



BOROUGH of POOLE
Environmental and Consumer Protection Services

CONTAMINATED LAND STRATEGY

Second review – September 2016

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EXECUTIVE SUMMARY

Part 2A of the Environmental Protection Act (EPA) 1990 was introduced in 2000 as a means of dealing with unacceptable risks to human health and the environment arising from land contamination. The legislation created a legal framework by which polluters can be held accountable retrospectively for their actions, and a means by which already developed sites can be investigated and remediated. In addition to this the introduction of the framework led to an increase in awareness of the risks from land contamination, and the production of guidance to assess the safety of new developments on potentially contaminated sites.

Since Part 2A's introduction the Borough of Poole (BoP) have used the legislation and guidance to investigate a total of 2.75km² of potentially contaminated land, containing approximately 3500 residential and business addresses, both through the Part 2A and planning regimes. Sites which have been investigated include landfill sites, potteries, chemical works, gasworks, and former petrol stations. This has resulted in the remediation of 1km² of contaminated land and the protection of 1600 households and business premises that were at risk of exposure to potentially harmful contamination.

This strategy has been written to update previous strategies produced in 2001 and 2006, it also reflects the work already achieved, experience gained and changes in statutory guidance and economic factors. The revised strategy sets out the approach the Borough of Poole will adopt to meet the purpose of:

Protecting the health and environment of Poole residents and businesses where living or working on or affected by potential contaminated land.

This 2015 strategy has a greater emphasis on encouraging voluntary actions to investigate and clean up contaminated land by the owners and developers of such land, supported by the expertise and knowledge held within Environmental and Consumer Protection Services (ECPS).

The four main methods by which we will meet our purpose are:

1. Continued review of contaminated sites under Part 2A of the EPA 1990

Detailed inspection of high risk sites undertaken by ECPS under the above legislation has been funded through government funding schemes. Due to the removal of this funding, and successful investigation of the highest risk sites already achieved, there will be a change in approach and focus under this legislation. The Borough of Poole will continue to meet its statutory functions whilst encouraging voluntary actions from stakeholders and ensuring that any inspection work undertaken by the Borough is proportionate, cost effective and contributes directly to achieving our purpose.

2. Supporting the investigation and remediation of contaminated sites through the planning regime.

Since 2000 the majority of sites which have been investigated and cleaned up have been through the planning regime. The National Planning Policy Framework (NPPF) was introduced in 2012 and requires that planning decisions should ensure that new and existing development is not put at unacceptable risk from contaminated land. ECPS will continue to provide expert knowledge and support to planners and developers to ensure suitable assessments and remediation of contaminated sites are completed. Appropriate assessment of potential contaminated sites is an essential part of the development process in order to ensure safe development. However, through the provision of knowledge and support, ECPS can enable time and cost effective actions to take place therefore limiting financial burdens on developers and expediting the development process as far as possible

3. Provision of expertise to assist in the provision of council wide services

The knowledge and expertise held within ECPS will continue to be used to support the provision of a number of services across the Council involving land subject to historically contaminating land. The provision of detailed site information, guidance and interpretation of data enables the supply of safe services to BoP residents and businesses.

4. Provision of conveyancing assistance and environmental searches

Poole has a legacy of former industrial and commercial land uses. In most cases there will be little or no risk associated with living on, or near to land that has had such a use. Inevitably, questions about the risks at these sites frequently come up through the conveyancing process. Information held by the Council relating to contamination is provided to individuals, companies or their representatives to assist in property decisions and to facilitate the house buying process. A charge is made for the provision of such information in accordance with the Environmental Information Regulations.

INTRODUCTION

Since April 2000, local authorities have had a duty to manage contaminated land issues within their areas. This duty was conferred by Part 2A of the Environmental Protection Act 1990 and associated statutory guidance. The Act gives local authorities the lead role in dealing with contaminated land and requires each authority to publish a written strategy setting out how it will carry out its duties.

The Borough of Poole published a strategy initially in 2001, which was updated in 2006. This is the second revision of the strategy and explains how the Council will implement the contaminated land regime from 2015 onwards, taking account of the latest statutory guidance, experience over the past decade, and the resources available to the Council.

This document sets out a strategy for how the Borough of Poole will respond to all demands relating to contaminated land – both through Part 2A of the EPA, the planning and redevelopment system, and by encouraging voluntary remediation.

1.0 REGULATORY AND POLICY CONTEXT

Central Government policy in regards to contaminated land was introduced to:

- provide measures to find and deal with existing contaminated land; and
- provide measures to prevent more contaminated land being created.

This strategy deals with the first aim, the second aim is addressed through policy relating to industrial pollution control, waste management and the storage of chemicals and hazardous materials.

This document is written with the Borough of Poole values at the heart of the strategy

1. We put residents, including children and young people, at the heart of everything we do
2. We have a can-do attitude
3. We work in a joined-up way with communities, businesses, partners and other service users
4. We use public money to achieve the greatest benefit where it is needed
5. We learn from experience and are empowered to use our knowledge and skills to improve

Our work in connection with contaminated land also particularly supports the key priorities of:

- Promoting the health and well-being of our population, especially the most vulnerable

- Protecting and enhancing Poole’s beautiful environment in a sustainable way so that it is a great place to live, work and play

