



Lewes District Council

Lewes District Council's Contaminated Land Inspection Strategy



**DRAFT
Revision 2
January 2014
Environmental Protection Act 1990 – Part 2A**

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1. Executive Summary

Part 2A of the Environmental Protection Act 1990 placed a responsibility on local authorities to identify and remediate land defined as 'contaminated land'. The regime is designed to deal with sites that are unlikely to be remediated through the planning process; public monies should not be spent remediating land that would be remediated by a developer.

The Contaminated Land regime came into force in England on 1st April 2000. Local authorities were required to prepare a strategy for the identification and inspection of possible contaminated sites within their areas. Our first strategy was published in November 2001 and revised in December 2008. This document is the second revision of the strategy and incorporates changes in national guidance introduced by the revised Contaminated Land Statutory Guidance published in April 2012 and the National Planning Policy Framework published in March 2012.

Lewes District Council has made significant progress since the 2008 Contaminated Land Strategy was published. Five site investigations, covering over 200 homes have been completed. As a result of these site investigations 12 properties were identified as been "Contaminated Land". These properties have been successfully remediated by Lewes District Council.

Action has also been taken through the development control process. For instance, part of a former gas works site was remediated in Lewes prior to housing being built and significant remedial works were undertaken during the construction of the Newhaven Energy Recovery Facility.

In its strategy Lewes District Council has applied the principles set out in the Department for Environment Food and Rural Affairs (DEFRA) Environmental Protection Act 1990: Part 2A, Contaminated Land Statutory Guidance, April 2012.

We have used extensively Historic Ordnance Survey maps dating from 1878 to identify the location of land uses which due to previous industrial activity may have caused contamination. These maps have been incorporated into our Geographic Information System (GIS).

In order to prioritise our work we have used a mathematical model to assist in quantifying risks posed by land which due to past uses may be "contaminated". The recent changes to the national guidance mean that we await new technical tools to be published to help authorities categorise sites according to their risks. We will investigate the possibility of revising the existing model to reflect the new guidance as this will again allow the Council to concentrate its investigations on those areas where the most serious contamination might be present.

Once potentially contaminated sites have been identified, if they are unlikely to be redeveloped under the planning system, the Council will then carry out further, more detailed, investigations. This will initially involve a more detailed site review, which will include the assessment of any investigative reports

associated with it. If contamination is still assessed to be probable, the Council will then visit the site to confirm the information available to it. Critical to our investigations will be the need to work with the site owner and any occupiers. Clearly our investigations may require intrusive site investigations, these will only occur where appropriate and necessary to the investigation. These more detailed assessments will only be required to confirm the presence or absence of 'a significant contaminant linkage'.

If, after reviewing all the evidence available to it, the Council considers that the site, in its current state, is causing significant harm or is there is a significant possibility of such harm being caused, or pollution to controlled waters is being or is likely to be caused, it will then identify it as being 'contaminated' and will seek the appropriate remediation.

Wherever possible, the Council will seek a voluntary approach to remediation, but will use its statutory powers where necessary. In investigating potentially contaminated sites the Council will also, where necessary, consult with other relevant bodies such as the Environment Agency, Natural England, DEFRA and English Partnerships. At all times the Council advocates a clear and transparent approach with all 'stakeholders'.

All information detailing sites identified as contaminated and remediated under Part 2A of the Environmental Protection Act 1990 is available on a public register available from Southover House, Southover Road, Lewes.

2. Consultation Arrangements

Periodic reviews will take place in accordance with the details laid down within the strategy itself. If you have any comments to make then this process will allow them to be taken into consideration.

You can send us your comments by any of the following means:

In writing to:

Environmental Health
Southover House
Southover Road
Lewes
East Sussex
BN7 1AB

By fax to: 01273 484 451

By e-mail at: ehealth@lewes.gov.uk

Copies of this strategy will be available from Environmental Health at the above address. The strategy can also be viewed through the Council's web site at www.lewes.gov.uk.

3. Regulatory Context

What follows is a simple introduction to the main principles of the law applying to contaminated land. It is intended to provide a context for this strategy and should not be used for any other purpose. Full reference to the legislation and statutory guidance is recommended.

3.1. Legislation

Part 2A of the Environmental Protection Act 1990 ("Part 2A") was introduced by section 57 of the Environment Act 1995 and came into force on 1 April 2000. It contains provisions on contaminated land in the UK and includes a statutory definition. A duty was imposed on Local Authorities to inspect their areas for contaminated land and, where contaminated land is identified, to ensure satisfactory remediation takes place. The Council's role as the primary enforcing authority for the purposes of Part 2A within the District is set out below. The Environment Agency's important role in achieving the objectives of Part 2A is also outlined below.

3.2. The Regulatory Role of Local Authorities under Part 2A Environmental Protection Act 1990

The primary regulatory role under Part 2A rests with the Council and requires that LDC:

1. Cause the District to be inspected to identify contaminated land;
2. Determine whether any particular site is contaminated land;
3. Act as the enforcing authority for all contaminated land which is not designated as forming a "Special Site" (see below). In the case of Special Sites the Environment Agency will be the enforcing authority.

