BEDFORD BOROUGH COUNCIL **DECISION NO. 1895**

RECORD OF EXECUTIVE DECISION TAKEN BY AN EXECUTIVE MEMBER

This form **MUST** be used to record any decision taken by the Elected Mayor or an individual Executive Member (Portfolio Holder).

The form must be completed and passed to the Chief Officer responsible for Legal and Democratic Services no later than NOON on the second working day after the day on which the decision is taken. No action may be taken to implement the decision(s) recorded on this form until 7 working days have passed and the Chief Officer responsible for Legal and Democratic Services has confirmed the decision has not been called in.

1. Description of decision

(1) That the proposed Contaminated Land Strategy, as detailed in Appendix A to the report prepared to accompany this decision, be approved for adoption to support delivery of the Council's duties to effectively regulate contaminated land issues that may occur in the Borough.

(2) That delegated authority be given to the Interim Strategic Director for Environment to implement the revised policy, making any minor textual or administrative amends to the policy as appropriate.

2. Date of decision

30 October 2026

3. Reasons for decision

The Contaminated Land Statutory Guidance produced by the Department for Environment, Food and Rural Affairs (DEFRA) provides direction on how Local Authorities should deliver these duties and includes a requirement for a written strategy setting out the approach to be taken to fulfil their statutory obligations.

The updated Contaminated Land Strategy supports the authority in demonstrating and delivering statutory obligations by setting out a clear strategy outlining the approach to be adopted in delivering statutory responsibilities.

4. Alternatives considered and rejected

The option to not create an updated strategy was considered and rejected. To exercise a regulatory enforcement function without an up-to-date contaminated land strategy that covers the legislative remits under Part IIA of the EPA 1990 was not considered a viable option due to the legal obligations and regulatory regime associated with contaminated land.

5. How decision is to be funded

Publication of the proposed strategy can be delivered within existing resources, with the implementation of the proposed strategy not requiring additional resource or financial implications as a result.

6. Conflicts of interest

Name of all Executive members who were consulted AND declared a conflict of interest.	Nature of interest	Did Standards Committee give a dispensation for that conflict of interest? (If yes, give details and date of dispensation)	Did the Chief Executive give a dispensation for that conflict of interest? (If yes, give details and the date of the dispensation).

The Mayor has been consulted on this decision

30 October 2026

Tom Wootton

Signed: Andrea Spice ..... Date: **30 October 2026**

Name of Decision Taker: **Cllr. Andrea Spice**
Portfolio Holder for Economic Prosperity, Planning, Housing & Regulatory Services

This is a public document. A copy of it must be given to the Chief Officer responsible for Legal and Democratic Services as soon as it is completed.

Date decision published: 30 October 2026.....

Date decision can be implemented if not called in: 10 November 2026.....

(Decision to be made exempt from call in.....NO.....)

For publication

Bedford Borough Council – Portfolio Holder for Economic Prosperity, Planning, Housing & Regulatory Services

Date of Meeting: 30 October 2026

Report by: Interim Service Director for Environment

Subject: CONTAMINATED LAND STRATEGY

1. EXECUTIVE SUMMARY

1.1 Under the provisions of the Environmental Protection Act 1990, Part IIA, a number of statutory duties are placed on Local Authorities relating to the regulation of contaminated land, including requirements to identify contaminated land, and where necessary, ensure its remediation in order that contaminated land is made suitable for its current use.

1.2 The legislation and associated statutory guidance require every Local Authority to cause their areas to be inspected from time to time, with a view to identifying contaminated land. This should be undertaken adopting a strategic approach, in the form of developing and implementing a written contaminated land strategy.

1.3 The identification and associated remediation of contaminated land can be complex in nature, with potentially significant remediation costs, subject to historical land uses etc. Therefore, within Bedford Borough Council the majority of contaminated sites are identified and addressed as part of the local planning/development management regime, an approach that is advocated through national guidance and by other local authorities nationally.

1.4 An updated Contaminated Land Strategy detailing the approach to fulfilling statutory requirements relating to contaminated land is provided at **Appendix A**.

2. RECOMMENDATIONS

2.1 It is recommended that the Portfolio Holder considers the contents of this report and appendices and, if satisfied, to:

(1) Approve the adoption and publication of the proposed Contaminated Land Strategy 2026 (see Appendix A) to support delivery of the Council's duties to effectively regulate contaminated land issues that may occur in the Borough.

(2) Delegate authority to the Interim Strategic Director for Environment to implement the revised policy, making any minor textual or administrative amendments to the policy as appropriate.

3. REASONS FOR RECOMMENDATIONS

3.1 The Contaminated Land Statutory Guidance produced by the Department for Environment, Food and Rural Affairs (DEFRA) provides direction on how Local Authorities should deliver these duties and includes a requirement for a written strategy setting out the approach to be taken to fulfil their statutory obligations.

3.2 The updated Contaminated Land Strategy supports the authority in demonstrating and delivering statutory obligations by setting out a clear strategy outlining the approach to be adopted in delivering statutory responsibilities.

4. THE CURRENT POSITION

4.1 Part IIA of the Environmental Protection Act (EPA) 1990 came into force in England in April 2000 via section 57 of the Environment Act 1995. Under Part IIA each local authority in England has a duty to identify land within its area where contamination is causing unacceptable risks to human health or the wider environment using a strategic approach.

4.2 The legislation and guidance states that local authorities should cause their areas to be inspected from time to time with a view to identifying contaminated land.

4.3 In support of the original requirement a Contaminated Land Capital Grants programme was previously available to local authorities to bid to central government for funding to support delivery of these duties and activities, this included undertaking investigations and remediation work etc. This funding programme was withdrawn in 2013 other than for ‘absolute emergency cases’, with cessation in any form from 2017.

4.4 As such the financial demands associated to the proactive inspection, assessment and potential remediation of land can be significant and the removal of funding to support such activities created a need to alter the approach of Local Authorities in delivering statutory duties associated to the identification and remediation of potentially contaminated land.

5. DETAILS

5.1 The refreshed strategy updates the approach to fulfilling statutory obligations based on the amended national guidance, the updated Local Planning Policy Framework and removal of the national Contaminated Land Capital Grants Programme and absence of a replacement scheme.

5.2 Considering the above and the changes in the contaminated land regime, the updated strategy reflects the current local and national approaches concerning scheduled inspections of sites and the use of complementary inspection and assessment processes through planning and development control, addressing issues as part of a planning application, site surveys, intrusive assessments and environmental land assessments, in line with duties and obligations under Part IIA.

5.3 The strategy seeks to set out the aims and objectives of the service with respect to contaminated land and the approach to the identification and remediation of potentially contaminated land.

5.4 The Council's Contaminated Land Strategy has been reviewed and refreshed to ensure that it remains consistent with the Council's statutory responsibilities under Part IIA of the Environmental Protection Act 1990, the associated Contaminated Land Statutory Guidance and the current national and local planning policy framework. The revised Strategy reflects changes in legislation, national guidance, environmental regulation and established approaches to identifying, assessing and managing potentially contaminated land. It also recognises the withdrawal of the national Contaminated Land Capital Grants Programme and the absence of an equivalent replacement funding scheme, which has implications for the Council's ability to undertake proactive investigations, and fund remediation works.

