

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 waivering 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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<http://www.legislation.gov.uk/ukpga/1995/25/section/57>
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- 4 DCLG, (2012). National Planning Policy Framework. Crown Copyright. London.
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- 6 DCLG, (2010). Approved Document C - Site preparation and resistance to contaminants and moisture. Crown Copyright. London.
http://www.planningportal.gov.uk/buildingregulations/approveddocuments/partc/document_c
- 7 DEFRA, (2009). The Environmental Damage (Prevention and Remediation) Regulations 2009. Guidance for England and Wales. Crown copyright. London.
<http://archive.defra.gov.uk/environment/policy/liability/pdf/indepth-guide-regs09.pdf>
- 8 EA, (2013). The Environment Agency Briefing Note. http://www.environment-agency.gov.uk/static/documents/Leisure/100209_External_FAQ_FINAL.pdf
- 9 DECC, (2012). Environmental Protection Act 1990: Part IIA Contaminated Land Radioactive Contaminated Land Statutory Guidance. The Stationary Office. London.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48325/4472-draft-statutory-guidance-covering-radioactive-cont.pdf
- 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