2.0 PURPOSE, AIMS, OBJECTIVES AND PRIORITIES:

2.1 Purpose/Aim:

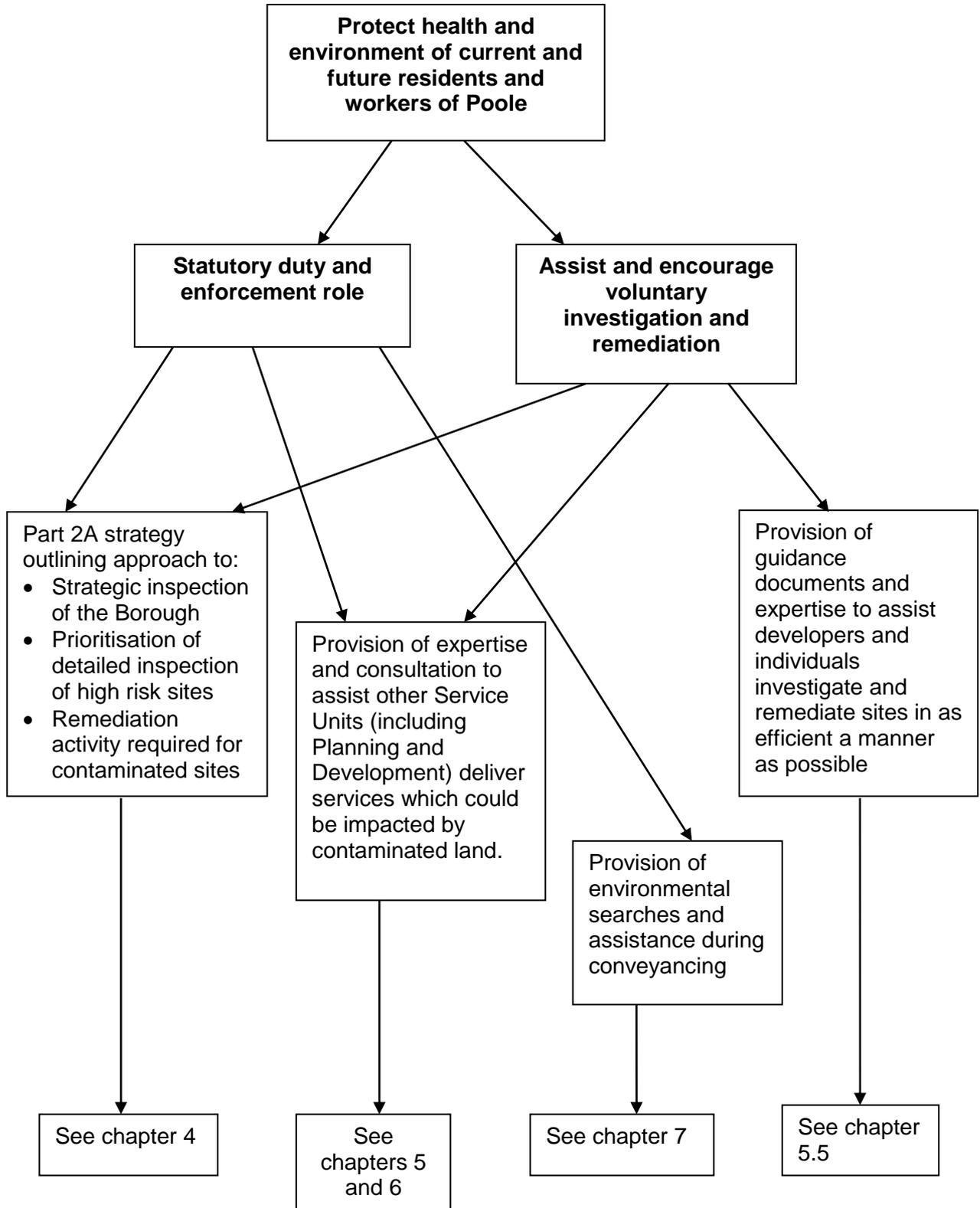
To protect the health and environment of Poole residents and businesses living or working on or affected by potential contaminated

Wherever possible this purpose will be achieved through voluntary remediation and/or the redevelopment or regeneration of sites. The approach to achieving this purpose that is outlined within this strategy aims to minimise burdens on individuals, business and the wider community while ensuring that unacceptable risks are dealt with effectively within the context of Part 2A of the Environmental Protection Act 1990.

2.2 Objectives:

- Ensure residents and workers are not exposed to unacceptable levels of contamination
- Only use enforcement to achieve the aim where absolutely necessary
- Support Borough of Poole projects through the provision of council wide expertise to all service units
- Support local regeneration and businesses through an active supportive role in the planning process and provision of expertise to developers and businesses
- Provide the means and expertise to assist residents to protect themselves from potential contamination risks
- Facilitate the removal of obstacles in the sale of properties affected by historical potentially contaminating land uses

Box 1: How ECPS propose to meet aims and objectives.