In order to fulfil these duties the Council is obliged to:

1. Prepare an inspection strategy setting out how the Council will inspect its area with the aim of identifying contaminated land (this document);
2. Determine if any particular area of land is contaminated land as defined;
3. Determine if contaminated land is to be designated as a special site (see section 10.3);
4. Undertake immediate remediation if there is an imminent danger of serious harm;
5. Consider the application of alternative statutory regimes to the site;
6. Identify and notify those who may need to take action on the land;
7. Determine responsibility for the remediation of the land;

8. Consult with the relevant parties as to the remediation actions that are to be carried out;
9. Serve remediation notices;
10. Monitor the effectiveness of remediation carried out;
11. Maintain a public register of details of regulatory action taken under the act;
12. Report progress made under Part 2A to the Environment Agency.

3.3. The Regulatory Role of the Environment Agency

The Environment Agency's role is to:

1. Assist local authorities in identifying contaminated land;
2. Provide site-specific guidance to Local Authorities;
3. Act as the enforcing authority for designated Special Sites;
4. Publish reports on contaminated land.

4. The Identification of Contaminated Land

When deciding whether land is contaminated, the Council must identify a significant 'contaminant linkage'. A contaminant linkage means a relationship between a contaminant source, a pathway and a receptor.



Figure 1

Source – Pathway – Receptor Linkage

These terms are not defined by statute. The following meanings are set out in statutory guidance:

1. The **contaminant source** must be a substance relevant to the legislative regime which is in, on or under the land and which has the potential to cause significant harm to a relevant receptor, or to cause significant pollution of controlled waters as defined by s.104 of the Water Resources Act 1991.
2. Relevant **receptors** are outlined in section 4 of the guidance and include human health, ecological system effects, property effects and pollution of control of controlled waters.

Notes:

1. The Council is advised to disregard any receptor not likely to be present given the current use of any land under investigation. The current use of a site is deemed to include any use currently made, or likely to be made, that is consistent with existing Planning permission. However 'current use' does include any likely informal recreational use of the land.
2. Radioactive contamination of land is covered by separate statutory guidance, the Radioactive Contaminated Land Statutory Guidance, published by the Department of Energy and Climate Change in April 2012. In the event that land is affected by both radioactive and non-radioactive contaminants both sets of statutory guidance will apply, and the enforcing authority should decide what is a reasonable course of action having due regard for the relevant primary legislation and advice from the Environment Agency.
3. The **pathway** must be one or more routes by which a receptor is being (or could be) exposed to or affected by a contaminant.

Examples:

1. Landfill gas (the contaminant) produced in a former unlicensed tip might be causing harm to a nearby dwelling (the receptor) as a result of the gas migrating through fissured chalk (the pathway).
2. Petrol (the contaminant) that leaked from storage tanks into underlying aquifers used for drinking water extraction. In this example the movement of groundwater represents both the pathway as the means by which petrol is moved from its original site and the receptor as the material that is suffering harm.

