

Contaminated Land Strategy



*Produced under the provisions of the
Environmental Protection Act 1990, Section 78B*

Version 4.0
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Explanatory Note

This Strategy was written in order to provide a working document detailing how Chelmsford City Council will meet the requirements of Part 2A of the Environmental Protection Act 1990 ('the Act'). As such, it is written in a style that will be understood by those who may need to refer to it.

This document is not intended to be, and does not purport to be, a replacement or treatise of the relevant Act, Statutory Guidance and Regulations. Where there is any confusion in terms of any definitions or interpretation, the Act, Statutory Guidance and Regulations must be referred to as the primary source of information for any decision-making etc.

This July 2021 update consists of minor layout changes and updates to references to the legislation where appropriate. No significant changes to the Council's overall strategy have been made.

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1.0 Introduction & Overview

1.1 Background

Industrial and demographic changes (particularly during the 20th century) resulted in the need for large-scale re-organisation of towns and cities. Large, often polluting, industries moved out, or disappeared altogether, leaving behind sizeable 'brownfield' gaps in the urban landscape.

At the same time, changes in heating methods (resulting in less waste being burnt on domestic coal fires) and the booming 'consumer society' had a significant effect on the type and volume of refuse being sent to landfill sites. Inevitably, these changes have left behind a legacy of contaminated land, which in some cases may be harmful.

Examples of potentially contaminative land uses are given in Appendix 1.

1.2 Regulatory Context

The contaminated land regime, under Part 2A of the Environmental Protection Act 1990, is one of the main policy measures used to deal with this legacy. It provides a risk-based approach to defining contaminated land and a means to identify and remediate land that poses a significant risk to human health or the environment, where there is no alternative solution. It also works alongside planning rules to help ensure that this land is made suitable for use following redevelopment.

Part 2A was introduced in April 2000, and gives specific legal powers (and duties) to local authorities to identify and deal with contaminated land. The regulations were widened in 2006 to include land contaminated by radioactivity.

The government has produced Statutory Guidance, in accordance with Section 78YA of the Environmental Protection Act 1990, which is legally binding and must be followed by enforcing authorities.

In April 2012, the Secretary of State for Environment, Food and Rural Affairs issued new, updated, Statutory Guidance to explain how Part 2A should be implemented and the legal tests for when land is considered to be contaminated land.

Separate Statutory Guidance covering radioactive contaminated land was also issued in April 2012, by the Secretary of State for Energy and Climate Change.

1.3 The Definition of Contaminated Land

The legal definition of contaminated land, as defined in Section 78A (2) (as modified) of the Environmental Protection Act 1990, 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) significant harm is being caused or there is a significant possibility of such harm being caused; or*
- b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.’*

Where ‘harm’ means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.

The legal definition of contaminated land is slightly different if harm is due to radioactivity, as defined in Regulation 5(1) of The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006:

‘any land which appears to the local authority in whose area the land 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 harm being caused.’*

With regard to radioactivity, ‘harm’ means lasting exposure to any human being resulting from the aftereffects of a radiological emergency, past practice or past work activity.

1.4 The Principle of Contamination Linkages

For a relevant risk to exist there needs to be one or more contaminant-pathway-receptor linkages (contaminant linkages) by which a relevant receptor might be affected by the contaminants in question. In other words, for a risk to exist there must be contaminants present (in, on or under the land) in a form and quantity that poses a hazard, and one or more pathways (via the air, soil or water) by which they might harm people, the environment, property or significantly pollute controlled waters.

Figure 1.4.1 *Contamination Linkage*



1.4.1 Contaminants

A 'contaminant' is a substance which is in, on or under the land and which has the potential to cause significant harm to a relevant receptor, significant pollution of controlled waters, or harm attributable to radioactivity.

1.4.2 Pathway

A 'pathway' is a route by which a receptor is or might be affected by a contaminant e.g. the ingestion of vegetables grown in contaminated soil. Please see Appendix 3 for a list of some potential contaminant pathways.

1.4.3 Receptors

A 'receptor' is something that could be adversely affected by a contaminant such as a person, an organism, an ecosystem, property, or controlled waters. Please see Appendix 2 for a list of the receptors covered by Part 2A.

1.5 Determination of land as ‘Contaminated Land’

Given the above legal definitions, land can only be formally determined as contaminated land (following due process as set out in the Statutory Guidance) for one or more of the following:

- Significant harm is being caused.
- There is a significant possibility that significant harm could be caused.
- Significant pollution of controlled waters is being caused.
- Significant pollution of controlled waters is likely to be caused.
- Harm attributable to radioactivity is being caused.
- There is a significant possibility that harm attributable to radioactivity could be caused.

1.6 The Polluter Pays Principle

An important task of the enforcing authority under the Part 2A regime is to establish who should bear responsibility for remediating a site where there are unacceptable risks from land contamination.

In general, this will follow the ‘polluter pays’ principle, where the person who caused or knowingly permitted the contamination will be the appropriate person to cover the cost of remediation. However, if it is not possible to find such a person, the Statutory Guidance states that the cost may fall to the owner or occupier of the land.

1.7 Planning and other Regulatory Regimes

1.7.1 The Planning Regime

All planning applications received by Chelmsford City Council have to be considered for potential contamination issues. This is to ensure compliance with the Town and Country Planning Act 1990, the National Planning Policy Framework and the Council’s Local Development Framework.

Contaminated land issues that arise through planning applications will be controlled via the planning regime (as opposed to being dealt with under Part 2A). It is the responsibility of the developer to ensure that a site can and will be made suitable for its proposed future use and that there are no unacceptable risks to human health, the environment, property and/or controlled waters. The developer must carry out site investigation and remediation works as necessary, and the Council will impose planning conditions to this effect.

To assist applicants and developers through this process, Chelmsford City Council, in conjunction with the other Essex local authorities, have compiled a guidance document: *Land Affected by Contamination: Technical Guidance for Applicants and Developers*. It is available to view or download as a pdf document from the Council's contaminated land web pages or a paper copy can be viewed during normal office hours at the Civic Centre.

The majority of contaminated land issues in the district are currently dealt with under the planning regime. A large number of sites have already been investigated and remediated via this route, so no further action will be required with regard to these sites under Part 2A.

1.7.2 Building Regulations

In addition to the planning regime, Building Regulations (made under the Building Act 1984) require developers to take measures (e.g. installation of ground gas protection measures) to protect new buildings and their future residents from the effects of contamination.

1.7.3 Other Regulatory Regimes

The Part 2A regime is just one of several ways in which land contamination can be addressed. Other legislative regimes include:

- Environmental Damage (Prevention and Remediation) Regulations 2015.
- Environmental Permitting (England and Wales) Regulations 2016 (As Amended).
- Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009.

The Statutory Guidance states that enforcing authorities should seek to use Part 2A only where no appropriate alternative solution exists. Therefore, Part 2A should not be used where existing legislation may be enforced or where contamination has arisen due to a breach of an existing license or permit.

2.0 Strategy Aims and Objectives

2.1 Aims

- To improve and protect the condition of the environment and the health of residents in the district;
- To meet the statutory obligation placed on the Council to produce a written strategy under Part 2A;
- To encourage the redevelopment of brownfield sites;
- To ensure that a strategic approach is used for dealing with contaminated land;
- To ensure that remedial action is reasonable, practicable, effective and durable;
- To encourage voluntary remediation.