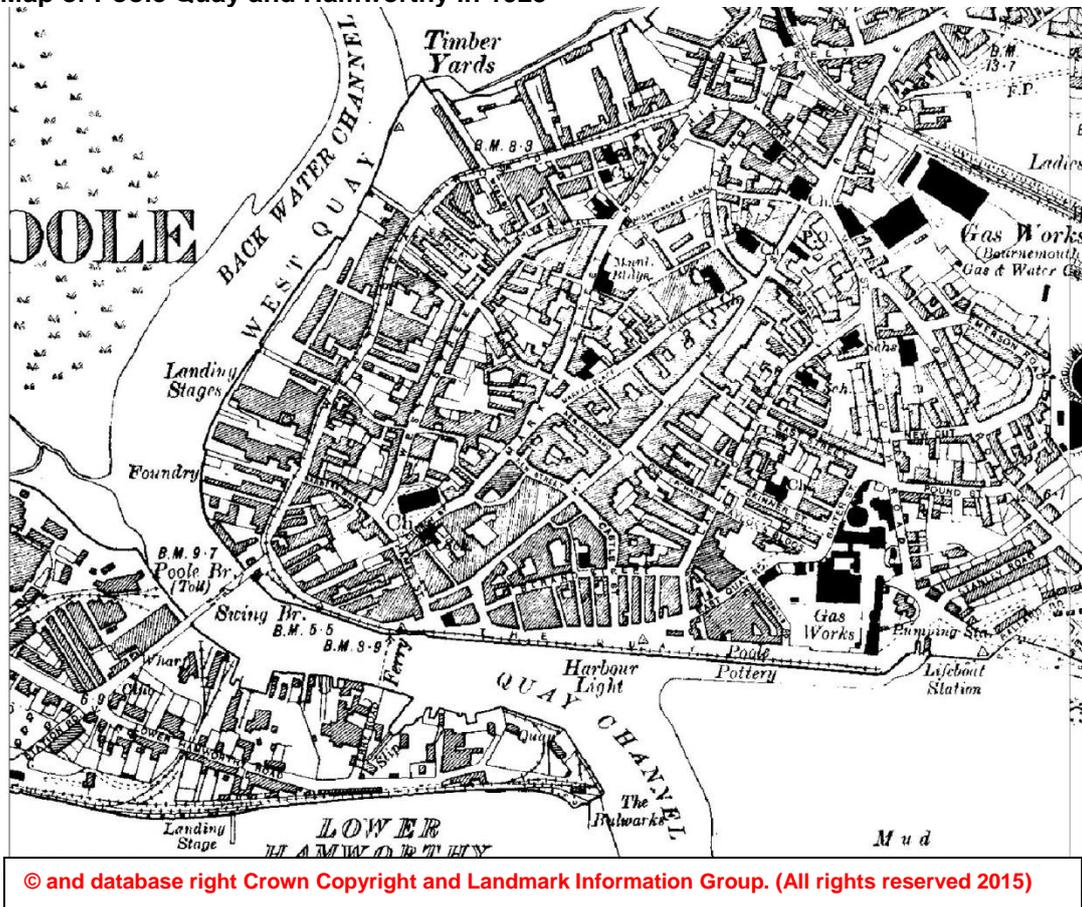
3.0 WHY IS CONTAMINATED LAND AN ISSUE IN POOLE?

Poole's coastal location and quay has resulted in a busy maritime and industrial history which has included timber treatment, boat building, foundries, town gasworks and ceramic works. Smaller industries are also present across the Borough including fuel storage, laundries, railways, maritime engineering and scrapyards. Former land uses such as these have the potential to cause contamination through leaks and spills of raw materials and bi-products.

The geology of the area has resulted in numerous local potteries and extraction from a large quantity of sand, clay and gravel pits which have since been filled. Some were filled as licensed landfill sites and others as a precursor of redevelopment. Furthermore reclamation of coastal areas from the sea has taken place in areas such as Baiter, Whitecliff, Holes Bay and Hamworthy. Filling or reclaiming land can cause contamination from the materials used or from the production of landfill gases

Due to limited areas of previously undeveloped land within the borough it is important to have a means by which the pollution caused by our industrial past can be dealt with to enable the re-use of land. This work therefore enables: the regeneration and development of existing communities; helps meet demand for new housing and social amenities; and prevents the use of and preserves 'greenfield' areas.

Map of Poole Quay and Hamworthy in 1925



4.0 PART 2A OF THE ENVIRONMENTAL PROTECTION ACT (EPA) 1990

Part 2A of the EPA 1990 created a legal definition of contaminated land and also placed a duty on local authorities to inspect their areas “from time to time” for potentially contaminated land. The legislation also set in place a legal framework for local authorities to require the clean up of land where the contamination poses a significant risk to human health or the environment.

The legislation is retrospective and enables action to take place where properties are already built. All cases of new development on potentially contaminated sites should be dealt with through the planning system. Part 2A should only be used when there is no other means of control in regards to the pollution e.g. through the planning regime or using the Environmental Damage Regulations 2010 (used for dealing with risk from current pollution incidents rather than retrospective ones)

The Part 2A (P2A) regime is given in the Department for Environment, Food and Rural Affairs document: “Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance” which was released in April 2012. This document updated previous statutory guidance from 2006. <http://www.defra.gov.uk/publications/files/pb13735cont-land-guidance.pdf> <https://www.gov.uk/government/publications/contaminated-land-statutory-guidance>

4.01 Contaminant linkages

One of the main principles of the assessment of contaminated land is the “contaminant linkage”. Under P2A for a risk to exist there needs to be one or more contaminant-pathway-receptor linkages present on a site. All three aspects of the linkage as defined below need to be present in relation to a piece of land before the land can be considered to be potentially contaminated land under P2A:

1. **Contaminant:** a substance which is in, on or under the land which has the potential to cause significant harm to a relevant receptor, or to cause significant pollution of controlled waters
2. **Receptor:** something that could be adversely affected by a contaminant, for example a person, an organism, an ecosystem, property or controlled waters.
3. **Pathway:** a route by which a receptor is or might be affected by a contaminant e.g. skin contact with contaminated soil, or inhaling hazardous vapours.

The term “**significant contaminant linkage**” means a contaminant linkage which gives rise to a level of risk sufficient to justify a piece of land being determined as contaminated land.

