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**Broxtowe  
Borough**

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**C O U N C I L**

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## **Contaminated Land Inspection Strategy**

In fulfilment of Part 2A of the  
Environment Protection Act 1990

January 2018

Local Authority Officer	Rebecca Salmon
Department	Environmental Health
Address	Council Offices Foster Avenue Beeston Nottingham NG9 1AB
Telephone	0115 9177777
E-mail	health@broxtowe.gov.uk
Reviewed by	Suzanne Hickey
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## **Executive Summary**

This strategy replaces Broxtowe Borough Council's original 2001 Contaminated Land Inspection Strategy (as amended). It details how Broxtowe Borough Council, in accordance with its duty under the Environmental Protection Act 1990, will inspect the land in its borough for contamination.

This update has been produced following the major revision of statutory guidance and also refers to changes to other legislation, guidance and national and Council policy since the original strategy was produced in 2001. Any reference throughout this document to the Statutory Guidance is the guidance issued in April 2012 under Section 78 of the Environmental Protection Act 1990.

The Council will use all available information and a risk based approach both in the initial screening process and again in the detailed inspection of sites to identify Contaminated Land.

The inspection programme will continue, with the Council producing a public register of any land designated as Contaminated Land. The process of investigating and remediating such land is intended to ensure that all land in the borough is suitable for use and does not pose an unacceptable risk to people, the environment, water and property.

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# 1.0 INTRODUCTION

## 1.1 The Problem of Land Contamination

The United Kingdom has a legacy of land contamination arising from past industrial development. Various industrial practices have led to substances being in, on or under land such as tars, heavy metals, organic compounds and mining materials. In addition, land filling of waste sometimes took place without adequate precautions against the escape of landfill gases and leaching of materials. The previous regulatory system for dealing with land which was contaminated led, in some instances, to over prescriptive remediation being demanded to ensure public safety and, as a result, emphasised the need for a new system of regulation.

In response to this, the UK Government, through the establishment of various policies and the introduction of legislation, has provided a framework which will endeavour to: -

- prevent future contamination of land from occurring; and
- ensure that appropriate action is taken to deal with existing land contamination where it poses unacceptable risks to human health or to the environment.

The purpose of Part 2A of the Environmental Protection Act 1990, hereafter referred to as Part 2A, is to deal with the legacy of land throughout the UK which has been contaminated by past industrial, mining and waste disposal activities. It is not known in detail how much land is contaminated and this can only be found out through wide-ranging and detailed site investigation and risk assessment.

## 1.2 The Part 2A Regime

Part 2A of the Environmental Protection Act 1990 came into force on 1 April 2000. It places a responsibility on local authorities to inspect land in its district to identify Contaminated Land.

**Contaminated Land is defined under the Act as any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land**

**that:**

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

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

**(c) For Radioactive Contaminated Land that:**

**(i) harm is being caused; or**

**(ii) there is a significant possibility of harm being caused.**

All references to Contaminated Land within this document refer to this statutory definition.

Part 2A provides the regulatory framework for the identification and remediation of Contaminated Land. The regime is based on the following basic principles: -



Figure 1.1 Principles of the Part 2A regime



The Government regards the implementation of the Part 2A regime as an essential tool in providing an effective framework to deal with the regulation of Contaminated Land.

## **1.3 Legislative Context & National Policy**

### **1.3.1 Other regimes**

The first priority for the Government's policy on land contamination is to prevent the creation of new contamination and as a result a range of regimes have been developed to prevent new contamination of land. These continue to deal with land affected by contamination alongside the provisions of Part 2A.

#### Environmental Damage (Prevention and Remediation) Regulations 2015

The Environmental Damage (Prevention and Remediation) Regulations 2015 are a result of the implementation of the European Directive on Environmental Liability (2004/35). They are based on the principle of 'the polluter pays', where those responsible for a pollution incident are required to prevent and, where necessary, remedy any environmental damage caused. The emphasis is on the operator identifying where or when there is imminent threat or actual damage to the environment, and taking immediate action.

Environmental damage is considered to be:

- Serious damage to surface or ground water.
- Serious damage to EU-protected natural habitats or species.
- Contamination of land with a significant risk of harm to human health.

The regulations are not retrospective and will only be applied to damage caused after their implementation.

#### Pollution Prevention and Control Act (1999)

This regime includes the specific requirement that permits (Environmental Permit Regulations, 2016) for industrial plants and installations must include conditions

to prevent the pollution of soil. There are also requirements in relation to the land filling of waste.

### Planning and Building Control

The National Planning Policy Framework (2012) states that planning policies and decisions should ensure that:

- the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;
- after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part 2A of the Environmental Protection Act 1990; and
- adequate site investigation information, prepared by a competent person, is presented.

For all new developments, it will be the responsibility of the developer to carry out any necessary site assessment and remediation. In most cases, the enforcement of any remediation requirements will be through planning conditions.

The Building Regulations (made under the Building Act 1984) require measures to be taken to protect new buildings, and their future occupants, from the effects of contamination. Approved Document Part C (Site Preparation and Resistance to Moisture) published in 2004 gives guidance on these requirements.

### **1.3.2 Regulatory role of local authorities under Part 2A**

The principal regulators for Part 2A are the local authorities, and their main responsibilities are:

- to prepare and publish a strategy for inspecting their area for Contaminated Land and to implement the strategy,

- to cause their areas to be inspected in order to identify Contaminated Land
- to establish who may be the appropriate person(s) to bear responsibility for remediation of the land
- to decide, after consultation, what remediation might be required in any individual case and ensure that such remediation takes place, by serving a remediation notice where necessary
- to record information on a public register about their regulatory actions
- to decide whether any such land should be designated a Special Site

The Statutory Guidance (2012) specifies the Council's duty with regard to inspection of its area, and also lays down fundamental principles to be followed throughout the inspection and strategy process.

In carrying out its inspection duty under section 78B(1) of the Environmental Protection Act 1990, the Council will take a strategic approach to the identification of land which merits detailed individual inspection.

This approach will:

- a) be rational, ordered and efficient
- b) be proportionate to the seriousness of any actual or potential risk
- c) seek to ensure that the most pressing and serious problems are located first
- d) ensure that resources are concentrated on investigation in areas where the Council is most likely to identify Contaminated Land
- e) ensure that the Council efficiently identifies requirements for the detailed inspection of particular areas of land.

In developing this strategic approach, the Council is required to reflect local circumstances. In particular it is required to consider:

- any available evidence that significant harm or pollution of controlled waters is actually being caused
- the extent to which any receptor is likely to be found in any of the different parts of the authority's area

- the extent to which any of these receptors is likely to be exposed to a contaminant
- the extent to which information on land contamination is already available
- the history, scale and nature of industrial or other activities which may have contaminated the land in different parts of its area
- the nature and timing of past redevelopment in different parts of its area
- the extent to which remedial action has already been taken by the authority or others to deal with land contamination problems or is likely to be taken as part of an impending redevelopment
- the extent to which other regulatory authorities are likely to be considering the possibility of harm being caused to particular receptors or the likelihood of any pollution of controlled waters being caused in particular parts of the local authority's area.

The legal requirement to produce an inspection strategy allows the Council to consider:

- how best to prepare and implement the strategy through the joint working of individual departments
- the practical working arrangements with external agencies that will have to be in place to effectively implement the new regime.

