

Contaminated Land Strategy

May 2018



Executive summary

The Contaminated Land Strategy 2018 sets out how New Forest District Council will implement the contaminated land regime as required by Part IIA of the Environmental Protection Act 1990 and in accordance with the revised statutory guidance (DEFRA, 2012). This strategy relates to New Forest District Council and incorporates land administered by the New Forest National Park Authority.

In developing this strategy, the New Forest District Council aims to secure a better future for the New Forest in line with the Corporate Plan by;

- i. supporting local businesses to prosper for the benefit of the community
- ii. assisting the well-being of those people who live and work within the district; and
- iii. protecting the special and unique character of the New Forest

Contaminated land is an important public health issue which warrants serious attention. When considering the potential for land contamination the Government has adopted a risk assessment approach on a site by site basis to ensure land is suitable for its current or proposed new use, and any required land remediation is proportionate. That said the starting point is to assume land is not contaminated unless there is substantive evidence to the contrary.

Local Authorities take the primary role under Part IIA of the Environmental Protection Act. In this context, New Forest District Council is required to publish a Strategy detailing how it will deal with contaminated land and has a duty to cause its area to be inspected for the purpose of identifying contaminated land.

New Forest District Council published its first Contaminated Land Strategy in 2001 and the subsequent work undertaken by the Council has been considerable. An extensive database has been developed which prioritises potentially contaminated land sites. This has enabled the Council to make informed decisions in taking further action under the legislation, the redevelopment of land and responding to requests for information from the public and business.

Whilst the New Forest District Council Contaminated Land Strategy 2018 forwards the concepts and principles of the contaminated land regime, the key messages are:

- The Council will encourage voluntary action, where appropriate, prior to enforcement action to deal with identified land contamination;
- The Council will agree, where appropriate, realistic timescales to action work with all relevant stakeholders;
- The contaminated land regime will be used as a last resort when no other regimes are available to deal with the identified land contamination; and
- The majority of contaminated land sites will be dealt with under the planning and building control regimes during redevelopment rather than the contaminated land regime.

This Strategy will be updated within 5 years and replaces the Council's previous Contaminated Land Strategy (November 2001) to reflect changes in statutory and technical guidance since that date.

Contents

p6	1 • Introduction
p7	2 • Aims and objectives
	2.1 • Aim
	2.2 • Objectives
p8	3 • Regulation of land contamination
	3.1 • Contaminated land regime
	3.2 • Statutory guidance
	3.3 • Other legislation
	3.4 • Other functions
p16	4 • Characteristics of the New Forest area
	4.1 • Geographical location
	4.2 • Population
	4.3 • History
	4.4 • Broad geological/hydrological characteristics
	4.5 • Ecological system
	4.6 • History and archaeology
p23	5 • Inspection process
	5.1 Strategic inspection
	5.2 Detailed inspection
p32	6 • Remediation
p32	7 • Communication
	7.1 • Requests for information
	7.2 • Public register
	7.3 • Strategy review
p37	References

1 • Introduction

Sustaining a healthy population and environment is a challenge. The contamination of land can have wide ranging impacts and depending on the nature and quantity of the substances present harm may be caused to human health, the environment, ancient monuments and other property.

Throughout the UK there have been a large and varied number of activities which have resulted in the deposition of contaminated material onto land. Some activities date back to the Roman presence in the British Isles but most are associated with the rapid industrial growth associated with the so called ‘industrial revolution’ that centred on Britain in the nineteenth and twentieth centuries.

Historically land contamination has occurred by a variety of means. These include the disposal of contaminated materials through infilling of disused clay, chalk and gravel pits, landfilling general household waste and the accumulation or spillage of fuel oils, concentrated chemicals and wastes on manufacturing and agricultural sites.

The pressure on land for housing and general development is severe. However, the need to preserve quality farmland, together with the protection of conservation areas means that many ‘brownfield’ sites are now being developed for a productive use. Landfill sites, old gasworks, abandoned chemical plants and foundries, are prime examples however remediation problems to make the land fit for use are complex, requiring satisfactory assessment and administration by the appropriate authorities.

The redevelopment of land utilises a number of Government regimes to deal with ongoing and historical land contamination. However there is a requirement for intervention where land contamination presents an unacceptable risk to human health and the environment where there is no suitable legislative alternative to address the risk. Part IIA of the Environmental Protection Act 1990 (hereafter referred to as ‘Part IIA’) aims to specifically deal with land contamination outside of existing regimes and legislation.

The Government’s policy objectives on contaminated land and the Part IIA regime are (DEFRA, 2012):

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

Part IIA requires Local Authorities to publish a Strategy detailing how it will deal with contaminated land and to keep the Strategy updated. The Strategy is required to take into account revisions to the statutory guidance (DEFRA, 2012) undertaken in 2012.

2 • Aims and objectives

New Forest District Council (the ‘Council’) has a statutory obligation to inspect its area for the purpose of identifying contaminated land. The Council’s resources must be used appropriately to prioritise sites for detailed inspection where there is likely to be an unacceptable risk to human health or the wider environment.

The aims and objectives of the Contaminated Land Strategy fall within the principles set out in the Government policy and within the context of New Forest District Council’s Corporate Plan 2016 - 2020 to secure a better future for the New Forest.

2.1 • Aim

The aim of this Strategy is to fulfil New Forest District Council’s statutory responsibility to identify and remove unacceptable risks associated with contaminated land as required by Part IIA of the Environmental Protection Act 1990.

2.2 • Objectives

The principal objectives of this strategy are:

- i. To provide a strategic approach to the identification and remediation of contaminated and potentially contaminated land in order to;
 - protect people, ecological systems, buildings, property, crops and livestock from significant harm caused by exposure to historic land contamination; protect controlled waters from significant pollution derived from historic contamination;
 - encourage the voluntary remediation of sites
 - encourage the remediation and redevelopment of brownfield sites
- ii. To meet the priorities in the New Forest District Council Corporate Plan;
- iii. To meet all responsibilities in the New Forest District Council and New Forest National Park Local Plans; and
- iv. To work in partnership with other regulators such as the Environment Agency and key stakeholders.
- v. To provide a reference document for the stakeholders detailing the Council’s position as a regulator;

3 • Regulation of land contamination

3.1 • Contaminated land regime

Principles

Part IIA came into force in April 2000. Part IIA has been implemented as a means of dealing with the legacies of contaminated land and complements other regulatory regimes such as the Planning regime, in that contaminated land can still be dealt with by use of planning conditions as part of the redevelopment process.

Sections 78A to 78YC of Part IIA contain the main legislation relating to contaminated land. This is accompanied by the Contaminated Land (England) Regulations 2000 and by a Department of the Environment Transport and the Regions (DETR) circular, Circular 02/2000 Contaminated Land: Implementation of Part IIA of the EPA updated in September 2006 as Circular 01/2006.

The Government has adopted a suitability of use approach when considering land contamination and requires the use of risk assessment on a site by site basis. It is necessary to consider the extent of the contamination in relation to the current and adjacent land, local circumstances and a wide range of environmental impacts. There are three main elements to this approach.

i) Ensuring land is suitable for its current use.

Identifying land where the type and extent of any contamination causes an unacceptable risk to human health or the environment, and remediating the land in a planned manner to a condition where the risks are reduced to an acceptable level ensuring the land is suitable for use.

ii) Ensuring land is made suitable for any new use.

Assessing the potential risk from contamination on the basis of a proposed future use, before planning permission for that use is granted, and where necessary, ensuring that land is remediated before the new use commences in partnership with the local planning authority, building control and other agencies as appropriate.

iii) Proportionate approach to remediation.

Limiting the requirements for remediation to works that are essential to prevent unacceptable risks to human health or the environment for uses that are permitted under the current planning permission.

Part IIA also provides details for assigning liabilities for contaminated land based on the 'polluter pays' approach. The legislation seeks to place the burden of dealing with contamination on the polluter where they can be found, or the owner/occupier where the polluter cannot be identified or no longer exists.