4.1 Requirements of April 2012 statutory guidance

4.1.1 Duty to inspect

The guidance maintains the duty for local authorities to cause their area to be inspected with a view to identifying contaminated land. It recognises that this inspection will consist of strategic and detailed inspection. Detailed inspection should be undertaken if land is identified where there is a reasonable possibility that a significant contaminant linkage exists.

4.1.2 Strategic approach/written strategy

Local authorities should take a strategic approach to carrying out their inspection duty. This approach should be rational, ordered and efficient and reflect local circumstances. This approach should be set out as a written strategy which should be formally adopted and kept under periodic review. The statutory guidance requires local authorities to include the following in their written strategy:

- Aims, objectives and priorities, taking into account the characteristics of the area (found in chapter 2)
- A description of the relevant aspects of the area (found in chapter 3)
- Their approach to strategic inspection of their area or parts of it (found in chapter 4.2.2)
- Their approach to the prioritisation of detailed inspection and remediation activity (found in chapter 4.3 and 4.4)
- How their approach under P2A fits with the broader approach to dealing with land contamination (found in chapters 5, 6 and 7)

4.1.3 Starting assumption that land is not contaminated

The guidance introduces the concept that the starting point should be that land is not contaminated land unless there is reason or evidence available to consider otherwise.

4.2 Approach to strategic inspection

Strategic inspection is described as the collecting of information to make a broad assessment of land within an authority's area and then identifying high risk land for more detailed consideration (detailed inspection)

4.2.1 2001 Strategic Approach:

The approach which was agreed and included in the 2001 and 2006 strategies followed the process below:

- Data collection/compilation of a list of potentially contaminated sites
- Categorisation of identified sites by the use of desk study and limited site inspection (walk over) of all sites
- Production of prioritised list of sites for detailed inspection based on category scores
- Detailed inspection of highest risk sites identified through prioritisation on a rolling programme as resources allow.

The desk top assessment incorporated the use of a spreadsheet risk assessment tool which works out a risk score of 1, 2 or 3. Further detailed desk study information was collected for the highest scoring category 1 sites and if this information still indicated potential significant pollutant linkages the sites were prioritised for detailed inspection. Funding was provided through the DEFRA/Environment Agency Capital Funds scheme.

4.2.2 What was achieved through the 2001 approach

The data collection exercise identified approximately 750 sites within the Borough which have been subject to a former potentially contaminating land use. The data was gathered from a number of sources (both internally and from a commercially supplied database) and was collated using a database and GIS system.

Categorisation of sites using desk study and, in some cases, walkovers was commenced but not completed for all 750 sites. 470 sites had an initial desk top assessment and approximately 285 sites had the process completed including walkover.

High risk detailed inspections were undertaken at 7 sites:

- Reclaimed land at Baiter Park and Whitecliff Recreation Ground
- Reclaimed land at Holes Bay – Fleets Lane/Willis Way/Stanley Green Road area
- Investigation of diesel spillage at Sterte Road
- Former landfill at Bearwood
- Reclaimed land at Turlin Moor Recreation Ground
- Former Landfill at Creekmoor
- Former Pottery and infilled clay pits at South Western Crescent/Copeland Drive

These inspections have resulted in the protection of approximately 1300 households in a number of communities shown to be at high risk and the remediation of 13 properties on 2 sites, enabling 13 households to safely use their properties. Funding for the clean up, where possible, was also gained from DEFRA/Environment Agency.

In addition to the identification of high priority sites through the inspection strategy one site was identified as a result of a complaint (an odour complaint resulted in the discovery of a large historic oil spillage) and another site was investigated as a result of evidence of significant contamination discovered through a planning application for an individual property.

4.2.2 2016 Strategic Approach

4.2.2.1 Principles of strategic inspection

Having regard to the latest statutory guidance and the experience of dealing with contaminated land issues gained over the last 15 years a

different strategic approach is now considered appropriate. The updated approach takes into account the following factors and considerations:

- The majority of the most likely polluting sites have already been investigated or remediated (either through Part 2A of the EPA 1990 or the redevelopment process) or are still in active use.
- Some significant remaining brownfield sites have been or are in line for redevelopment as part of the Borough Of Poole's regeneration project
- In December 2013 Defra wrote to all local authorities announcing that capital funding for investigations and remediation projects had been withdrawn. Limited funding would be provided in emergency cases until 2017.
- The starting point should be that sites do not meet the definition of contaminated land unless evidence indicates otherwise

Strategic inspection is an iterative process with local authorities required to inspect their areas from time to time. Walkovers and desk studies have, however, primarily been completed for the larger or more potentially contaminated sites, this has confirmed that there currently no sites requiring urgent detailed inspection. The value in completing such an assessment on all sites has been measured as low and so it is not considered appropriate to continue in this manner.

4.2.2.2 Revised strategic inspection procedures

- Maintain the list of previously gathered sites.
The database is a useful resource which is used in all aspects of work relating to contaminated land.
- Introduce a new categorisation system in line with current statutory guidance (see box 2)
- Undertake brief reclassification exercise of existing categorised sites:
 - Previous Category 3 sites become category C
 - All previous category 1 and 2 sites become Category B sites on the basis that no evidence of actual contamination (which is potentially significant) is held.
- The database should be kept under review and updated with additional information as/when it becomes available:
 - Sites may become category A sites if information is received of actual (significant) contamination on site (through planning, complaint, or from another council SU/external body such as EA). Further action regarding detailed inspection will be pursued if resource allows.
 - Sites may be decreased to Group C if the information comes to light as a result of other work (planning or search related)

Box 2: Revised Site Categories

Category A

All 3 aspects of a pollutant linkage are present – i.e. a sensitive receptor, a viable pathway and evidence of the actual presence of contaminants in a form and quantity that could reasonably pose a hazard. Detailed inspection to obtain sufficient information to decide whether the site is contaminated land is desirable and the possibility of such should be pursued in accordance with the approach set out in this strategy. These sites would be subject to appropriate assessment if redeveloped through the planning system.