5.5 The updated Strategy establishes a proportionate, risk-based and evidence-led approach to the identification, inspection and assessment of potentially contaminated land across the Borough. It recognises that the presence of potentially contaminative historical land uses does not necessarily mean that land meets the statutory definition of contaminated land. The Council must consider the available evidence, the existence of relevant contaminant linkages and the potential for significant harm to human health or the environment, or significant pollution of controlled waters, in accordance with the statutory framework.

5.6 A key feature of the refreshed Strategy is the recognition of the complementary roles of the statutory contaminated land regime and the planning and development management process. The planning system provides an important mechanism for identifying and addressing potential land contamination where sites are proposed for redevelopment or changes of use. Through the consideration of planning applications, the Council can require appropriate site investigations, risk assessments and, where necessary, remediation measures to ensure that land is suitable for its proposed use. This approach supports the effective management of land contamination alongside sustainable development and the regeneration of previously developed land.

5.7 The Strategy reflects the move away from relying principally on a programme of routine or scheduled inspections towards a more targeted approach, informed by available environmental information, historical land-use records, development proposals, complaints, new evidence and identified risks. The Council will continue to maintain and review information relating to potentially contaminated sites, with inspection and assessment activity prioritised according to the likelihood and potential severity of environmental or public health risks. This approach enables available resources to be directed towards those sites where further investigation is most justified, whilst retaining the ability to respond to emerging risks and fulfil statutory obligations.

5.8 The updated Strategy also recognises the important contribution of complementary assessment and regulatory processes, including desk-based environmental assessments, site surveys, intrusive investigations, planning conditions, environmental permitting and engagement with relevant regulatory bodies. Where appropriate, the Council will work collaboratively with landowners, developers, the Environment Agency and other relevant organisations to secure the investigation and remediation of land through the most suitable regulatory mechanism. The use of these complementary processes does not replace the Council's statutory duties under Part IIA, but provides opportunities to identify and address potential contamination in a coordinated and proportionate manner.

5.9 The withdrawal of the national Contaminated Land Capital Grants Programme represents a significant change in the financial context within which local authorities discharge their contaminated land responsibilities. Previously, the programme provided opportunities to secure external funding towards detailed site investigations and remediation of qualifying sites. In the absence of a replacement national funding mechanism, the Council must have regard to the financial implications of undertaking investigations and any subsequent remediation requirements. The revised Strategy, therefore, places greater emphasis on risk prioritisation, effective use of existing regulatory powers, partnership working and securing appropriate investigation and remediation through the development process or from responsible parties wherever legally appropriate.

5.10 The Strategy maintains the Council's commitment to protecting public health, the environment and controlled waters, whilst ensuring that regulatory intervention remains reasonable, proportionate and consistent with statutory guidance. Where land is suspected of presenting a significant risk, the Council will assess the available evidence and determine whether further investigation is necessary. Where land meets the statutory definition of contaminated land, the Council will follow the relevant statutory procedures, including identifying appropriate persons and seeking remediation in accordance with the legislative framework. Formal enforcement action will be considered where necessary and justified, with voluntary remediation encouraged where appropriate.

5.11 The revised Strategy also provides greater clarity regarding the Council's operational priorities, decision-making arrangements and the circumstances in which further investigation or regulatory intervention may be required. This includes maintaining appropriate records, reviewing new information as it becomes available, responding to reports of potential contamination and ensuring effective coordination between Environmental Health, Planning and other relevant Council services. The approach supports transparency and consistency in regulatory decisions and provides greater certainty for residents, landowners, developers and other stakeholders.

5.12 In summary, the principal changes and areas of emphasis within the refreshed Strategy are:

- Updated legislative and policy context: Alignment with Part IIA, relevant statutory guidance and the current national and local planning policy framework.
- Risk-based prioritisation: A targeted and proportionate approach to inspections and investigations, informed by evidence and the potential significance of identified risks.
- Integration with the planning process: Greater recognition of the opportunities to identify, investigate and remediate potentially contaminated land through development management and redevelopment.

- Effective use of resources: Recognition of the withdrawal of national capital grant funding and the need to prioritise activity within available resources.
- Partnership working: Continued engagement with landowners, developers, the Environment Agency and other stakeholders to support appropriate investigation and remediation.
- Clear regulatory responsibilities: Confirmation of the Council's statutory duties, the circumstances in which formal intervention may be necessary and the importance of proportionate enforcement.
- Ongoing monitoring and review: Maintaining relevant land information and reviewing priorities in response to new evidence, development activity and emerging environmental risks.

5.13 Overall, the refreshed Strategy represents an updated and pragmatic framework for managing potentially contaminated land across the Borough. It seeks to balance the Council's statutory responsibilities with the need to make effective use of available resources, while supporting sustainable development, environmental protection and public confidence in the Council's regulatory functions. The Strategy does not remove or diminish the Council's statutory responsibilities but provides a clear framework for how these responsibilities will be discharged in the current legislative, operational and financial environment

6. ALTERNATIVES CONSIDERED AND REJECTED

6.1 The option to not create an updated strategy was considered and rejected. To exercise a regulatory enforcement function without an up-to-date contaminated land strategy that covers the legislative remits under Part IIA of the EPA 1990 was not considered a viable option due to the legal obligations and regulatory regime associated with contaminated land.

7. KEY IMPLICATIONS

7.1 Legal Issues – relevant legal power

It is a statutory requirement that Local Authorities have a Contaminated Land strategy in place under Part IIA of the Environmental Protection Act 1990 to deal with identification and remediation. The recommendations within the report support the ongoing delivery of associated statutory obligations, and details how legal obligations placed on the authority will be delivered.

7.2 Policy Issues

The current policy requires update to ensure it reflects the approach of the service and authority to deliver statutory obligations as set out above and within the updated strategy.

7.3 Resource Issues

Publication of the proposed strategy can be delivered within existing resources, with the implementation of the proposed strategy not requiring additional resource or financial implications as a result.

7.4 Risks

Failure to put in place an updated strategy presents a risk of failing to meet statutory requirements placed on the authority and increases the potential for challenges from landowners and developers where the approach of the service does not follow that set out within its strategy.

7.5 Environmental Implications

Updating the contaminated land strategy will support the approach and success of actions being taken to identify and remediate contaminated land and will ensure landowners and developers are aware of expectations associated to the identification and remediation of contaminated land via the planning development process.

7.6 Equalities Impact

In preparing this report, due consideration has been given to the Borough Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010. A full equality impact assessment has been conducted and will be further reviewed following a pubic planning consultation and as part of the local nominations and booking agreement to ensure homes are used accordingly.

7.7 Impact on Families

There are no impacts on families anticipated as a result of this report and submitted updated Strategy.

7.8 Community Safety and Resilience

This report does not raise Community Safety and Resilience issues but does outline the approach to delivering activities to protect Public Health.

7.9 Impact on Health and Wellbeing

The report and updated Contaminated Land Strategy supports the delivery of actions to identify and remediate sites of potential contamination and activities that seek to protect public safety and health.