Part IIA and relevant statutory guidance clearly define contaminated land terminology and principles which are summarised as follows:

Definition of contaminated land

The principle term of reference for this strategy is 'contaminated land'. In the context of the Act this is:

'Land which appears to the Local Authority to be in such a condition, by reasons of substances in, on or under the land, that significant harm is being caused (or there is a significant possibility of such harm being caused), or that pollution of controlled waters is being, (or is likely to be caused).'

Definition of harm

The contaminated land definition includes the term 'significant harm' and although Part IIA does not include a specific definition for this phrase it does define harm in section 78A(4). The definition is;

'Harm to the health of living organisms or other interference with the ecological systems of which they form a part and in the case of man includes harm to his property.'

Further clarification on the meaning of significant harm and the significant possibility of significant harm (SPOSH) in terms of human health was given in Annex 3 to circular 01/2006. This states that significant harm includes death, disease and serious injury and that in relation to toxic effects on human health SPOSH would exist if the amount of pollutant a person might be exposed to would represent an unacceptable intake or direct bodily contact.

SPOSH should be interpreted on a site specific basis and should take into account the nature and degree of possible harm, the susceptibility of the receptors to such harm, the probability or frequency of the occurrence and the timescale within which the harm might occur.

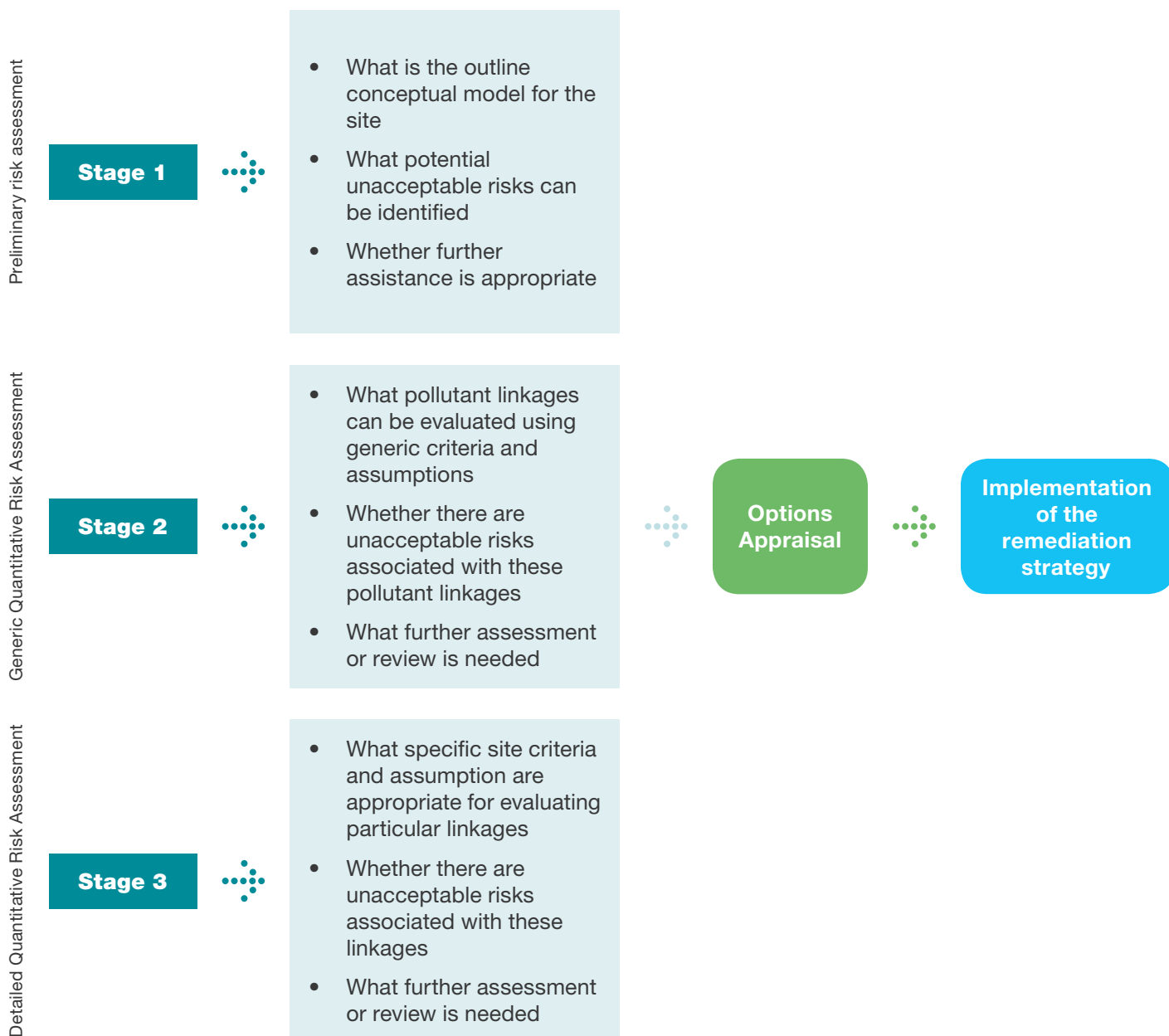
Principles of contaminant linkages

Assessment of harm is based on a risk assessment approach to human health and the environment. To correctly assess land as being contaminated and in need of remediation and / or a protective action, a contaminant linkage has to be determined. A contaminant linkage is a link determined between a contaminant source and a receptor through a pathway as shown below:

Sources	Pathways	Receptors
Examples: <ul style="list-style-type: none">• Contaminated soils• Contaminated water• Leaking drums• Industrial process releases• Hazardous materials• Waste	Examples: <ul style="list-style-type: none">• Air• Water• Soil• Food chain	Examples: <ul style="list-style-type: none">• People• Domestic and commercial property• Infrastructure• Ecosystems• Animals• Plants• Controlled waters

Principles of risk assessment

Risk assessment is undertaken by initially establishing the form and concentration existing for the discovered substances, assessing this data against published nationally accepted guidelines and standards, and finally determining if harm to a receptor is likely, or has occurred, through the establishment of a pathway therefore identifying any contaminant / pollutant linkages. If the process of risk assessment demonstrates unacceptable risks are presented on site associated with the pollutant linkages, then an options appraisal process is to be followed to explore remediation to reduce or control the risks for the site. The key decisions in the risk assessment process are summarised below.



It should be acknowledged that all risk assessments concerning the investigation of contaminated land will have an associated level of uncertainty due to the scientific uncertainties and assumptions made. The Council will undertake to minimise the level of uncertainty as far as reasonably practicable, by working with suitably qualified personal to make informed and professional judgements based on the evidence provided.

Background contamination

Part IIA deals with contamination that is an unacceptable risk to human health and / or the environment. Land that is contaminated with expected levels of historical contaminants would be considered background contamination and not dealt with under Part IIA.

Roles and responsibilities

The Department of the Environment, Food and Rural Affairs (DEFRA) has the primary responsibility of the strategic management of the contaminated land regime and for implementing and reviewing the associated national policies.

The Local Authority takes the primary role under Part IIA for regulation and local implementation. The duties complement the existing nuisance regime for which Local Authorities are already responsible; the Waste and Mineral Extraction legislation which is enforced by Hampshire County Council and also the planning regime where responsibility is shared with the New Forest Park Authority. The Environment Agency (EA) has responsibility where controlled waters are affected and has additional enforcement powers within other enforcement regimes to complement the provisions of Part IIA. The duties are detailed below;

The Local Authority

- To cause the district to be inspected for contaminated land from time to time for the purpose,
 - a) of identifying contaminated land; and
 - b) of enabling the authority to decide whether any such land is land which is required to be designated as a special site
- To record prescribed information about contaminated land in a public register;
- To establish who is the appropriate person or persons to bear responsibility for the remediation of land associated with contamination;
- To decide, following consultation, what remediation is required and ensure it takes place through agreement or, where necessary, enforcement; and,
- To determine who should bear what proportion of the liability for meeting remediation costs;

The Environment Agency

- To assist Local Authorities in identifying contaminated land, particularly where water pollution is involved;
- To provide site specific guidance to local authorities on contaminated land that is subject to grant applications;
- To act as the enforcing authority for any land designated as a special site;
- To publish periodic reports on contaminated land; and
- To carry out technical research and in conjunction with DEFRA publish scientific advice

3.2 • Statutory guidance

Statutory guidance to accompany the contaminated land regime was revised in 2012 and is detailed in the document Environmental Protection Act 1990: Part IIA Contaminated Land Statutory Guidance, April 2012 (DEFRA, 2012). Local Authorities are required to act in accordance with any guidance and as such the updates in the statutory guidance are reflected in this Strategy. The updates include:

- a requirement for Local Authorities to place identified sites within one of four defined categories* with the aim to assist decisions regarding whether the land can be defined as contaminated land;

*not the Councils 'priority categories 1-5' on pages 23 and 24.

