

**Bath and North East
Somerset Council**

**REVISED CONTAMINATED
LAND STRATEGY**

September 2023

CONTENTS

1.0	<i>INTRODUCTION</i>	4
2.0	<i>REGULATORY CONTEXT</i>	5
3.0	<i>B&NES CORPORATE STRATEGY</i>	7
4.0	<i>REVIEW OF PROGRESS</i>	9
5.0	<i>CHARACTERISTICS OF BATH & NORTH EAST SOMERSET AREA</i>	10
6.0	<i>APPROACHES TO DEALING WITH CONTAMINATED LAND</i>	14
7.0	<i>MINIMISING UNNECESSARY BURDENS ON TAXPAYERS, BUSINESSES AND INDIVIDUALS</i>	20
8.0	<i>DETERMINATION OF CONTAMINATED LAND</i>	21
9.0	<i>CONTAMINATED LAND STRATEGY REVIEW</i>	22
10.0	<i>ONGOING CONTAMINATION STRATEGY WORK</i>	23
	<i>Appendix A: Glossary of Terms</i>	24
	<i>Appendix B: References</i>	28

LIST OF FIGURES AND TABLES

Figure 1: Pollutant linkage

Figure 2: Location of B&NES in the southwest of England

Figure 3: View of District including sub-areas

1.0 INTRODUCTION

Bath and North East Somerset Council (B&NES or The Council) has, like many local authorities, an inherited legacy of contaminated land. Much land contamination has been present for long periods of time, largely from the 18th Century onwards as a result of industrial, mining and waste disposal activities.

Most soils have some small presence of contaminants (e.g. caused by natural geology and diffuse pollution) but levels of risk are usually very low. However, some land has the potential to pose unacceptable levels of risk to human health or the environment, including water pollution, for example some historical industrial sites and landfills. Land is only considered to be “contaminated land” in the legal sense if it poses an unacceptable risk.

Government policy on land contamination is built on the twin ideas of stopping new contaminated land being created, whilst taking a risk-based approach to tackling historical contamination. The former is not covered here, but it includes Defra policy on pollution, waste, water and chemicals.

Under the contaminated land provisions contained in Part IIA of the Environmental Protection Act 1990, the Council is required to inspect land in its District for contamination.

In 2001 the Council published its Contaminated Land Strategy (the Strategy) detailing how it would undertake its inspection.

This document updates the Strategy and reviews the progress that has been made to implement the Contaminated Land Strategy and sets out the Council's plans for continuing its work.

1.1 The Council's Aims

B&NES is required to inspect land in its District for the purpose of identifying contaminated land.

The Council's approach to land contamination is to identify, characterise and remove unacceptable risks to human health and the environment, and to ensure that the cost burdens are proportionate, manageable and economically sustainable.

The aims of the Strategy are:

- Ensure all future developments (via the Planning Process) are “suitable for use” and not capable of being determined as Contaminated Land under Part 2A of the Environmental Protection Act 1990.
- To identify unacceptable risks to human health and the environment from the immediate and long-term effects of contaminated land.
- Prioritise potentially contaminated sites and ensure that most pressing and serious problems are located first.
- To address properties/land in need of remediation in order to improve the environment within the B&NES District.
- To encourage the voluntary remediation and redevelopment of contaminated land.

2.0 REGULATORY CONTEXT

Part 2A of the Environmental Protection Act 1990 is a piece of primary legislation which was introduced to provide a better way to identify and remediate contaminated land. It was inserted into the Environmental Protection Act (1990) by section 57 of the Environment Act (1995) and came into force on 1 April 2000 in England. It was introduced to identify and regulate the remediation of land where contamination had resulted in significant harm to human health or the environment or where there was a significant possibility of this happening. It also applies where Controlled Waters are, or could be, polluted.

The introduction of this legislation (Part 2A) led to the Council publishing its Contaminated land Strategy in 2001 and this revised document.

Contaminated Land Statutory Guidance was issued by DEFRA in April 2012. The guidance was intended to explain how local authorities should implement the regime on contaminated land.

2.1 Definition of contaminated land under Part 2A

For the purpose of Part 2A, contaminated land is defined as:

"any land which appears to the Local Authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that -

(a) significant harm is being caused or there is a significant possibility of such harm being caused; or

(b) pollution of controlled waters is being, or is likely to be caused;"

OR with respect to radioactive contamination 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) harm is being caused, or

(b) there is a significant possibility of such harm being caused;"

So, although land may have been subjected to a former contaminative use, unless there is a significant possibility of it presenting a significant risk to a receptor such as a human being, crops, animals, buildings or controlled waters, then it will not require action by the local authority, under the Part 2A regime.

2.2 Principle of Pollutant Linkage and Risk Assessment

For a risk to exist there needs to be one or more contaminant-pathway-receptor "pollutant linkage(s)" by which a relevant receptor might be affected by the substances in question. In other words, for a risk to exist there must be contaminants present in, on or under the ground in a form and quantity that poses a hazard, and one or more means by which they might harm people, the environment, or property; or pollute controlled waters:

(a) A source (also known as **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 to cause 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, a piece of property, or a water body.