8. SUMMARY OF CONSULTATIONS AND OUTCOME

8.1 The following Councillors, Council units, Officers and/or other organisations have been consulted in preparing this report:

- Portfolio Holder for Economic Prosperity, Planning, Housing & Regulatory Services
- Interim Strategic Director for Environment
- Head of Regulation & Community Protection
- Technical Officer (Contaminated Land & Air Quality)
- Head of Legal Services
- Finance Business Partner, Environment

9. WARD COUNCILLOR VIEWS

9.1 Not applicable as the stagey and regulatory function is Borough wide as appropriate.

10. CONTACTS AND REFERENCES

Report Contact Officer:	Callum Fletcher, Manager of Corporate Safety & Commercial Regulation Callum.fletcher@bedford.gov.uk
Declarations of Interest by the Report Author:	None
File Reference:	CL_Strat_2026
Previous Relevant Minutes:	N/A
Background Papers:	N/A
Appendices:	Appendix A – Contaminated Land Strategy 2026

BEDFORD BOROUGH COUNCIL

Contaminated Land Strategy

November 2026

Environment Directorate

Document Control

Document reference: CLST2026 (01)
Date effective: November 2026
Prepared by: Victoria Person – Technical Officer (AQ&CL)
Reviewed by: Callum Fletcher – Manager for Corp. Safety & Commercial Regulation

Revision	*Description*	*Date*
CLST2026(01) V1.1	A DRAFT revised strategy to provide a local framework for Bedford Borough Council to meet its legal duties under Part IIA of the Environmental Protection Act 1990 to inspect, identify and manage land contamination	September 2026
CLST2026(01) v1.2	A revised strategy to provide a local framework for Bedford Borough Council to meet its legal duties under Part IIA of the Environmental Protection Act 1990 to inspect, identify and manage land contamination	October 2026

Contaminated Land Strategy

Contents

1. Background 4
2. Regulatory and Policy Context 4
3. Regulatory Objectives 5
4. Aims & Objectives 6
5. Progress to date 7
6. Roles & Responsibilities 8
7. Identification of Potentially Contaminated Sites 10
8. Enforcement 13
9. Requests for information 14
10. Cost Recovery 15
11. Strategy Review 16

Appendix A Bedford Borough Council Page 18

Appendix B Process for Determining Contaminated Land Page 21

1. Background

1.1 The industrial revolution and its impact on the demographic and spatial distribution of people in the United Kingdom resulted in an unprecedented change in land use patterns. In the latter half of the 20th century the character of the UK economy shifted significantly, albeit gradually, away from industrial production to a more service-based economy. Inevitably, these changes and others, for example the type and volume of waste that is sent to landfill, have left behind a legacy of land that has been contaminated with harmful substances which may pose a risk to the environment (human, animal, natural and built).

1.2 This gave rise to a need for a regulatory framework by which land affected by contamination, which was adversely impacting the environment, could be remediated for the benefit of the environment and where vacant brought back into beneficial use.

1.3 The current and projected need for homes has placed renewed pressure on local authorities to reuse land in urban areas and this provided an additional impetus for the rehabilitation of historically contaminated land.

2. Regulatory and Policy Context

2.1 Part IIA of the Environmental Protection Act (EPA) 1990 came into force in England in April 2000 (via section 57 of the Environment Act 1995). Under Part IIA, each local authority in England has a duty to identify land within its area where contamination is causing unacceptable risks to human health or the wider environment using a strategic approach.

2.2 On 6 April 2012, new Statutory Guidance was published by the Department for Environment Food and Rural Affairs (Defra), which required all local authorities to update or replace their existing Inspection Strategies in accordance with the Guidance.

2.3 The legislation and guidance states that local authorities should cause their areas to be inspected from time to time with a view to identifying contaminated land.

2.4 There should be a strategic approach to this, and it should be detailed in a written contaminated land strategy, which should be kept under periodic review.

2.5 The financial demands associated to the inspection, assessment and potential remediation of land are significant. The removal of funding to support such activities creates a barrier to the approach of Local Authorities in dealing with such, thus requiring a considered approach to the remediation of potentially contaminated land.

2.6 In support of this requirement a Contaminated Land Capital Grants programme was available to local authorities to bid for funding in support of delivering these duties. However, This funding programme was withdrawn in 2013 other than for ‘absolute emergency cases’ and ceased to exist in any form from 2017.

2.7 This document sets out the way in which the Council proposes to implement its inspection duties under Part IIA in accordance with the revised Statutory Guidance.

2.8 It provides a review of the progress that has been made to implement the Strategy and also sets out the Council's revised proposals for the identification and assessment of contaminated land within the Borough. The updated Land Contamination Risk Management (LCRM) guidance provides another key piece of resource in managing risk from historic land contamination along with various other such tools for stakeholders.

2.9 The strategy also details the Council's expectations of how contaminated land issues will be addressed by developers when considering and progressing development through the Planning Process.

3. Regulatory Objectives

3.1 The overarching objectives of the Government's policy on contaminated land and the Part IIA regime are to:

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

3.2 The government considers that the most effective way of delivering these objectives is via the 'suitable for use' approach. It also places a strong emphasis on voluntary action.

3.3 The main element of the 'suitable for use' approach is to ensure that where unacceptable risks to human health, or the environment are identified; that the remedial requirements are targeted to the risk, as it relates to the current circumstances and use of the land. Part IIA regime cannot be used to deliver site betterment beyond addressing actual harm.

3.4 The government requires that a balance is achieved between the precautionary approaches to dealing with contaminated land and empowering local authorities to make proportionate, clear and accountable decisions; ensuring that any intervention achieves a net benefit.

3.5 Contaminated land is defined for the purposes of Part IIA as: "any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that –

(a) significant harm is being caused or there is a significant possibility of such harm being caused; or
(b) significant pollution of controlled waters is being, or there is a significant possibility of such pollution being caused."

3.6 What may or may not constitute the various categories of harm is set out in the statutory guidance. Controlled waters include inland freshwater, groundwater and coastal waters.

4. Aims & Objectives

4.1 Bedford Borough Council has the following overall aims in implementing its Contaminated Land Strategy to fulfil the requirements of Part IIA and the statutory guidance:

(a) To protect human health

(b) To contribute to environmental improvement and sustainability in the borough

(c) To seek land remediation through the development management system

(d) Seek to ensure that contaminated land is made suitable for its use

(e) To adopt a strategic risk-based approach to the periodic inspection of the Borough via the planning development process, complaints/incidents and the inspection of permitted processes (for the purposes of identifying land which presents unacceptable risks to human health or the wider environment,)

(f) To promote and achieve remedial actions that are reasonable, practicable, effective and durable

(g) Encourage the regeneration and voluntary action by polluters or other appropriate persons, in order to facilitate the re-use of brownfield sites

(h) To support the Council in meeting the local housing needs, by providing guidance and support to developers, when dealing with brownfield sites

(i) Quantify the Council's liabilities, if any

4.2 The objectives of the strategy are:

(a) To follow the overarching objectives of the Contaminated Land Statutory Guidance (April 2012)

(b) To utilise the Development Management system as the predominant way in which land affected by contamination will be assessed and prioritised within the Borough, in accordance with the Contaminated Land Statutory Guidance (April 2012)