### **1.3.2 Regulatory role of the Environment Agency**

The Environment Agency has an important complementary regulatory role under the Part 2A regime. This includes:

- the provision of information and advice, including site specific guidance, to local authorities
- the regulation of Special Sites
- the preparation of a national report on the state of Contaminated Land.

The Contaminated Land (England) Regulations 2000 define Special Sites, which includes land associated with the following situations:

- (a) Pollution of controlled waters as defined in the Regulations

- (b) Contamination by certain chemicals used as pesticides
- (c) Contamination by waste acid tars
- (d) Refining of petroleum
- (e) Manufacture of explosives
- (f) Nuclear sites
- (g) Land owned by the Ministry of Defence
- (h) Land on which prescribed processes designated for central control have been carried out.

### **1.3.3 Objectives of the Part 2A regime**

The Part 2A regime is based upon a set of principles which include 'suitable for use' standards of remediation, the 'polluter pays' principle for allocating liability, a risk based approach to the assessment of contamination and sustainable development.

Part 2A provides a means of dealing with unacceptable risks to human health and the environment posed by land contamination, and enforcing authorities should seek to find and deal with such land. Under Part 2A the starting point should be that land is not contaminated land unless there is reason to consider otherwise. Only land where unacceptable risks are clearly identified, after a risk assessment has been undertaken in accordance with the Statutory Guidance, should be considered as meeting the Part 2A definition of Contaminated Land.

#### **The objectives with respect to Contaminated Land are:**

- **to identify and remove unacceptable risks to human health and the environment;**
- **to seek to bring damaged land back into beneficial use; and**
- **to seek to ensure that the cost burdens faced by individuals, companies and society as a whole are proportionate, manageable and economically sustainable.**

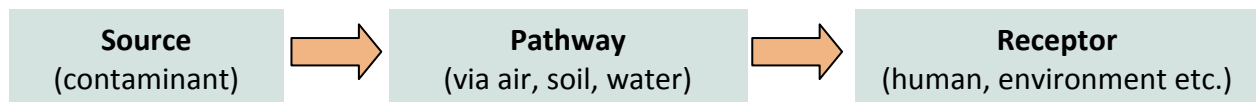
These three objectives underlie the 'suitable for use' approach to the remediation of Contaminated Land, which the Government considers is the most appropriate approach to achieving sustainable development in this area.

## 1.4 Principles and definitions

### 1.4.1 Principals of pollutant linkages

The Department for Environment, Transport and Regions (DETR) Circular 02/2000 follows established approaches to risk assessments, including the concept of pollutant linkages.

A pollutant linkage is the relationship between a contaminant, a pathway and a receptor.



**Figure 1.2: Pollutant linkage**

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

A pathway is a route by which a receptor could be affected by a contaminant.

A receptor is something that could be adversely affected by a contaminant. Humans, organisms, property and controlled waters are all examples of receptors.

Unless all three elements of a pollutant linkage are present in respect of a piece of land, the land will not be identified as Contaminated Land.

The Council must first satisfy itself that:

- (a) such a pollutant linkage exists in respect of a piece of land; and

- (b) the pollutant linkage
- (i) is resulting in significant harm being caused to the '*receptor*' in the pollutant linkage; or
  - (ii) presents a significant possibility of significant harm being caused to that receptor;
  - (iii) is resulting in the pollution of controlled waters which constitute the receptor; or
  - (iv) is likely to result in such pollution.

#### **1.4.2 Principals of risk assessment**

DETR Circular 02/2000 promotes a risk-based approach to dealing with Contaminated Land.

Risk is defined as the combination of:

- 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
- the magnitude (including the seriousness) of the consequences.

The aim of this type of approach is to protect human health and the environment without unnecessarily 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.

So, although land may be contaminated, unless it presents a significant risk to a receptor such as a human being or an aquifer used to supply water, the mere presence of a former contaminative use does not require action by the local authority.

## **2.0 CHARACTERISTICS OF THE BOROUGH**

This section gives background information about the borough of Broxtowe and highlights some of the factors, in relation to potential contaminants, pathways and receptors, which will influence the Council's approach to the inspection of Contaminated Land.

### **2.1 Geographical Characteristics**

Broxtowe Borough lies on the west side of the Nottingham conurbation. It is bounded to the east by the City of Nottingham, to the north and south by the districts of Ashfield and Rushcliffe respectively, and to the west by the towns of the Erewash Valley in Derbyshire.

The population of Broxtowe at the 2011 Census was estimated to be 109, 487. The bulk of the population is concentrated in the urban areas which centre in Beeston, Stapleford, Eastwood and Kimberley. Beeston and Stapleford form part of the more built-up southern part of the borough, where approximately two thirds of its population live. Eastwood and Kimberley are separate towns surrounded by an area which is more rural in character, containing several villages.

The northern settlements developed in association with coal mining, although there are now no active collieries in the area. As a consequence of this decline considerable physical, economic and social change has occurred in tandem with extensive recent housing and industrial development. The towns in the south of the borough, whilst historically related to the textile industry of the Nottingham area and the Erewash Valley, have developed as part of the wider built up area around Nottingham and include extensive post-war residential development.

#### **2.1.1 Mineral extraction**

Mining for coal was well established in the northern half of the borough, particularly along the Erewash valley, by the 15<sup>th</sup> century using small bell pits. In



the 18<sup>th</sup> and 19<sup>th</sup> centuries these shallow workings became exhausted and larger deeper mines were sunk. The last deep mined coal was raised at Moorgreen in 1985 and there are now no active collieries in the borough.

Opencast mining has also taken place extensively as much of the northern part of the borough is on the exposed coalfield, where the coal seams can be found just below the subsoil. In connection with the opencast operations a number of dedicated blending, stocking and loading facilities were provided. Currently no opencasting is being carried out in the borough.

Whilst much of the dereliction associated with the mining operations has been dealt with, in some cases reclamation has been combined with an opencast scheme (e.g. Moorgreen colliery). However, potential gas migration and ground stability still need to be taken into account when any building work takes place.

Sharp sand and gravel have been worked at Attenborough but the site has now become a nature reserve.

Bricks were manufactured at a number of sites in the borough and the associated clay pits have been used as landfills.

### **2.1.2 Railways**

Rail development within the borough was largely influenced by the coal mining industry after the initial connection of Nottingham and Derby in 1839 by a line running through Beeston and Attenborough. This route now forms part of the current main line from Nottingham to London. Further development of the Midland Railway company resulted in the Erewash Valley line running along the Western boundary of the borough with a large marshalling yard and associated facilities at Toton, and a cut off route from Trowell to Nottingham principally for passenger trains. These routes are still in use, however, there are now areas of derelict land around the Toton site and some abandoned associated branch lines such as Bennerley – Kimberley – Watnall.

Vested coal and iron interests brought a second railway network to the borough in the 1870's. This was the Great Northern Railway in association with the Stanton Ironworks Company and various coal owners. This system included a second route for Nottingham to Derby via Kimberley as well as a second route up the Erewash Valley from Awsworth through Eastwood, plus some associated branch lines. These railways were abandoned completely by 1970 and while some sections remain derelict, others have been used as landfill sites, footpaths or redevelopment. Additionally, an extensive private rail system was operated by Barber Walker and Company of Eastwood (Later the National Coal Board). This connected Langley Mill, Underwood, Eastwood and Watnall, and was closed in stages between 1956 and 1985.