Category B

Sites fall into category B when either:

- 1) No evidence of actual contamination is held and there is insufficient evidence to suggest detailed inspection is appropriate. However Information held suggests there is a reasonable possibility that a contaminant linkage could exist on site based on the sites former or current use; or
- 2) Strategic inspection has shown that the site does not have at least one aspect of the pollutant linkage present so cannot meet the definition of contaminated land in its present use; or
- 3) The site has been subject to appropriate assessment and/or has been remediated and is safe for its current use. However some contamination remains on site so it may not be suitable for ANY use

In all cases the site is considered suitable for the present use and environmental setting based on currently held information and does not meet the legal definition of contaminated land. Appropriate assessment would be required however if the site is redeveloped or the land use is changed through planning.

Category C

Sites fall into category C when either:

- 1) Although no actual site won data is held, based on the sites former use contaminants may theoretically be present but are very unlikely to have an unacceptable impact on key targets. For instance the source/former land use is sufficiently small/old/remediated or of low potential risk to warrant any further consideration.
- 2) Intrusive investigation has shown that no actual contamination is present and the site is suitable for any use
- 3) Remediation has taken place which has made the site suitable for any use.

In all cases the site is considered suitable for its present use and environmental setting and does not meet the legal definition of contaminated land. If the site was redeveloped it is unlikely that appropriate assessment would be required.

4.3 Approach to the prioritisation of detailed inspection

Detailed inspection is described as obtaining information on ground conditions and carrying out the risk assessments which support decisions as to whether a site meets the definition of contaminated land under P2A of the EPA 1990. The guidance states that such inspection should take place where the local authority considers there is a reasonable possibility that a significant contaminant linkage exists. The Borough of Poole have interpreted the 'obtaining information on ground conditions' as the obtaining of actual ground data from the taking of soil, water or gas samples through intrusive investigations.

4.3.1 Principles of detailed inspection

The updated approach to detailed inspection is based on the following principles:

- Guidance recommends that local authorities should take a precautionary approach to the risks raised by contamination, whilst avoiding a disproportionate approach given the circumstances of each case. The aim should be to consider the various benefits and costs of taking action
- Statutory guidance confirms that enforcing authorities should seek to use P2A only where no appropriate alternative solution exists
- Part 2A is not meant to deal with land which may contain some contamination but is not having any negative impact on human health or the wider environment.
- Any detailed inspection should only proceed if evidence is held to suggest significant contamination may exist and that the inspection would achieve the purpose of protecting the health of the residents of Poole.

As outlined above DEFRA funding has all but ceased and is only available for emergency sites until 2017. Furthermore detailed inspection can be a lengthy and costly exercise which is completed in a number of phases. Even if funding is secured for one phase it cannot be guaranteed for the duration of the inspection. In such a case inspections may remain uncompleted causing blight to the residents of the site unless funding is available from internal budgets. Based on these circumstances it is not possible to continue to routinely progress sites for detailed intrusive investigations.

Fortunately the highest priority sites have already been investigated and whilst some high risk sites remain uninvestigated, there is limited or no currently held information which confirms the presence of significant contamination on these sites or that it is having an unacceptable impact on site users.

4.3.2 Approach to detailed inspection – 2014 onwards

Despite the current economic situation the Borough of Poole recognises that it has a duty to undertake detailed inspection of land where a reasonable possibility that a significant contaminant linkage exists. The statutory guidance states that the timing of such inspection should be subject to the authority's approach to prioritisation of detailed inspection. Therefore if information comes to light which would made a site category A, a cost benefit analysis (CBA) will be undertaken as to whether detailed inspection should and is able to take place. The analysis will assess the following factors:

- Severity/level of contamination
- Likelihood of significant risk/impact of contamination
- Consultation with development control to see if upcoming redevelopment
- Pursuance of original polluter to undertake inspection ("Polluter pays principle")
- Engagement with landowners to encourage independent voluntary inspection
- Availability of external funding
- Availability of internal funding

The results of the CBA may not support detailed inspection of the site at that time, In which case the CBA would be reviewed if circumstances changed or new information came to light.

If the council proceeds with detailed inspection it will be undertaken in accordance with the procedures contained within the statutory guidance and current best practice.

4.4 Approach to determination and Remediation Activities

4.4.1 Determination

If detailed inspection provides sufficient information for the council to decide that the land in question is contaminated land under the legislation it will be formally determined as such. A written record will be produced and the appropriate parties given notice in accordance with legal requirements.

4.4.2 Remediation

Once land has been determined as contaminated land the council will decide how it should be remediated and, where appropriate issue a remediation notice. Whilst each case will be assessed individually, the broad aim of remediation will be to remove significant contaminant linkages, or permanently disrupt them to ensure they are no longer significant. Remediation may involve a range of treatment, assessment and monitoring actions.

The process of deciding who is liable for remediation of contaminated land can be quite complex and the Borough of Poole will have regard to the detailed Statutory Guidance in reaching its decisions.

The Borough of Poole will always encourage voluntary remediation and will only serve a remediation notice if we are satisfied the necessary measures are not being taken by the appropriate persons. If a notice needs to be served it will only require what remediation is reasonable, to make the site suitable for use, having regard to the seriousness of the pollution or harm. For instance if the site in question is industrial the level of clean up required will not be the same as if the site was a residential property.