(c) A **pathway** is a means by which a receptor is or might be affected by a contaminant.

The presence of a receptor, pathway and source is termed a pollutant linkage, as illustrated in Figure 1, and land will be determined contaminated if a significant pollutant linkage exists.



Figure1: Pollutant Linkage

The term "significant pollutant linkage", means a pollutant linkage which gives rise to a piece of land being determined as contaminated land. The term "significant pollutant" means the contaminant(s) that give rise to a significant pollutant linkage.

The identification of contaminated land is based on the principle of risk. Managing environmental 'risk' is a key part of Part 2A. The statutory guidance promotes a risk-based approach in dealing with contaminated land. The aim of this type of approach is to protect human health and the environment without wasting finances on cleaning up sites that do not pose a significant risk. The need for, and extent of, any remediation will be based on a site-specific risk assessment of the facts.

3.0 B&NES CORPORATE STRATEGY

Bath & North East Somerset Council Corporate Strategy 2023-2027 was adopted on July 2023.

The Corporate Strategy is the Council's overarching strategic plan. It sets out what the Council plan to do, how to do it, and how to measure performance over the next four years.

The Council have two core policies – tackling the climate and nature emergency and giving people a bigger say. The Core Policy for addressing the climate and nature emergency is detailed below:

Climate change impacts on the current and future wellbeing of local residents, and the Council need to take urgent action. In 2019, the Council declared a climate emergency across Bath & North East Somerset.

This meant change for all and the Council is committed to playing its part. The Keynsham Civic Centre had the largest solar panel array on a new public building in the country when it was built. The Council introduced LED street lighting. The Energy at Home scheme retrofitted 300 homes and our Plastics Pledge involves local businesses and communities.

To build on this the Council has identified three priority areas for action:

- Energy efficiency improvements to existing buildings and zero carbon for new build
- A major shift to mass transport, walking and cycling to reduce transport emissions
- A rapid and large-scale increase in local renewable energy generation

These have been built into the Corporate Strategy and are reflected in the key commitments.

The Council's work to address the climate and nature emergency delivers other important benefits – for example, insulating homes both improves public health and creates good local jobs.

The Council Climate Emergency webpages have the latest information on our plans and what you can do to help. <https://www.bathnes.gov.uk/climate-emergency>

This Contaminated Land Strategy aims to take account of the Corporate Strategy and in particular, the climate and nature policy.

Further information regarding the contaminated land risk assessment and remedial process, where necessary are detailed in Section 6.1 of this report. However, it is noted that, where remediation is required, it is undertaken to the best practicable technique. The remediation approach should be proportionate, taking into account social-economic factors and be in line with sustainable development.

Under Part 2A, Authorities should use their judgement to strike a reasonable balance between:

- a) Dealing with risks from contaminants and the benefits of remediation; and

b) The potential impacts including financial costs, health and environmental impacts, property blights and burdens on affected on affected people.

One of the three overarching objectives of the Government's policy on contaminated land and the Part 2A regime is to ensure that the burdens faced by individuals, companies and society as a whole, are proportionate, manageable and compatible with the principles of sustainable development.

4.0 REVIEW OF PROGRESS

The first version of this Strategy was developed following guidelines issued by the Department for Transport, Local Government and the Regions (DTLR) and issued in 2001.

The works completed to date are as follows:

- Over 1000 sites with a potentially contaminative historical use have been recorded on a database and geographical mapping system.
- Historical mapping of the District has been obtained and reviewed to ensure as many sites as practical have been identified.
- Sites have been classified as either high, medium or low risk based on their historical use.
- Detailed Part 2A site investigations have been completed in two areas, one in Newbridge Hill, Bath and one in Dapps Hill, Keynsham.
- Five sites have been determined as Contaminated Land, two of which have subsequently been revoked.
- Voluntary assessment and remediation works have been undertaken on seven sites investigated under Part 2A.
- Consultation of the Contaminated Land Department through Council Planning and Development Control departments have ensured new developments are investigated, risk assessed and remediated, where appropriate, ensuring that developments are not capable of being determined as contaminated land.
- Voluntary remediation with the use of contaminated land conditions via the Planning System has resulted in over 100 sites of concern being assessed and remediated where appropriate.
- Pollution incidents and complaints of contamination such as oil leaks and spillages and waste deposition are reported, investigated and remediated (where necessary) by the Department to prevent contaminated land.

5.0 CHARACTERISTICS OF BATH & NORTH EAST SOMERSET AREA

B&NES Council was created in 1996 following reorganisation of Local Government in the area covered by the former Avon County Council. It has responsibility for all the functions traditionally carried out by county and local authorities, and covers the communities served by the former Bath City and Wansdyke Local Authorities. This section summarises some of the pertinent characteristics of B&NES, further information is presented in Appendix B.

This section provides a description of the characteristics of the B&NES District which are important in identifying key local features relevant to the identification of and strategic inspection for contaminated land.