(c) To ensure that any proposed development within the Borough is dealt with accordingly via the planning process in a manner that ensures the land is suitable for its intended use (thus cannot be subsequently determined as Contaminated Land under the Part IIA regime)

(d) Encourage voluntary remediation of sites where appropriate

(e) To only use Part IIA where no appropriate alternative solution exists

(f) To not undertake a strategic or detailed inspection of any site where a planning permission exists or is understood to be imminent unless there is significant evidence that the land is contaminated land

(g) To refer any issues or allegations relating to radioactivity on land to DECC

(h) To ensure that the Strategy is compatible with the Council’s Corporate Plan and Policies

(i) To share information internally and externally in order to effectively deal with land contamination issues during the policy making and planning process

(j) To avoid any unnecessary blight of land within the Borough

(k) To communicate effectively the authority's intentions

(l) To continue to update and maintain the Register as appropriate

5. Progress to date

5.1 Whilst the Government has recognised that the implementation of the contaminated land regime may involve significant costs to local authorities, there is currently no dedicated central government funding available to support local authorities in the delivery of their responsibilities.

5.2 In addition, the Council does not maintain a dedicated budget for undertaking proactive detailed site investigations, risk assessments or remediation works in relation to potentially contaminated land.

5.3 Whilst these factors present challenges to the proactive implementation of certain aspects of the Part IIA regime, Bedford Borough Council remains committed to fulfilling its statutory responsibilities through a proportionate, risk-based approach.

5.4 This includes maintaining and reviewing information relating to potentially contaminated sites, prioritising sites based upon available information and risk, and securing the investigation and remediation of contamination through the planning process wherever appropriate. The Council has also previously undertaken a review of potentially contaminated sites within the Borough and holds a strategic list of such.

5.5 Despite the absence of dedicated funding, significant progress has been made over recent years in the investigation and remediation of land affected by contamination, primarily through:

(a) The planning regime, including the National Planning Policy Framework (NPPF), which establishes a clear relationship between land contamination, redevelopment and the requirement for remediation where necessary.

(b) The Contaminated Land Regime - Part IIA of the EPA 1990 and associated Regulations and Guidance, which have provided clarity for local authorities and owners of land that is potentially contaminated regarding liability, risk assessment and remediation expectations.

5.6 In practice, the planning and development management process has become the primary mechanism through which land affected by contamination is investigated and remediated. The principles, risk assessment methodologies and management framework established under Part IIA continue to inform the Council's approach to the assessment of planning applications and the management of land contamination issues throughout the Borough.

Ongoing Delivery Arrangements

5.7 Regulatory Services will continue to maintain and update the Council's contaminated land records and information systems through:

(a) Reviewing and updating information received through the planning process regarding site investigations, risk assessments and remediation works undertaken on sites included within the Council's prioritisation list.
(b) Maintaining and updating the contaminated land public register, Geographic Information System (GIS), GeoEnviron database and associated records.
(c) Updating information published on the Council's website where appropriate.
(d) Responding to environmental information requests and land contamination enquiries.

5.8 Regulatory Services will continue to utilise the planning and development management process as the primary mechanism for addressing potentially contaminated land and will:

(a) Expect developers and their agents to identify and address land contamination issues at the earliest opportunity, including during pre-application discussions.
(b) Seek the submission of proportionate and robust information to demonstrate that land contamination risks can be appropriately assessed and managed.
(c) Object to planning applications where there is insufficient evidence to demonstrate that contamination risks can be satisfactorily addressed, or where remediation is considered technically unfeasible.
(d) Recommend the use of appropriate planning conditions where further investigation, assessment or remediation is required.
(e) Record all relevant land contamination consultation responses and decisions within the Council's information management systems.
(f) Liaise, where appropriate, with the Environment Agency and other relevant stakeholders regarding land contamination matters.
(g) Agree the discharge of land contamination planning conditions where investigations, remediation and validation works have been completed to an appropriate standard.
(h) Act in accordance with the Contaminated Land Statutory Guidance, National Planning Policy Framework and other relevant guidance documents.

5.9 The Council will continue to review available information and intelligence relating to potentially contaminated land and will keep this Strategy under periodic review to ensure it remains consistent with current legislation, policy and best practice.

6. Roles & Responsibilities

Local Authority

6.1 The primary regulatory role under Part IIA rests with the Local Authorities, reflecting existing functions under the statutory nuisance regime and complementing their role as the Local Planning Authority. The statutory duties of the local authority under the Part IIA regime are:

(a) to prepare a strategy for inspection of their area
(b) to inspect the Borough where possible to identify contaminated land
(c) to determine whether any land meets the definition of Contaminated Land under Part IIA of the Environmental Protection Act 1990
(d) to establish whether sites should be designated as “Special Sites” and thus become the responsibility of the Environment Agency
(e) where the Agency carries out an inspection on behalf of the Council, the inspection duty and the decision as to whether land is Contaminated Land, remain the sole responsibility of the Council
(f) to consult the Environment Agency on sites where there is pollution of controlled waters and where the Local Authority considers that land meets the definition of a Special Site
(g) to act as enforcing authority for all contaminated land which is not designated as a “Special Site”, for which the Environment Agency will be the enforcing authority
(h) to maintain a public register of sites for which a remediation notice has been served, or where a remediation statement or declaration has been published

Environment Agency

6.2 The Environment Agency has a key supporting role to Local Authorities, involving provision of information and advice, and a number of specific regulatory functions. Thus, the Environment Agency has the following roles with respect to contaminated land under Part IIA:

(a) custodians of data (website) and provision of information in response to specific requests
(b) to assist local authorities in identifying contaminated land, particularly in cases of water pollution
(c) to provide site specific guidance to local authorities on contaminated land with specific reference to water pollution
(d) to undertake inspections of Potential Special Sites at request and on a priority basis
(e) to act as enforcing authority for any land designated as a Special Site
(f) to maintain a register of Special Sites remediation
(g) to publish periodic reports on the State of Contaminated Land

Developer

6.3 To satisfy the Local Planning Authority (LPA) that contamination risks will be appropriately managed and remediated, developers should undertake proportionate site investigations and risk assessments to identify and evaluate potential risks to human health, controlled waters, property and the wider environment. All assessments, remediation strategies and verification works should be prepared by

suitably qualified and competent persons in accordance with current guidance and best practice.

6.4 Further guidance on the investigation, assessment and management of land contamination is provided in the documents referenced within this strategy and or widely available and published elsewhere.

6.5 Following completion of remediation works, developers are responsible for demonstrating to the satisfaction of the LPA that the agreed remedial objectives have been achieved. This will normally require the submission of verification reports and, where appropriate, the implementation of post-remediation monitoring to confirm the ongoing effectiveness of the remediation measures.

Developer Strategic Planning

6.6 As part of the Council's Local Plan 2030 (adopted in 2020), within the Core Strategy the need for more housing in the Borough was highlighted. The proposed housing requirements for Bedford in the period of 2015-36 was 14,550 homes.

6.7 Since that time the previous 2040 Local Plan (now withdrawn) sought to build on the previous plan and allocate land for strategic growth site. However, due to the withdrawal of the 2040 Plan, the Council is now seeking to set out the long-term planning framework to guide the future development of the borough, including homes, jobs and services, under and new Local Plan 2050.