2.2 Objectives

- To provide a strategic framework which the Council will use to identify, inspect and determine contaminated land;
- To ensure that development on potentially contaminated land will not be permitted unless evidence has been submitted to show that the possibility, nature and extent of contamination has been properly investigated and assessed and that any remediation measures necessary to deal with the contamination are effective;
- To inspect any sites that come to light as a matter of urgency where there is a risk to human health;
- To outline the Council's procedures regarding powers of entry, liability, cost recovery, special sites and enforcement;
- To prepare written records of determination and risk summaries for land that is found to be contaminated;
- To prepare written statements for land that is not found to be contaminated;
- To maintain a public register of contaminated land
- To inform the public and stakeholders of the Council's intentions in relation to contaminated land.

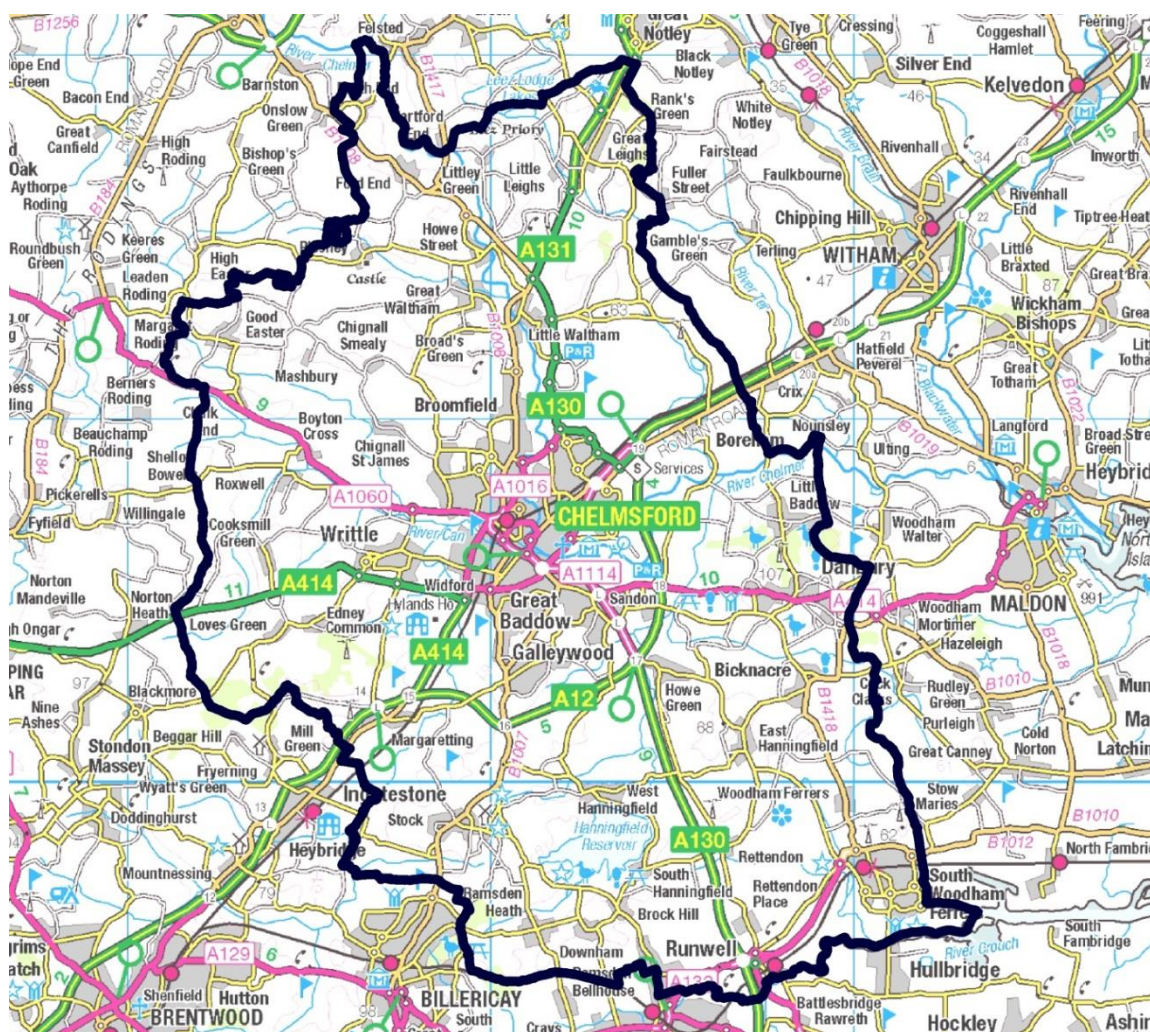
3. The District of Chelmsford

3.1 General

The district of Chelmsford covers an area of approximately 340 km² and is situated some 47 km north-east of London. Chelmsford has a population of 168,310 (2011 census), centred upon the city of Chelmsford and the adjoining villages, which together make up some two thirds of this total.

The remaining third live in a variety of settlements, ranging from the new town of South Woodham Ferrers through numerous free-standing villages to tiny hamlets and isolated dwellings.

Figure 3.1.1 Chelmsford district



Chelmsford is an important administrative, educational, commercial and industrial base and supports a productive agricultural sector.

3.2 Changes in Industry, Infrastructure and the Economy

The District has seen marked changes within the past 25 years. It has been among the fastest-growing, and the area continues to experience significant pressures for development, with further population growth expected over the next 10 to 15 years. These pressures are as a result of locally generated needs for requirements such as housing, jobs and transport, and externally generated growth factors such as Stansted Airport and the M25 / M11 corridor.

Much of the demand for new housing is due to changes in the structure of the population, particularly with more young people forming new households, and a growing student population.

The economy and pattern of land use in the District diversified rapidly during the 1980's and 1990's. Rather than being based on the former historic heavy manufacturing and agricultural sectors of the earlier and middle years of last century, the economy of the District has become more service-based. There has been strong growth in the education, leisure, health and retail sectors, and unemployment levels are among the lowest in Essex.

Many large-scale factories and industrial premises have closed or contracted over the last few years, leaving major areas of land which may contain contamination to be considered. In addition, there are numerous historic smaller-scale industrial operations and land uses across the District, which ceased operation years ago and which will require investigation in the future.

3.3 Geology

The district is underlain by London Clay (a non-aquifer). This deposit, together with Lower London Tertiary deposits, overlies the Chalk, which is classified as a major aquifer. There are areas of Boulder Clay to the north of the District. In addition, there are numerous deposits of glacial sand and gravel and brickearth extending across most of the Borough, these constituting minor aquifers.

4.0 The Inspection Process

4.1 Identifying Sites of Potential Concern (SOPC's)

In order to identify potentially contaminated land, it is first necessary to identify land uses (both past and present) that have the potential to give rise to contamination. It is also necessary to identify relevant receptors, so that contaminant linkages can be assessed in light of the current use of a particular site. The following information sources will be used to this end:

Table 4.1.1 Sources of information

Information	Source
Maps (historical & present day)	Ordnance Survey
Closed landfill sites	Environment Agency
Active landfill sites	Environment Agency
Part A and B industrial processes	Chelmsford City Council
Geology	British Geological Survey
Groundwater vulnerability	Environment Agency
Source protection zones	Environment Agency
Groundwater abstraction points	Environment Agency
Watercourses	Environment Agency
Private water supplies	Chelmsford City Council
Sites of Special Scientific Interest	Natural England
Special Protection Areas	Natural England
RAMSAR sites	Natural England
National Nature Reserves	Natural England
Special Areas of Conservation	Natural England
Scheduled monuments	Chelmsford City Council
Listed buildings	Chelmsford City Council

The Council will use a geographical information system (GIS) to manage this information and record areas containing SOPC's as well as sites that have already been formally determined as contaminated land.