5.1 Geographical Location

Figure 2 illustrates the location of B&NES in relation to other Local Authorities in the Avon area. The B&NES boundary stretches from the picturesque lakes of the Chew Valley in the west to the World Heritage City of Bath and the Wiltshire border to the east.

Bath is set in rolling hills and woodland, which are dissected by the River Avon. The countryside around is part of the Bristol/Bath Green Belt and the Cotswolds Area of Outstanding Natural Beauty (AONB). The City boundary runs tightly around the built-up area.

The town of Keynsham lies close to Bristol with the southern boundary provided by the Mendip Hills around the former mining towns of Midsomer Norton and Radstock.

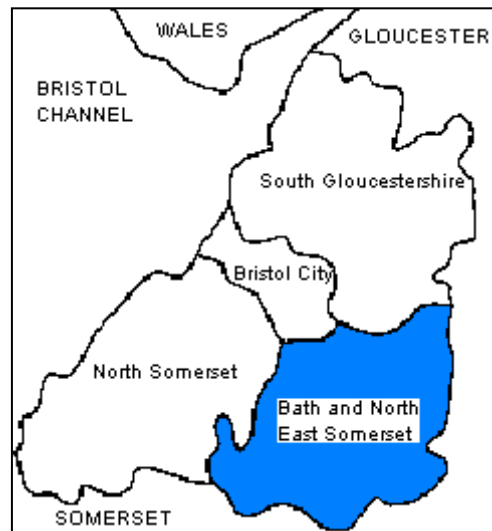


Figure 2: Location of B&NES in the southwest of England

5.2 Size and Population Distribution

Covering approximately 35,000 hectares, the areas of B&NES contrast greatly in terms of the density and diversity of population. The City of Bath accounts for approximately half the population and is 12 times more densely populated than the remainder of North East Somerset. Bath covers 29 km², whilst the population of the remaining area is spread over 323 km². The main concentrations of population are at Midsomer Norton, Radstock, Keynsham, Saltford and Bath.

The total population of B&NES is estimated by the Council as being 196,357 with 99,583 residing in Bath and 96,774 living across the remaining area.

In order to present a more detailed view of the areas within the District it has been divided into 4 sub-areas: Bath; Keynsham and Saltford; Norton Radstock; and the remaining rural area. These are shown in Figure 3.

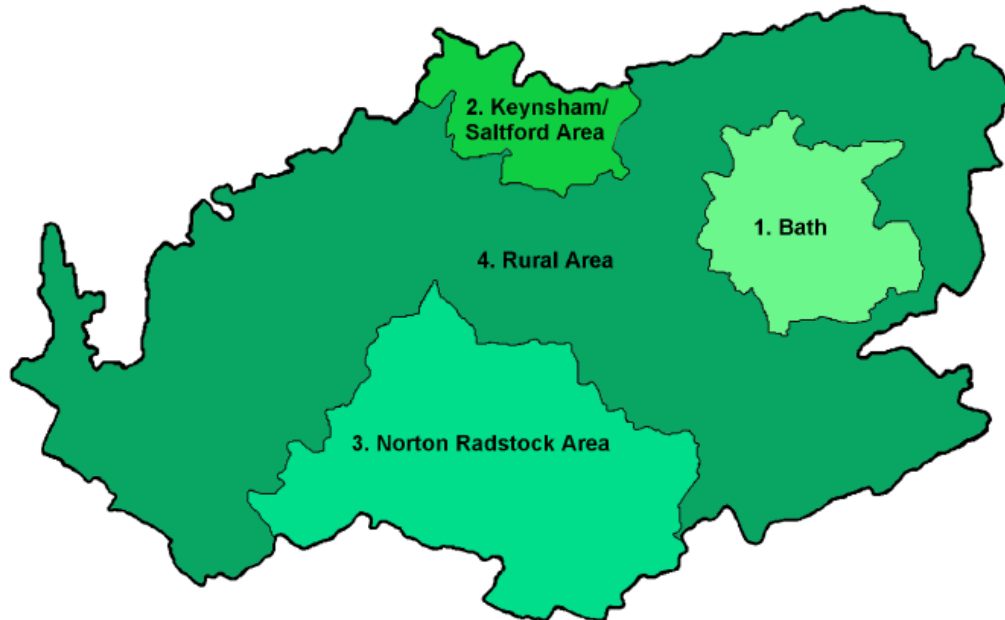


Figure 3: View of District including sub-areas

5.3 Current & Historical Land Use Characteristics

Approximately 75 per cent of the Authority's area outside of Bath is undeveloped, consisting principally of agricultural land.

Industrial activity expanded with the development of the Somerset Coalfield in the 18th and 19th centuries, and Norton-Radstock and the adjoining villages became colliery communities. In the north of the District the Fry's (later Cadbury's) chocolate factory relocated from Bristol in 1922 to a greenfield site near the Avon at Keynsham. Elsewhere, village industries grew into well-known businesses like Harbutt's Plasticine factory at Bathampton and Purnell's printing works at Paulton.