The legislation sets out strict liability for the responsibility for payment of remediation. Statutory guidance also details situations where those responsible may be exempt or it might be appropriate for the local authority to waive costs and pay for remediation. Regard should always be given to the circumstances of each individual case when making such decisions. The Borough of Poole have produced a statement of policy setting out the council's position in regards the possibility of waiving or reducing remediation costs; 'Contaminated Land Cost Recovery and Hardship Policy' which was adopted in 2012.

4.5 How BOP's approach under Part 2A integrates with other ways of dealing with land contamination

Whilst P2A is an effective tool for dealing with contaminated land it should only be used where there are no other means to deal with the contamination since the undertaking of investigations and risk assessments can be both costly and timely to the Borough of Poole and the taxpayer.

The P2A regime is only one of several ways in which land contamination can be addressed. Land contamination can be addressed when land is developed (or redeveloped) under the planning system, during the building control process, or where action is taken independently by landowners. Further discussion of the above routes is contained within the following sections.

5. THE PLANNING REGIME

Most land that is affected by contamination is dealt with through the planning system rather than P2A.

The role of the planning system is to control future development and land use. Risk arising from contamination and remediation requirements should be considered on the basis of the proposed use of the land. The underlying approach to identifying and dealing with risk and the broad policy objective of safeguarding human health and the environment are similar for planning and P2A regimes. One of the aims for remediation under planning is that, as a minimum, land should not be capable of being determined as contaminated land under Part 2A of the EPA 1990.

5.1 Planning Policy

5.1.1 National Planning Policy Framework

In 2004 Planning Policy Statement (PPS) 23: Planning and Pollution Control was introduced which provided policy and good practice for dealing with contaminated land through the planning system. This was withdrawn and replaced with the National Planning Policy Framework (NPPF) in March 2012. The NPPF sets out the Government's planning policies for England and how they are expected to be applied both in drawing up local plans and as a material consideration in determining individual planning applications.

The NPPF contains policies relating to contamination as a material planning consideration, consequently local plan policies and planning decisions need to take contamination into account. Chapter 11 'Conserving and enhancing the natural environment' states that:

"The planning system should contribute to and enhance the natural and local environment by:

- Preventing new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution.; and
- Remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate"

Paragraph 121 of the NPPF goes on to state 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 neutral environment arising from that remediation, and;

- Adequate site investigation information, prepared by a competent person, is presented. A competent person is defined as a person with a recognised relevant qualification and sufficient experience in dealing with the type(s) of pollution.
- After remediation, as a minimum land should not be capable of being determined as contaminated land under Part 2A of the EPA 1990.

The NPPF also states that planning policies and decisions should encourage the effective re-use of previously developed (brownfield) land, bringing them back into beneficial re-use

5.1.2 Changes to the Town and Country Planning (General Permitted Development Order) 1995

The Department for Communities and Local Government (DCLG) introduced a change to permitted development rights for a period of 3 years, between 30 May 2013 and 30 May 2016. The amendment allowed a change of use of an office building and land within its curtilage to a residential use, therefore such a change of use would not require planning permission.

This is subject to a process whereby a developer shall apply to the local planning authority for a determination as to whether the prior approval of the local planning authority is permitted. Prior approval can be refused if further information is required regarding 3 factors which include contamination risks on the site.

Therefore if the local authority has concerns that contamination on a site means that the change of use to residential would not be appropriate without investigation and possibly remediation then full planning permission would still be required.

5.2 What has been achieved so far?

ECPS have routinely acted as consultees to the Planning and Regeneration Service Unit in regards to redevelopment of contaminated sites since the introduction of Part 2A in 2000.

This has resulted in the detailed investigation of over 100 sites, this can involve the review of simpler short investigations or detailed involvement in complicated inspections, risk assessments and development of complex remediation projects. Involvement can also vary from a few hours to a day on a simple review or time spread out over a number of years on larger sites such as the redevelopment of Poole Town Gasworks at Pitwines or the construction of housing on former landfill sites. The work involves, review, consultation and site visits.

Since 2000 1.3km² of former industrial or potentially contaminated sites have been investigated through the planning regime with remediation of approximately 1km² of contaminated land taking place. This has resulted

in ensuring that the residents and users of approximately 2300 properties or commercial buildings are not at risk from contamination.

5.3 Responsibilities

Any risks from contamination must be identified early in the development process so they can be appropriately assessed and suitable mitigation can be put in place to reduce any risks to an acceptable level.

5.3.1 The role of the developer

The NPPF states that where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner (paragraph 120 section 11). The developer is therefore required to undertake appropriate site investigation and remediation.

5.3.2 The role of the local authority

It is the responsibility of the local authority to follow and implement national policy to ensure developers meet their responsibilities and require appropriate assessment and mitigation to take place.

When assessing individual planning applications the local planning authority (LPA) should consider whether there is, or might be, a potential contamination hazard on a site, and if so:

- whether a proposed use or development of the site could give rise to unacceptable risks to health or the environment,
- what further information it needs to clarify the issues of potential contamination
- what steps by way of remediation, restrictions on the proposed use or other development of the land should be taken to reduce those risks.