4.2 Prioritisation of SOPC's

Each potentially contaminated site will require a detailed inspection in order to establish the presence or otherwise of a contaminant linkage. In accordance with the Statutory Guidance, the Council will seek to ensure that the most pressing and serious problems are dealt with first. It is therefore necessary to categorise sites into priority order using a rapid assessment of the potential contaminant linkages.

The methodology employed will be based on that described in DETR Contaminated Land Research Report 6 ('Prioritisation & Categorisation Procedure for sites which may be Contaminated') – or 'CLR 6'. This is to ensure all further investigative work relates directly to the seriousness of the potential risk, and that therefore the most pressing problems are identified and quantified first.

CLR6 was published in 1995 and the terminology is not ideal for this purpose and so it has been adapted where necessary.

There are 4 categories of prioritisation with category 1 being the highest and category 4 the lowest. Basic definitions are given below:

Priority Category 1

- Site likely not to be suitable for present use and environmental setting.
- Contaminants probably or certainly present and very likely to have an unacceptable impact on key targets.
- Urgent assessment action needed in the short term.

Priority Category 2

- Site may not be suitable for present use and environmental setting.
- Contaminants probably or certainly present and likely to have an unacceptable impact on key targets.
- Assessment action needed in the medium term.

Priority Category 3

- Site considered suitable for present use and environmental setting.
- Contaminants may be present but unlikely to have an unacceptable impact on key targets.
- Assessment action unlikely to be needed whilst the site remains in present use or otherwise remains undisturbed.

Priority Category 4

- Site considered suitable for present use and environmental setting.
- Contaminants may be present but very unlikely to have an unacceptable impact on key targets.
- No assessment action needed while site remains in present use or undisturbed.

To assist in the prioritisation procedure, a simple scoring system has been devised as follows: A number between 1 and 10 is awarded for each of the following three factors as below, 1 being the lowest score for unlikely risk and 10 being the highest for certain risk. The three numbers are then added together to obtain a total CRP score. This will produce a lowest possible rating of 3, and a highest rating of 30.

Likelihood of contaminants on the site:

Score 1	-	Most Unlikely
Score 5	-	Good Chance
Score 10	-	Known to be Present

Existence of receptors within area of influence:

Score 1	-	Most Unlikely
Score 5	-	Good Chance
Score 10	-	Known to Exist

Likelihood of impact of contaminants on receptors (pathway):

Score 1	-	Most Unlikely
Score 5	-	Good Chance
Score 10	-	Certain

The scores for each of the above categories are added together to obtain a Contaminant Receptor Pathway (CRP) score and based on this, a priority rating is allocated using the following table:

Table 4.2.1 CRP Scoring

CRP Score	Inspection Priority Rating
26 - 30	1
21 - 25	2
16 - 20	3
3 - 15	4

4.3 Detailed Inspection

Following prioritisation, the Council will inspect the potentially contaminated sites in the established priority order with the highest risk sites (priority 1) being inspected first. However, the rate at which these sites are inspected will be determined by the budgetary and manpower resources available at the time. The purpose is to gain sufficient information to determine whether or not there is a significant contaminant linkage.

The first phase of any investigation is to collect and assess as much information as possible about a particular site from maps and historic records and by undertaking a site walkover survey. If the findings confirm that there is potential for contamination to be present, then further investigation will be required.

The next phase of investigation is to carry out a ground investigation (also known as a site investigation) to determine the nature and extent of any contamination on a site. The sampling and analysis of soil, water and/or ground gases may be required to assess the amount of contamination present. A risk assessment will then be carried out to determine whether it could pose an unacceptable risk to human health, controlled waters, ecological systems, crops, livestock, buildings or property, and whether any significant contaminant linkage exists (note that this will be carried out in line with current guidance and best practice – see Appendix 6).

4.4 Determination of Contaminated Land

Once a detailed inspection is complete, the Council should have identified any significant contaminant linkage(s), and carried out a robust, appropriate, scientific and technical assessment of all the relevant and available evidence. The Council can then determine whether or not a site meets the legal definition of contaminated land as laid down in the Statutory Guidance.

Before formally making a determination however, the Council will inform the owners and occupiers of the land (and any other person who appears to the Council to be liable to pay for remediation) of its intention to determine the land (to the extent that the authority is aware of these parties at the time) unless the Council considers there is an overriding reason for not doing so.

The Council will also consider:

- (a) Whether to give such persons time to make representations (for example to seek clarification of the grounds for determination, or to propose a solution that might

avoid the need for formal determination) taking into account: the broad aims of regime; the urgency of the situation; any need to avoid unwarranted delay; and any other factor the Council considers to be appropriate.

- (b) Whether to inform other interested parties as it considers necessary, for example owners and occupiers of neighbouring land.

4.4.1 Informing Interested Parties

If the Council determines land as contaminated land, it shall give notice of that fact to:

- (a) The Environment Agency;
- (b) The owner of the land;
- (c) Any person who appears to the authority to be in occupation of the whole or any part of the land; and
- (d) Each person who appears to the authority to be an appropriate person; in accordance with section 78B(3) of Part 2A.

4.4.2 Regulatory Action

Once the Council is satisfied that significant harm is occurring, or there is a significant possibility of such harm, or pollution of controlled waters is being or likely to be caused, or that harm or significant possibility of such harm attributable to radioactivity is being caused, it will declare that a significant contaminant linkage exists and that the land is therefore contaminated land by definition.

In every case where the land does not fall within the category of a special site (see section 5.4 and Appendix 4), the Council must commence regulatory action. This involves a series of procedures, which includes:

- A formal written record of the determination.
- Formal notification of all interested parties.
- Determination of the physical extent of the land.
- The extent and seriousness of the risks (need for urgent action).
- The number and type of pollutant linkages.
- The effect that each significant pollutant may have on controlled waters (if any).
- The most appropriate and cost-effective remedial scheme for each significant pollutant linkage.

- Identification of liability groups and, appropriate persons, for each pollutant linkage.
- Assessment of hardship in the case of each appropriate person.
- Effective remediation of the site, and the recovery of costs where appropriate.

4.5 Remediation

Once land has been determined as contaminated land, remedial action will be required to reduce or remove that contamination linkage. This may involve cleaning up the contamination, breaking the pathway, or modifying the receptor. The overall aim of remediation is to remedy harm/pollution and to ensure that risks are reduced to an acceptable level.

The Council will consider how land should be remediated and, where appropriate, it will issue a remediation notice to require such remediation to be undertaken.

Further consultations will be carried out at all of the above stages, with the ultimate aim of securing voluntary remediation (without the need for enforcement action).

Where the land falls within the definition of a special site, the Environment Agency becomes the enforcing authority. In these cases, however, the Council must still make the determination and formally notify the interested parties.