In line with national trends, Bath's industrial profile has changed over the last 60 years and there has been a decline in the traditional manufacturing sector demonstrated by the closure or relocation of various companies. Bath's main industries included heavy and light engineering, shoe manufacture, and printing and publishing.

The following potential contaminative industries have been present in the District:

- Engineering (Stothert & Pitt, Horstmann, etc)
- Mining and Brickmaking (Victoria Brick & Tile, Twerton Colliery, Fullers Earthworks. Somerset Coalfields Collieries etc)
- Civil Engineering & Construction Industry (Bath & Portland Stone, etc)
- Food & Drink (Cadburys Factory, Oliver Biscuits etc)
- Transport (railway, canal, river, road etc)

- Printing and Papermaking (Pitman Press, Bathford Papermill, Purnell Printworks)
- Textiles (Isaac Carr, Charles Wilkins, wool & silk)
- Electricity, Gas & Water (Bath Gas Works, Midsomer Norton Gas Works etc)
- Retailing
- Furniture making (Bath Cabinet Makers, Keevil & Son, etc)
- Motor car making (Horstmann Cars, Fullers Ltd, etc)

There have also been Ministry of Defence sites at Foxhill, Ensleigh and Warminster Road, Bath, although these were mainly administrative in character.

5.4 Broad Geological/Hydrogeological Characteristics

The District has a varied geology that has a major influence on the soils of the area, as well as the landscape, natural resources and cultural heritage.

Solid and Drift Geology

Three main geological series underlie the District. The western area is characterised by the red soils and generally low relief of the Triassic formation, while the eastern part of the District consists largely of the plateaus and valleys of the Jurassic series. The Carboniferous series outcrops in the centre of the District.

The Carboniferous limestone which characterises the Mendip Hills lies mainly to the south of the District, but the Upper Coal Measures underlie much of the District as well as outcropping in an area stretching from Hallatrow northwards to Clutton, Pensford and Compton Dando. The series is made up largely of sandstones, shales and mudstones but banded with coal seams.

The Triassic forms areas of low relief stretching from the slopes of the Mendips northwards across the Chew Valley to Dundry Hill. To the east the Triassic floors the valleys of the Somer, Wellow Brook and Cam before disappearing beneath the newer Jurassic rocks.

Most of the series is characterised by Keuper Marl, siltstones and mudstones. Occasional beds of Butcombe sandstone form local topographical features such as Pagans Hill and Chilly Hill near Chew Stoke. Fringing the northern slope of the Mendips are areas of Dolomitic Conglomerate which consist of rock debris.

The Jurassic series outcrop over about half the District and from the western flank of the Cotswolds Hills. The series comprises Lias limestones, clays and sands overlain by Oolitic limestones and clays. The Lias limestones give rise to the characteristic 'tablelands' or plateaus above the low-lying Keuper marl valleys and vales.

Lower Lias clay lies on top of the plateaus in places and is exposed in the narrow valley floors of the Cam, Wellow and Newton Brooks.

Midford Sands are areas of sandstone which are locally important in the valley of the Conygre Brook north of Priston as well as in the Midford area itself.

Rising above the Inferior Oolite is the Fullers earth formation, a mixture of limestone, mudstone and the famous Fullers earth clay. The Fullers earth outcrops in the steep valley sides in the east of the District and has a history of land slippage.

Above the Fullers earth lies the Great Oolite and Forest Marble limestone series forming the bold scarps and wide plateaus which typify the Cotswolds. They characterise the high ground between the valleys of the Wellow and Cam Brooks, the extensive plateau at Hinton Charterhouse and the Downs around Bath.

Gravels and alluvium feature in the valley bottoms of the Avon and its tributaries, and form extensive areas in the upper parts of the Chew and Cam Valleys, and at the foot of the Mendip slopes around Chew Valley Lake, and at Hollow Marsh.

5.5 Hydrogeology

The majority of the eastern region of the District is recognised as being a Principal aquifer, and therefore highly permeable. The area is also overlain with soils of a high leaching potential.

The only substantial area of this region where a Secondary aquifer exists is in the southeast, around Hinton Charterhouse and extending north to Midford, and the overlying soils have an intermediate to high leaching potential. The solid geology in this area is Jurassic Great Oolite Limestone, and the drift geology is alluvium, mainly silt.

There are Principal aquifers in the northwest of the District close to North Wick and Whitchurch, within the limestone geology and covered with soils of a high leaching potential.

Principal aquifers and soils of a high leaching potential are also found in the far west, north of Nempnett Thrubwell, and the geology here is Keuper Marl, Sandstone, and Dolomitic Conglomerate.

The Chew Valley South area contains a Principal aquifer with soils of an intermediate leachate potential overlying, and Dolomitic Conglomerate solid geology. Compton Wood, in the south of the Chew Valley South area, lies on the District border and is adjacent to a Principal aquifer occurring in the neighbouring local authority and overlain by soil with a high leaching potential. The geology of this area consists of Hotwells Limestone.