### **2.1.3 Light industry**

Light industry in the form of textiles, electrical and pharmaceutical manufacturers historically dominated the southern part of the borough and, whilst some decline has taken place, many of these sites are still in operation. Currently, working practices and pollution controls ensure that any new contamination is minimal and historic contamination is being dealt with as and when sites are redeveloped.

### **2.1.4 Ministry of Defence land**

A large area of land in Chilwell came under the control of the Ministry of Defence (MOD) during World War One, and since 1990 parcels have been released for redevelopment. Remediation has been undertaken on each piece of land by the developer in agreement with the Council. Redevelopment is still on going and a considerable area remains in MOD ownership.

### **2.1.6 Protected locations**

There are a wide range of protected habitats across the borough, including:

- 7 Sites of Special Scientific Interest (SSSI's) protected under the Wildlife and Countryside Act 1981 and Countryside and Rights of Way Act 2000

- 15 geological and 156 biological Local Wildlife Sites (previously known as Sites of Importance for Nature Conservation) as designated by the Nottinghamshire Biological and Geological Records Centre
- 15 local nature reserves.

As well as its rich natural habitat and diversity, the borough has a significant historic built environment with

- 296 listed buildings
- 6 ancient monuments
- 17 designated Conservation Areas.

### **2.1.7 Key surface water bodies and river network**

The southern boundary of the borough is formed by the River Trent and the western boundary closely follows the River Erewash for much of its length. Additionally, a large reservoir is present at Moorgreen and large man-made lakes created at Attenborough by mineral extraction, now form the Attenborough Nature Reserve.

## **2.2 The Geology of the Borough**

### **2.2.1 Drift geology (unconsolidated deposits)**

Alluvial deposits form the surface geology of the southern extremity of the borough taking in Beeston and Attenborough down to the southern boundary of the River Trent as well on a thin strip immediately alongside the River Erewash on the western boundary.

These types of deposits are associated with rivers and often comprise sandy material which allows ready passage of water, or water borne contaminants. Additionally, marshland often found adjacent to watercourses, is likely to be a source of methane and other gases associated with vegetation.

### **2.2.2 Solid geology (Solid rocks)**

The solid rocks underlying the Alluvial deposits in the south of the borough are Permo-Triassic Sandstones which extend to form the surface geology of the rest of Beeston, Chilwell, Toton and much of Stapleford as well as the north eastern edge of the borough. These rocks form part of the principal aquifer, which extends eastwards across the rest of Nottinghamshire, and is used as a source of potable water.

From a line passing through the north of Stapleford, and above Bramcote, Coal Measures are to be found at the surface and have been the subject of both opencast and underground coal workings, although currently no extraction is taking place.

The general dip of the strata is from west to east with the Coal Measures continuing under the Permo-Triassic rocks on the eastern boundary of the borough.

### **2.2.3 Hydro geology (water pathways)**

The drift deposits in the south of the borough connect with the Permo-Triassic rocks below to form a pathway for water and possible contaminants into the ground water, used on a supply of potable water further east.

The Coal Measures which allow the passage of water as well as contaminant containing water, extend beneath the Permo-triassic. However, these are not generally used as supply of water because of their acidic nature caused by both the rocks and past mining activity.

### **2.2.4 Possible sources of contamination**

Within the Coal Measures acid water is present both in the form of surface water entering via old mine workings and the associated disturbed strata as well as water trapped present since the formation of the rocks. Springs are also common in this formation and therefore may give rise to contaminated surface

water flows. Additionally, various gasses are usually present in both the Coal Measures and Drift deposits close to rivers.

### **2.2.5 Pathways for contamination**

The borough is covered by soils of high permeability meaning that they readily allow water or contamination to pass to the rock below. All of the solid and drift geology below the surface soils can act as pathways for contamination but the most important pathway is via the drift deposits and the Permo-Triassic rocks as this will affect the potable water supply further east.

### **2.2.6 Geological receptors for contamination**

The principal receptor for contamination is the Permo-Triassic strata as already mentioned because of implications for the water supply. Both the River Trent and River Erewash are also receptors as are any other watercourses.

## **3.0 CORPORATE POLICY**

The Contaminated Land Inspection Strategy will operate within the context of the Corporate Plan 2016-2020 as well as complement the aims and objectives of various other Broxtowe Borough Council policies. It will play an important part in allowing the Council to move closer to meet its aims and objectives for environmental improvement, regeneration and sustainable development while working to ensure the health and wellbeing of its residents. The key documents are discussed below.

### **3.1 Corporate Plan 2016-2020**

Broxtowe Borough Council Corporate Plan identifies 5 priorities; housing, business growth, environment, health and community safety. One of the aims is to increase the rate of house building on brownfield sites. Another is to complete the regeneration of Beeston town centre and seek opportunities to regenerate other town centres throughout the borough.

The supply of land, like many other natural resources, is limited and the demand for new development whether for housing, business, transport or leisure activities, places severe pressure on our environment. Redeveloping areas where the previous development has come to an end not only contributes to the social and economic regeneration of the local communities but is also an important force in achieving environmental improvement and healthier lives.

### **3.2 Part 2 Local Plan 2017-2028**

The Council considers the potential implications of contamination both when they are developing local plans and when they consider individual applications for planning permission. They will satisfy themselves that the potential for contamination is properly assessed, and the development incorporates any necessary remediation. Where necessary, any planning permission will include appropriate site investigation and remediation conditions. The Part 2 Local Plan discusses this further and identifies the protection of groundwater as an

important issue. It aims to encourage brownfield redevelopment and to protect future occupants and broader environmental concerns from the effects of contamination. It sets out how appropriate action will be taken to identify and deal with contamination throughout the planning process.

### **3.3 Economic Regeneration Strategy 2017-2021**

The Economic Regeneration Strategy develops further the principles and aims of the Corporate Plan with emphasis on economic development and brownfield regeneration. It focuses on adopting a proactive approach to bringing forward brownfield sites for development. Developers can be reluctant to take on brownfield sites due to concerns about potential contamination, the associated cost of remediation and timescales involved. The Economic Regeneration Strategy aims to promote these sites as opportunities to regenerate an area. In order to do this the Council proactively contacts landowners and provides all necessary advice in order to bring forward any potential planning application swiftly. It also considers the use of Compulsory Purchase Orders to legally acquire land in order to ensure it is suitably redeveloped in the future. Throughout this process the Environmental Health team will continue to provide any necessary advice on matters relating to land contamination in order to assist the process and meet the objectives of both strategies.

### **3.4 Enforcement Policy 2017**

The main purpose of local government enforcement work is to protect the public, the environment, consumers and legitimate businesses by making sure that legal requirements are met and that everyone acts/operates within the law. It does not just mean taking formal action, such as prosecution, but includes a wide range of actions and measures, including giving help or advice to make sure that things are as they should be. The Council will generally endeavour to support businesses and individuals to meet their legal obligations before considering any kind of enforcement action. The main objective of the Enforcement Policy is to ensure the Council endeavours to carry out its enforcement functions in an equitable, effective, efficient, practical and consistent manner.

Under Part 2A, the Council may need to decide whether and how to act in situations where such decisions are not straightforward and where there may be unavoidable uncertainty underlying some of the facts of each case.

In so doing, the Council will use its judgement to strike a reasonable balance between:

- a) dealing with risks raised by contaminants in land and the benefits of remediating land to remove or reduce those risks; and
- b) the potential impacts of regulatory intervention including financial costs to whoever will pay for remediation (including the taxpayer where relevant), health and environmental impacts of taking action, property blight, and burdens on affected people.