- the use and acceptability of technical screening levels;
- clarification concerning the acceptability of elevated background contamination levels, and;
- introducing the need to produce a risk summary document prior to the determination of a site.

A key element to the Statutory Guidance is with regards to voluntary action. As such the Council's approach to its contaminated land regulatory duties is to seek voluntary action before taking enforcement action. This approach recognises that in many cases as much or more effective remediation can be achieved by agreement than by enforcement. This approach requires effective communication with owners, occupiers and interested parties of the land in question.

New Forest District Council will act in accordance with the statutory guidance when implementing the regime.

Non-statutory technical guidance

Contaminated land technical guidance has been produced by numerous authorities and organisations over many years. These include but are not limited to the:

- Environment Agency (EA)
- Department of Food and Rural Affairs (DEFRA)
- Health and Safety Executive (HSE)
- Public Health England (PHE)

- World Health Organisation (WHO)
- United States Environmental Protection Agency (US EPA)

New Forest District Council will use the information and guidance produced by such organisations to conduct appropriate and technical assessments of all potential contaminated land sites.

3.3 • Other legislation

Part IIA of the Environmental Protection Act 1990 should only be used to secure remediation of contaminated land where no appropriate alternative solution exists. There are a number of other regulatory functions that provide Local Authorities with legislative powers to deal with land contamination including planning and development control, building control and the Environmental Damage Regulations. Action under Part IIA may be precluded where action under these regimes results in a desired outcome, however these should be assessed on a case by case basis.

Planning regime

Land contamination can adversely affect or restrict the beneficial use of land and often development presents the best opportunity to successfully deal with the risks presented. The planning regime therefore has a key role to play in facilitating the development of land affected by contamination and is in line with government policy which recognises that the burden of dealing with land contamination is often reduced if remediation is undertaken alongside redevelopment.

All planning applications have to be considered for potential contamination issues to ensure compliance with the Town and Country Planning Act 1990, the National Planning Policy Framework and associated Planning Practice Guidance, and the Council's Local Plan. Contaminated land issues that arise through planning applications will be controlled through the planning regime as opposed to the contaminated land regime.

National Planning Policy Framework published in 2012 by the Department for Communities and Local Government (DCLG) and National Planning Practice Guidance – Land Affected by Contamination (DCLG 2014) requires that to conserve and enhance the natural environment policies and decisions must ensure that:

- the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution
- arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;
- after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990;
- adequate site investigation and risk assessments have been prepared by a competent person and carried out with appropriate regard to good practice and the change in land use.

The responsibility for securing a safe development rests with the developer and/or landowner, who should be made aware that actions or omissions on their part could lead to liability being incurred under Part IIA.

Building control

The Building Regulations 2010 (Part C1 of Schedule 1) introduced the requirement for reasonable precautions to be taken to avoid danger to health and safety caused by contaminants on or in the ground covered, or to be covered by the building and any land associated with the building.

Technical guidance issued by the Department for Communities and Local Government (DCLG) in the form of Approved Document C – Site preparation and resistance to contaminants and moisture (DCLG, 2010), provides advice on site preparation and resistance to contaminants in order to mitigate the effects of contaminants, whilst recognising the connection between building control, planning and environmental protection.

Environmental Damage Regulations

The Environmental Damage (Prevention and Remediation) Regulations 2009 (S.I. 2009/153) as amended by S.I. 2010/587 provide a mechanism to deal with environmental damage to land, water or ecosystems where this occurs to businesses after 1 March 2009. They rely on the polluter pays principle requiring operators of commercial activity to have in place measures to prevent environmental damage and take remedial action if it does occur.

The term ‘environmental damage’ has a specific meaning in the regulations and covers severe damage to land, surface water or groundwater, protected species or natural habitats or a site of special scientific interest. The local authority has enforcement responsibilities in relation to damage to land where this results in a significant risk of adverse effects on human health. Enforcement responsibility for damage to water is held by the Environment Agency, whilst damage to natural habitats or protected species or sites of special scientific interest is enforced by Natural England.

Environmental Permitting

The Environmental Permitting Regulations (England and Wales) 2010 replaced the 2007 regulations and cover industrial processes, waste operations, water discharges, groundwater activities and radioactive substances. They give the enforcing authority the ability to apply conditions to permits to control activities and discharges to land, air and water.

Operators holding an environmental permit are liable for the prevention and remediation of environmental damage under the Environmental Damage Regulations 2009.

Water Resources Act 1991 (as amended by the Water Act 2003)

This Act gives the Environment Agency powers to take action to prevent or remedy the pollution of controlled waters by serving “Working Notices” specifying the remedial action to be taken. Where the Local Authority identifies contaminated land impacting on controlled bodies of water they will liaise with the Environment Agency with respect to appropriate remedial action.

3.4 • Other functions

The examples of overlapping regulatory functions provided above may not be exhaustive and environmental legislation and regulatory responsibilities do not remain static. The Council will ensure the impact of any new legislation introduced following publication of this strategy is taken into consideration when implementing the contaminated land regime. Where alternative powers exist or are created to deal with land contamination issues, these will be used where possible in preference to implementing the regulatory process set out in Part IIA.

4 • Characteristics of the New Forest area

4.1 • Geographical location

The New Forest area lies in the south western corner of Hampshire, between the large urban areas of Southampton and the conurbations of Christchurch, Bournemouth, and Poole. Picturesque estuaries and the Southampton Water lay along the more physical boundary of the coast. The terrain is generally flat or gently undulating. In contrast there is downland to the North West which is part of the Dorset and Wiltshire downland (Cranborne Chase - Area of Outstanding Natural Beauty).

The area has a high quality, diverse environment, including the New Forest (which covers some three-quarters of the District and is separately administered as a National Park) and its 64 kilometres of coastline. Despite the area's largely rural character, it contains a substantial number of towns and villages. Background information, characteristics and features of the area are outlined as follows.

4.2 • Population

The overall resident population of the area is around 176,000. This rises dramatically in summer months with tourism. Significant population growth since the Second World War has been concentrated in the eastern parishes (Totton and Waterside) and the coastal towns to the south (Lymington, New Milton, Barton on Sea). There is also an important market town close to the border of East Dorset (Ringwood).

4.3 • History

The New Forest

The New Forest was established as the King's hunting forest shortly after the Norman Conquest in 1066. Being an unusually extensive, open, semi-wild area in an agricultural and developed part of the country it is now of very great value for recreation, conservation, wildlife, grazing of livestock and forestry. The Forest has been shaped over the centuries by a unique blend of natural forces and human activity. The New Forest is a very diverse and complex landscape comprising unenclosed ancient woodland, enclosures, open heaths and lawns, mires and ponds, back-up grazing land, and scattered dwellings and villages. The character of the landscape ranges from intimate woodland and pastoral scenes to exposed heathlands.

The coast

The District's coastline is one of contrasts. Along Southampton Water much of the shoreline is influenced by urban and industrial development, although there are valuable remnants of a wooded farmland (Forest fringe) landscape. The petro-chemical complex at Fawley is visible in the landscape for miles around.

Some of the most untouched coastal landscape in southern England is to be found where the New Forest meets the sea along the north west Solent shores between Calshot and Lymington. The Beaulieu and Lymington Rivers are particularly attractive and popular sailing areas.

Most of the coastline between Lymington and Barton-on-Sea is accessible to the public. None of the District's coastal settlements are seaside resorts, although Lymington has strong connections with the sea as a yachting and boat-building centre.