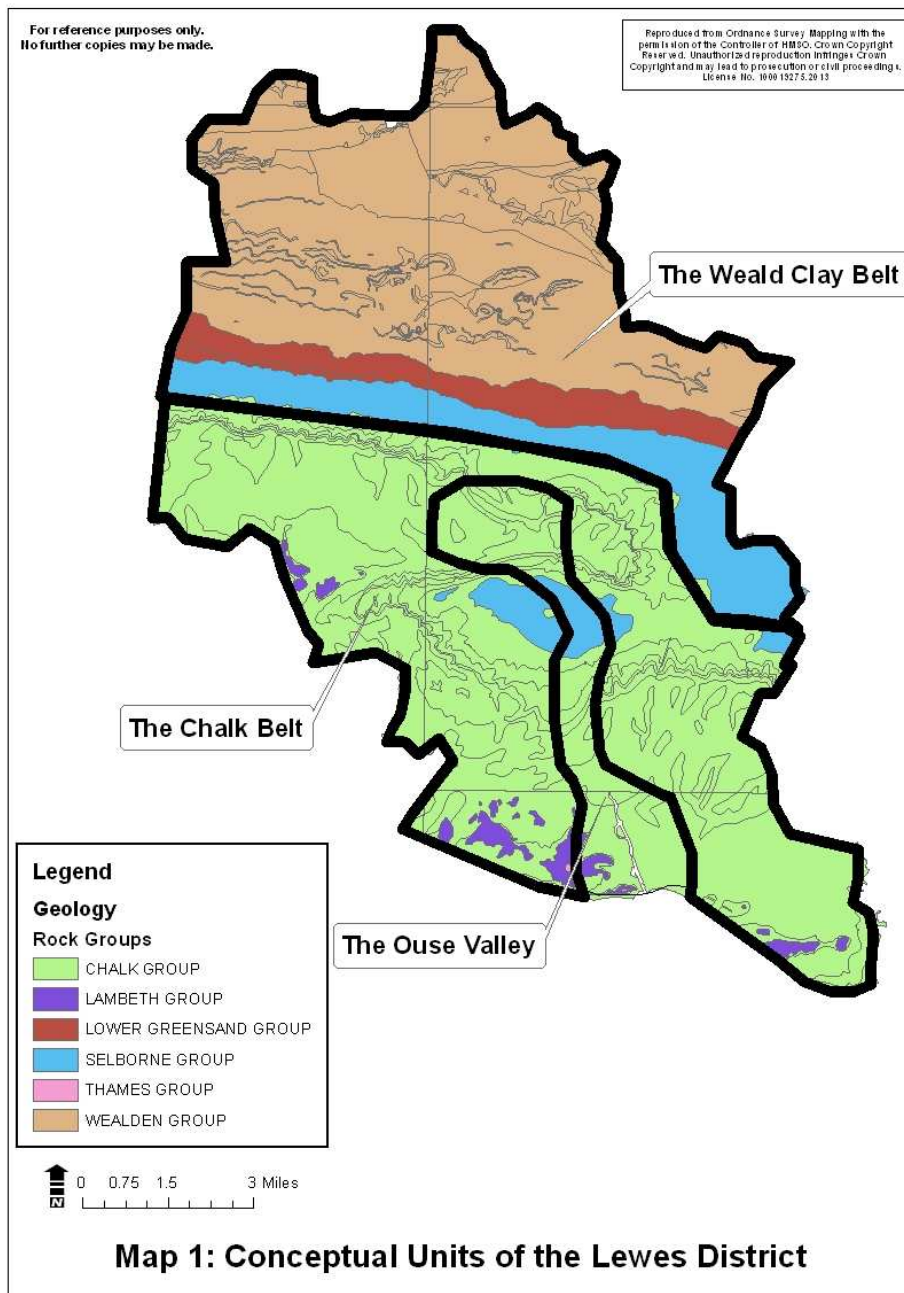
4.1. Suitable for Use

The legislative regime takes a pragmatic approach by concentrating on land posing unacceptable risks in relation to its current use. Where land containing contaminants is not causing an unacceptable risk to any receptors under its current use, the development control system can be used to make the land suitable for any new use when planning permission for the change of use is granted. This approach is termed “suitable for use”. Remediation requirements must make land suitable, not necessarily free of all contamination. The suitable for use approach avoids expensive remediation of sites where the current use does not pose a significant risk to receptors. For example much higher remediation measures would be required if a pollutant that could effect human health was present on land forming part of a domestic garden than if it was on an industrial site due to the nature of the land use and the vulnerability of the receptors.

5. Potentially Contaminated Land within the Lewes District

For the purposes of this section the District can be broadly split into three geological and land use areas shown in the map below:

1. The Chalk belt;
2. The Ouse Valley;
3. The Weald clay belt.



Each of these areas has a different character due to former industrial use and geology which directly impacts upon the type of contamination that is likely to be found and the receptors which may be impacted by its presence.

5.1. The Chalk Belt

The chalk belt is characterised as being underlain by principal aquifers which have the potential, and often do provide sources of public drinking water. The aquifers in this area are also usually classified as being highly vulnerable to contamination by leaching of substances from the surface. The main types of potentially contaminative uses found in this area are landfills and quarrying activities, some of which may have occurred on the same site. Modern day industrial uses such as the Cradle Hill Industrial Estate in Seaford also provide potentially contaminative uses. The former Seaford Gas Works is also located in this belt. Key receptors in this area are the aquifers underlying much of the area and the towns of Lewes, Newhaven, Seaford and Peacehaven

5.2. The Ouse Valley

The area is characterised by alluvial deposits (which maybe over 20m thick in places) overlying chalk. This geology can provide some protection to the underlying chalk which is used as a source of public drinking water as some contaminants are prevented from reaching the chalk due the relatively impermeable nature of the alluvial layer. The alluvial layer provides challenges of its own, the material is prone to differential settling and thus piling to the un-weathered chalk below is often required. This piling activity has the potential to introduce preferential flow paths and therefore pathways for contaminants from the surface deposits to reach the underlying chalk aquifer. An additional challenge posed by the alluvial deposit is in the form of natural peat lenses which can be encountered. These lenses have the potential to produce methane gas, which at the right concentration with oxygen can be explosive; therefore gas protection measures are sometimes required. The Ouse Valley has been home to numerous industries over a very long time span including gas works, metal works, railway infrastructure, port facilities, military land and landfilling and land raising activities.

The Ouse Valley is a well recognised floodplain, hence the alluvial deposits. This history of flooding has lead to the quite widespread use of a practice known as land “raising” where waste material such as domestic waste or spoil from quarries was used to raise the land out of the floodplain. This raised ground has the potential to be a source of landfill gases such as methane and carbon dioxide, in addition, depending upon the material used, there is potential for other contaminants such as heavy metals, hydrocarbons, Polycyclic Aromatic Hydrocarbons (PAHs), phenol, asbestos and sharps (such as broken glass) to be present.