In certain circumstances the Council may carry out the remedial works itself. In general terms, it has this power where:

- Urgent action is necessary.
- There is no 'appropriate person'.
- The Council is precluded from taking enforcement action.
- The Council agrees to carry out the works on behalf of an appropriate person.
- A Remediation Notice has not been complied with.

In non-urgent cases where a remediation notice is necessary, and all the required consultations have been completed, the notice will be served on the appropriate person(s) no sooner than three months after the contaminated land has been identified or declared a special site. The notice itself may require further investigation of the site and as a result more pollutant linkages may be identified. Where that is the case, the Council will go through the same processes again to identify appropriate persons and remedial actions.

5.0 Procedures

5.1 Powers of Entry

For the purpose of identifying contaminated land, the Council has been granted powers of entry under Section 108 of the Environment Act 1995. These powers allow any person authorised in writing by the Council to enter premises and inspect the area, take soil or other samples and inspect any records connected to the site to determine if significant harm is being caused.

The Council will consult the landowner before inspecting the land unless there is a particular reason why this is not possible, for example because it has not been possible to identify or locate the landowner. Where the owner refuses access, or the landowner cannot be found, the Council will consider using statutory powers of entry.

Before the Council carries out an inspection using statutory powers of entry under section 108 of the Environment Act 1995, it will first satisfy itself that there is a reasonable possibility that a significant contaminant linkage may exist on the land. The Council will not use statutory powers of entry to undertake intrusive investigations, including the taking of sub-surface samples, if:

- (a) It has already been provided with appropriate, detailed information on the condition of the land (e.g. by the Environment Agency or some other person such as the owner of the land) which provides sufficient information for the authority to decide whether or not the land is contaminated land; or
- (b) A relevant person (e.g. the owner of the land, or a person who may be liable for the contamination) offers to provide such information within a reasonable and specified time, and then provides such information within that time.

5.2 Record of Determination of Contaminated Land

- 5.2.1 The Council will prepare a written record of any determination that land is contaminated land. The record will clearly and accurately identify the location, boundaries and area of the land in question, making appropriate reference to Ordnance Survey grid references and/or Global Positioning co-ordinates. The record will be made publicly available on the Council's Contaminated Land Public Register.
- 5.2.2 The record will explain why the determination has been made, including:
- (a) The risk summary required by Section 3 of the Statutory Guidance, and where not already covered in the risk summary:
 - (i) A relevant conceptual model comprising text, plans, cross sections, photographs and tables as necessary in the interests of making the description understandable to the layperson; and
 - (ii) A summary of the relevant assessment of this evidence.
 - (b) A summary of why the Council considers that the requirements of relevant sections of this Statutory Guidance have been satisfied.
- 5.2.3 The Council will seek to ensure (as far as is reasonable) that all aspects of the record of determination are understandable to non-specialists, including affected members of the public.

Note that if it is clear, following an inspection, that land does not meet the legal definition of contaminated land, the Council will issue a written statement to that effect to the owners of the property and other interested parties. A copy of this statement will also be kept on file, along with the reasons for making the decision.

5.3 Public Register

The Council is required to maintain a public register containing full particulars of the following matters:

- Remediation notices.
- Appeals against remediation notices.
- Remediation declarations.
- Remediation statements.
- Appeals against charging notices.

- Designation of 'special sites'.
- Notifications of claimed remediation.
- Convictions for offences under section 78M of the Environmental Protection Act 1990.
- Site specific guidance issued by the Environment Agency.
- Other environmental controls.

The public register can be viewed online on the Council's website or viewed in person by prior arrangement at the Council offices. Reasonable charges will be made to cover any photocopying costs.

5.4 Special Sites

For a site to be classified as a 'special site' it must meet the criteria outlined in the Contaminated Land (England) Regulations 2006, as summarised in Appendix 4. The regulation of special sites falls to the Environment Agency, but it is the responsibility of the Council to identify and designate these sites before further action can be taken. No site will be designated as a special site without detailed discussions with relevant personnel within the Environment Agency. Where the Council already has information that would allow the classification of a special site, arrangements can be made so the Environment Agency carries out the inspection of the site on behalf of the Council.

Once a site has been designated as a special site, regulation and enforcement are passed onto the Environment Agency.

5.5 Liability

For any land determined as contaminated land, the Council will need to establish who will bear responsibility for carrying out the remedial work. It is the intention of Part 2A that the appropriate person (ideally the polluter) pays for the cost of remediation, either voluntarily or following formal action.

For some land, the process of determining liabilities will consist simply of identifying either a single appropriate person (an individual or a corporation such as a limited company) who have caused or knowingly permitted the presence of a single significant contaminant, or the owner of the land.

The history of other land may be more complex with, for example, a succession of different

occupiers or industries that may have contributed to the contamination with potentially many separate substances to varying degrees over a period of time. These, in turn may require different remedial measures.

Hence, the degree of responsibility for the state of the land may vary widely and determining liability for the costs of each remediation action can be correspondingly complex.

In line with the Statutory Guidance, the Council will undertake a number of tests to decide whether any individuals or corporations should be excluded from liability. Liability can then be apportioned accordingly between the remaining liable parties.

5.5.1 Class 'A' Appropriate Persons

These are, generally speaking the polluters, but also included are persons who 'knowingly permit'. This includes developers who leave contamination on a site, which subsequently results in the land being declared contaminated.

5.5.2 Class 'B' Appropriate Persons

Where no Class 'A' persons can be found liability reverts to the owner or the occupier. These are known as Class 'B' persons.

The Council will make all reasonable enquiries to identify Class 'A' persons before liability reverts to innocent owner occupiers.

The Council will, at all times, closely follow the Statutory Guidance in determining liable person(s) and apportionment of remediation costs.

If no appropriate person can be found or, where those who would otherwise be liable are exempted by one of the relevant statutory provisions, then the significant contaminant linkage will become an 'orphan linkage'. In these instances, the Council has the power to carry out the remediation action itself, at its own cost.

5.6 **Cost Recovery**

In making any cost recovery decision, the Council (in line with the Statutory Guidance) will adopt the following general principles:

- (a) The Council will aim for an overall result which is as fair and equitable as possible to all who may have to meet the costs of remediation, including national and local taxpayers.

- (b) The 'polluter pays' principle should be applied with a view that, where possible, the costs of remediating pollution should be borne by the polluter. The Council will therefore consider the degree and nature of responsibility of the relevant appropriate person(s) for the creation, or continued existence, of the circumstances which lead to the land in question being identified as contaminated land.

The Council will seek to recover all of its reasonable costs. However, it will consider waiving or reducing the recovery of costs to avoid any undue hardship which the recovery may cause to the appropriate person, or to reflect one or more of the specific considerations set out in the Statutory Guidance.

In certain circumstances, the Council may consider deferring recovery of its costs and securing them by a charge on the land in question. Such deferral may lead to payment from the appropriate person either in instalments or when the land is next sold.

5.7 Enforcement

The Council intends to carry out its responsibilities under Part 2A in a clear and transparent manner and will endeavour to promote voluntary remediation of sites at all times.

Before remediation notices are served, there will be extensive consultation with all parties that have an interest in the land and they will be encouraged to arrive at an informal remediation solution.