The aim is to consider the various benefits and costs of taking action, with a view to ensuring that the regime produces net benefits, taking account of local circumstances.

Much of the borough's land contamination has been present for long periods of time. The Part 2A regime deals with the legacy of land contamination issues and how it impacts current land uses. However, not all contamination poses problems and may only be of concern when, or if, the land is used for a different or new purpose. Therefore, it may only be necessary to deal with contamination when land is redeveloped.

However, in some circumstances, regulatory action may be needed to make sure that necessary remediation on a site is carried out to ensure land is suitable for its current use. This approach ensures that remediation requirements are reasonable and tailored to the needs of individual sites.



## 4.0 AIMS AND OBJECTIVES

The Statutory Guidance requires each Council to set out its aims, objectives and priorities with respect to a Contaminated Land Inspection Strategy. The previous sections have outlined Broxtowe Borough Council's duties under Part 2A, how the Strategy aligns with other existing Council policy and described the unique characteristics of the borough.

All of these factors feed into the Council's approach to its inspection duties and what it hopes to achieve. Below is a list of key aims that the Council wishes to achieve through management of land contamination issues. These are overall aims which complement the existing policies previous discussed. They also reflect the Council's statutory duties. It is important to note that these aims are not solely achievable through implementation of Part 2A alone. Delivery of other Council strategies and statutory functions will be necessary.

The principal aims of the strategy are:

- To PROTECT human health, controlled waters and ecosystems**
- To PREVENT damage to property and unnecessary blight**
- To ENCOURAGE voluntary remediation, regeneration and redevelopment**

The objectives are:

- To encourage a proactive approach amongst landowners towards investigation of potential contamination and to encourage voluntary remediation where necessary
- To ensure appropriate remediation is undertaken on sites where land contamination is identified as presenting unacceptable risk
- To assist other Council departments and external parties to enable informed decisions regarding future land use plans

- To ensure that where redevelopment of land takes place within the borough that the planning process deals effectively with any land contamination such that the land is suitable for its intended use
- To ensure the Council meets the statutory requirements of the Environmental Protection Act 1990 without causing unnecessary alarm to our communities
- To keep remediation costs falling upon the Council and taxpayers to a minimum.

## **5.0 THE APPROACH AND PROGRESS TO DATE**

This section sets out the phased approach by which the Council will meet the regulatory requirements once the Contaminated Land Inspection Strategy has been adopted.

### **5.1 Redevelopment of Land Affected by Contamination**

The primary method of successfully dealing with land contamination within the borough has been and will continue to be via the redevelopment of land under the planning regime. This is deemed to be the most efficient and cost effective way of bringing potentially contaminated land back into beneficial and economic use. The Council's Environmental Health and Planning departments work closely together to ensure that all sites are suitable for their intended use. In most cases this is achieved through the use of suitable planning conditions and their enforcement. Land effectively remediated under the planning regime for its new end use should no longer be subject to Part 2A action. If the land use changes again in the future, this will again be assessed under the planning regime to establish whether further remediation is necessary.

### **5.2 Urgent Sites**

Throughout the entire process of site prioritisation and inspection, if any sites are strongly suspected of causing significant harm, or if any sites are referred by the Environment Agency for determination as a Special Site, then these will need to take priority. To date no urgent sites have been brought to our attention that have required priority inspection.

### **5.3 Identifying and Inspecting sites**

#### **5.3.1 Use of data**

In order to assist in the identification and prioritisation of sites the Council purchased some historical land use data. The majority of this data was in digital form, entered into a Geographical Information System (GIS). The Council also

has access to an extensive set of data which are invaluable in assisting the assessment of sites under Part 2A. Since the Council acquired the land use data, an on going programme of data cleansing and review has been taking place. This process manually verifies each site identified and has led to additional sites being identified as well as current sites being split into smaller areas in order to allow for a more specific assessment and reduction in potential property blight. This has led to there being a larger number of sites identified for further assessment but it has not significantly changed the total area of land identified. To date 1482 sites have been identified for further inspection.

### **5.3.2 Prioritisation of sites**

To ensure that the most pressing and serious problems are located first, it is intended, initially, to assess those sites which have been subject to the most heavily contaminative industries and which therefore present the greatest risk.

The Council's order of receptor priority for assessing risk is:

- 1. To protect human health.**
- 2. To protect controlled waters.**
- 3. To protect designated ecosystems.**
- 4. To prevent damage to property.**

The Council has purchased a computerised screening package that uses a numeric risk assessment based approach to prioritise sites. This has allowed automatic and continual re-prioritisation of sites where new information is added to the system. Site visits are required to fill in gaps in the data where necessary.

### **5.3.2 Detailed inspection of sites**

Once the prioritisation process has been completed, the detailed inspection of sites will commence. Sites will be inspected in order of priority, based on the outcome of the previous screening exercise. Where Contaminated Land is identified, the site will be determined in accordance with statutory requirements. For sites in a contaminative state, but which do not constitute Contaminated Land, further inspection will only be undertaken if the status of the land changes

(e.g. if a new receptor is introduced through the planning process). To date we have undertaken detailed initial investigation on 3 sites, non of which required further assessment. To date, no Contaminated Land has been identified within the borough.

#### **5.4 Resources and Timescales**

The timescales involved in completing the above stages are dependent upon the resources provided. Like all other local authorities across the UK, Broxtowe Borough Council has had to find significant savings over recent years. This has led to fewer resources and an ever increasing workload. The Council now has the equivalent of approximately 0.2 officers dedicated solely to the proactive work of Contaminated Land inspection. Whilst steady progress is being made, the Council has focussed its efforts and officer resources into dealing with land contamination issues via the planning regime and this remains to be where resources are directed. This has led to a large number of sites being investigated at the cost of the landowner/developer rather than the Council.

Historically funding for the investigation and remediation of sites under Part 2A was made available via the Department for Environment, Food and Rural Affairs (DEFRA) Contaminated Land Capital Grants Scheme. This funding ceased in 2013 and therefore the cost of investigating and remediating sites where necessary under Part 2A is likely to fall on the Borough Council.

## **6.0 PROCEDURES**

Procedures have been drawn up to describe how Contaminated Land issues will be handled within the Council. This section also details the levels of service the community can expect from the Council in dealing with these issues.

### **6.1 Information and Complaints**

The Council may receive complaints or information regarding Contaminated Land. Upon investigation, information may be found which impacts on the approach to the inspection and classification of land, as laid down in this document.

#### **6.1.1 Complaints**

A complaint regarding land suspected to be contaminated will be dealt with following the same procedure as currently used by the Environmental Health team to deal with service requests.

All complainants can expect: -

- their complaint to be logged and recorded
- to be contacted by an officer regarding their complaint within 5 working days
- to be kept informed of progress towards resolution of the problem.

Every effort will be made to resolve complaints quickly and efficiently. The legislative framework does, however, present a number of obstacles to speedy resolution of problems: -

- a. proof of a viable pollutant linkage before any formal designation as Contaminated Land is permissible, this might only be possible following detailed investigation
- b. prior consultation with interested parties before designation as Contaminated Land

- c. a statutory minimum three month period between designation of Contaminated Land and serving of a remediation notice; and
- d. the requirement for the enforcing authority to make every effort to identify the original polluter of the land (“Class A Person”).