5.3. The Weald Clay Belt

This area typically consists of thick weald clay (up to 50m thick) overlying sandstone and limestone beds (there are some exposures of sandstone in

this area), although groundwater is not a significant receptor in this area there are many sensitive streams. This area has had a long industrial history of brick and tile works which have taken advantage of the abundant clay deposits. Former brickworks have often been redeveloped first for other commercial and industrial uses such as transport depots or industrial units, subsequent to this second use it is common for the site to have been redeveloped for residential use. In addition the pits formed during the extraction of clay have often been refilled with waste material ranging from industrial/building waste to domestic refuse. These former uses combine to give a potential risk of landfill gas, hydrocarbons, heavy metals, PAHs, phenol, asbestos and sharps (such as broken glass).

6. Overall Aims and Objectives of the Strategy

6.1. Aims of the Strategy

The Council aims to:

- Identify actual and potential contaminated sites within the District by rational, ordered and efficient investigation, to remove unacceptable risk to human health and the environment and prevent the creation of new contaminated sites;
- Reinforce a "suitable for use" approach enabling developers to design and implement appropriate and cost effective remediation schemes as part of their redevelopment project of contaminated sites to bring land back into beneficial use;
- Identify sites which are not defined as contaminated in accordance with the Environmental Protection Act 1990, Part 2A but could still be contaminated, to ensure that the land is suitable for its current use or can be made suitable for its intended future development use, where a receptor may be introduced.

6.2. Objectives and Milestones

The main objective is to identify and remediate land where contamination is causing unacceptable risks to human health and the wider environment, assessed in the context of the current use and circumstances of the land and to prevent the creation of new contaminated sites.

To meet its objective the council will:

- Review existing site prioritisation to ensure that they reflect the changes in statutory guidance;
- Determine whether the sites are contaminated sites under Part 2A, by identifying all receptors as set out in the statutory guidance. This will be achieved by means of local knowledge and plans and contact with other agencies such as EA, DEFRA, Natural England etc. and where necessary site investigation.
- Receptors will generally be prioritised in the following order:

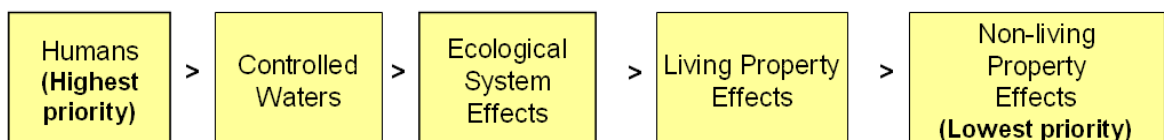


Figure 2: Figure to show priority of receptors

- To decide, after consultation, what remediation is required in relation to the site, either through agreement with the appropriate persons or by serving a remediation notice;
- Make information on all regulatory action taken by the Council on contaminated land available to the public by way of a public register.

6.3. Considering Local Authority Interests in Land

All Local Authority owned land (the land terrier) information held by the Council's Estates Department has been digitised for use on GIS (Geographic Information Systems) as a direct result of the Part 2A regime coming into force. In addition, this contains some information on land that was previously owned by the council but has since been sold. This information will be reviewed against existing information on possible past contaminative uses held on the GIS in order to obtain the information on which Council owned sites, or previously owned sites, if any, may be potentially contaminated as a result of past uses.

The Council's existing owned/ leased sites will be looked at along with other potentially contaminated sites throughout the district. They will be dealt with in a timescale appropriate to their risk ranking during the site prioritisation process. The justification for inspection of any particular Council owned/ leased land will be in accordance with the site prioritisation procedure.

The DETR Inspections Strategies Advice Note clearly states that the duties of an authority as regulator should be kept separate from responsibilities which arise as landowner or polluter. Decisions on designation of such land as contaminated land and any proposed remediation will be decided in liaison with the Environment Agency. Depending upon the particular circumstances of each such case, the Environment Agency may well be used to independently audit decisions. The Property Regeneration & Enterprise Department of Lewes District Council will be consulted where there is Lewes District Council interest in land.

In other instances the Local Authority may become the "appropriate person" as result of a site being found to be an "orphan site". Once again these sites will be investigated in a timescale appropriate to their risk ranking in the site prioritisation process.

7. Relationship with other Policies, Strategies and Procedures

7.1. Planning and Development Control.

Part 2A will not normally apply where land is within the normal cycle of redevelopment and regeneration. In such circumstances the planning and development control regime will continue to be the primary means of control. Paragraph 121 of the NPPF requires that planning 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.*

7.2. Building Control

Building Control is based on a set of regulations which provide minimum standards of design and building work for domestic, commercial and industrial buildings. The regulations contain a list of requirements including structures, fire safety, ventilation, drainage, energy conservation and access/facilities for disabled people.