A Principal aquifer lies beneath the Mendip area of the District; this is overlain by soils with an intermediate leachate potential and is characterised by Dolomitic Conglomerate geology.

A small number of localised Principal aquifers, with overlying soils of mainly high leaching potentials, exist in the centre and southern area of the District. These are generally within areas of Oolitic limestone.

The remainder of the District, comprising large areas of the western region and sections of the central area, is classified as a non-aquifer and therefore negligibly permeable.

5.6 Bath Thermal Springs

Bath exists because of the emergence of three natural springs in the heart of the city which deliver over 1 million litres of mineral-rich water every day. Uniquely in the UK, the mineral water is hot - it rises to the surface at a constant temperature of at least 45° C. These springs have been, and continue to be, at the centre of economic, social and cultural developments in the City. As such, their protection is of paramount importance locally and nationally.

Bath was, in fact, charged with responsibility for the Hot Springs in a Royal Charter of 1591 granted by Elizabeth I – this duty has passed to Bath & North East Somerset Council. The springs are further protected by the 1982 County of Avon Act.

6.0 APPROACHES TO DEALING WITH CONTAMINATED LAND

6.1 Approaches under Part 2A

The statutory guidance states that the enforcing authorities should seek to use Part 2A only where no appropriate alternative solutions exist. It has introduced a number of tools to aid the Part 2A risk assessment process and consequently the decisions on whether land should be determined as contaminated or not.

The statutory guidance not only introduced the consideration of naturally occurring contamination. It also presents the requirements for Risk Summaries. These are produced after detailed inspection but prior to formal determination. They should be understandable to the layperson, including the owners of the land and members of the public who may be affected by the decision. Risk Summaries should include the risks, uncertainties, the risks in context (locally and nationally) and possible remediation options.

In the event where there are no alternative solutions and a site is determined under Part 2A, then remediation would be required to the best practicable technique. The remediation approach should be proportionate, taking into account social-economic factors and be in line with sustainable development.

Under Part 2A, Authorities should use their judgement to strike a reasonable balance between:

- a) Dealing with risks from contaminants and the benefits of remediation; and
- b) The potential impacts including financial costs, health and environmental impacts, property blights and burdens on affected people.

The broad aim should be to manage or remediate land in such a way that risks are minimised as far as is reasonably practicable. That is, for example, there may cases where after all considerations it is concluded that a land management system is more beneficial than removing and replacing soils.

One of the three overarching objectives of the Government's policy on contaminated land and the Part 2A regime is to ensure that the burdens faced by individuals, companies and society as a whole, are proportionate, manageable and compatible with the principles of sustainable development.

6.2 The planning system

The approach to contamination issues is predominantly through the planning system. Ensuring that contaminated land is dealt with during development reduces potential future liabilities and potentially more costly remediation once a site has been developed. Assessment and remediation would be secured by planning conditions and negotiations with applicants and developers.

National Planning Policy is set out in the National Planning Policy Framework (NPPF) which seeks to encourage a strong, competitive economy. Its Core Planning Principles prioritise the reuse of brownfield sites (previously developed land) for development.

Land affected by contamination (or the possibility of it) is a material planning consideration to be taken into account to ensure that land is made suitable for use when it is redeveloped.

Due to the withdrawal of the funding system from central Government for contaminated land work, the development or redevelopment during the planning or building control processes is the primary means for achieving investigation and remediation of potentially contaminated sites within the District. The majority of sites with potentially contaminated land are therefore being dealt with through the planning process, with only a small amount having to fall under the Part 2A regime.

For all new developments, it is the responsibility of the developer to carry out any necessary site assessments and remediation, in order to ensure the site 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. This is detailed within NPPF s.119, 120, 174, 183 and 184:

119. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.

120. Planning policies and decisions should:

c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;

174. Planning policies and decisions should contribute to and enhance the natural and local environment by:

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and
f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

Ground conditions and pollution

183. Planning policies and decisions should ensure that:

a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);

b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and

c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.

184. Where a site is affected by contamination or land stability issues, responsibility for

securing a safe development rests with the developer and/or landowner.

However, failure to appropriately satisfy the requirements of the planning condition may result in a future contaminated land investigation.

The types of planning conditions and informatives recommended through the consultation process when considering potentially contaminated land are discussed in the following sections and include:

6.2.1 Standard Conditions

The four standard conditions are attached to a planning approval to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems. As well as to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Failure to appropriately investigate, remediate (where necessary) and subsequently to verify the works would be in breach of a planning condition.

The conditions are discharged in the order of: Investigation & Risk Assessment, Remediation Scheme, Verification Report and Unexpected Contamination/Watching Brief and are detailed and discussed below.

Condition 1. Investigation and Risk Assessment

No development shall commence until an investigation and risk assessment of the nature and extent of contamination on site and its findings has been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a competent person, and shall assess any contamination on the site, whether or not it originates on the site. The assessment must be conducted in accordance with the Environment Agency's 'Land contamination risk management (LCRM)' and shall include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

Reason: In order to ensure that the land is suitable for the intended uses and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors and in accordance with

the National Planning Policy Framework. This is a condition precedent because the works comprising the development have the potential to uncover harmful contamination. Therefore these details need to be agreed before work commences.