The regulations allow conditions (b) and (c) to be waived in extreme cases, but not conditions (a) and (d).

### **6.1.2 Confidentiality**

All complainants will be asked to supply their names and addresses and, if appropriate, the address giving rise to the complaint. The identity of the complainant will remain confidential.

The only circumstances in which this information might be made public would be in the case of a remediation notice being appealed in a court of law and, an adverse effect on the complainant’s health was an important reason for the original Contaminated Land designation.

## **6.2 Information Evaluation**

A risk-based approach will be taken throughout the evaluation process, from initial screening, to detailed inspection of sites.

### **6.2.1 Prioritisation process**

Potentially Contaminated Land shall, prior to detailed investigation, be listed and categorised using a risk screening methodology. This will utilise all available data regarding potential sources, pathways and receptors.

The risk screening methodology will determine individual scores for the potential source and for the various pathway/receptor linkages. Five receptor types will be assessed:

- (i) human beings
- (ii) ecological systems
- (iii) property in the form of buildings
- (iv) property in a form other than buildings

- (v) controlled waters

The methodology for calculating the individual scores will be by assignment of numerical values.

After the individual scores are determined for the potential source and each of the various pathway/receptor linkages, scores will be calculated for each source/pathway/receptor group. In addition, an overall score will be calculated using weighting factors selected to reflect the relative importance of each of the receptor types. For example, the human receptor category is assigned a higher weighting than the property receptor categories. The scoring methodology will reflect the concept that a low (or zero) score value will result from a situation where one or more of the three elements of the pollutant linkage does not exist.

These scores can then be used to determine the relative ranking of sites. A lower relative score will signify a lower potential for a pollutant linkage. Conversely, a higher relative score will signify greater potential. This ranking will be used to assist in identifying those sites of higher priority for further detailed investigation. Site walkovers will then be utilised in order to further prioritise sites for further inspection.

### **6.2.2 Site specific assessment**

Following detailed scientific review and consultation, the Environment Agency has revised the Contaminated Land Exposure Assessment (CLEA) framework reports and software. New software was released in 2009 and the previous versions of Contaminated Land Report (CLR) numbers seven through to ten and previously published Soil Guideline Values (SGV's) have been withdrawn as they no longer reflect the updated approach to human health risk assessment. The publication of new SGV's or Generic Assessment Criteria (GAC) is on going.

The new CLEA model or an approved alternative method must be used in site specific risk assessments where appropriate.



Risk assessment may also be required for substances not covered by the CLEA risk assessment model. In these cases, it will be necessary to use alternative standards derived from an approved quantitative risk assessment method.

### **6.2.3 Risk assessment for controlled waters**

Advice will be sought from the Environment Agency on the risk assessment if controlled waters are the receptor in a particular pollutant linkage. It is anticipated that risk assessments and remediation will be carried out in accordance with relevant Environment Agency guidance.

## **7.0 GENERAL LIAISON AND COMMUNICATION**

This section details the contact points, consultation and liaison arrangements between the Council, other Statutory bodies, owner-occupiers, other interested parties and the wider community.

This consultation allows people to give their views and to direct the Council to areas they are concerned about. It also allows the Council to notify interested parties of the need to exchange information and invite involvement in the review and assessment process.

### **7.1 Liaison with Statutory and Non-statutory Bodies**

In June 2000 the Nottinghamshire Contaminated Land Sub Group was instigated. This is a grouping of officers from the District and Borough Councils in Nottinghamshire and the Environment Agency who are responsible for enforcement of the contaminated land regime.

The group has since merged with the Nottinghamshire Pollution Working Group and meets regularly to discuss consistency of approach and encourage close liaison between neighbouring authorities. The group will continue to provide the means by which informal liaison between neighbouring authorities over issues such as cross border sites, and strategy implementation and review can take place.

### **7.2 Risk Communication**

The Council will be using a risk based approach to the identification of Contaminated Land. It will additionally be obtaining and recording large amounts of risk based data on land throughout the borough. This information will be available on request subject to the exclusions detailed in Section 10.

In communicating this information the Council will ensure that:

- it is relevant to the group requesting the information
- it is clear, consistent and concise

- it is not too technical
- it allows equal access to all information
- officers are available for discussions, meetings, etc.
- all relevant partners are included
- feedback will be invited
- risk based information will be communicated objectively and the sources of those assessments are identified
- the information and decision linking process is timely, transparent, objective and consistent.

## **8.0 PROGRAMME FOR INSPECTION**

This section details the priorities and programme for the detailed inspection of potentially Contaminated Land. However, if at any stage the Council become aware of any sites requiring urgent review this will be carried out as a matter of course.

### **8.1 Arrangements for Carrying Out Detailed Inspection**

Detailed investigation is to confirm that the pollutant linkage identified is:

- resulting in significant harm (or the significant possibility of such harm) being caused to the receptor; or
- resulting in (or likely to result in) the pollution of controlled waters

If either of these are confirmed then the land becomes Contaminated Land and the pollutant linkage becomes significant.

The detailed investigation of potentially contaminated land is invariably a very time consuming and expensive process. It must be emphasised that all investigations will be carried out on an incremental basis and terminated immediately if it is clear that no significant pollutant linkage exists.

In cases where imminent risk of serious harm or serious pollution of controlled waters has been confirmed, the Council will authorise urgent action.

#### **8.1.1 Obtaining desk top information**

The suggestion that land may be contaminated can have a significant impact on the way others view it, and in particular, its market value. The Council will therefore seek to obtain as much information as possible about a suspected site without causing unnecessary alarm. This may involve detailed inspection of historical data in its possession such as Planning and Building Control files.

It will also involve consultation with others who may possess information such as:

- The Environment Agency

- Department for Environment, Food and Rural Affairs
- The Health & Safety Executive
- Developers
- Previous occupiers.

Once sufficient information has been obtained which confirms a pollutant linkage does not exist, or, if one does exist, it is not significant, then the investigation will cease and no further action will be taken. It may be, however, that circumstances will be identified whereby a significant pollutant linkage could occur at some time in the future. In this case arrangements will be made to keep the situation under review.

### **8.1.2 Inspection of land**

Where evaluation of all available data suggests a significant pollutant linkage may exist, it may be necessary to visit the site and carry out some form of on site testing, or take away samples for analysis. The utmost discretion will be used at all times to minimise the effect on occupiers of the land and that no unnecessary damage or harm is caused to any aspect of the environment, including the historic environment.

In every case this will be carried out by a suitable person, adequately qualified to undertake the work. The Council may, from time to time, employ external consultants to carry out site investigation works. The appointment of external consultants will be carried out in accordance with the Council's procedures and technical guidance.

Intrusive investigations will be carried out in accordance with appropriate health and safety and technical procedures to ensure:

- (i) they are effective
- (ii) do not cause any unnecessary damage or harm; and
- (iii) do not cause pollution of controlled waters.

To ensure the most appropriate technical procedures are employed the Council will have regard to the most up to date Government guidance available.

### **8.1.3 Powers of entry**

Section 108 of the Environment Act 1995 gives the local authority power to authorise, in writing, suitable persons to investigate potentially Contaminated Land. These powers are extensive and will be considered in detail with the Council's Legal department prior to any resisted entry being attempted. It should be noted that these powers are not available to the Environmental Agency. The powers with which a person may be authorised to exercise include:

- To enter at any reasonable time (or in urgent cases, at any time, if need be by force) any premises/land to make such examination and investigations as necessary
- To take samples, photographs, carry out tests, install monitoring equipment etc.