The Avon Valley

In the west of the area the New Forest escarpment drops into the Avon Valley which separates the New Forest from the Dorset heathlands. Much of the valley floor is high grade agricultural land, whilst to the north of Ringwood is a significant area of sand and gravel workings, most of which is gradually being transformed into lakes

The Western Downlands

The rolling open chalk downlands in the North West corner of the area are part of the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty. This location offers a marked contrast to the landscapes of the New Forest.

Agricultural land

The area contains substantial areas of agricultural land classified as the best and most versatile in the river valleys (in particular that of the Avon), the coastal area between Lymington and New Milton, the coastal estates fringing the open Forest, and in the western Downlands.

Towns and villages

Many of these towns and villages are of historic interest - for example, Ringwood and Lymington have 13th century charters.

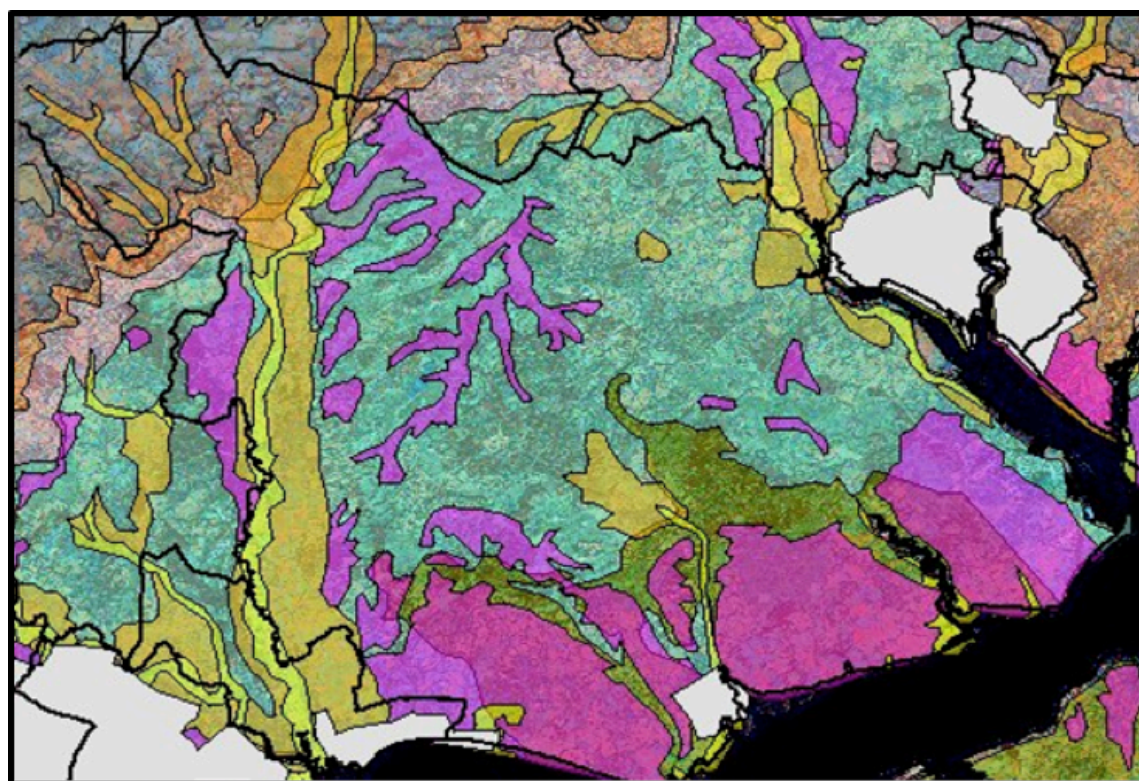
All of the area's main towns and villages are close to, or in, the New Forest. Their affinity and historic links with the Forest are reflected in the fact that historic Forest grazing rights extend well beyond the Forest itself to encompass most of the towns and villages in the District.

4.4 • Broad geological/hydrological characteristics

The illustrative Map 2 shows the actual locations of the rivers. Solid and drift geological information is illustrated in Map 1. This information is critically important to risk assessment since it provides an insight into potential pathways between contaminated sites and potential receptors.

The New Forest District Council boundary and the Solent are shown in black, whilst major settlements are shown in white.

Map 1 • Schematic solid and drift geological features of the district



Geologically the New Forest district lies within the Hampshire Basin which is a broad shallow basin filled with gravels, sands and clays contained within low chalk downlands.

The New Forest area is underlain by sedimentary rocks laid down in the Tertiary period subsequent earth movements tilted the layers of rocks to expose older deposits to the north and younger layers to the south. During the Ice Age the land was again re-shaped to form a series of huge terraces, stepping downwards from the north-west to the shore of the Solent. At the end of the Ice Age a capping of gravel or brick-earth was deposited over parts of the area.

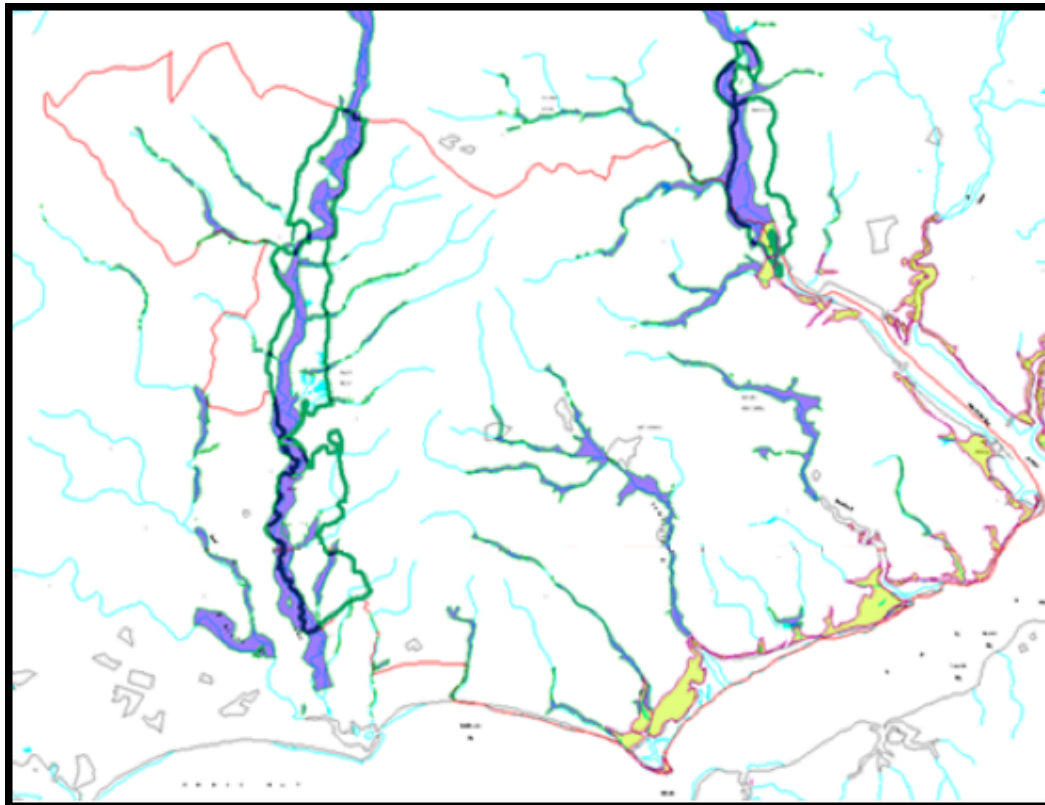
The geology and landform have influenced the soils that are found today. Soils to the north sit on the oldest rocks and are very poor and acidic. The central area is covered by more recent deposits which give rise to deeper soils, well suited to growing trees. To the south are found the youngest rocks on flatter land supporting a wide variety of deeper soils. Throughout the Forest, peat has accumulated in hollows and wide flat valleys, providing ideal conditions for bog vegetation.

Surface water percolates through the gravels and sands but is then held up by the less permeable clay beds which re-direct the flow of the groundwater. In areas of poor drainage the surface soil becomes impoverished and waterlogged due to soluble minerals being washed down to the clay layer and forming a hard impermeable layer or 'pan' a few feet below the surface.