6.8 An emphasis of the future Local Plan is on sustainable development so it is intended that there will be a limit in the use of "greenfield" sites. This will allow for development opportunities utilising previously developed (brownfield or grey belt) land. Some of this land may be contaminated because of former land uses and the new development will enable this contamination to be dealt with under the planning control regime utilising existing saved policies and the National Planning Policy Framework (NPPF). Therefore, it is expected that most contaminated land remediation will continue to be dealt with by using 'contaminated land' planning conditions within the planning regime.

6.9 Significantly the NPPF states that if a site is remediated via the planning regime it should not be capable of being determined as contaminated land under Part IIA. As a consultee to the local planning authority, the Commercial Regulation Team considers all relevant applications for the potential to be affected by land contamination and must keep in mind the relationship between the two regimes.

6.10 Further information relating to Bedford Borough such as geographical, geological context is provided in Appendix A.

7. Identification of Potentially Contaminated Sites

7.1 In undertaking its duty to inspect the Borough under Part IIA, primarily via the planning development route, the Council will take into consideration the particular characteristics of the area, including:

(a) Potential sources of contamination

(b) Relevant geology, hydrogeology and hydrology
(c) Potential specified receptors (all human receptors, sensitive water receptors, sensitive property receptors and relevant ecological receptors)

7.2 Before a piece of land can be considered as possibly being “contaminated land”, a “pollutant linkage” must be identified. The process of identifying pollutant linkages and of assessing the significance of each linkage is based on “contaminant-pathway-receptor” methodology.

7.3 A contaminant is a substance which is in, on or under the land and which has the potential to cause harm to a relevant receptor, or cause pollution of controlled waters. A receptor is either (a) a living organism, a group of living organisms, an ecological system or piece of property and is being or could be harmed by a contaminant, or (b) controlled waters that are being or could be polluted by a contaminant. A pathway is one or more route(s) or means by or through which a receptor (a) is being exposed to or affected by a contaminant or (b) could be so exposed or affected.

7.4 Unless all three elements of a pollutant linkage are identified, land cannot be considered contaminated. All search strategies will therefore be prioritised on areas where both contaminants and receptors are known or likely to exist.

7.5 For example, if an area had a land use that was likely to have been affected by contaminants it would not be considered of the highest priority if there were no specified receptors within the area of interest. This would also apply if receptors were present but pathways by which they could be exposed to the contaminants were absent. However, if one or more pathway or receptor were present then the same land use would be considered a higher priority.

Potential sources of contamination

7.6 Any site with the potential to cause pollution will be identified at this preliminary stage. Both historical and current land uses will be considered.

Past Industrial, Commercial, Waste Disposal & Mineral Extraction Activities

7.7 The vast majority of potentially contaminated sites will be identified through the examination of historical data in the form of digitised historical ordnance survey maps, plans and photographs for evidence of past industrial use. Consultation with the Town and Parish Councils and with members of the public for local knowledge of past industry will also be an information source.

7.8 It must be recognised that many of those former industrial sites will have been redeveloped over the years. In some cases, they will have been redeveloped with residential dwellings, schools or other land uses that are inherently more vulnerable to the presence of contamination than the original land use. In such cases the methods and extent of remediation may be unknown; in others it may be known but the adequacy of the remediation will need to be examined. This will be a factor in the risk prioritisation process.

Current Industrial, Commercial, Waste Disposal & Mineral Extraction Activities

7.9 The present industrial areas of the Borough are also potential sources of historical contamination and these will be inspected in accordance with the statutory guidance, via the planning development regime, to establish whether there is a potential for contamination, and if there is, whether it is controlled by another regulatory regime.

Potential Specified Receptors

7.10 Land can only be considered contaminated if the contamination adversely impacts specified receptors, potential receptors may include human, property, ecological receptors and water. Relevant receptors will seek to be determined on a case-by-case basis.

Potential Pathways of Exposure to Contamination

7.11 Pathways by which receptors can be exposed to contamination are many and will vary considerably depending on the contaminant and the different types of receptors. It is neither practical nor appropriate to summarise all potential pathways in this document, but for context two examples are provided below.

7.12 For volatile contaminants, or gases a pathway to human exposure could be through cracks in, or service penetrations through, concrete floor slabs. Whereas for contaminants in a liquid or solid phase this pathway to human exposure would not be significant, but direct contact with the soil, or dusts from the soil, containing the contaminants may well be.

7.13 For contaminants in the ground that can be mobilised by precipitation, or that exist in a liquid form, a porous/permeable geology will represent a viable pathway through which those contaminants could move laterally or vertically to impact on a surface water or groundwater receptor. Whereas, if those same contaminants were present in, or were contained by, an impermeable or low porosity/permeability geology then that pathway would be much less significant or not viable at all.

7.14 The identification of statutorily contaminated land will be carried out in an ordered, rational and efficient manner based firmly on the principles of risk assessment and it will be implemented using a staged approach that will make the best use of scarce resources. Further information the process to be adopted when determining contaminated is provided in **Appendix B.**

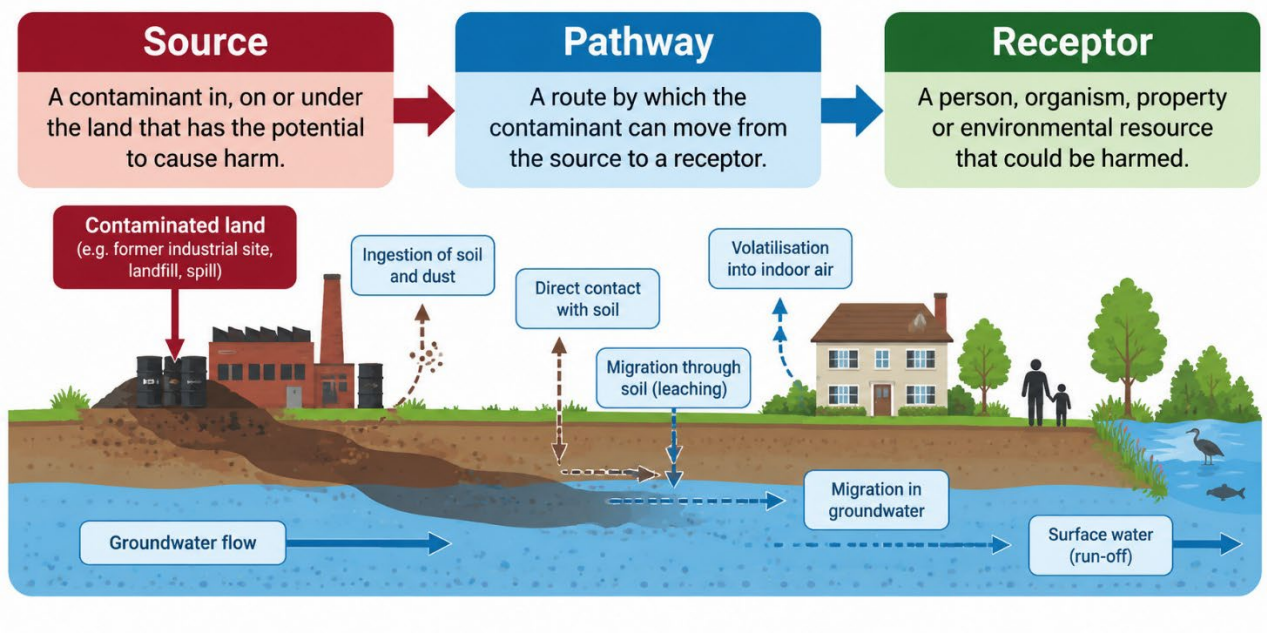


Figure 1: *typical 'Source – Pathway – Receptor' model*

8. Enforcement

8.1 The Council will adopt a proportionate and risk-based approach to enforcement under Part IIA of the Environmental Protection Act 1990, seeking to secure appropriate remediation while having regard to the principles of reasonableness, consistency and transparency