At least seven days notice must be given to residential occupiers and to occupiers of land where heavy plant is to be used. Consent must be obtained to enter from the occupier, or failing that, a warrant obtained under Schedule 18 of the Act.

The Council will not use these powers to obtain information about the condition of land, where:

- it can obtain the information from third parties without the need for entering the site; or
- a person offers to provide the information within a reasonable and specified time, and does so.

### **8.1.4 Land which may be a Special Site**

Where the Council is aware that land it intends to investigate would, if declared Contaminated Land, be a Special Site, it will notify the Environment Agency in writing requesting any information it may have on the land and the likelihood of

pollutant linkage(s). According to the wishes of the Environment Agency, it may be that a joint investigation will be undertaken.

Where the Environment Agency (or their agents) wish to carry out formal investigation on behalf of the Council their officers will need to be appointed as suitable persons. The Environment Agency do not have the power under Part 2A to investigate land which may be Contaminated Land without the authorisation of the Council.

### **8.1.5 Determining if land is Contaminated**

There are four possible grounds for determining if land is contaminated:

1. Significant harm is being caused
2. There is a significant possibility of significant harm being caused
3. Pollution of controlled waters is being caused
4. Pollution of controlled waters is likely to be caused.

In making any determination the Council will take all relevant information into account, carry out appropriate scientific assessments, and act in accordance with the Statutory Guidance. The determination will identify all three elements of the pollutant linkage and explain their significance.

### **8.1.6 Where the significance of a pollutant linkage cannot be adequately determined**

Situations may arise where, based on the information available, it is not possible to determine whether a pollutant linkage is significant in accordance with the Statutory Guidance. In such a case the Council will determine that, on the balance of probabilities, it would seem the land does not fall within the statutory definition of Contaminated Land, but the situation will be kept under review and reopened at any time if new information becomes available.

Similarly, inspection may identify contamination that would only form a significant pollutant linkage should new receptors be introduced. In such circumstances this information will be carefully recorded and the site monitored where the

introduction of relevant new receptors seems likely. Should such a site be identified for future development the information obtained during the investigation will be made available to the planning officer and the developer.

## **8.2 Written Record of Determination and Formal Notification**

Once a site land has been determined to be Contaminated Land, the Council will prepare a written record to include:

- a description of the pollutant linkage(s) confirmed
- a summary of the evidence which confirms the existence of the pollutant linkage(s)
- a summary of the risk assessment(s) upon which the pollutant linkage(s) were considered to be significant
- a summary of the way the requirements of the Statutory Guidance were satisfied.

The Council will then formally notify in writing the following relevant parties that the site has been determined, to include:

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

At the notification stage it may not be possible to identify all the relevant parties, particularly the appropriate persons. The Council will, however, act on the best information available to it and review the situation as more information comes to light.

If the Council is of the opinion that the Contaminated Land is a Special Site it will inform the Environment Agency of that decision. The Environment Agency will then consider whether it agrees that the land should constitute a Special Site. If it does not agree it will notify the Council and the Secretary of State within 21 days with a comprehensive statement explaining its reasons. The Council will then refer the decision to the Secretary of State.



If the Environment Agency agrees with the Council, or it fails to notify the Council within 21 days that it disagrees, the land will be designated a Special Site. The responsibility for securing remediation then passes to the Environment Agency, though the Council must complete the formal notification process.

The legislation and Statutory Guidance has been designed to try to encourage voluntary remediation (without the need for enforcement action). The formal notification procedure commences the process of consultation on what remediation might be most appropriate. To aid this process the Council will provide as much information to the relevant parties as possible.

This will include:

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

The appropriate persons will also be provided with written explanations of the test for exclusion and apportionment.

It may be at this stage that the Council will need further information on the condition of the site to identify whether any additional significant pollutant linkage(s) exist. If that is the case an informal attempt will be made to obtain this information from the appropriate persons already identified.

All relevant information will be held on the Public Register of sites determined as Contaminated Land (see Section 10.2.1).

### **8.3 Liability and Enforcement**

Land may be declared Contaminated Land upon the identification of only one significant pollutant linkage. Full liability cannot be determined until all significant pollutant linkage(s) on the site have been identified. When all significant pollutant linkage(s) have been identified the procedure relating to the apportionment of liability must commence. This has five distinct stages as follows:

- identifying potential appropriate persons and liability groups
- characterising remediation actions
- attributing responsibility to liability groups
- excluding members of liability groups
- apportioning liability between members of a liability group.

These procedures are complex and cumbersome. The process commences with the establishment of 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 speaking the polluters, but also included are persons who, "knowingly permitted a pollutant to be in, on or under the land". This includes developers who leave contamination on a site which subsequently results in the land being declared Contaminated Land.

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

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

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

Sites where reasonable enquiries have failed to find a Class 'A' or Class 'B' person, or where the persons that are found are exempt from liability for specified reasons, will become 'orphan' sites. In such cases Broxtowe Borough Council, as the enforcing authority, will have to bear the cost of any necessary remediation in accordance with the Statutory Guidance.

### **8.3.1 Apportionment of costs**

Generally speaking the members of a liability group will have the total costs falling on the group as a whole apportioned between them. It may also be necessary to apportion costs between liability groups. There are three basic principles, which apply to exclusion and apportionment tests:

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

### **8.3.2 Limitation on costs to appropriate person(s)**

There are six tests specified to identify Class 'A' groups who should be excluded from liability. These will be applied in sequence and separately for each pollutant linkage.

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

When the Council has apportioned the costs of each remediation action, and before serving remediation notices, it will consider whether any of those liable may not be able to afford it. If, after taking into consideration the Statutory Guidance, it decides that one or more of the parties could not afford the costs, it will not serve a remediation notice on any of the parties. The Council will instead, consider carrying out the work itself and produce and publish a remediation statement

### **8.3.3 The enforcement process**

Before remediation notices are served the extensive consultation process will be completed and ample encouragement given to arrive at an informal solution. The Council will do all in its power to consult the appropriate person, owners, occupiers etc. about their views on the state of the land. This could be a difficult and most protracted process and cause delay. Where a housing estate is affected for example, it may be that house owners, land owners, developers, lenders, insurers, surveyors, geotechnical engineers, residents groups, etc will have differing views according to their position.

Remediation notices are served only as a last resort (notwithstanding urgent cases), and then only after this lengthy consultation process has been exhausted. Notices will be authorised after two tests are satisfied:

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

If these are met the Council will serve a Remediation Notice on each appropriate person. Notices cannot be served less than three months after formal notification that the land is contaminated unless the urgent action is deemed necessary (where there is imminent risk of serious harm).

### **8.3.4 Specifying remediation**

The Council will specify in the Remediation Notice the measures to be carried out. These will be both appropriate and cost effective employing what the Statutory Guidance terms best practicable techniques. The aim of the remediation will be to ensure that the land is no longer contaminated, taking the shortest and lowest cost route. This means in most cases attention will be focussed on breaking the pathway, rather than removing contaminant or receptor. Every endeavour will be made to ensure that remediation works do not cause unnecessary damage or harm to any aspect of the environment, including the historic environment.

The reasonableness of the requirements are, however, a concept which is considered at some length in the guidance. It is determined in relation to the cost of carrying out the remediation against the cost of failing to (i.e. the costs, or potential costs, resulting from the continuing pollution).