Remediation notices are served only as a last resort (not withstanding urgent cases), and only after the consultation process has been exhausted. In addition, notices will only be authorised after the following two tests are satisfied:

- The remediation actions will not be carried out otherwise.
- The Council has no power to carry out the work itself.

If these tests are met, the Council will serve a remediation notice on each appropriate person. It will not be served less than three months after the date of the formal notification that the land is contaminated - unless the urgent action is deemed necessary (i.e. where there is imminent risk of serious harm).

Should enforcement action be required, for example due to the failure to fulfil the requirements of a remediation notice, action will be taken in accordance with the Council's enforcement policy current at that time.

Appendix 1

List of Potentially Contaminative Land Uses

This list has been drawn up to provide a broad indication of the type of sites that are known to use, or to have used in the past, materials that could pollute the soil.

The list is not necessarily exhaustive and inclusion on this list does not necessary infer the existence of a pollutant linkage.

Abattoirs	Descaling Contractors (Chemical)	Iron Founder
Adhesive Manufacture	Detergent Manufacture	Iron Works
Agriculture	Distilleries	Knackers Yards
Aircraft Manufacture	Dockyards	Lacquer Manufacture
Airports	Drum Cleaning	Laundries
Animal By-Product Processing	Dry Cleaners	Leather Manufacture
Anodisers	Dye Works	Metal Coating
Anti-Corrosion Treatment	Dyers & Finishers	Metal Manufacture
Asbestos Products	Electricity Generation	Metal Sprayers & Finishers
Asphalt Works	Electrical Engineers	Mining
Automotive Engineering	Electro-Platers	Mirror Manufacture
Battery Manufacture	Engineering Works	Motor Vehicle Manufacture
Bearings Manufacture	Explosive/Fireworks Manufacture	Oil Fuel Distributions & Supplies
Blacksmiths	Farms	Oil Merchants
Boiler Makers	Fertiliser Manufacture	Oil Refineries
Bookbinding	Fellmongers	Oil Storage
Brass & copper Tube Manufacture	Fibre Glass Works	Paint & Varnish Manufacture
Brass Founders	Food Processing	Paper Works
Brewing	Foundries	Pesticide Manufacture
Car Manufacture	Fuel Manufacture	Petrol Stations
Cement Works	Fuel Storage	Photographic Film Works
Cement Batching	Glass Mantle Manufacture	Photographic Processing
Ceramics Manufacture	Glass Works	Paper Manufacture
Chemical Manufacture & Storage	Glue Manufacture	Plastic Works
Chrome Plating	Gum & Resin Manufacture	Plating Works
Coal Carbonisation	Hatters	Power Stations
Coal Merchant	Hide & Skin Processors	Print Works
Coppersmiths	Ink Manufacture	Printed Circuit Board Manufacture

Radioactive Materials Processing	Ship Builders	Timber Treatment
Railway Land	Skein Silk Dyers Small Arms Manufacture	Timber Preservatives Manufacture
Railway Locomotive Manufacture	Smokeless Fuel Manufacture	Tin Plate Works Transport Depots
Refiners of Nickel & Antimony	Soap Manufacture	Tyre Manufacture & Re-Treading
Resin Manufacture	Solvent Manufacture	Vehicle Manufacture
Rubber Manufacture	Solvent Recovery	Vulcanite Manufacture
Scrap Metal Dealers	Steel Manufacture	Vulcanisers
Sealing Compound Manufacture	Stove Enamellers	Waste Disposal
Sewage Works	Synthetic Fibre Manufacture	Waste Recycling
Sewage Sludge Disposal Areas	Tank Cleaning	Waste Treatment
Ship Breakers	Tanneries	Zinc works
Sheet Metal Merchants & Work	Tar & Pitch Distillers	
	Textile Manufacture	
	Thermometer Makers	

Appendix 2

Receptors

The following receptors are covered by Part 2A. For further details, and information on what constitutes significant harm to each receptor, please refer to the Statutory Guidance.

- Human beings.
- Any ecological system, or living organism forming part of such system, within a location which is:
 - i. A site of special scientific interest.
 - ii. A national nature reserve.
 - iii. A marine nature reserve.
 - iv. An area of special protection for birds.
 - v. Any European site within the meaning of regulation 10 of the Conservation Regulations 1994 e.g. special areas of conservation and special protection areas.
 - vi. Any candidate special areas of conservation or special protection areas.
 - vii. Any habitat afforded protection under paragraph 6 of planning policy statement 9 (PPS9) e.g. RAMSAR sites.
 - viii. Any nature reserve under section 21 of the National Parks and Access to the Countryside Act 1949.
- Property in the form of:
 - i. Crops, including timber.
 - ii. Produce grown domestically, or on allotments for consumption.
 - iii. Livestock.
 - iv. Other owned or domesticated animals.
 - v. Wild animals which are the subject of shooting or fishing rights.
- Property in the form of buildings. For this purpose, 'building' means any structure or erection, and any part of a building including any part below ground level but does not include plant/machinery within a building.
- Controlled waters, as defined by the Water Resources Act 1991. Including relevant territorial waters, coastal waters, inland freshwaters and ground waters. For the purposes of Part 2A, 'ground waters' does not include waters contained in underground strata but above the saturation zone.

Appendix 3

Contaminant Pathways

The following pathways may create linkages between contaminants on, in or under the ground and relevant receptors. This list is for guidance only and is not necessarily exhaustive.

- Ingestion of soil and dust.
- Ingestion of vegetables & soil attached to vegetables.
- Inhalation of indoor & outdoor dust.
- Inhalation of indoor & outdoor vapours.
- Inhalation of toxic or asphyxiating ground gases.
- Dermal contact with soils and dusts.
- Risk of fire / explosion.
- Migration of soluble or mobile contaminants into groundwater.
- Migration of soluble or mobile contaminants into surface water bodies.
- Surface run-off into surface water bodies.
- Permeation through water pipes.
- Impact on areas of ecological importance.
- Impact on crops or domestically grown produce.
- Impact on livestock and wild animals subject to shooting / fishing rights.
- Impact on buildings and / or foundations.

Appendix 4

Special sites

Once the Council has identified land as contaminated land by definition, it will then also consider whether it falls into the category of a special site. Special sites are sites where, more often than not, the Environment Agency have had, or still have, an enforcement role.

The definition of a special site, as given in the Contaminated Land (England) Regulations 2006 is reproduced below for information only. Reference should always be made to the full text of the legislation and Statutory Guidance for a complete legal definition and for details of references where quoted.