Remediation Notices

8.2 Where the Council has identified contaminated land and established the appropriate person(s) the Council shall serve on each appropriate person a 'remediation notice' specifying what that person is to do by way of remediation and the periods within which that person is required to do each of the things so specified.

8.3 Remediation notices will be served only as a last resort (notwithstanding urgent cases), and then only after the consultation processes and required considerations have been completed. Notices will be authorised after two tests are satisfied:

- that the remediation actions will not be carried out otherwise; and
- that the Council has no power to carry out the work itself

8.4 If these are met the Council will serve a remediation notice on each appropriate person.

Remediation Statements

8.5 Before the Council can serve a Remediation Notice it will first determine whether it has the power to carry out any of the remediation actions itself. There are five specified circumstances where this may be the case:

- where urgent action is required (see below)
- where no appropriate person can be found

- where one or more appropriate persons are excluded (e.g. on hardship grounds)
- where the local authority has made an agreement with the appropriate person(s) that it should carry out the remediation; and
- in default of a remediation notice.

8.6 In these circumstances the Council (where it is the enforcing authority) shall prepare a Remediation Statement specifying the works that will be undertaken and when they will take place.

8.7 Urgent action is required where the Council is satisfied that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused by contaminated land. In such circumstances the procedures identified in the statutory guidance will be followed which may involve forced entry into the premises. Section 108 of the Environment Act 1995 gives the Council power to authorise, in writing, "suitable persons" to investigate potentially contaminated land. These powers are extensive and will be considered in detail with the Council's Solicitor prior to any resisted entry being attempted.

8.8 The terms "imminent" and "serious" are not defined, so local authorities are advised to use the normal meaning of the words. In appropriate cases the Council will seek to recover costs of remediation works it has completed.

Remediation Declarations

8.9 In circumstances where the only things by way of remediation which may be done are things that the Council considers are unreasonable having regard to the cost which is likely to be involved and the seriousness of harm, or of the pollution of controlled waters, it shall prepare a Remediation Declaration. This shall record the reason why the Council would have specified that remediation and the grounds on which it is satisfied that it is precluded from specifying that remediation.

Reconsideration of determinations

8.10 The Revised Contaminated Land Statutory Guidance has introduced the option for the Council to reconsider, revoke or vary any of its determinations that land is contaminated land if it becomes aware of further information which it considers significantly alters the basis for its original decision. If the Council does so it should record its reasons alongside the initial record of determination in a way that ensures that the changed status of the land is made clear.

9. Requests for information

9.1 Contaminated Land Registers - Part IIA requires the Council to keep a public register. The public register is intended to act as a full and permanent record, open for public inspection, of all regulatory action taken by the enforcing authority in respect of the remediation of contaminated land. The Council's contaminated land register will be maintained by Regulatory Services and Community Protection service group. Members of the public can request to view the register by contacting EHadmin@bedford.gov.uk free of charge during normal office hours.

9.2 **The Environmental Information Regulations 2004 -** Implementation of the strategy will also result in significant volumes of data that will be held on computer databases and geographical information systems, as well as in paper form.

9.3 These Regulations require local authorities to make any environmental information they hold available upon request, subject to certain exemptions. These are complex but it would be likely that the Council will have to respond to requests for information on land it has identified as part of, for example, the inspection of the Borough, as outlined in Part 2 of this strategy.

9.4 It should be noted that the Council's prioritisation list for further investigation is being classified as "a record which is in the course of completion". This is because it is always liable to update and as such this will not be disclosed under the Regulations. It should, however, be understood that information held about specific sites within the prioritisation list will be made available via an Environmental Information Regulation request. A charge will usually be made for the supply of information in accordance with the Regulations.

9.5 Charges will be made for responses under the Environmental Information Regulations 2004.

10. Cost Recovery

10.1 Under Part IIA of the Environmental Protection Act 1990, the Council has powers to recover the reasonable costs it incurs in carrying out its contaminated land functions, including the costs of investigation, risk assessment, remediation and enforcement, subject to the requirements of the legislation and Statutory Guidance.

10.2 Where contaminated land is formally determined and remediation action is required, the Council will seek to identify the appropriate person(s) responsible for the contamination in accordance with the provisions of Part IIA and any associated statutory guidance. Where appropriate, the Council will seek to recover its reasonable costs.

10.3 The Council will have regard to all relevant statutory provisions, guidance and the specific circumstances of each case when determining whether cost recovery is appropriate. This will include consideration of hardship, fairness, reasonableness and any exemptions or limitations on cost recovery that may apply.

10.4 The Council recognises that cost recovery is not automatic and that there may be circumstances where full or partial recovery is not reasonable or practicable. Decisions regarding cost recovery will be made on a case-by-case basis, having regard to the principles set out within the Contaminated Land Statutory Guidance.

10.5 Where the Council is itself identified as an appropriate person, or where no appropriate person can be found, the Council will consider its obligations and available options in accordance with the requirements of Part IIA and any resources available to support the necessary actions.

10.6 The Council will seek, wherever possible, to encourage voluntary investigation and remediation of contaminated land in advance of formal regulatory intervention, thereby reducing risks to human health and the environment and minimising the need for enforcement action and associated costs.

11. Strategy Review

11.1 The Council has a duty to keep its written strategy under periodic review to ensure that remains up to date, this strategy may be subject to periodic review as needed to reflect changes to guidance, statutory guidance and legislation etc. and will be subject to update at least every 5 years if not sooner.

11.2 Any proposed changes to the written strategy will be reported to the Members before they are finalised and any updated strategy formally published.

References

BGS (2012). Normal Background Concentrations of contaminants in English soils.

Department for Communities and Local Government (2012). National Planning Policy Framework. DCLG, London.

Department for Environment, Food and Rural Affairs (DEFRA), December 2010. Public consultation on changes to the Contaminated Land Regime under Part IIA of the Environmental Protection Act 1990.

Department for Environment, Food and Rural Affairs (2012). Environmental Protection Act 1990: Part IIA Contaminated Land – Contaminated Land Statutory Guidance. The Stationery Office, London.

Department of Energy and Climate Change (2012). Environmental Protection Act 1990: Part IIA Contaminated Land – Radioactive Contaminated Land Statutory Guidance. The Stationery Office, London.