### **8.3.5 Remediation by the Council**

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

- where urgent action is required (see below)
- where no appropriate person can be found
- where one or more appropriate persons are excluded (on grounds of hardship)
- where the Council has made an agreement with the appropriate person that it should carry out the remediation
- in default of a remediation notice.

### **8.3.6 Urgent Action**

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 the forced entry into the premises.

The Council will undertake 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 Special Site the Council will determine the land to be Contaminated Land in accordance with the statutory procedure, and then notify the Environment Agency as they will then be responsible for the remediation. In appropriate cases the Council will seek to recover costs of remediation works it has completed.

## **9.0 REVIEW MECHANISMS**

This section describes instances when inspections will occur outside the general strategic framework, circumstances under which previous inspection decisions should be reviewed and measures to be taken to ensure the strategy remains effective and current.

### **9.1 Triggers for Undertaking Non-routine Inspections**

The Strategy recognises that there may be occasions where inspections have to be undertaken outside of the general strategic framework. Triggers for undertaking non-routine inspection will include:

- introduction of new receptors – (e.g. where a new protected ecosystem is designated, or there is persistent trespass on a site which otherwise does not have a sensitive receptor)
- identification of localised health effects – which appear to relate to a particular area of land
- responding to information from other statutory bodies, stakeholders, or other interested parties, which reveal that the site requires urgent action.

While these occurrences may trigger non-routine inspections, they will not be allowed to significantly interfere with the milestones laid down in the general strategic framework.

### **9.2 Triggers for Reviewing Inspection Decisions**

There may also be occasions when the findings of previous inspection decisions should be reviewed. This might occur, for example, if there were:

- significant changes occur in legislation
- establishment of significant case law or other precedent
- revision of guideline values for exposure assessment.

It is important that all decisions are made and recorded in a consistent manner that will allow efficient review.

### **9.3 Reviewing the Strategy**

The Council has a duty to keep the Strategy under periodic review and feels that it will be appropriate to review it periodically. Should there be significant changes to guidance and policy then an unscheduled review may be necessary.

The next full review date will January 2023.

## **10.0 INFORMATION MANAGEMENT**

### **10.1 General Principles**

A large amount of information, in the form of reports, maps, letters and documents will be required to enable the Council to undertake its inspection duties. This data will come from a variety of sources and many different formats. The management of data concerning the environment is covered under The Environmental Information Regulations 2004, whilst Part 2A of the Environmental Protection Act 1990 covers the information required for the register of contaminated land.

### **10.2 Information Content**

#### **10.2.1 The Public Register**

The public register is located in: -

Public Protection  
Broxtowe Borough Council  
Council Offices  
Foster Avenue  
Beeston  
Nottingham NG9 1AB

It is available for inspection by prior appointment during normal office hours Monday to Friday.

The public register is intended to act as a full and permanent record, open for public inspection, of all regulatory action taken by the Council in respect of the remediation of Contaminated Land, and will include information about the condition of that land.

The register, maintained by the Council, will contain full particulars of the following matters, in a readily accessible format. All information will be added to the register as soon as it is reasonably practical to do so:



- Remediation notices served
- Appeals against remediation notices
- Remediation declarations
- Remediation statements
- Appeals against charging notices
- Designation of Special Sites
- Notification of claimed remediation
- Convictions for failure to comply with a remediation notice.
- Guidance issued by Environment Agency concerning Contaminated Land
- Other environmental controls
- Information on Contaminated Land for which the Council has responsibility.

### **10.2.2 Copying Entries between Local Authorities**

For most areas of Contaminated Land, the Council will be the enforcing authority. However, for particular areas of Contaminated Land this may not be the case. This applies if:

- (a) the Contaminated Land has been designated a Special Site, in which case the Environment Agency is the enforcing authority; or
- (b) the land has been identified as Contaminated Land by the Council for an adjoining or adjacent area, as a result of significant harm or the pollution of controlled waters which might be caused in that Council's own area.

Where this is the case, the enforcing authority will copy all entries it makes into its own register for the land in question, to the Council in whose area the land is actually situated.

## **10.3 Confidentiality of Register Information**

### **10.3.1 Exclusion on the grounds of national security**

The Council will not include any information on its register if, in the opinion of the Secretary of State, its inclusion would be against the interests of national security. The Secretary of State can give directions to the Council specifying information, or descriptions of information, which are to be excluded from any register or referred to the Secretary of State for his determination.

### **10.3.2 Exclusion on the grounds of commercial confidentiality**

The Council will not, without the relevant person's permission, include any information on its register which:

- (a) relates to the affairs of any individual or business; and
- (b) is commercially confidential to that individual or the person carrying on that business.

However, information cannot be excluded from the register solely on the basis that its inclusion might provide information to a prospective buyer of the land, thereby affecting the sale or the sale price.

Further guidance can be found in Part 2A with reference to:

- inclusion of information that is in the public interest
- communication procedures with relevant parties and appeals processes
- register content for excluded material
- timescales for inclusion of previously excluded information.

## **10.4 Information and Liaison with other Council Departments**

### **10.4.1 Development control and planning policy/local plans**

Land contamination, or the possibility of it, is a material consideration for the purposes of town and country planning. This means that the Council has to consider the potential implications of contamination both when it is developing its

local plan and when it is considering individual applications for planning permission.

The local planning authority will satisfy itself that the potential for contamination is properly assessed, and that any development incorporates any necessary remediation. Where necessary, any planning permission will include appropriate site investigation and remediation conditions. Under the “suitable for use” approach, risks should be assessed, and remediation requirements set, on the basis of both the current use and circumstances of the land and its proposed new use.

There may be many sites within the borough that, owing to their current uses, are not considered to be Contaminated Land as defined by the Act. Should the use of the site or its surrounding area change, the status of the pollutant linkage may alter for that site. These conditions will also be taken into account in the planning stage with a clear procedure to assist Planning Officers and Environmental Health Officers.

Procedures will be introduced to ensure that: -

- when a planning application is received, that has the potential to alter a sites status as regards Contaminated Land, the Environmental Health section will be consulted
- a consultation will automatically be generated if the proposed development lies within or bounds a site identified on the Contaminated Land Register
- if it is known, or strongly suspected, that a site is contaminated to an extent that would adversely affect the proposed development or infringe statutory requirements, an investigation of the hazards by the developer and proposals for remedial action will normally be required before the application can be determined by the planning authority. Any subsequent planning permission may need to include conditions requiring certain remedial measures to be carried out

- in cases where there is only a suspicion that the site might be contaminated, or where the evidence suggests that there may be only slight contamination, planning permission may be granted subject to conditions that development will not be permitted to start until a site investigation and assessment have been carried out and that the development itself will incorporate any remedial measures shown to be necessary. (See Department of the Environment Circular 11/95 'The Use of Conditions in Planning Permission' – Development of Contaminated Sites; Sections 74 and 75).

## **10.5 Provision of Information to the Environment Agency**

### **10.5.1 Council inspection strategies**

The Council is required to provide the Environment Agency with a copy of its inspection strategy to identify Contaminated Land in its area. The Environment Agency will not publish the detail of the strategy, but will summarise overall findings and highlight the proportion of authorities that have delivered strategies.

### **10.5.2 Determination, remediation and regulatory activity**

The Council is also required to notify the Environment Agency when a site is determined to be Contaminated Land. This information is required to enable the Environment Agency to compile reports and, also to assist in deciding whether or not it should provide site-specific advice on the site.