The Forest is drained by a fine network of small streams. Generally flows are at a minimum in August and reach their maximum in January. The drainage regime responds quickly to rainfall.

Development (or redevelopment) which would have an unacceptable risk upon water quality or the quality or natural flow patterns of a groundwater resource are not permitted (please refer to the Local Plan and also Environment Agency policy).

Map 2 • Hydrological Features



North ↗

The District boundary is shown in red. The Major Rivers, Flood plains and Coastline illustrated in blue.

4.5 • Ecological system

Nature conservation

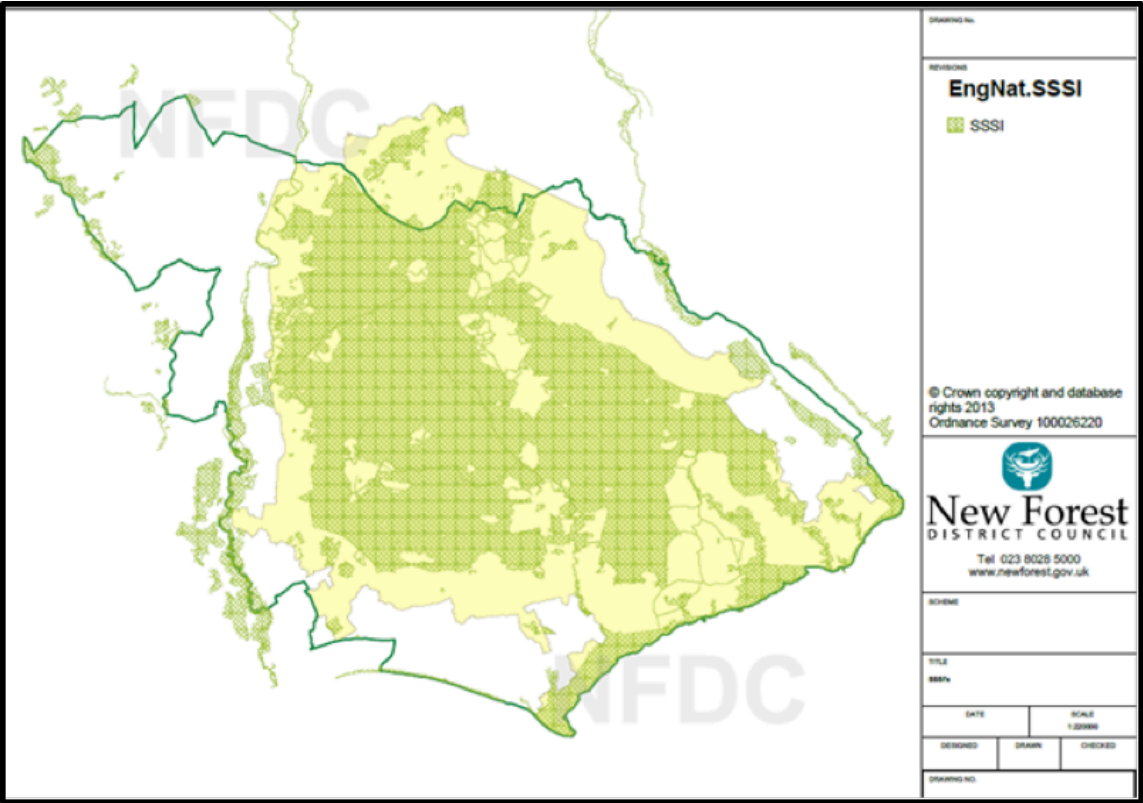
The area contains an exceptional concentration of sites of nature conservation value. In terms of locations forming part of the national network of areas of importance for nature conservation, there are 25 designated Sites of Special Scientific Interest (SSSIs) covering some 44% of the area. Of these the largest is the New Forest SSSI (28,947 hectares). Some 85% of the coast lies within designated SSSIs. There are National Nature Reserves (NNRs) at the Beaulieu Estuary (the North Solent NNR), Martin Down and Kingston Great Common.

A number of these SSSIs are of international as well as national importance. The New Forest SSSI is classified as a Special Protection Area and listed as a Ramsar site, and is a candidate Special Area of Conservation. Much of the Avon Valley SSSI is within a classified SPA and listed Ramsar site, and the River Avon SSSI is a candidate SAC. The SSSIs bordering the Solent and Southampton Water are also within a classified SPA and listed Ramsar site; Solent and Isle of Wight Lagoons candidate SAC.

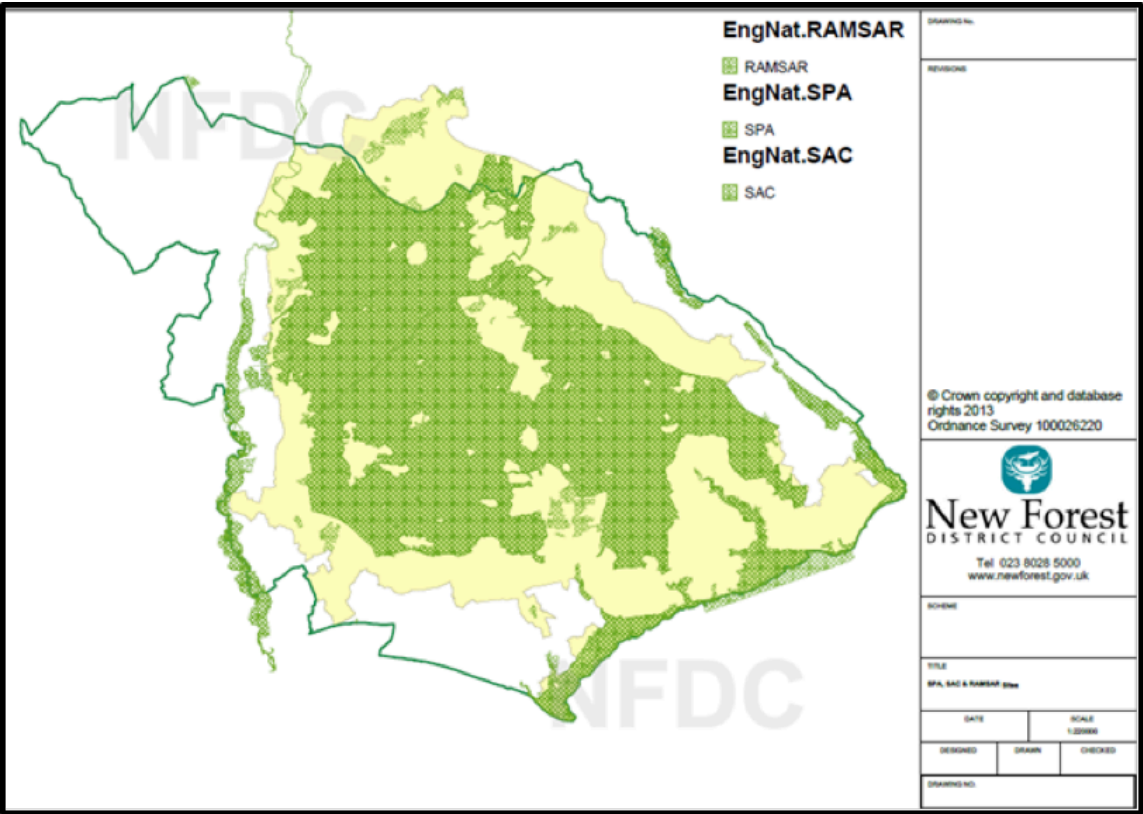
There are also substantial locally designated areas of nature conservation importance in the area. Local Nature Reserves (LNRs) have been designated at Calshot, Boldre Foreshore and the Lymington-Keyhaven marshes. In addition, there are numerous Sites of Importance for Nature Conservation (SINCs). There can be some overlap between LNRs and SSSIs, in which case national guidance on the protection of SSSIs prevails.

Within the area, the Downlands lie in the Cranborne Chase and West Wiltshire Downs AONB, which also extends into Dorset, Wiltshire and Somerset. The South Hampshire Coast AONB extends the full length of the north-west Solent shore with the bulk of the South Hampshire Coast AONB lying within the New Forest.