Environment Agency (2004). CLR11: Model Procedures for the Management of Land Contamination. Environment Agency, Bristol.

Environment Agency (EA), February 2009. Dealing with contaminated land in England and Wales A review of progress from 2000-2007 with Part IIA of the Environmental Protection Act.

Environmental Data Services Ltd (ENDS), July 2004. Milestones fail to still qualms about contaminated land regime, ENDS Report 354. The Friary Press, London.

Environmental Permitting (England and Wales) Regulations 2016. Statutory Instrument (SI 2016/1154).

Environmental Protection Act 1990, Part IIA: inserted by the Environment Act 1995, Section 57. See Environment Act 1995 for text for Part IIA.

Environmental Protection UK, March 2011. Assessment and remediation of land contamination through the planning system. Prepared on behalf of DEFRA. Ref Sp1005.

http://randd.defra.gov.uk/Document.aspx?Document=DefraSP1005Report.pdf

The Contaminated Land (England) (Amendment) Regulations 2012. Statutory Instrument (SI 2012/263).

The Contaminated Land (England) Regulations 2006. Statutory Instrument (SI 2006/1380).

The Environmental Damage (Prevention and Remediation) Regulations 2009. Statutory Instrument (SI 2009/153).

Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009. Statutory Instrument (SI 2009/3104).

Slough Borough Council. Contaminated land strategy 2018-2023. Feb 2018

ONS - Subnational population projections for England: 2022-based - Subnational population projections for England - Office for National Statistics

Appendix A

Bedford Borough

Geographical setting

The Borough of Bedford was awarded Charter status by Henry II in 1166, and includes the county town of Bedford, the urban area of Kempston and multiple rural villages – covering an area of approximately 120,000 acres.

In 2007 the development of a new town, Wixams, commenced on a 750-acre brownfield site with the town is now well established.

Bedford is situated on one of the early crossing points of the River Great Ouse, on the arc between Oxford and Cambridge and with easy access to London (55 miles to the South) and Milton Keynes (15 miles to the Southwest), and Cambridge (30 miles to the East) Bedford has the advantage of close proximity to both the M1 and the A1, connected via the A428 with excellent transport links.

Bedford is a significant growth area and approximately 27,000 new homes are planned by 2040 with expectations that the Borough's population will carry on growing well into the future, with an estimated population in 2026 is 197,486.

The area is also well served by the existing rail network with Bedford being the northern terminal for the Thameslink service between Bedford and Brighton via London Gatwick Airport. The station is also one of the major nodes on the InterCity line between London and the North.

Plans for the East West Rail (EWR) project continue to develop with the ambition of improving transport links across the Oxford-Cambridge corridor, and construction of a new station located at Wixams commenced in 2024 adding to local transport links.

In December 2025 approval was granted for construction of the first Universal branded theme park and resort destination in the UK and Europe, Universal United Kingdom Resort. The development will have a transformational impact on Bedford Borough and will include delivery of several transport upgrades, significant employment opportunities and a range of associated developments.

Employment

This is broadly based, now mainly within the urban areas. In the past this has been centred around agriculture, and this led to the development of industrial and manufacturing processes, which were closely related to the rural economy. More recently, the area has seen a reduction and closures within the manufacturing base, however, it has been successful in introducing modern electronics firms together with the research and development arms of major pharmaceutical companies. Confirmation of the Universal United Kingdom Resort will bring about significant changes and employment opportunities within the Borough over the coming years as constructions work increase and the development progresses.

Geological Characteristics

The geology of the Local Authority area is relatively uniform a solid geology consists of Cornbrash(a) and Bisworth(a) formations, and Oxford Clay(b) from the Jurassic period. The strata dip gently (2°) to the Southeast. Faults within both the limestone and mudstone formations have been identified as part of site investigations for engineering works. These rocks are overlain by glacial deposits including boulder clay, gravel and silts. Within the valleys, particularly the Ouse Valley, the solid geology is overlain by alluvium (river gravel and silts). The drift deposits covering this underlying solid geology are mainly chalky tills with the dominant soil type comprising low-permeability clay soils (mainly calcareous). Details of historic quarrying will be taken from the Bedfordshire Historic Environment Record, and more recent extractions from plans held by the County Council's

Hydro Geology

The majority of the land within the Local Authority Area is classified by the Environment Agency as non-aquifer. Minor aquifers within the area are: -

a) the Bedford Oolitic limestone
b) the sand and gravel deposits within the River Great Ouse valley.

There are no Public Water Supply (ground water) Sites or Source Protection Zones within the Local Authority area. However, several deep boreholes service sections of the local industry in and around Bedford and 23 private water supplies are checked and approved for public consumption. Relevance to Potentially Contaminated Land: In view of the largely uniform and impermeable nature of the surface geology and the lack of underlying major aquifers it is unlikely that the pollution of controlled ground waters will be a major issue in the identification of contaminated sites.

Industrial History

Bedford is a long-standing market town serving the local area. The Local Authority area includes the adjacent urban area of Kempston and 43 rural villages (area 120,000 acres / 484km²). The first map of the town was produced by John Speed in 1610 and shows a small market town with the main part of the built-up area to the North of the River Great Ouse.

Bedford became the head of navigation for the River Great Ouse in 1689. Activities at that time were primarily agricultural, and Bedford became an inland port for fish, crops (wheat, oats, barley, peas, beans and apples), malt, fullers earth and coal. Brewing and lacemaking featured as "cottage" industries.

However, population growth was slow, and the census of 1801 reveals an urban population of only 4000. The mid-19th century, i.e. 1832 1888, was identified as the time of the Great Estates when crop rotation of fallow, barley, beans on clay, clover on gravel / loam and wheat was introduced. Cottagers continued lace making and extended products to plait (rope) for hat making. Small scale market gardens appeared. Brewing continued to flourish in areas of Bedford at Castle Hill, Newlands (St. Paul's Square) and St. Mary's. The associated trade of glass and bottle making was introduced. Foundries producing agricultural implements started to appear. In 1817, Britannia Iron Works - a foundry manufacturing stoves, railings and farm implements - was set up by John Howard at the west end of High Street. The works relocated

to Kempston Road in 1859 and had extended to a 15-acre site by 1874. During this period the railway connections came through Bedford and its adjacent areas,

- 1846 Bedford - Bletchley
- 1851 Great Northern (London - York)
- 1857 Midland (London - Leicester)

1832, saw the formation of the Bedford Gas Company, with a gas works on the then edge of Bedford at Greyfriars. The Company transferred to a larger site at Ford End Road in 1864.

Further industrial expansion followed including:

- 1894 W. H. Allens Engineering Works on a 13-acre site at Queens Park.
- 1904 W Y A Robertsons works at Ampthill Road
- 1913 Igranic Electrical Company at Elstow Road
- 1913 Meltis at Elstow Road

Outside Bedford, and within the rural area, glass house and nursery production was introduced. Leather tanning and dying sites in villages adjacent to the River Great Ouse became established. Excavation and firing of the Oxford Clay for brick products started prior to 1914. Urban population growth escalated during the 19th century, rising to 35,000 by 1901. In recent years, much of Bedford's manufacturing base has suffered from plant. Closures and the impact of all redundant/reused sites will be reviewed as part of the inspection/planning development process.