Where land contamination is regarded as an issue from the Building Control perspective, close liaison occurs with the planning function. Building Control will be informed of any entries in the register regarding a contaminated land designation. The Building Control Section have access to contaminative use data and landfill sites and 250m buffer data in order to inform their decision making process. Building Control records contain information relating to contaminated land at various sites through out the district and the records and knowledge of the building control inspectors assisted in the development of the GIS data base.

7.3. Environmental Permitting (England and Wales) Regulations 2010

The same section of the Environmental Services department deals with both contaminated land issues and industrial pollution control. Thus, there is a close working relationship between staff involved in these activities.

Part 2A will not be applicable where Lewes District Council or the Environment Agency has the ability to remedy contamination arising from the breach of a process authorisation under the above legislation.

7.4. Environmental Damage and Liability Regulations 2009

The Environmental Damage Regulations implement the European Directive on Environmental Liability. They are based on the 'polluter pays principle' so those responsible prevent and remedy environmental damage, rather than the taxpayer paying. 'Environmental damage' has a specific meaning in the Regulations, covering only the most serious cases.

The emphasis, in the first instance, is on the business or other 'operator' identifying when there is an imminent threat or actual damage and taking immediate action.

7.5. Statutory Nuisance (Part III of the EPA 1990)

Statutory nuisance no longer applies as the main control for contaminated land, however it may still apply where land is causing nuisance e.g. by odour, where the statutory definition of contaminated land is not fulfilled.

7.6. Water Resources Act 1991

This act gives the Environment Agency powers to control pollution of controlled waters. The application of either regime to any site will need to be determined after consultation between the Local authority and the Environment Agency.

7.7. Land Ownership (Estates Department)

The Estates Department have put their paper map based information on land ownership and disposals onto the GIS. As a result, the Estates Department's data can be queried against sites that have had a past potentially contaminative use. Hence, the council will gain a better idea of which of the sites within its ownership are potentially contaminated.

7.8. Eco-Management and Audit Scheme (EMAS)

The way in which we use our resources will directly affect generations after us. Through applying principles of good eco-management the council will help to create a more sustainable future. This strategy will complement the EMAS principles and objectives of the council.

7.9. Economic Development and Regeneration

Lewes District Council's Economic Development and Regeneration Strategy is set out in the Building a Brighter Future 2012-2015 document. The strategy is underpinned by the following five strategic priorities:

1. Attracting Investment;
2. Promoting Enterprise;
3. Inspiring Learning;

4. Welcoming Visitors; and

5. Strengthening Partnerships.

Property Regeneration & Enterprise Officers will be given access to contaminative use and contaminated land information through the GIS. However, economic development and regeneration actions will not affect the prioritisation of potentially contaminated sites, or the level of remediation conducted.

8. LDC Current Position and Priority Actions

8.1. Current Position

Lewes District Council has made significant progress since the 2008 Contaminated Land Strategy was published.

Five site investigations, covering over 200 homes, have been completed at sites prioritised using the methodology set out in the 2008 strategy. As a result of these site investigations 12 properties were identified as being "Contaminated Land", these properties have subsequently been remediated and remediation statements issued.

Action has also been taken through the development control process. For instance, part of a former gas works site was remediated in Lewes prior to housing being built and significant remedial works were undertaken during the construction of the Newhaven Energy Recovery Facility.

An extensive communication strategy has been developed in parallel with the site investigation and remediation work which has enabled the physical works to take place by ensuring residents are kept informed and consulted at every stage of the process.

8.2. Priority Actions

At present Lewes District Council's main action is to review existing site prioritisation to ensure that they reflect the changes in statutory guidance. This will allow for the next set of priority sites to be identified and appropriate resources to be allocated to further work on each of the sites. This work is will be based upon the existing risk modelling undertaken using the DREAM (Dundee Risk Evaluator Assessment Model). It should be noted that the revised statutory guidance indicates that tools may be made available to apply the revised category 1-4 approach to risk assessment.

8.3. The DREAM Model

The DREAM model was developed by the Scientific Officer responsible for contaminated land within the Environmental & Consumer Protection Department (ECPD) of Dundee City Council. The full DREAM document is available on request from the Environmental Health Department at Lewes District Council. The DREAM model is based on the contaminant linkage principle at the centre of the contaminated land regime. DREAM enables scoring of the principal sources of contamination, pathways and receptors to derive individual linkage scores, which may be combined to give an overall Site Index Score (SIS). In addition, the model also assumes that if receptors or pathways are absent within a linkage, the linkage is considered incomplete and will fail to achieve a linkage score. The DREAM model has been adapted to conform to local geologic conditions and former uses.

The models procedures are based upon professional experience and methodologies derived from a number of published documents including:

- Department of the Environment Industry Profiles (47 Vol.);
- Department of the Environment Contaminated Land Research Report CLR No. 6 (1995) – Prioritisation and Categorisation Procedure for Sites which may be Contaminated; and
- Desk Reference Guide to Potentially Contaminative Land Uses.