Map 3 • SSSI sites



Map 4 • Ramsar, SPA and SAC sites



Conservation areas

There are 24 Conservation Areas in New Forest District covering historic town centres, New Forest villages, small hamlets and farmsteads, and groups of buildings within their settings. High priority is given to preserving and enhancing the character and appearance of Conservation Areas in this area. Four of the six main town centres are within Conservation Areas.

Key water resource/protection issues

The area contains two major river valleys, the Rivers Avon and Test. These display special landscape and other characteristics. The valleys are subject to normal countryside and other special designations but are subject to the creation of the National Park area.

This area contains substantial areas of exceptional environmental sensitivity. The New Forest, and many areas of nature conservation value, including those on the coast, are extremely vulnerable to the effects of atmospheric and waterborne pollutants, to noise nuisance and to light intrusion. In addition, the area contains groundwater protection zones at Ampress, Lymington, and north-west of Breamore (serving boreholes at Hale and Woodgreen) and water catchment areas defined by the Environment Agency around the rivers Avon and Test which are subject to Local Environment Agency Plans (LEAPS), which include requirements for the protection of groundwater sources and aquifers. LEAPS have been produced for water catchment areas throughout the country. The protection of groundwater sources and aquifers is necessary due to legislation such as the Water Resources Act 1991, and the Groundwater Regulations 1998.

The coast of this area is some 64 km (40 miles) long, and includes built-up areas, countryside and parts of the New Forest. The area's coast falls into three broad sections.

i. Christchurch Bay (Barton-on-Sea to Hurst Spit).

This coast is characterised by narrow shingle beaches and slumping or eroding cliffs of much geological interest, mostly included in Sites of Special Scientific Interest (SSSIs).

ii. North-west Solent Shore (Hurst Spit to Calshot).

This contains extensive coastal marshes of considerable wildlife value, all within SSSIs; the Beaulieu River estuary is included in a National Nature Reserve, and there are local nature reserves in the Lymington-Keyhaven marshes and at Boldre foreshore. These areas are in a Special Protection Area (SPA) and Ramsar site, and parts of them, together with areas off-shore, are within candidate Special Areas of Conservation (SACs). The hinterland is low lying, with an attractive landscape, part open, part wooded, all included within the South Hampshire Coast Area of Outstanding Natural Beauty. The New Forest extends to the coast between Walhampton and Calshot.

iii. Southampton Water (Calshot to Redbridge).

This is a river estuary, with much of the coast now developed for major industry and other uses, including the Esso oil refinery and petrochemicals complex, the Fawley Power Station, the site of the former Marchwood Power Station, Husbands Shipyard and the Marchwood Military Port. Other developed areas are at Eling, Marchwood and Hythe. The remaining coastal marshes and intertidal areas are of great nature conservation value, and largely included within SSSIs. These areas are in a SPA and Ramsar site; part of the Hythe-Calshot Marshes SSSI, Eling & Bury Marshes SSSI and part of the Lower Test Valley SSSI are in a candidate SAC. There is also a local nature reserve at Calshot.

4.6 • History and archaeology

The District Council places a high priority on the protection of coastal areas of nature conservation value.

The coast contains a number of sites and buildings of historic and/or archaeological interest which have become an integral part of the coastal landscape. These are identified in Hampshire County Council's Sites and Monuments Record, and include two Tudor castles at Hurst and Calshot Spits, two nationally rare examples of early working tide mills at Eling and Beaulieu, one of the most important sites in the Solent for the construction of early wooden warships at Buckler's Hard, and important relics of the world wars, for example the hangars at Calshot. There are also archaeological remains off-shore, which are identified in the County Council's Maritime Sites and Monuments Record.

Built heritage and design

The New Forest has a rich built heritage. It contains the majority of Scheduled Ancient Monuments in the area, together with 24 Conservation Areas and numerous listed buildings. The Conservation Areas vary in their character and purpose. Some display the typical dispersed character of Forest settlements and ancient field patterns, such as those at Fritham and Minstead. Settlements such as these also contain the greatest numbers of typical Forest cottages, which, together with their small scale outbuildings, have a landscape significance as well as an historic value. Other Conservation Areas reflect the special history of the area, and its links with the coast, for instance those at Beaulieu, Buckler's Hard, Eling and Ashlett.

5 • Inspection process

A strategic approach to land contamination is not only essential at a local level but is equally important to facilitate the coordination of management practices nationally, with the aid of the Environment Agency. In taking on contaminated land responsibilities Local Authorities have to examine the resources required, what resources are available and how to undertake the duties in the context of the Local Plan. A strategic approach is also essential to program and manage work.

As previously stated the Council's approach to its contaminated land regulatory duties is to seek voluntary action before taking enforcement action at any point within the inspection process. It is recognised that voluntary action is typically more effective than formal enforcement action however this approach requires effective communication with owners, occupiers and interested parties of the land in question.

5.1 • Strategic inspection

Progress to date (2001 – 2017)

Considerable progress has been made since the publication of the Council's previous Contaminated Land Strategy in 2001. The Council has:


- identified 2350 potentially contaminated land sites throughout the District using numerous sources including historical maps, business directories and details held by the petroleum officer;
- collated detailed information via site walkovers on possible sources, pathways and receptors;
- prioritised all of the 'known' 1199 potentially contaminated land sites within the New Forest district from Category '1' (higher risk) to Category '5' (lower risk) as shown in Table 1;
- developed a Geographical Information System (GIS) and associated database to store and manage the information gathered on all of the potentially contaminated sites. The database has been ranked to reflect the prioritised list such that the perceived highest risk sites would be inspected first and such that some sites may never come forward for pro-active inspection under the contaminated land regime;
- re-assessed a number of potentially contaminated sites as detailed below; and
- continues to deal with contaminated land issues via other available regimes, but principally using the planning regime.

In order to undertake the work listed above, the Council used proprietary computer software and engaged the services of contaminated land consultants, WPA Consultants (initially through a consortium of Local Authorities) between 2000 and 2016. Furthermore Council officers have received training, including one to Master's Degree level (Contaminated Land) in order to ensure Council officers are trained to an appropriate standard to undertake the required work.

Prioritised sites

The Council's priority categories and numbers of associated sites are shown in the table below:

Table 1 – Potentially contaminated land sites and categories

 Risk	NFDC category	Number of sites
	Category 1	19*
	Category 2a	71
	Category 2b/3	820
	Category 4	5
	Category 5	284
	Not required	1,151

Notes

*19 of these sites (or historic land use points) are encompassed in one large site.

The list of potentially contaminated sites is not a public document.

The one large site that is in Category 1 has had extensive voluntary investigations and some voluntary remediation work completed between 2006 to 2013. The site was highlighted to the Council for redevelopment in 2013, however in 2017 the Council became aware that redevelopment of the site was unlikely in the short term. Agreed annual monitoring on the site has been undertaken since 2013 to regularly assess the site conditions. This site is discussed further in the section 'Category 1 sites' on page 26.

Reassessment of sites

In 2008 and 2010 New Forest District Council secured funding via the Defra (Department for Environment, Food and Rural Affairs) Contaminated Land Capital Grants Scheme to carry out more detailed site investigations. Site investigations were carried out at 4 sites and concluded that there was no significant pollutant linkage and remediation was not necessary. Therefore these sites were re-assessed as a low priority on the potential Part IIA sites database.

Between 2013 and 2015 further work was undertaken on the prioritisation of potentially contaminated sites (Categories 1 and 2a) to determine if sites required re-prioritising. This work used additional information to provide further evidence of the potential contamination of the site. Examples of the additional information used includes:

- Planning reports
- Undertaking up-to-date site walkovers
- Discussion with the Environment Agency
- Letters to owners of sites
- Some desktop studies

As a result 43 sites were re-prioritised from a Category 1 or 2a to a Category 2b, 3, 4 or 5, thus enabling the sites to be classed as lower priority sites.

Planning regime - New Forest District Council

The policy within New Forest District Council remains one of promoting appropriate sustainable development and ensuring the proper regard of the risks from environmental factors including the potential or known presence of contamination.

The dataset produced by the Council from the initial prioritisation of all potentially contaminated sites forms the basis of a planning constraint layer. This layer is used to trigger a planning consultation request for Environmental Protection to comment on planning applications which overlay potentially contaminated sites or buffer zones of potentially contaminated sites.