'Contaminated land of the following descriptions is prescribed for the purposes of section 78C (8) as land required to be designated as a special site:

- (a) Land affecting controlled waters in the circumstances specified in regulation 3;*
- (b) Land which is contaminated land by reason of waste acid tars in, on or under the land;*
- (c) Land on which any of the following activities have been carried on at any time;*
 - i. The purification (including refining) of crude petroleum or of oil extracted from petroleum, shale or any other bituminous substance except coal; or*
 - ii. The manufacture or processing of explosives.*
- (d) Land on which a prescribed process designated for central control has been or is being carried on under an authorisation, where the process does not solely consist of things being done which are required by way of remediation;*
- (e) Land on which an activity has been or is being carried on in a Part A(1) installation or by means of Part A(1) mobile plant under a permit, where the activity does not solely consist of things being done which are required by way of remediation;*
- (f) Land within a nuclear site;*
- (g) Land owned or occupied by or on behalf of -*
 - i. The Secretary of State for defence;*
 - ii. The defence Council,*
 - iii. An international headquarters or defence organisation, or*
 - iv. The service authority of a visiting force, being land used for naval, military or air force purposes;*

- (h) Land on which the manufacture, production or disposal of -
 - i. Chemical weapons,*
 - ii. Any biological agent or toxin which falls within section 1(1)(a) of the Biological Weapons Act 1974 (restriction on development of biological agents and toxins), or*
 - iii. Any weapon, equipment or means of delivery which falls within section 1(1)(b) of that Act (restriction on development of biological weapons) has been carried on at any time.**
- (i) Land comprising premises which are or were designated by the Secretary of State by an order made under section 1(1) of the Atomic Weapons Establishment Act 1991 (arrangements for development etc. of nuclear devices);*
- (j) Land to which section 30 of the Armed Forces Act 1996 (land held for the benefit of Greenwich hospital) applies;*
- (k) Land which is contaminated land wholly or partly by virtue of any radioactivity possessed by any substance in, on or under that land; and*
- (l) Land which -
 - i. Is adjoining or adjacent to land of a description specified in any of sub-paragraphs (b) to (k); and*
 - ii. Is contaminated land by virtue of substances which appear to have escaped from land of such a description.'**

Appendix 5

Glossary of terms

Appropriate Person	Defined in Section 78A(9) as: 'Any person who is an appropriate person, determined in accordance with Section 78F, to bear responsibility for anything which is to be done by way of remediation in any particular case.'
Contaminant	A substance which is in, on or under the land and has the potential to cause significant harm or significant pollution of controlled waters.
Contaminant Linkage	The relationship between a contaminant, a pathway and a receptor.
Contaminated Land	Defined in Section 78A(2) 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) Significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.' OR with respect to radioactive contamination it is defined as: 'Any land which appears to the local authority in whose area the land 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 harm being caused.'
Controlled Waters	Has the same meaning as in Part III of the Water Resources Act 1991, and includes relevant territorial waters, coastal waters, inland freshwaters and ground waters. Except that 'ground waters' does not include waters contained in underground strata but above the saturation zone.'
Ecological Systems	Only the following ecological systems can be considered for the purposes of Part 2A: <ul style="list-style-type: none"> • A site of special scientific interest. • A national nature reserve. • A marine nature reserve. • An area of special protection for birds. • 'European site' within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2010. • Any habitat or site afforded policy protection 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.

Enforcing Authority	Special sites will be enforced by the Environment Agency and all other contaminated land sites will be enforced by the local authority in whose area the land is situated.
Environment Agency	An executive non-departmental public body (responsible to the Secretary of State for Environment, Food and Rural Affairs) which aims to protect and improve the environment and to promote sustainable development.
Geology	The study of the structure of rocks, minerals and soils in specific geographical areas.
Harm	Defined in Section 78A(4) as: 'Harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.' OR with respect to radioactive contamination is defined as: 'Lasting exposure to any person being resulting from the aftereffects of a radiological emergency, past practice or past work activity.'
Hydrogeology	The study of the occurrence, distribution, movement and properties of water through rock beneath the ground.
Hydrology	The study of the occurrence, distribution, movement and properties of surface water.
Orphan Linkage	A significant contaminant linkage where no appropriate person can be found, or where those who would otherwise be liable are exempted by one of the relevant statutory provisions. In these instances, the enforcing authority has the power to carry out the remediation action itself, at its own cost.
Part 2A	Part 2A of the Environmental Protection Act 1990.
Pathway	A route by which a receptor is being / could be exposed to, or affected by, a contaminant.
Pollution of Controlled Waters	Defined in Section 78A(9) as: 'The entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter.'
Prioritisation	The process of scoring sites based on the potential contaminants, pathways and receptors. This creates a prioritised list of potentially contaminated sites, which can then be inspected in priority order.
Property	Only the following property can be considered for the purposes of Part 2A: a) Property in the form of: i. Crops, including timber; ii. Produce grown domestically, or on allotments, for consumption; iii. Livestock; iv. Other owned or domesticated animals;

	<p>v. Wild animals which are the subject of shooting or fishing rights.</p> <p>b). Property in the form of buildings. For this purpose, 'building' means any structure or erection, and any part of a building including any part below ground level, but does not include plant or machinery comprised in a building, or buried services such as sewers, water pipes or electricity cables.</p>
Public Register	Register maintained by the Council of particulars
Receptor	Something that could be adversely affected by a contaminant, for example a person, an organism, an ecosystem, property, or controlled waters.
Remediation	Removing identified significant contaminant linkages, or permanently disrupting them, to ensure that they are no longer significant and that risks are reduced to an acceptable level. Remediation may involve a range of treatment, assessment and monitoring actions to secure the overall clean-up of the land.
Remediation Notice	Defined in Section 78E(1) as a notice specifying what an appropriate person is to do by way of remediation and the periods within which he is required to do each of the things so specified.
Remediation Statement	In any case where the enforcing authority is precluded from serving a remediation notice, the responsible person shall prepare and publish a 'remediation statement'. The document will detail what remediation actions are being / have been / are expected to be done, appropriate timescales and the name and address of the responsible person.
Risk	A combination of the probability / frequency of occurrence of a defined hazard and the magnitude (including the seriousness) of the consequences.
Significant Harm to Human Health	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 health, serious injury, birth defects, and impairment of reproductive functions.
Significant Possibility	The decision on whether the possibility of significant harm / pollution being caused is significant is a regulatory decision to be taken by the relevant enforcing authority. Decisions will be made in line with the Statutory Guidance.
Special Site	<p>Defined by Section 78A(3) as:</p> <p>'Any contaminated land –</p> <p>a) Which has been designated as such a site by virtue of section 78C(7) or 78D(6)...; and</p> <p>b) Whose designation as such has not been terminated by the appropriate Agency under section 78Q(4)...'</p> <p>See Appendix 4 of this document for further details.</p>

Substance	<p>Defined in Section 78A(9) as:</p> <p>‘Any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.’ OR with respect to radioactive contamination is defined as:</p> <p>‘Whether in solid or liquid form or in the form of a gas or vapour, any substance which contains radionuclides which have resulted from the after-effects of a radiological emergency or which are or have been processed as part of a past practice or past work activity, but shall not include radon gas or the following radionuclides: Po-218, Pb-214, At-218, Bi-214, Rn-218, Po-214 and Tl-210.’</p>
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Appendix 6

Risk Assessment

General

Part 2A takes a risk-based approach to defining contaminated land. For the purposes of this document, 'risk' means the combination of:

- (a) The likelihood that harm, or pollution of water, will occur as a result of contaminants in, on or under the land; and
- (b) The scale and seriousness of such harm or pollution if it did occur.

All soils contain substances that could be harmful to human or environmental receptors, although in the very large majority of cases the level of risk is likely to be very low. In conducting risk assessment under the Part 2A regime, Chelmsford City Council will aim to focus on land which might pose an unacceptable risk.

The Council will have due regard for good practice guidance on risk assessment and will ensure that risk assessments are carried out in such a way so as to deliver the results needed to make robust decisions in line with Part 2A and the Statutory Guidance.