5.3.3 Responsibilities in relation to risks to groundwater

Traditionally consultation in regards to contaminated land was provided to the planning authority both by ECPS and the Environmental Agency (EA) in regards to risks to human health and groundwater respectively. Previously the EA would provide comment and consultation when requested on any development proposed on a site subject to a previously potentially polluting land use. The scope of sites which the EA will now consult on has reduced due to the availability of resources. They will now consult only on the most seriously polluted and those on the most sensitive groundwater receptors, they will also only consult on sites where they have been involved from the start rather than responding to requests as information about groundwater becomes available as a result of intrusive site investigations. It is expected by the EA that local authority contaminated land officers will cover the shortfall created by the change

in EA policy. Training will be undertaken by ECPS but it should be recognised that this will be limited and that ECPS officers will not have the same knowledge and skills as the EA in this respect but will assist the LPA in regards to groundwater contamination where possible based on available resources.

5.4 Procedures

5.4.1 1APP planning application form

The national standard planning application form (1APP) is used by the Borough of Poole. Question 14 relates to existing use but also requests information on contamination. Q 14 from the 1APP form is shown in Box 3. 'Land affected by contamination' is defined as: "all cases where the actual or suspected presence of substances in, on or under the land may cause risks to people, property, human activities or the environment."

Box 3: Question 14 of 1APP form

14. Existing Use

Please describe the current use of the site:

Is the site currently vacant? Yes No

If Yes, please describe the last use of the site:

When did this use end (if known)?
DD/MM/YYYY
(date where known may be approximate)

Does the proposal involve any of the following?
If yes, you will need to submit an appropriate contamination assessment with your application.

Land which is known to be contaminated? Yes No

Land where contamination is suspected for all or part of the site? Yes No

A proposed use that would be particularly vulnerable to the presence of contamination? Yes No

5.4.2 When information is required to be submitted

The 1 APP form requires appropriate contamination assessment to be submitted where:

- 1) The site is known to be contaminated

- 2) Land where contamination is suspected for all or part of the site
- 3) A proposed use that would be particularly vulnerable to the presence of contamination

There can be confusion about how these questions should be answered, so in order to clarify please see the explanations in box 4. Where the answer is yes to any of the questions an appropriate contamination assessment should be undertaken.

Ideally information will be submitted by the applicant with the planning application documents, however sometimes the applicant is not aware of their responsibilities. Therefore to ensure that safe development takes place ECPS check the weekly planning lists to see where evidence exists that an application site is affected by contamination.

Where evidence is held that an application is on a site where contamination is known to exist or is suspected for all or part of the site ECPS will either:

- 1) Object to the planning application: Where sites are considered high risk appropriate assessment must be submitted prior to determination of the planning permission. If this is not submitted ECPS would object until satisfactory assessment has been received.
- 2) Recommend to the LPA that a condition requiring appropriate assessment by a competent person is placed on the planning permission if granted. The condition would require the assessment to be undertaken prior to the commencement of development to enable any mitigation required to be incorporated into the design of the development.

5.4.3 What is required to be submitted - 'Appropriate contamination assessment'

What constitutes an appropriate contamination assessment may vary from site to site depending on the risks identified on that site. "Appropriate" is considered to be sufficient information to assess the risks on a particular site, the assessment should be undertaken by a competent person and should follow current best guidance.

As a minimum an appropriate assessment will include a desk study, site walkover, conceptual site model and an initial risk assessment. This is often referred to as a Phase 1 assessment. Additional detailed inspection and remediation proposals will only be required if the desk study shows it is warranted.

Box 4 Explanation of 1APP questions.

Question 1:

Sites for which the answer to this question should be yes are; sites that have been determined as contaminated land and/or sites that have been subject to a site investigation, which has revealed levels of contamination requiring remediation

Question 2:

Sites for which the answer to this question should be yes are; sites that have been subject to former industrial or contaminative uses and consequently there is a possibility of contamination. These sites will require further investigation to establish whether there is a significant contamination requiring remediation.

Examples of such sites are:

- Sites on or near to former landfill, made ground or reclaimed land
- Sites which have been subject to a former industrial use such as:
 - Petrol stations or garages
 - Scrapyards/waste storage
 - Engineering works
 - Timber treatment
 - Chemical works
 - Potteries

Question 3:

Sites for which this question should be yes are sites that fall within the following categories:

Residential developments

Schools

Play areas and parks

Hospitals

Allotments

As previously outlined, in most cases the submission of this assessment will be required by compliance with a condition. However, in the case of high risk sites the phase 1 assessment should be submitted with the planning application itself. The phase 1 report must provide confidence that a remedial solution is available. If the phase 1 cannot provide sufficient assurance then the application must also be accompanied by a detailed investigation. In some cases it may be necessary for further works or remediation proposals to be submitted at this stage to provide confidence that the safe development of the proposed site use can be achieved.

5.5 How ECPS can help the developer

Appropriate assessment of potentially contaminated sites is an essential part of the development process in order to ensure safe redevelopment, however by providing guidance upfront ECPS aim to make the

assessment process as simple as possible. Being fully informed about what is and isn't necessary on a site can enable time and cost effective investigations to take place therefore limiting financial burdens and expediting the process as far as possible.

5.5.1 **Site specific advice**

All applicants are welcome to contact ECPS for site specific discussions at any stage of the planning process.

Developers and their consultants are welcome to submit site investigation strategies for us to review. It is important to carry out enough sampling to fully characterise contamination on site, however we can advise if too much investigation has been proposed and if savings can be made.

It is sometimes preferred by developers to include costly remediation at the design stage instead of taking time to sample properly. However completing extra sampling can lead to financial savings by showing that remediation isn't necessary.