Land contamination planning conditions are appended to planning permissions where necessary. Environmental Protection is responsible for reviewing all investigation and remediation work undertaken by consultants to ensure the site is made suitable for its proposed use and that there are no unacceptable risks to human health, controlled waters, the environment, or property. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

In order to assist developers the Council has produced the 'Developers Guide to Development on Potentially Contaminated Land' which is available on New Forest District Council's website newforest.gov.uk/article/4227/Contaminated-Land.

Future work (2018 – 2022)

The extensive work completed to date has identified and prioritised potentially contaminated land within the district. Expected future progress includes:

1. identifying and reprioritising potentially contaminated land when additional information and evidence is presented;
2. forwarding work on the identified Category 1 sites; and
3. continuing to deal with contaminated land issues via other available regimes, but principally using the planning regime

Reassessment of sites

The process of identifying and reprioritising potentially contaminated land is an on-going activity. Further information may come to light at any stage and the Council will take into account any information obtained from or volunteered by the public, site owners, businesses and voluntary organisations. New and updated information will also often be provided as a result of information between departments (particularly between Environmental Protection and Development Control) and with the Environment Agency and other statutory bodies that may identify new sites or affect the prioritisation of sites that have already been identified.

It should be noted that higher priority sites (listed as Category 1 and 2a in Table 1) should progress to a detailed inspection to determine if they are contaminated land under the legal definition. These sites are currently classified as being potentially contaminated land due to lack of or no evidence presented to date which identifies pollutant linkage(s) and significant harm being caused as detailed in Section 3.1.

As such the Council is not currently proactively pursuing detailed inspections of Category 2a sites due to the evidence presented to date, and in addition to prohibitively costly intrusive site investigations and the removal of the Contaminated Land Capital Grants Scheme which ceased in April 2017. However, should further evidence be obtained concerning Category 2a sites, then the Council will re-assess the situation and proactively investigate the site where deemed appropriate.

Category 1 sites

As advised above, the one large site containing the 19 identified Category 1 sites was highlighted to the Council for development in 2013. Remediation of the site would therefore have been secured through the planning regime to ensure the land would be suitable for its new use. In 2017, the Council became aware that redevelopment of the site was no longer likely in the short term and in 2018 the site changed ownership. Discussions with relevant interested parties concerning contamination at the site are in progress to agree an appropriate way forward and any progress will be detailed in an updated version of the strategy when necessary.

5.2 • Detailed inspection

If information comes to the attention of the Council indicating a site is causing concerns relating to contaminated land, the Council will investigate in accordance with the statutory and other relevant guidance.

The Statutory Guidance (DEFRA, 2012) requires that:

‘If the local authority identifies land where it considers there is a reasonable possibility that a significant pollutant linkage (as defined in paragraphs 3.8 and 3.9) exists, it should inspect the land to obtain sufficient information to decide whether it is contaminated land, having regard to section 3 of this Guidance’

This guidance also makes clear that, under Part IIA, the starting point should be that land is not contaminated land unless there is reason to consider otherwise.

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

In addition, if the Council identifies contaminated land which is considered to meet one or more of the descriptions of a special site set out in the Contaminated Land (England) Regulations 2006 (as amended), the Council will consult the Environment Agency and, subject to the Agency’s advice and agreement, arrange for the Agency to carry out any intrusive inspection of the land on the Council’s behalf, taking into account the provisions of the Statutory Guidance (DEFRA, 2012).

Reactive Investigations

Although the Council’s approach to identifying potentially contaminated land will principally be via the planning regime, there may still be a need to investigate some sites, in particular where information is received that suggests a problem of land contamination is of current concern to one or more sensitive receptors.

If information comes to the attention of the Council that indicates a site is causing concerns relating to contaminated land, the Council will undertake any necessary investigation in accordance with the statutory and other relevant guidance.

Risk summaries

The revised Statutory Guidance (DEFRA, 2012) introduces the use of ‘risk summaries’, which will be produced for any land where, on the basis of its risk assessment, it is considered likely that the land in question may be determined as contaminated land.

In a format that is understandable to the layperson, a risk summary will aim to explain our understanding of the risks and any other relevant factors associated with the land in question.

Risk summaries should include:

- i. A description of: the contaminants involved; the identified contaminant linkage(s), or a summary of such linkages; the potential impact(s); the estimated possibility that the impact(s) may occur; and the timescale over which the risk may occur;
- ii. A description of the authority’s understanding of the uncertainties behind its assessment;
- iii. A description of the risks in context, for example by setting the risk in local or national context, or describing the risk from land contamination relative to other risks that receptors might be expected to be exposed to in any case;
- iv. A description of the authority’s initial views on possible remediation; and
- v. In the case of land which (if it were determined as contaminated land) would be likely to be a special site, the authority should seek the views of the Environment Agency, and take any views provided into account in producing this description.

Local Authorities are not required to produce risk summaries:

- i. For land which will not be determined as contaminated land;
- ii. For land which has been prioritised for detailed inspection (in accordance with Section 2 of the Statutory Guidance) but which has not yet been subject to risk assessment in accordance with Section 3; and
- iii. For land determined as contaminated land before the revised Statutory Guidance came into force (April 2012).

Determination

Local authorities have the sole responsibility for determining whether any land appears to be contaminated land. The starting assumption of Part IIA is that land is not contaminated land unless there is reason to consider otherwise. The prioritisation process aims to highlight those sites where there is greatest potential for the land to be contaminated and the detailed inspection process should verify the existence of any pollutant linkage and assess the likely significance of this

Deciding land is not contaminated land

While undertaking inspection duties the Council is likely to inspect land that it becomes apparent does not meet the definition of contaminated land or the Council may cease an inspection and assessment on the grounds that there is little or no evidence to suggest that it is contaminated land. When a piece of land has been prioritised for detailed inspection and is subsequently deemed not to be contaminated, the Council in accordance with the Statutory Guidance, will produce a written statement to that effect

to minimise the potential for blight. The statement will contain an explanation of the rationale behind the decision and make clear the circumstances that would invalidate the statement (such as a change of use to a more sensitive end nature). The statement will be issued to the land owner and other interested parties. Such statements may be reviewed as scientific understanding of risks evolving over time.

Determining land is contaminated land

Before making any formal determination the Council will need to be satisfied that there is at least one significant contamination linkage on site. This will be achieved through completion of a robust, appropriate, scientific and technical assessment of all available and relevant evidence. In making such decisions local authorities 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):

- i. Significant harm is being caused to a human or relevant non-human, receptor.
- ii. There is a significant possibility of significant harm being caused to a human, or relevant non-human, receptor.
- iii. Significant pollution of controlled waters is being caused.
- iv. There is a significant possibility of significant pollution of controlled waters being caused.

Area to be determined

The extent of the area to be determined as contaminated requires careful consideration, and should only include land considered to be contaminated. The area of land being considered may change as further evidence is obtained. The area of land to be determined can be subdivided and should take into account:

- The nature of the contamination;
- Any variation in the degree of risk across the land;
- The type of remediation that could be applied;
- Land ownership, and;
- The likely identity of the person(s) responsible for the remediation.

Informing interested parties

In accordance with the Statutory Guidance (DEFRA, 2012) before the Council makes a determination we will notify (in writing) the owners and occupiers of the land, any other person who appear at the time to be liable to pay for remediation works and the Environment Agency of the Council's intention to determine the land unless it is considered there is an overriding reason for not doing so. The correspondence from the Council will include:

- A description of the pollutant linkages identified, and;
- A summary of the evidence and risk assessment on which determination is based.

The interested parties will be invited to discuss the situation with the Council before more formal action is considered.

Formal notification of determination

Where it is considered that the land is contaminated, the Council will provide written notification to the owner of the land, occupiers of the land, any person who appears to be liable to pay for remediation, the Environment Agency and neighbouring authorities if the site is within 250m of a district boundary.