Condition 2. Remediation Scheme

No development shall commence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment, has been submitted to and approved in writing by the Local Planning Authority, unless the findings of the approved investigation and risk assessment has confirmed that a remediation scheme is not required. The scheme shall include:

- (i) all works to be undertaken;
- (ii) proposed remediation objectives and remediation criteria;
- (iii) timetable of works and site management procedures; and,
- (iv) where required, a monitoring and maintenance scheme to monitor the long-term effectiveness of the proposed remediation and a timetable for the submission of reports that demonstrate the effectiveness of the monitoring and maintenance carried out.

The remediation scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

The approved remediation scheme shall be carried out prior to the commencement of development, other than that required to carry out remediation, or in accordance with the approved timetable of works.

Reason: In order to ensure that the land is suitable for the intended uses and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors and in accordance with the National Planning Policy Framework. This is a condition precedent because the works comprising the development have the potential to uncover harmful contamination. Therefore these details need to be agreed before work commences.

Condition 3. Verification Report

No occupation shall commence until a verification report (that demonstrates the effectiveness of the remediation carried out) has been submitted to and approved in writing by the Local Planning Authority, unless the findings of the approved investigation and risk assessment has confirmed that a remediation scheme is not required.

Reason: In order to ensure that the land is suitable for the intended uses and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors and in accordance with the National Planning Policy Framework.

Condition 4. Unexpected Contamination

In the event that contamination which was not previously identified is found at any time when carrying out the approved development, it must be reported in

writing immediately to the Local Planning Authority. Thereafter an investigation and risk assessment shall be undertaken, and where remediation is necessary, a remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme, a verification report (that demonstrates the effectiveness of the remediation carried out) must be submitted to and approved in writing by the Local Planning Authority prior to occupation of the development.

Reason: In order to ensure that the land is suitable for the intended uses and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors and in accordance with the National Planning Policy Framework.

6.3 Encouraging polluters/owners of land to deal with contamination

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.

Remediation of contaminated land should be enforced preferentially through these means, with enforcement through Part 2A only when no appropriate alternative solution exists.

There are a number of other legislative regimes which can be used without the need for Part 2A to be used directly. These include (subject to being superseded); Environmental Damage (Prevention and Remediation) Regulations 2009, Environmental Permitting (England and Wales) Regulations 2010, Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009, and Statutory Nuisance (Environmental Protection Act 1990).

In accordance with statutory guidance, the Council will look to ensure 'the polluter pays principle' is applied wherever possible. This is when the person/business 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, then the statutory guidance states that the cost may fall to the owner or occupier of the land. It is an intention that voluntary remediation is secured as a first option as specified in the legislation.

6.4 Building Regulations

In addition to the planning regime, there is a provision within the building regulations (made under the Building Act 1984) requiring developers to take measures to protect new buildings and their future residents from the effects of contamination. An example of this would be the installation of gas protection measures into properties.

There is also guidance within the Building Regulations 2010 document: 'Approved Document Part C (Site Preparation and Resistance to Contaminants and Moisture)'.

6.5 Environmental Damage Regulations

Environmental Damage (Prevention and Remediation) Regulations 2009. The Regulations aim to prevent and remedy damage to land, water and biodiversity.

Obligations are placed on businesses (or 'operators' of commercial 'activities' in the words of the Regulations) to put in place precautionary measures to avoid environmental damage and to take remedial action if it occurs. It compliments

Part 2A in dealing with current contamination created on site and can also deal with historical contamination which may have been mobilised on sites, including during remediation.

6.6 Environmental Permitting Enforced by Local Authorities

Through the provisions of the Environmental Damage (Prevention and Remediation) Regulations 2009 and Environmental Permitting regimes there are powers to deal with land contamination resulting from breaches of permits, authorisations and licences and other environmental incidents. Operators of permits also have a closing duty to restore the land to an agreed condition after use. The Environment Agency are the regulator of the larger permits including active landfills.

6.7 Brownfield Land Register

During the life of this Strategy the Government has made a commitment to develop a Brownfield Land Register. The Register will list all available brownfield land suitable for housing, or what proportion of suitable sites have planning permission. It aims to enable progress to be measured against the Government's target for obtaining planning permission on 90% brownfield land identified as being suitable for housing by 2020.

7.0 MINIMISING UNNECESSARY BURDENS ON TAXPAYERS, BUSINESSES AND INDIVIDUALS

Mechanisms to reduce burdens include:

- Encouraging voluntary action to deal with land contamination issues as far as reasonable and practicable;
- Continuing to ensure that contaminated land is dealt with appropriately through the planning system;
- Maintaining that the responsibility of safe development rests with the developer and/or landowner;
- Ensuring that the cost burdens of undertaking remediation are proportionate, manageable and economically sustainable; and
- Securing ongoing management preferable to expensive remediation.