Risk assessments will be based on information which is:

- (a) Scientifically-based;
- (b) Authoritative;
- (c) Relevant to the assessment of risks arising from the presence of contaminants in soil; and
- (d) Appropriate to inform regulatory decisions in accordance with Part 2A and the Guidance.

Current Use

Under Part 2A, risks should be considered only in relation to the current use of the land. For the purposes of this strategy, the term 'current use' means:

- (a) The use which is being made of the land currently.
- (b) Reasonable likely future uses of the land that would not require a new or amended grant of planning permission.
- (c) Any temporary use to which the land is put, or is likely to be put, from time to time within the bounds of current planning permission.
- (d) Likely informal use of the land, for example children playing on the land, whether authorised

by the owners or occupiers, or not.

- (e) In the case of agricultural land, the current agricultural use will not be taken to extend beyond the growing or rearing of the crops or animals which are habitually grown or reared on the land.

In assessing risks, the Council will disregard any receptors which are not likely to be present given the current use of the land or other land which might be affected. In considering the timescale over which a risk should be assessed, the Council will take into account any evidence that the current use of the land will cease in the relevant foreseeable future (e.g. within the period of exposure assumed for relevant receptors in a contaminant linkage).

When considering risks in relation to any future use or development which falls within the description of a 'current use', the Council will assume that the future use or development would be carried out in accordance with any existing planning permission. In particular, the Council will assume:

- (a) That any remediation which is the subject of a condition attached to that planning permission, or is the subject of any planning obligation, will be carried out in accordance with that permission or obligation.
- (b) Where a planning permission has been given subject to conditions which require steps to be taken to prevent problems which might be caused by contamination, and those steps are to be approved by the planning authority, then the planning authority will ensure that those steps include adequate remediation.

Contaminant Linkages

Under Part 2A, for a relevant risk to exist there needs to be one or more contaminant-pathway-receptor linkages – 'contaminant linkage' – by which a relevant receptor might be affected by the contaminants in question. In other words, for a risk to exist there must be contaminants present in, on or under the land in a form and quantity that poses a hazard, and one or more pathways by which they might significantly harm people, the environment, or property; or significantly pollute controlled waters. For the purposes of this strategy:

- (a) A 'contaminant' is a substance 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.
- (b) A 'receptor' is something that could be adversely affected by a contaminant, for example a person, an organism, an ecosystem, property, or controlled waters. Examples of the various receptors that are relevant under the Part 2A regime were given in Appendix 2.
- (c) A 'pathway' is a route by which a receptor is or might be affected by a contaminant.

The term 'contaminant linkage' means the relationship between a contaminant, a pathway and a receptor. All three elements of a contaminant linkage must exist in relation to particular land before the land can be considered potentially to be contaminated land under Part 2A, including evidence of the actual presence of contaminants. The term 'significant contaminant linkage', as used in this strategy, means a contaminant linkage which gives rise to a level of risk sufficient to justify a piece of land being determined as contaminated land. The term 'significant contaminant' means the contaminant which forms part of a significant contaminant linkage.

In some cases the Council may encounter land where risks are presented by groups of substances which are likely to behave in the same manner, or a substantially very similar manner, in relation to the risks they may present (e.g. as may be the case with organic substances found in oils). For the purposes of identifying and assessing contaminant linkages and taking regulatory decisions in relation to such linkages, the Council will treat such groups of contaminants as being in effect a single contaminant and multiple contaminant linkages as being in effect a single contaminant linkage. The Council will only do this if there is a scientifically robust reason for doing so, and it will state clearly why this approach has been taken in relevant documentation (including the risk summary discussed later in this Section) if the land is later determined as contaminated land.

In considering contaminant linkages, the Council will consider whether:

- (a) The existence of several different potential pathways linking one or more potential contaminants to a particular receptor, or to a particular class of receptors, may result in a significant contaminant linkage.
- (b) There is more than one significant contaminant linkage on any land. If there are, the Council will consider whether or not each should be dealt with separately, since different people may be responsible for the remediation of individual contaminant linkages.

The Process of Risk Assessment

The process of risk assessment involves understanding the risks presented by land, and the associated uncertainties. In practice, this understanding is usually developed and communicated in the form of a 'conceptual model'. The understanding of the risks is developed through a staged approach to risk assessment, often involving a preliminary risk assessment informed by desk-based study; a site visit and walkover; a generic quantitative risk assessment; and various stages of more detailed quantitative risk assessment. The process will normally continue until it is possible for the Council to decide:

- (a) That there is insufficient evidence that the land might be contaminated land to justify further inspection and assessment; and/or

- (b) Whether or not the land is contaminated land.

For land to proceed to the next stage of risk assessment there should be evidence that an unacceptable risk could reasonably exist. If the Council considers there is little reason to consider that the land might pose an unacceptable risk, inspection activities should stop at that point. In such cases, the Council will have due regard for the relevant section of the Statutory Guidance.

It may become apparent during the course of detailed inspection of land that the assumptions that led to the prioritisation of the land prove to be incorrect, and that the risks posed by the land are lower than expected. In such cases the Council will consider whether (and if so how) to proceed with its inspection, having regard to the need to prioritise inspection activities in accordance with Section 4.2 of this strategy.

There may be good reason to continue until a decision can be taken on whether or not the land is contaminated land. However, as soon as it becomes clear to the Council that the land is unlikely to be contaminated land, it will bring its inspection and risk assessment to an end, and redirect its efforts to the inspection of other land in line with its approach to prioritisation.

As a general rule, inspections will be conducted as quickly, and with as little disruption, as reasonably possible whilst ensuring that a sufficiently robust assessment is carried out. The Council will seek to avoid or minimise the impacts of long inspections on affected persons, in particular significant disruption and stress to directly affected members of the public in the case of inspections involving residential land.

The Council will seek to ensure that its risk assessment is relevant to the land in question, and that it is based on risks that are reasonably likely to exist. In the course of risk assessment, the Council may consider possible exposure scenarios or situations which are very unlikely to occur. However, regulatory decisions will be based on what is reasonably likely, not what is hypothetically possible.

In undertaking risk assessments, the Council will ensure that the time and resource put into assessment is sufficient to provide a robust basis for regulatory decisions. In some cases, there may be a need for detailed and lengthy assessments, particularly in complex cases where regulatory decisions are not straightforward. However, in other cases a less detailed and shorter assessment may be appropriate. For example, if it becomes evident early in risk assessment that there is clearly a high or low risk (to the extent that the decision on whether or not land is contaminated land is straightforward) the Council will normally take the decision on the basis of this evidence alone.

Using External Expertise During Risk Assessment

Developing an understanding of risks in complex cases may raise issues which are beyond the expertise of any one person and may require the involvement of others to conduct a robust risk assessment. There may be little need to consult others in cases where risks are clearly high or low or where the Council has sufficient internal expertise, but in more complex cases the Council will consider whether it is necessary to bring in external expertise.

The question of who to consult depends largely on the circumstances of the land, and the expertise and gaps in expertise of the person doing the assessment. When choosing specialist consultants, the Council will strive as far as possible to ensure that they are appropriately qualified and competent to undertake the work. The Council, or consultants working on their behalf, will also consider seeking the advice from other relevant experienced practitioners or Government advisory bodies as necessary.

Note that although external experts may advise the Council on regulatory decisions under the Part 2A regime, the decisions themselves remain the sole responsibility of the Council.