DREAM requires a simple algorithm to allow the calculation of the potential risk that may be posed by a particular site. This algorithm has been constructed using empirical means and has been tested to ensure that the SIS accurately reflects the Council's priorities.

The DoE Industry Profiles and the Desk Reference Guide to Potentially Contaminated Land Uses provide detailed insight into the operating procedures in a large number of industrial settings. These documents provide a scientific basis for the categorisation of the contaminative potential of industries and form the basis for the risk ranking.

Historical land uses are scored on a 1 – 4 scale, where 1 has been assigned to land uses which are considered to be the least likely to cause contamination, to a maximum value of 4 which has been assigned to the industries that pose the greatest potential to cause extreme contamination of the land. In addition to the industrial land uses listed in appendix B, Lewes District Council has added additional land uses such as Hospitals, Brick Fields and Quarries.

Lewes District Council will investigate the possibility of updating the DREAM system to reflect the new risk assessment categories.

9. General Liaison and Communication Procedures

The Council recognises that effective liaison and communication is an essential part of implementing its strategy. As part of this strategy, the Council will establish communication links with a wide variety of statutory consultees and other interested parties to ensure efficient transfer of information.

9.1. Consultees

The following consultees were invited to comment on the consultation draft of this strategy:

- Environment Agency;
- Natural England;
- English Heritage;
- Department for Environment, Food & Rural Affairs (DEFRA);
- East Sussex County Council;
- South Downs National Park Authority;
- Lewes District Council Planning Local Planning Authority;
- Lewes District Council Building Control; and
- Food Standards Agency.

There is scope within the local community to provide input into this strategy. The Council will therefore invite comments from Parish and Town Councils and the general public, by ensuring copies of the consultation draft are available at the Council's offices in Lewes (Southover House) and in local libraries. Access to a copy of the draft will also be made via the Council's website www.lewes.gov.uk.

9.2. Communicating with Appropriate Persons, Owners, Occupiers and Other Interested Parties

The Council's approach to its regulatory duties under Part 2A is to seek voluntary action in the first instance provided that it is satisfied that the standard of voluntary remediation proposed is of an equivalent or better standard than would be specified in a Remediation Notice. The Council recognises that this approach will require effective communication with owners, occupiers and other interested parties. The Contaminated Land Officer will be the central contact point within the Council on contaminated land issues, and as such will keep owners, occupiers and other interested parties informed at each stage of an investigation. The Council also recognises that, when communicating with major national landowners or companies, account will need to be taken of their corporate priorities with

respect to remediation of contaminated land sites. It is the aim of the Council to work with representatives of such organisations to ensure that a suitable timescale is agreed, taking into account the nature and degree of risk to receptors from the contaminated land in question.

9.3. Inspection of the Statutory Register

The register held under section 78R of the Environmental Protection Act 1990 of sites determined as contaminated land is available for public inspection by contacting the Environmental Services section of the council, based at Southover House, Lewes (full postal address in section 2).

9.4. Relationship with the Environment Agency

Interactions between the Council and the Environment Agency are provided for in the legislation, statutory guidance, the Agency's Process Handbook and the Memorandum of Understanding on fly tipping agreed between the Agency and the Local Government Association. At the local level a good working relationship already exists between the Council and the Agency, and this will be particularly beneficial in the regulation of Part 2A of the Environmental Protection Act 1990.

The Council and the Agency will share all relevant information that they hold as freely as possible, unless prohibited in doing so on grounds of national security, commercial confidentiality or data protection. The Agency and the Council each have areas of particular expertise that will be of benefit to one another. The Council will respond to requests for advice or assistance from the Agency. The designation and hand over of "Special Sites" to the Environment Agency are detailed in the statutory guidance.

10. Programme for Inspection

10.1. Arrangements for Carrying Out Detailed Inspections of Land

When inspecting land for contamination the Council will follow the approach set out in this strategy and act in accordance with Part 2A and statutory guidance. The aim of inspection is to determine whether a contaminant linkage exists and whether any land appears to be 'Contaminated Land'.

The Council will inspect the District to:

- Identify land where contaminant linkages exist and which may be contaminated;
- Gather evidence on whether pollutants are actually present;
- Determine whether land appears to be contaminated;
- Decide whether any land should be designated as a Special Site.

If it appears that any land in a neighbouring District or Borough may require investigation to ascertain whether it is "Contaminated Land" affecting the Lewes District, the Council will inspect that land for the purposes of Part 2A in consultation with the appropriate local authority. Where it is clear from information available that any particular land would be a special site, the Council will seek arrangements where the Environment Agency inspects the land.

Detailed inspection may include:

- Collating and assessing documents and information from other organisations;
- Visiting land to make visual inspections and, in some cases, limited sampling e.g. surface deposits;
- Undertaking intrusive investigation of land, e.g. exploratory excavations.