Appendix B

Process for Determining Contaminated Land

Determining contaminated land

The local authority has the sole responsibility for determining whether any land appears to be contaminated land. It cannot delegate this responsibility (except in accordance with section 101 of the Local Government Act 1972). However, in making such decisions the authority may rely on information or advice provided by another body such as the Environment Agency, or a suitably qualified experienced practitioner appointed for that purpose.

There are four possible grounds for the determination of land as contaminated land (with regard to non-radioactive contamination):

(a) Significant harm to human health.
(b) Significant possibility of significant harm to human health.
(c) Significant harm or significant possibility of such harm (non-human receptors).
(d) Significant pollution of controlled waters or significant possibility of such pollution.

The legal definition of contaminated land is slightly different if harm is due to radioactivity as it is defined in Regulation 5 of The Radioactive Contaminated Land (England) Regulations 2006. Land contaminated by radioactivity is the responsibility of the Environment Agency.

Before making any determination, the local authority should have identified one or more significant contaminant linkage(s), and carried out a robust, appropriate, scientific and technical assessment of all the relevant and available evidence. The Revised Contaminated Land Statutory Guidance provides the guidance necessary to enable the above, as well as defining four categories of harm to human health to aid the determination process following completion of the risk assessment. In the case of any land which, following determination as contaminated land, would be likely to meet one or more of the descriptions of a “Special Site” set out in the Contaminated Land Regulations 2012 (as amended), the Council should consult the Environment Agency before deciding whether to determine the land. The Council should take the Agency’s views into full consideration and strive to ensure it has the Agency’s agreement to its decision (although the decision is for the Council to make subject to the provisions of Part IIA).

Situations may arise where, with the information available, it is not possible to determine whether a pollutant linkage is significant in accordance with the statutory guidance. In such cases the Council will determine that, on the balance of probabilities, the land does not fall within the statutory definition of contaminated land. However, the situation will be kept under review and reopened at any time new information becomes available.

Inspection may identify contamination that would form a significant pollutant linkage, should new receptors be introduced to the site. In such circumstances this information will be recorded. Should such a site be identified for future development, the information obtained during the investigation should be made available to the planning authority and the owners/developers.

The Written Record of Determination and Formal Notification

Where a site is to be determined as “contaminated land”, the Council shall:

- produce a Risk Summary that explains their understanding of the risk and other relevant factors in a manner that is understandable to a layperson. This is a prerequisite of a formal determination.

- afford all opportunities for the landowner and/or responsible person(s) to undertake their own suitable remediation. This reflects the fact that the legislation and statutory guidance is designed to encourage voluntary remediation (without the need for enforcement action) and in doing so minimise unnecessary burdens on the taxpayer, businesses and individuals.

However, if the Council is of the opinion that the timescale or the remediation method proposed will not alleviate the risk, then the Council will, having determined the land as “contaminated land” by statutory definition, prepare a written record to include:

- a description of the pollutant linkage(s) confirmed,

- a summary of the evidence which confirms the existence of the pollutant linkage(s) including the risk assessments used to conclude their significance (the Risk Summary),

- a summary of the way the requirements of the statutory guidance were satisfied.

The Council will formally notify all relevant parties in writing that the land has been determined “contaminated land”, including:

- the owner(s)
- the occupier(s)
- those liable for remediation (‘appropriate persons’ in the guidance) and
- the Environment Agency.

At the notification stage it may not be possible to identify all the relevant parties. The Council will, however, act on the best information available to it at that time and keep the situation under review should more information comes to light.

If land has been determined as “contaminated land” and falls within one or more of the “special site” descriptions prescribed in the regulations made under Part IIA, it is required to be designated a “special site”. The Environment Agency then becomes the enforcing authority for that land.

The formal notification procedure commences the process of consultation on what remediation might be most appropriate. To aid this process the Council will therefore provide as much information to the relevant parties as possible, including where available:

- a copy of the written record of determination,
- copies of site investigation reports (or details of their availability),
- an explanation of why the appropriate persons has been chosen as such; and
- details of all other parties notified.

Appropriate persons will be provided with written explanations of the tests for exclusion and apportionment.

Determining liability

When a significant pollutant linkage(s) has been identified, the procedure relating to the apportionment of liability must commence. This has five distinct stages as follows:

- Identifying potential appropriate persons and liability groups.
- Specifying remediation actions.
- Attributing responsibility to liability groups.
- Assessing exclusion from liability within any liability group.
- Apportioning liability between members of a liability group.

Identification of Appropriate Person(s) and Liability Groups These procedures are complex, commencing with the establishment of liability groups. All appropriate persons for any one pollutant linkage are a 'liability group'. These may be either class 'A' or class 'B' persons.

APPROPRIATE PERSONS - Class 'A'

These are the polluters but also include persons who "knowingly permit pollution". This would include developers who leave contamination on a site that subsequently results in the land being determined as contaminated land.

APPROPRIATE PERSONS - Class 'B'

Where no class 'A' persons can be found, liability reverts to the owner or the occupier of the land, this may include leaseholders These are known as class 'B' persons.

The Council will make all reasonable enquiries to identify class 'A' persons before liability reverts to owners or occupiers.

Specifying Remediation

The Council will specify what remediation measures are to be carried out in any Remediation Notice, with the reasonableness of the measures being an important factor. As such they will be both appropriate and cost effective, employing 'best practicable techniques' with the aim of the remediation being to ensure that the land is no longer contaminated.

Attributing Responsibility

Appropriate persons or liability groups must be considered for each significant pollutant linkage. Therefore, where a site has had a series of contaminative uses over time, each significant pollutant linkage will be identified separately and responsibility considered for each.

Assessing Exclusion

The Council will consider whether any members of a liability group should be excluded, in accordance with the rules for exclusion set out in Part IIA of the EPA 1990. There are numerous tests specified to identify Class 'A' groups who should be excluded from liability. These will be applied in sequence and separately for each pollutant linkage. The exclusion of

Class ‘B’ persons is much less complex. A single test merely excludes those who do not have an interest in the capital value of the land. Tenants therefore are excluded.

Apportionment of Liability

The Council decides how to apportion liability between members of each liability group who remain after any exclusions have been made.

- The financial circumstances of those concerned have no relevance.
- The Council must consult persons affected to obtain information (on a reasonable basis having regard to the cost). If someone is seeking to establish an exclusion or influence an apportionment to their benefit, then the burden of providing the Council with supporting information lies with them.
- Where there are agreements between appropriate persons the local authority must give effect to these agreements, subject to paragraph 7.30 of the Revised Contaminated Land Statutory Guidance.

The statutory guidance also sets out considerations to which the enforcing authority should have regards when making any cost recovery decision. Therefore, the Council will consider whether any of those liable for the remediation of “contaminated land” may not be able to afford the necessary work before serving any remediation notices.

Orphan Linkages

It is possible that either no Appropriate Person(s) can be found for a pollution linkage on a contaminated land site, or that all members of a liability group benefit from one or more exemptions. In such circumstances that pollution linkage shall be treated by the Council as an Orphan Linkage and the enforcing authority will have the power to carry out the remediation action(s) itself, at its own cost.