at one site is unlikely to be similar to that of any other site therefore it is difficult to put exact time limits to investigations. As voluntary action will be preferred to formal enforcement action a prosecution may not conclude an investigation.

11.5 Land Charge Enquiries

Under Con 29 Land Charge Searches the Council is required to provide answers to the following queries;

“Do any of the following apply (including any relating to land adjacent to or adjoining the property which has been identified as contaminated land because it is in such a condition that harm or pollution of controlled waters might be caused on the property):-

- a) *A contaminated land notice;*
- b) *In relation to a register maintained under section 78R of the Environmental Protection Act 1990:-*
 - i) *A decision to make an entry; or*
 - ii) *An entry; or*

- c) *Consultation with the owner or occupier of the property conducted under section 78G(3) of the Environmental Protection Act 1990 before the service of a remediation notice?"*

More frequently the Council is requested to provide over and above the standard information requested under con 29 land charge questions, any additional requests should be made in writing to Land Charges, Fareham Borough Council, Civic Offices, Civic Way, Fareham, PO16 7AZ. Requests for Con 29 land searches can be made by emailing landsearches@fareham.gov.uk or calling 01329 824499.

There is a fee for land charges.

11.6 Requests for Information

Questions relating to land contamination issues arising from land/ property sale transactions or the redevelopment of a piece of land need to be made in writing to the Contaminated Land Officer, Department of Regulatory and Democratic Services, Fareham Borough Council, Civic Offices, Civic Way, Fareham, PO16 7AZ or emailing regulatory@fareham.gov.uk. Questions should be clearly stated and accompanied by a plan of the area with the boundaries of the required search area clearly marked. Charges are made for this service and it is advised that individuals requiring questions relating to land contamination to be answered contact the contaminated land officer for details of current charges.

- An initial response should be given within 2 working days
- A detailed reply should be provided within 10 working days

Answers to queries will be restricted to factual data. Interpretation of this data and the making of comments concerning potential risks to the development or financial liabilities will not be provided by the Council.

11.7 Information received from members of the public

The Council welcomes input from members of the public, as it is likely that long term residents have knowledge of the area they live in and the activities that have taken place there. Should members of the public wish to discuss land contamination issues they can contact the Department of Regulatory and Democratic Services via telephone or an office visit during office hours or send an email regulatory@fareham.gov.uk.

References

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- 10 Environment Act 1995 s.108
<http://www.legislation.gov.uk/ukpga/1995/25/section/108>
- 11 The Contaminated Land (England) Regulations 2006
<http://www.legislation.gov.uk/uksi/2006/1380/contents/made>

Appendix 1

Other Contacts

DEFRA

The Department for Environment, Food and Rural Affairs oversees contaminated land legislation and policy associated with it. DEFRA runs the contaminated land capital projects programme. The contact details are as follows;

Contaminated Land Branch
Department for Environment, Food and Rural Affairs
Area 3C, Nobel House
17 Smith Square
London
SW1P 3JR
Tel: 0207 238 6285
Email: contaminatedland.enquiries@defra.gsi.gov.uk

DECC

The Department of Energy and Climate Change produce the statutory guidance for radioactive contaminated land. The contact details are as follows;

3 Whitehall Place
London
SW1A 2AW

Tel: 0300 060 4000
Email: correspondence@decc.gsi.gov.uk

CLG

The Department for Communities and Local Government oversee the planning system and policy on the development of brownfield land and land affected by contamination. The contact details are as follows;

Eland House
Bressenden Place
London
SW1E 5DU

Tel: 030 3444 0000
Email: contactus@communities.gsi.gov.uk

Health Protection Agency/ Public Health England

The HPA is the Governments principal scientific and technical adviser on the health effects of toxic substances. It works closely with the Environment Agency and the

Food standards Agency on producing technical guidance on contaminated land and provides advice to local authorities on specific cases of land contamination. Local Health Protection Units act as points of contact for local authorities. On request they will offer comments on risk assessments and will provide support to the Council for public meetings and informing members of the public.

Hampshire and Isle of Wight Health Protection Unit
Unit 8
Fulcrum 2
Solent Way
Whiteley
Fareham
Hampshire
PO15 7FN

Tel: 0845 055 2022
Fax: 0845 504 0448
Email: hiowhpu@hpa.org.uk

From 1st April 2013 the HPA will be part of Public Health England.

Natural England

Natural England is a non departmental Government body which aims to conserve and enhance England's natural environment. It can provide advice on the impacts of land contamination on biodiversity and the natural environment.

Natural England
2nd Floor
Cromwell House
15 Andover Road
Winchester
Hampshire
SO23 7BT

Tel: 0300 060 2514
Email: enquiries@naturalengland.org.uk

Food Standards Agency

The Food Standards Agency is an independent Government department whose aim is to protect the public's health and consumer interests in food. It can provide advice with regards to contaminants in the food chain.

Food Standards Agency
Aviation House
125 Kingsway
London
WC2B 6NH

Tel: 020 7276 8829

Email: helpline@foodstandards.gsi.gov.uk

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