Where necessary inspections of land will be conducted using statutory powers of entry. Before doing so, however, the Council will satisfy itself on the basis of information already obtained that:

- There is a reasonable possibility that a pollutant linkage exists on the land; and
- In the case of proposed intrusive investigation there is:
 - A likelihood that a contaminant is actually present; and
 - Knowledge or likelihood that a receptor is present, given the current use of the land.

The Council will not conduct an inspection by means of intrusive investigation if:

- It has already been provided with adequate and satisfactorily detailed information on the condition of the land on which to base determination of whether the land is contaminated for the purposes of Part 2A; or
- A person offers to provide such information within a reasonable and specified time, and this information is provided within that time.

Any intrusive investigations will be carried out using appropriate technical procedures (as detailed in BS 10175:2011, Investigation of Potentially Contaminated Sites: Code of Practice & BS 5930: 1999+A2:2010, Code of Practice for Site Investigations) and taking all reasonable precautions to avoid harm, water pollution or damage to natural resources or features of historical or archaeological interest.

If at any stage the Council considers, on the basis of information from a detailed inspection, that there is no longer a reasonable possibility that a particular contaminant linkage exists, the Council will cease detailed inspection of that linkage.

The following steps may form part of an inspection:

- Liaison with owners, appropriate persons, Environment Agency, Natural England, English Heritage and any other relevant bodies to obtain available information;
- Preparatory research on the history of the site and its environment before the visit such as viewing maps, Part A (Environmental Permitting (England and Wales) 2010) Processes, Part B Processes, Landfill sites and other documentary sources to identify past uses;
- Consider relevant Codes of Practice and other documentation available for identification of contaminated land;
- The visual identification of possible contaminants on the site visit i.e. geology, soil type and vegetation of the general area of the site, making notes for example street names, boundaries and entrances, buildings, site debris etc;
- Consider whether intrusive sampling is necessary (for example by exploratory excavations). The local authority will only carry out an intrusive investigation in accordance with appropriate technical procedures for such an investigation. The local authority will ensure that it takes all reasonable precautions to avoid harm, water pollution or damage to natural resources or features of historical or archaeological interest that might be caused as a result of the investigation. The Council will notify any area of special scientific interest (SSSI) and consult Natural England on any action which would be required to be carried out by the owner or occupier of the land

that may require the consent of Natural England under Section 28 of the Wildlife and Countryside Act 1981 (as amended).

Lewes District Council will not carry out an inspection using statutory powers of entry that involves intrusive investigation when:

- Detailed information has been provided on the condition of the land by the Environment Agency; or
- Detailed information has been provided on the condition of the land by some other person (i.e. the owner of the land); or
- A person offers to provide such information within a reasonable and specified time and the information is then provided in that time.

Provided that the information forms an appropriate basis for the Local Authority to determine whether the land is contaminated, in accordance with the requirements of the statutory guidance.

10.2. Health & Safety Issues

The Council will follow good technical practice in carrying out, and recording, detailed inspection work. The Council will take appropriate steps to ensure such work does not harm people (site workers, local residents and the general public) or damage the wider environment;

If the history of the site indicates that it may pose threats to personal safety, the Council will undertake the necessary procedures regarding this matter and have regards to documentation such as BS 5930: 1999+A2:2010 regarding mining, quarrying and waste disposal sites and/or HSE HS (G) 66 Protection of workers and the general public during the development of contaminated land (1991) (HMSO);

If at any stage the Council considers, on the basis of the information obtained from a detailed inspection, that there is no longer a reasonable possibility that a contaminant linkage exists on the land it will not carry out any further detailed inspection for that contaminant linkage.

10.3. Land That May Be a Special Site

If the Council has determined the land to be contaminated and it also falls within one or more of the 'special site' descriptions prescribed in the Contaminated Land (England) Regulations 2006 then the Council will, after due consultation with the Environment Agency, designate the land as a special site and notify the Agency accordingly. Special sites generally include:

- Land on which a prescribed processes designated for central control under the Environmental Permitting (England and Wales) 2010 regime has been carried out;

- The following industrial processes: Acid Tar Lagoons, Petroleum Refineries and Chemical Weapons Sites;
- Land used primarily by the Ministry of Defence (MOD), or at any time for specific weaponry or nuclear sites;
- Controlled waters where water quality is affected due to contaminated land, taking into account such factors as the nature of the pollutant and type of controlled waters affected.

Assuming the Environment Agency agrees with the determination, the Agency will then become the enforcing authority for that land. The Council will endeavour to advise and assist the Agency upon request, for example when the Agency prepares remediation proposals. In the event that the Council and the Agency cannot agree on the designation of a special site, the matter will be referred to the Secretary of State for decision.

It is possible to agree on the transfer of potential special sites to the Environment Agency for investigation before they are formally designated as contaminated land. In such circumstances a well argued case will be presented to the Environment Agency whenever such sites are identified during the inspection process as to why the LDC considers the site under consideration might be special.