‘Normal’ Presence of Contaminants

The Part 2A regime was introduced to help identify and deal with land which poses unacceptable levels of risk. It is not intended to apply to land with levels of contaminants in soil that are commonplace and widespread throughout England or parts of it, and for which in the very large majority of cases there is no reason to consider that there is an unacceptable risk.

Normal levels of contaminants in soil should not be considered to cause land to qualify as contaminated land, unless there is a particular reason to consider otherwise. 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 Council will have due regard to the relevant sections of the guidance in this case.

For the purpose of this strategy, ‘normal’ levels of contaminants in soil may result from:

- (a) The natural presence of contaminants (e.g. caused by soil formation processes and underlying geology) at levels that might reasonably be considered typical in a given area and have not been shown to pose an unacceptable risk to health or the environment.
- (b) The presence of contaminants caused by low level diffuse pollution, and common human activity other than specific industrial processes. For example, this would include diffuse pollution caused by historic use of leaded petrol and the presence of benzo(a)pyrene from

vehicle exhausts, and the spreading of domestic ash in gardens at levels that might reasonably be considered typical.

In deciding whether land has normal levels of contaminants, the Council will consider whether contamination is within the bounds of what might be considered typical or widespread:

- (a) Locally, if there is sufficient information to make a reasonable consideration of what is normal within a local area; and/or
- (b) Regionally or nationally in broadly similar circumstances, having due regard to similarity in terms of land use and other relevant factors such as soil type, hydrogeology, and the form of the contaminants.

The Council will decide whether normal levels of contaminants exist in relation to land where:

- (a) Those levels are not significantly different to those likely to be typical or widespread within the district, or in other similar areas; and/or
- (b) Those levels are common or usual in similar land use situations across England or parts of it; and
- (c) There is no specific reason to consider that those levels of contaminants are likely to pose an unacceptable risk.

It is possible that specific pieces of land at or slightly above normal levels of contamination with regard to specific substances may pose sufficient risk to be contaminated land, and that remediation of such land may bring significant net benefits. However, such cases are likely to be very unusual and the Council will take particular care to explain why the decision has been taken, and to ensure that it is supported by robust scientifically based evidence.

Use of generic assessment criteria and other technical tools

It is common practice in contaminated land risk assessment to use 'generic assessment criteria' (GACs) or 'soil guideline values' (SGVs) as screening tools in generic quantitative human health risk assessment to help assessors decide when land can be excluded from the need for further inspection and assessment, or when further work may be warranted.

The Council will use GACs and other technical tools to inform certain decisions under the Part 2A regime, provided:

- (i) the Council understands how they were derived and how they can be used appropriately;
- (ii) they have been produced in an objective, scientifically robust and expert manner by

reputable organisations; and

- (iii) they are only used in a manner that is in accordance with Part 2A and the Statutory Guidance.

Note: GACs relating to human health risk assessment represent cautious estimates of levels of contaminants in soil at which there is considered to be no risk to health or, at most, a minimal risk to health. With regard to such GACs:

- (a) They may be used to indicate when land is very unlikely to pose a significant possibility of significant harm to human health. This is on the basis that they are designed to estimate levels of contamination at which risks are likely to be negligible or minimal and far from posing a significant possibility of significant harm to human health.
- (b) They will not be used as direct indicators of whether a significant possibility of significant harm to human health may exist. Also, the Council will not view the degree by which GACs are exceeded (in itself) as being particularly relevant to this consideration, given that the degree of risk posed by land would normally depend on many factors other than simply the amount of contaminants in soil.
- (c) They should not be seen as screening levels which describe the boundary between Categories 3 and 4 (as defined in Section 4 of the Statutory Guidance) as the two Categories in which land would not be contaminated land on grounds of risks to human health. In the very large majority of cases, these SGVs/GACs describe levels of contamination from which risks should be considered to be comfortably within Category 4.
- (d) They will not be viewed as indicators of levels of contamination above which detailed risk assessment would automatically be required under Part 2A.
- (e) They will not be used as generic remediation targets under the Part 2A regime. Nor should they be used in this way under the planning system, for example in relation to ensuring that land affected by contamination does not meet the Part 2A definition of contaminated land after it has been developed.

The Council may adopt new technical tools and advice developed to help regulators and others apply and conform to the Statutory Guidance. This may be undertaken by government bodies, regulators or other organisations in the land contamination sector. Tools might be developed to help assessors apply the Category 1-4 approach (as described in Section 4 of the Statutory Guidance) in relation to specific substances or situations. For example, this might include the development of generic screening levels to help assessors decide when land might be assumed to be in Category 4; or tools to help describe how estimates of risk and/or bodily uptake of a contaminant might indicate that land should be placed within certain Categories.

Recognising & Dealing with Uncertainty

All risk assessments of potentially contaminated land will involve uncertainty, for example due to scientific uncertainty over the effects of substances, and the assumptions that lie behind predicting what might happen in the future. When building an understanding of the risks relating to land, the Council will recognise that uncertainty exists. The Council will seek to minimise uncertainty as far as it considers it to be relevant, reasonable and practical; and it will recognise remaining uncertainty, which is likely to exist in almost all cases. The Council will be aware of the assumptions and estimates that underlie the risk assessment, and the effect of these on its conclusions.

The uncertainty underlying risk assessments means there is unlikely to be any single 'correct' conclusion on precisely what is the level of risk posed by land, and it is possible that different suitably qualified people could come to different conclusions when presented with the same information. The Council will use its judgement to form a reasonable view of what it considers the risks to be on the basis of a robust assessment of available evidence in line with the Statutory Guidance.

Risk Summaries

Once the Council has completed its detailed inspection and assessment of particular land it should be satisfied it has sufficient understanding of the risks to take relevant regulatory decisions.

The Council will produce a risk summary for any land where, on the basis of its risk assessment, it considers it is likely that the land in question may be determined as contaminated land. The risk summary will explain the Council's understanding of the risks and other factors that it considers to be relevant. The Council will 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. The Council will not proceed to formal determination of land as contaminated land unless a risk summary has been prepared.

Risk summaries will include as a minimum:

- (a) A summary of the Council'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.
- (b) A description of the Council's understanding of the uncertainties behind its assessment.
- (c) 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 may not involve a detailed comparison of relative

risks, but the Council will aim to explain the risks in a way which is understandable and relevant to the layperson.

- (d) A description of the Council's initial views on possible remediation. This may not be a detailed appraisal, but it will 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 the risks posed by the land; and the Council's initial assessment of whether remediation would be likely to produce a net benefit, having regard to the broad objectives of the regime set out in Section 1 of the Statutory Guidance. In the case of land which (if it were determined as contaminated land) would be likely to be a special site, the Council will seek the views of the Environment Agency, and take any views provided into account in producing this description.

The Council is not required to produce risk summaries:

- (a) For land which will not be determined as contaminated land (e.g. land that would be in Categories 3 and 4 in terms of Section 4 of the Statutory Guidance). In such cases, however, the Council will issue a written statement in line with paragraphs 5.2 – 5.4 of the Statutory Guidance.
- (b) For land which has been prioritised for detailed inspection (in accordance with Section 2 of the Statutory Guidance) but which has not yet been subject to risk assessment.
- (c) For land determined as contaminated land before this Guidance came into force.