8.0 DETERMINATION OF CONTAMINATED LAND

Where land is determined to be Contaminated Land, but not a Special Site, and urgent remediation action is not required, the following minimum notification procedure will be carried out:

- The Local Authority will identify the owner and occupier of the land, and the appropriate person to bear responsibility for the remediation action required.
- The Local Authority will send notification of the determination to the relevant parties and copy to the Environment Agency, detailing the evidence for the determination.
- Consultation with the relevant parties regarding the remediation scheme, actions required, and how and when they are to be implemented, will then be commenced.

The Local Authority will endeavour to informally consult the owners and occupiers of land and appropriate persons at least one calendar month prior to making a formal determination of contaminated land. This is to allow the parties the opportunity to voluntarily collect and present relevant information regarding the land to the Local Authority.

However, the Local Authority is not under any statutory obligation to undertake informal pre-notifications of its intentions and such pre-notifications will be made on a discretionary basis.

A **public register** of contaminated land, as required by the legislation, will be maintained and is available by contacting Contaminated_Land@BATHNES.GOV.UK.

9.0 CONTAMINATED LAND STRATEGY REVIEW

The Council has a duty under Part 2A to keep its Contaminated Land Strategy under periodic review. The main reasons why the Council will carry out a review are:

- to see how the Council are progressing, i.e. to determine whether we are achieving our objectives and priorities;
 - to revise and improve procedures;
 - to take account of changes in legislation;
 - to take into account emerging evidence-base information;
 - to take account of the establishment of significant case law or precedent;
 - to take account of changes in guidance for dealing with land contamination (in particular, risk assessment techniques, guideline values, etc.); and
 - to reflect changes in Council policies and strategies.
- It is considered appropriate to carry out a review of this Contaminated Land Strategy within five full years of implementation, i.e. before 2029. Thereafter, reviews will be carried out on a five yearly basis or less where necessary.

10.0 ONGOING CONTAMINATION STRATEGY WORK

The ongoing work in relation to the Contaminated Land Strategy is outlined below:

- Identification, investigation and remediation through the planning and development control process – The Department will continue to work with Planning and Development Control to ensure that sites are identified for investigation, risk assessment and remediation to ensure that Developers remove unacceptable risks and that sites are “safe and suitable for use”.
- Investigation of complaints: where a complaint is made about a site, it will be inspected, and where appropriate, investigated and assessed to determine mitigation or remedial actions required. Where Part 2A inspection is required it will be in accordance with the Strategy.
- Inspection of known Issues: Undertaking inspection of sites of highest risk or sites with known issues in accordance with the Strategy within the constraints of available resources.
- Identification of known or potential areas of historical contamination: This activity is now largely complete as the Council has examined historical maps and relevant reports of its District.

The Environment Agency historically ran the projects which investigated and remediated Part 2A sites on behalf of DEFRA. In December 2013, it was confirmed that DEFRA was no longer supporting the costs of investigating and remediating contaminated land under Part 2A through the Contaminated Land Capital Grants Scheme.

Central government funding has not been reinstated, and investigations therefore need to be funded through existing Council budgets. This severely limits the extent/ability to actively progress site investigations. In addition, any remediation costs will need to be met by the appropriate persons, when applicable.

Appendix A: Glossary of Terms

Appropriate person(s) An appropriate person is any person who is, determined in accordance with section 78F of the Environmental Protection Act 1990, to bear responsibility for anything which is to be done by way of remediation.

Aquifers are: 'A subsurface layer or layers of rock or other geological strata of sufficient porosity and permeability to allow either a significant flow of groundwater or the abstraction of significant quantities of groundwater.'

There are 4 aquifer types and each can be confined or unconfined:

- principal aquifers
- secondary aquifers
- secondary undifferentiated
- unproductive strata

Principal and secondary aquifers provide significant quantities of drinking water, and water for business needs. They may also support rivers, lakes and wetlands.

Secondary aquifers are split into 2 groups:

- secondary A aquifers comprise permeable layers that can support local water supplies, and may form an important source of base flow to rivers
- secondary B aquifers are mainly lower permeability layers that may store and yield limited amounts of groundwater through characteristics like thin cracks (called fissures) and openings or eroded layers

Secondary undifferentiated aquifers are aquifers where it is not possible to apply either a Secondary A or B definition because of the variable characteristics of the rock type. These have only a minor value.

Unproductive strata are largely unable to provide usable water supplies and are unlikely to have surface water and wetland ecosystems dependent on them.

Brownfield sites which have previously undergone development and which therefore, require a level of remediation prior to redevelopment.

CLEA Contaminated Land and Exposure Assessment, a methodology for carrying out a risk assessment.

CON.29 A standard form of enquiry during property transactions made in respect of property and land condition details that may be held on record by a local authority.

Contaminant(s) A substance which is in, on or under the land and which has the potential to cause harm or to cause pollution to controlled waters.