In some instances, the Council will seek to make arrangements with the Environment Agency to carry out an inspection of the land on behalf of the Council. Where the Environment Agency is to carry out an inspection on behalf of the Council, the Council will authorise a person nominated by the Agency to exercise the powers of entry conferred by section 108 of the Environment Act 1995. Before the Council gives such authorisation, the Environment Agency will have to satisfy the Council that the conditions for the use of statutory powers of entry set out in paragraph 2.11 of the statutory guidance have been met.

10.4. Arrangements for Appointing External Consultants

The Council has the sole responsibility for determining whether any land appears to be contaminated. The Council will not delegate this responsibility (except in accordance with Section 101 of the Local Government Act 1972). The Council may choose from time to time to rely on information or advice provided by another body such as the Environment Agency, or by a consultant appointed for that purpose. This also applies when the Agency carries out an inspection on behalf of the Council.

10.5. Determining that 'there is a significant possibility of significant harm being caused'

The Council will determine whether land is contaminated on the basis that there is a significant possibility of significant harm being caused where:

- It has carried out scientific and technical assessment of risks arising from the contaminant linkage, according to relevant appropriate, authoritative and scientifically based guidance on such risk assessments; and
- That the assessment carried out shows that there is significant possibility of significant harm being caused; and
- There are not suitable and sufficient risk management arrangements in place to prevent harm.

10.6. Risk Summaries

Once LDC has completed detailed inspection and assessment of a site it should be satisfied it has sufficient understanding of the risks to take relevant regulatory decisions.

The statutory guidance requires that LDC produce a risk summary for any land where, on the basis of its risk assessment, LDC considers it is likely that the land in question may be determined as contaminated land. The risk summary should explain LDC's understanding of the risks and other factors the authority considers to be relevant. LDC should seek to ensure that the risk summary is understandable to the layperson, including the owners of the land and members of the public who may be affected by the decision. LDC should not proceed to formal determination of land as contaminated land unless a risk summary has been prepared.

10.7. Frequency of Inspections

The Council from time to time will inspect its area for the purpose of identifying contaminated land (section 78B (1)). By doing this the authority will act in accordance with the statutory guidance.

10.8. Records of the Determination That Land Is Contaminated Land

The Council will prepare a written record of any determination that particular land is contaminated. The record will include:

- Identify of site/owner/occupier;
- Date of sampling;
- A description of the particular significant linkage, identifying all three components - contaminant, pathway and receptor;
- A summary of the evidence upon which determination is based;
- A summary of a relevant assessment of this evidence;
- A summary of the way in which the authority considers that the requirements of the statutory guidance have been satisfied.

10.9. Risk Communication with Local Communities

The Council having obtained information from the detailed inspection, which indicated that there is a possibility of significant harm being caused to local communities, will have procedures in place to inform the local communities. The council will identify all stakeholders; gather information/ views from stakeholders; seek informal ways of sharing information; communicate key messages in a clear, transparent manner; remain open, accessible and responsive; and encourage two way communications.

11. Reviewing the Strategy

This strategy will be reviewed every 4 years as a minimum. An earlier review will be conducted if:

- There is a substantial change in the legislation;
- There is a substantial change in the statutory guidance issued by the Secretary of State;
- There is a substantial change in key guidance in connection with site investigation;
- There is a substantial change in proposed land use planning;
- There is a substantial change in the local development plan.

The aim will be to conclude reviews within 6 months of any such change occurring.

11.1. Review of Assumptions and Information (Triggers for Inspection)

Assumptions and information used in arriving at decisions as to the status of particular areas of land and/or the need for inspection will be reviewed on a continual basis. Reviews will be prioritised in the event of: -

- Proposed changes in the use of the land or surrounding land;
- Unplanned changes in the use of land (e.g. persistent, unauthorised use of land by children or other members of the public);
- Unplanned events (e.g. localised flooding, accidents, fires, spillages; where consequences cannot be addressed through other relevant environmental protection legislation);
- Reports of localised health effects relating to a particular area of land;
- Reports of unusual or abnormal site conditions from any source which are verified;
- New information received from any other statutory body;
- New information from owners or occupiers or other interested parties;
- New information or guidance on contaminants, pathways, receptors.

The aim will be to conclude reviews within 3 months of any of the above events.

12. References

Department for Environment, Food and Rural Affairs (April 2012) Environmental Protection Act: Part 2A. Contaminated Land Statutory Guidance. London: The Stationary Office

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The Contaminated Land (England) Regulations, 2006, HMSO

The Environment Act 1995, HMSO

Desk Reference Guide to Potentially Contaminative Land Uses, (1999), Incorporated Society of Valuers and Auctioneers: London

BS 10175:2011, Investigation of Potentially Contaminated Sites: Code of Practice, British Standards Institution.

BS 5930: 1999+A2:2010, Code of Practice for Site Investigations, British Standards Institution.

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HSE HS (G) 66 Protection of workers and the general public during the development of contaminated land (1991), HMSO.