The notification will include:

- The reasoning of the notification
- A record of determination
- The risk summary
- Information on the site investigations
- The reasoning why people have been identified as an appropriate person
- Details of tests for exclusions from and apportionment of liabilities

Postponing determination

The Council may decide to postpone a determination of contaminated land if the landowner or another person undertakes to deal with the land in question without determination and if the Council is satisfied that the remediation will be undertaken to an appropriate standard and timescale. Postponement does not affect the Council's ability to determine the land in the future if works are not undertaken as agreed.

In addition, the Council may decide to postpone a determination of contaminated land if a significant contaminant linkage would only exist if the use of the land were to change in the future. Should this be the case then the site will be kept under review and take reasonable steps to ensure that a postponement does not create conditions under which significant risks could go unaddressed in the future (DEFRA, 2012).

Record of the determination of contaminated land

The Council is required to prepare a written record of land determined as contaminated land. The record must be made publicly available and should be clear and understandable to non-specialists. The record should include:

- Accurate details of the location, boundaries and land in question
- Explanation of why the determination is being made
- The risk summary
- The relevant conceptual model
- A summary of the relevant assessment of the evidence
- A summary of why the authority considers the requirements of the relevant Statutory Guidance (*DEFRA, 2012*) have been satisfied

Making determinations in urgent cases

If the Council considers there is an urgent need to determine particular land, the Council will make the determination in a timescale considered appropriate to the urgency of the situation.

Timescales

The Council will work to progress all aspects of contaminated land investigations and remediation (Section 6) in a timely manner. Realistic timescales to progress work will be agreed, where appropriate, with all relevant stakeholders as early as practicable within the process.

Formal action may be considered should voluntary action not be progressed within the agreed timescales however the Council recognises that any agreed timescales may be subject to change due to the nature of the work involved. Therefore it is important for the Council and stakeholders to work closely to progress the investigation and any subsequent remediation of a site.

6 • Remediation

The aim of remediation is to reduce the risks so they are no longer significant and at an acceptable level. This can be achieved by disrupting the contaminant linkages, for example by removing the contamination and therefore removing the source.

Definition

Remediation is defined in the Environmental Protection Act 1990 s78A as:

- (a) the doing of anything for the purpose of assessing the condition of – (i) the contaminated land in question; or (ii) any controlled waters affected by that land; or (iii) any land adjoining or adjacent to that land;
- (b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land for the purpose – (i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm (or significant pollution of controlled waters), by reason of which the contaminated land is such land; or (ii) of restoring the land or waters to their former state; or
- (c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters.'

Remediation Notices

Following the determination of land as being contaminated land, the enforcing authority must consider how the land should be remediated and, where appropriate, serve a remediation notice on the appropriate person(s) to require such remediation. The enforcing authority is typically the Local Authority or for land identified as being a 'special site' the Environment Agency.

The remediation notice must;

- Specify what remediation option(s) are required;
- The timescale to complete the specified remediation; and
- Be placed on a public register

A remediation notice can be revised or revoked in full or part at any time, in the event that new information comes to light.

Prior to the service of a remediation notice the Council will consult other regulatory bodies and suitably qualified professionals and have regard to relevant technical documents. Furthermore the Council will take into account;

- whether voluntary remediation is being or will be undertaken without the need for a notice;
- whether there is a need for urgent action where there is imminent risk of serious harm;
- whether there are viable remediation option(s) which will provide a practical and effective solution for a sufficient period of time;
- whether it is feasible for the identified appropriate person(s) to complete the specified remediation within the defined timescale;
- the potential impacts of the remediation option(s) on the environment and health of people undertaking the works, and buildings;
- the financial cost at each stage of the process including preparation of remediation strategies, remediation, verification, ongoing maintenance and land value; and
- the associated benefits of the remediation works affected by the remediation options

Voluntary remediation

The Council encourages voluntary remediation when appropriate without the requirement for a formal remediation notice and will work with the appropriate person(s) to secure the remediation of contaminated land. A remediation statement would replace the remediation notice which states the person(s) reasonable to ensure remediation is undertaken and completed, the nature and extent of the remediation and the timescales to complete the work. The remediation statement will be placed on the public register.

Urgent remediation

Urgent action must be authorised where the Council is satisfied that there is imminent danger of serious harm or serious pollution of controlled waters being caused as a result of contaminated land. In such circumstances the procedures identified in the statutory guidance will be followed which may involve use of powers of entry.

The Council will initiate the remediation in urgent cases where it is the enforcing authority if it is of the opinion that the risk would not be mitigated by enforcement action. In the case of a potential special site, the Council will notify and consult with the Environment Agency. In appropriate cases the Council will seek to recover costs of remediation works it has completed.

Liability and costs

Land may be declared contaminated land with the identification of only one significant contaminant linkage. Full liability cannot therefore be determined until all significant contaminant linkages on the site have been identified.

When all significant contaminant linkages have been identified liability must be apportioned. This has five distinct stages as follows:

- i. Identifying potential appropriate persons and liability groups;
- ii. Characterising remediation actions;
- iii. Attributing responsibility to liability groups;
- iv. Excluding members of liability groups; and
- v. Apportioning liability between members of a liability group.

The process starts with establishing liability groups. All appropriate persons for any one linkage are a, 'liability group'. These may be Class 'A' or Class 'B' persons.

APPROPRIATE PERSONS - Class 'A' - These are, generally the polluters, but can also include those who 'knowingly permitted'.

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

The matter of appropriate persons must be considered for each significant contaminant linkage. Therefore where a site has had a series of contaminative uses over the years, each significant contaminant linkage will be identified separately and liability considered for each.

The cost of each remediation action will normally be apportioned between those who remain liable after any exclusion. Section 78F(6) and (7) of the 1990 Act, which provides that:

Section 78F(6): Where two or more persons would, apart from this subsection, be appropriate persons in relation to any particular thing which is to be done by way of remediation, the enforcing authority shall determine in accordance with guidance issued for the purpose by the Secretary of State whether any, and if so which, of them is to be treated as not being an appropriate person in relation to that thing.

Section 78F(7): Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, they shall be liable to bear the cost of doing that thing in proportions determined by the enforcing authority in accordance with guidance issued for the purpose by the Secretary of State (DEFRA, 2012).

The main provisions for the establishment of liability are set out in Part IIA of the Environmental Protection Act 1990; and further information can be found within Section 7 of the Contaminated Land Statutory Guidance (DEFRA, 2012).

Wherever possible, voluntary action and/or the redevelopment of sites for inspection and remediation of land affected by contamination will be encouraged. This approach aims to minimise burdens on individuals, business and the wider community while ensuring that unacceptable risks are dealt with effectively.

7 • Communication

7.1 • Requests for information

Contaminated land searches

Contaminated land information is made available in accordance with the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

A charge may be made to provide information under the Environmental Information Regulations 2004. Fees for providing this service are published annually by the Council in its Fees and Charges document.

Contaminated land complaints and enquiries

It is possible that enquiries concerning potentially contaminated land will be received from the public, businesses and voluntary organisations.

In such cases:

- i. The enquiry will be logged and investigated using the Council's GIS, other sources of information and a site reconnaissance when appropriate; and
- ii. The enquirer will be kept informed of progress towards the resolution of the enquiry.

7.2 • Public register

We are required to maintain a Public Register of Contaminated Land in accordance with the requirements of the Contaminated Land (England) Regulations 2006 and this includes;

- Remediation notices
- Remediation notice appeals
- Remediation declarations
- Remediation statements
- Charging notices appeals
- Special site declarations
- Notification of claimed remediation
- Convictions for offences under Environmental Protection Act 1990 sec 78M
- Other environmental controls

Currently there are no entries on the New Forest District Council Public Register of Contaminated Land.

7.3 • Strategy review

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

- i. To see how we are progressing, i.e. to determine whether we are achieving our objectives and priorities;
- ii. To revise and improve procedures;
- iii. To take account of changes in legislation;
- iv. To take account of the establishment of significant case law or precedent;
- v. To take account of changes in guidance for dealing with land contamination (in particular, risk assessment techniques, guideline values, etc);
- vi. To reflect changes in council policies and strategies.

The Council will carry out a review of this Contaminated Land Strategy within five years of implementation in line with the Statutory Guidance (*DEFRA, 2012*).

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