Where the Environment Agency is not the regulator of the site and a remediation notice is not issued, they would require information for each site from the Council. Information on the types of remediation would normally be obtained from remediation notices, statements and declarations issued. These will be copied to the Environment Agency as and when they are issued.

Information on the regulatory activity of the Council is not required by the Environment Agency for operational reasons. However, the Environment Agency will be supplied with summary information for the report, to assess the regulatory effort being directed at Part 2A nationally.

## **10.6 Information Storage Systems**

### **10.6.1 Geographical Information System (GIS)**

A GIS is a digital system for the storage, manipulation, analysis and visualisation of spatial data. At the heart of a GIS is a database that allows the spatial data (information for which a grid reference can be given e.g. maps) to be linked to attribute data (information about what is at a particular point or area).

Datasets containing both spatial and attribute data can be brought together into a common system, simplifying their analysis. This integration between databases and maps means that a GIS is a powerful tool for the analysis of environmental data.

The Council will be entering information about land as it is investigated on to a GIS.

## **10.7 Dealing with Requests for Environmental Information**

As a consequence of the investigation of many areas of land the Council will hold environmental information that is not released through the public register. Requests for this information may arise from landowners, developers, consultants and members of the public. The information will be made available unless there are “compelling and substantive reasons to withhold it”. The Environmental Information Regulations, 1992 list these conditions (see paragraph. 9.8.1).

Requests for information will be responded to within one month.

There is provision within the Contaminated Land (England) Regulations 2000 for the Council to charge for the supply of information other than that which is on the register. This charge will reflect the resource costs, staff time spent searching, retrieving, reviewing, processing and preparing the information, plus fixed costs such as royalty charges and postage.

### **10.7.1 Confidentiality of Environmental Information**

The Environmental Information Regulations 2004 outline those circumstances where information *may* be classed as confidential as being:

- International Relations, National defence, Public security
- Legal Proceedings
- Confidential deliberations, internal communications
- Unfinished documents
- Commercial confidentiality.

Those circumstances where requested information *must* be treated as confidential are given as:

- Statutory restrictions
- Personal information where disclosure has not been consented to
- Volunteered information where disclosure has not been consented to
- Potentially damaging to the environment.

In April 2000 a new four-part question (Question 16A) was added to the standard land search enquiries in part 1 of form CON29 (Enquiries of Local Authorities regarding Contaminated Land). In response to this question, information will only be recorded in any of its parts when a site has been identified as Contaminated Land according to the current guidance.

### **10.7.2 Data Protection Act 1998**

The Data Protection Act 1998 applies to all personal data that is processed manually and automatically. It seeks to give some protection to persons (known as data subjects) in respect of three potential dangers:

- the use of personal information that is inaccurate, incomplete or irrelevant
- the possibility of access to personal information by unauthorised persons
- the use of personal information in a context or for a purpose other than that for which the information was collected.

Personal data is defined as data consisting of information which, relates to a data subject who can be identified from the information, or from that and other

information in the possession of the data user (the Council). Every individual member of the public can be considered a data subject.

The implications of holding information relating to the condition of potentially polluted property, and the persons associated with that property and pollution, could be significant. The matter will therefore be considered in detail with the Council's Solicitor and Data Protection Administrator before records begin to be compiled.

## 10.0 GLOSSARY OF TERMS

**Class A person:** a person who is an '*appropriate person*' by virtue of section 78F(2) (that is, because he has caused or knowingly permitted a pollutant to be in, on or under the land).

**Class B person:** a person who is an '*appropriate person*' by virtue of section 78F(4) or (5) (that is, because he is the owner or occupier of the land in circumstances where no Class A person can be found with respect to a particular remediation action).

**Contaminant (Source):** a substance which is in, on or under the land and which has the potential to cause harm or to cause pollution of '*controlled waters*'.

**Contaminated land:** 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.

**Controlled waters:** defined in section 78A(9) by reference to Part III (section 104) of the Water Resources Act 1991; this embraces territorial and coastal waters, inland fresh waters, and ground waters.

**Current use:** any use which is currently being made, or is likely to be made, of the land and which is consistent with any existing planning permission (or is otherwise lawful under town and country planning legislation). This definition is subject to the following qualifications:

(a) the current use should be taken to include any temporary use, permitted under town and country planning legislation, to which the land is, or is likely to be, put from time to time;



(b) the current use includes future uses or developments which do not require a new, or amended, grant of planning permission;

(c) the current use should, nevertheless, be taken to include any likely informal recreational use of the land, whether authorised by the owners or occupiers or not, (for example, children playing on the land); however, in assessing the likelihood of any such informal use, the local authority should give due attention to measures taken to prevent or restrict access to the land; and

(d) in the case of agricultural land, however, the current agricultural use should not be taken to extend beyond the growing or rearing of the crops or animals which are habitually grown or reared on the land.

**DETR:** Department of Environment, Transport and the Regions

**EA:** The Environment Agency

**GIS:** Geographical Information System

**Groundwater:** any water contained in underground strata, wells & boreholes.

**HSE:** Health and Safety Executive

**Harm:** 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.

**IPPC:** Integrated Pollution Prevention and Control

**MOD:** Ministry of Defence

**Pathway:** 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:** a contaminant which forms part of a 'pollutant linkage'.

**Pollutant linkage:** the relationship between a '*contaminant*', a '*pathway*' and a '*receptor*'.

**Pollution of controlled waters:** the entry into '*controlled waters*' of any poisonous, noxious or polluting matter or any solid waste matter.

**Receptor:** either:

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

(i) is in a category listed in Table A in Chapter A as a type of '*receptor*', and

(ii) is being, or could be, harmed, by a '*contaminant*'; or

(b) '*controlled waters*' which are being, or could be, polluted by a '*contaminant*'.

**Remediation:** generally accepted as being the carrying out of works to prevent or minimise effects of contamination. In the case of this legislation the term also encompasses assessment of the condition of land, and subsequent monitoring of the land.

**Risk Assessment:** the study 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.

**Significant harm:** defined in section 78A(5). It means any harm which is determined to be significant in accordance with the Statutory Guidance in Chapter A (that is, it meets one of the descriptions of types of harm in the second column of Table A of that Chapter).

**Special site:** any '*contaminated land*' -

(a) which has been designated as such a site by virtue of section 78C(7) or 78D(6)...;and

(b) whose designation as such has not been terminated by the appropriate Agency under section 78Q(4)...".

The effect of the designation of any Contaminated Land as a Special Site is that the Environment Agency, rather than the local authority, becomes the enforcing authority for the land.

**Statutory Guidance:** Contaminated Land Statutory Guidance, DEFRA 2012

## **11.0 REFERENCES**

- Contaminated Land Statutory Guidance, DEFRA 2012
- The Environmental Protection Act 1990: Part 2A
- DETR Circular 02/2000
- The Environment Act 1995
- The Environmental Information Regulations, 2004
- The Contaminated Land (England) Regulations 2000
- The Use of Conditions in Planning Permissions; Circular 11/95; DoE 1995
- The Data Protection Act, 1988
- Broxtowe Borough Council Corporate Plan 2016-2020
- Broxtowe Borough Council Part 2 Local Plan 2017-2028
- Broxtowe Borough Enforcement Policy 2017
- Broxtowe Borough Economic Regeneration Strategy 2017-2021