Contamination-related conditions Conditions placed on the granting of planning permission which ensure the removal of the link between contaminant(s) and humans or the environment, either by the removal of the contaminant(s) or by use of barriers.

Controlled Waters Controlled waters are defined in section 78A(9) of EPA 1990 by referencing Part III (section 104) of the Water Resources Act 1991. The definition covers:

- a) Inland waters (river, streams, underground streams, canals, lakes and reservoirs)

- b) Groundwater (any water contained in underground strata, wells or boreholes)
- c) Territorial waters (the sea within three miles of a baseline)
- d) Coastal waters (the sea within the baseline up to the line of highest tide, and tidal waters up to the fresh water limit)

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Geographical Information System (GIS) A data-handling and analysis computer system based on sets of data distributed spatially in two dimensions. The data sets may be map-oriented or image-oriented.

Greenfield sites Sites which have not previously undergone development.

Groundwater Any water contained in underground strata, wells or boreholes.

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."

Listed buildings Buildings placed on statutory lists of buildings of 'special architectural or historic interest' compiled by the Secretary of State for Culture, Media and Sport under the Planning (Listed Buildings and Conservation Areas) Act 1990, on advice from English Heritage.

Local Plan Description of, and development proposals for, the Local Authority's area.

National Nature Reserves National Nature Reserves protect the most important areas of wildlife habitat and geological formations in Britain, and act as places for scientific research.

Owner Defined in section 78A(9) as: "a person (other than a mortgagee not in possession) who, whether in his own right or as a trustee for any other person, who is entitled to receive the rack rent of the land, or where the land is not let at a rack rate, would be so entitled if it were so let."

Part IIA Part IIA of the Environmental Protection Act 1990, the contaminated land regime.

Pathway A pathway is one or more routes 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.

Pollutant linkage The relationship between a contaminant, a pathway and a receptor.

Private Water Supply A water supply, which is supplied by means other than from privatised water authorities.

Public Register The public register maintained by the enforcing authority under section 78R of particulars relating to contaminated land.

Ramsar Sites A "Ramsar site" is land listed as a Wetland of International Importance under the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (the Ramsar Convention) 1973.

Receptor Either:

a living organism, group of organisms, an ecological system or a piece of property which:

- a) is in a category listed as a type of receptor, and
- b) is being, or could be, harmed by a contaminant; or

- c) controlled waters which are being, or could be, polluted by a contaminant.

Remediation Notice A legal document served to require land remediation and specifying the required works of remediation.

Risk assessment Risk can be defined as the combination of:

- a) the probability or frequency of occurrence of a defined hazard (for example, exposure to a property of a substance with the potential to cause harm); and
- b) the magnitude (including the seriousness) of the consequences.

Scheduled Ancient Monuments The definition of an ancient monument includes sites of public interest for historic, architectural, traditional or archaeological reasons, whether above or below ground, and any 'cave or excavation'. It also includes sites containing the remains of these. Not all are visible structures above ground and most only show when conditions are right, for example as distinct crop or soil marks.

Site of Special Scientific Interest (SSSI) Areas of land that have been notified as of special interest under the Wildlife and Countryside Act 1981 or the National Parks and Access to Countryside Act 1949. In England SSSIs are notified by English Nature forming a series of nationally important sites, which contribute to the conservation of wildlife habitats, geological features and landforms.

Source(s) A substance in, on or under the ground with the ability to cause harm.

Source Protection Zone (SPZ) Protection zones around certain sources of groundwater used for public water supply. Within these zones, certain activities and processes are prohibited or restricted.

Special Site(s) Land is required to be designated as a Special Site where:

1. a) controlled waters are being affected to the extent they do not achieve the appropriate water quality standards; or
 - b) controlled waters are being affected by the land and:
 - (i) any of the substances which is causing or is likely to cause the pollution is a member of the following group of substances:
 - organohalogen compounds; organophosphorous compounds; organotin compounds; substances which possess carcinogenic, mutagenic or teratogenic properties in or via the aquatic environment; mercury and its compounds; cadmium and its compounds; mineral oil and other hydrocarbons; cyanides.
 - (ii) the waters or any part of the waters are contained within underground strata which are considered to be major aquifers.
2. waste acid tars are present in, on or under the land;
3. the purification or refining of crude petroleum or any other substances with the exception of coal has taken place;
4. the manufacture of explosives has taken place;
5. prescribed processes under the Integrated Pollution and Control or Pollution Prevention and Control authorisations take place or have taken place;
6. the land is owned or occupied by defence organisations or is being used for defence purposes;

7. the land was used for the manufacture, production or disposal of various kinds of weapons: chemical, biological or nuclear etc.

Substance (contaminated land regime definition) Any natural or artificial substance, whether in solid or liquid form or in the form of gas or vapour.

Sustainability See sustainable development.

Sustainable development Ensuring a better quality of life for everyone, now and in the future. It is development that balances economic, environmental and social considerations.

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Uniform Database of information used within Environmental & Consumer Services at B&NES.

Website The Council's website can be viewed at <http://www.bathnes.gov.uk/>.

Appendix B: References

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