5.5.2 **Borough of Poole planning advice note**

ECPS propose to produce a guidance leaflet providing detailed information further to this strategy. The leaflet will provide details of what information is expected to be submitted as part of the appropriate assessment. If at the start of the process the developer is aware of what is required of them it can help to reduce the need for ECPS to reject poor quality or sub standard investigations. Whilst this document is being produced links to guidance documents produced by other Councils can be found in appendix 1.

5.5.3 **External Guidance**

Links to guidance which may be particularly useful to the developer can be found below.

- <http://planningguidance.communities.gov.uk/blog/guidance/land-affected-by-contamination/land-affected-by-contamination-guidance/>
- Environment Agency – Guiding Principles for Land Contamination
<http://www.environment-agency.gov.uk/research/planning/121619.aspx>
- British Standards Institution (2011) BS 10175:2011: Investigation of Potentially Contaminated Sites – Code of Practice available at
<http://shop.bsigroup.com/en/ProductDetail/?pid=00000000030282173>
- NHBC/Environment Agency/CIEH (2008) - Guidance for the Safe Development of Housing on Land Affected by Contamination R&D Publication 66: available at
<http://www.nhbc.co.uk/Builders/Technicaladviceandsupport/Publications/ContaminatedLandDevelopment/>

- BS8485: Code of Practice for the Design of Protective Measures for Methane and Carbon Dioxide Ground Gases for New Buildings
- CIRIA (2007) - C665 Assessing Risks Posed by Hazardous Ground Gases to Buildings London CIRIA
<http://www.ciria.org/ItemDetail?iProductCode=C665&Category=BOOK&WebsiteKey=3f18c87a-d62b-4eca-8ef4-9b09309c1c91>
- Environment Agency (2004) CLR11: Model Procedures for the Management of Land Contamination available at
<http://www.environment-agency.gov.uk/research/planning/33740.aspx>

6.0 PROVISION OF COUNCIL WIDE EXPERTISE

Information is provided internally within the council to assist with the provision of a variety of services. The provision of expertise and detailed site information and interpretation of data enables the supply of safe services to BoP residents and businesses.

Examples of a few of the instances ECPS have assisted with the provision of expertise are as follows:

- Provision of advice and interpretation of reports and remediation proposals to support Building Consultancy enforce Building Regulations Document C
- Assistance in training of Building Control Officers in contamination issues
- Provision of information and expertise to assist in the valuation of BoP owned land and planning for future uses of BoP land as part of asset management and planning policy
- Provision of soil testing protocol for creation of community gardens
- Testing and interpretation of soil results for a wildlife pond and garden in an area of former landfill

7.0 CONVEYANCING ASSISTANCE AND ENVIRONMENTAL SEARCHES

As discussed previously Poole has a legacy of former industrial, commercial and waste management based land uses. In most cases there will be little or no risk associated with living on, or near to land that has had such a use. Indeed the safe redevelopment of these sites is now positively encouraged through the planning system and can result in very high quality housing. It is, however, inevitable that questions will be raised during the sale and purchase of houses/properties on such sites. Furthermore Part 2A of the EPA 1990 places a liability for remediation on

property owners if the original polluter cannot be found. Consequently it is important that appropriate checks are made before purchasing a property.

ECPS provide information and interpretation to the public or their representatives as part of the conveyancing process. Information is provided to facilitate the sale of houses and premises thereby assisting Poole's property market. The information in some cases is also used by solicitors and mortgage companies as part of the legal transactions of the conveyancing process. Since 2007 ECPS have undertaken, on average, 85 such searches per year.

7.1 Role of conveyancing solicitors

In 2001 the Law Society advised solicitors to make purchasers aware of contamination issues during the conveyancing process. Whilst not a statutory requirement, conveyancing solicitors should recommend making enquiries to identify contamination that might affect the property being offered for sale. Solicitors should also advise house buyers of their potential liabilities in relation to contaminated land. Advice from the Law Society is that enquiries should be made of regulatory bodies or that site reports should be gained from an independent company. In most instances enquiries are routinely made by commissioning a search from a private company.

7.2 Searches from private search companies

A variety of private companies offer environmental/contaminated land searches. These companies keep large databases of environmental information, including land use information obtained from old Ordnance Survey maps. When a search is carried out these companies check their database records and if it appears to them that there is little likelihood of contamination being present they will often issue some form of 'pass' certificate to confirm this. Often some form of insurance cover or warranty will be provided to accompany the certificate.

If, however, there is some possibility that the property might be affected by contamination then the company will often refuse to issue a certificate and will advise the affected parties to make further enquiries.

Ultimately, it is down to the views of any particular search company whether they wish to issue a certificate or not. The Borough of Poole have no influence on the contents or the outcome of searches carried out by private companies. Furthermore, it is important to note that such certificates do not actually confirm either the presence or absence of contamination at a given property. Possession of a certificate does not mean that the property in question will not be affected by contamination. Similarly, a refusal to issue a certificate does not mean a property is contaminated.

7.3 How ECPS can assist in the conveyancing process.

ECPS hold information on contamination as a result of work completed through P2A and the planning regime. Such information is generally a lot more detailed than the information provided by private search companies. The local authority/ECPS is also the only body which can provide an opinion as to whether the site would be subject to inspection under P2A.

This information is available to individuals and their representatives to assist in property decisions and to facilitate the housebuying process as part of a Borough of Poole environmental search. A fee is payable under the Environmental Information Regulations for this service.

Circumstances when it would be useful to undertake a Borough of Poole search:

- **If a 'failed' or 'referred' private environmental search is received**
If a property 'fails' the private search then the company may advise you to contact the Contaminated Land Team of the Local Authority. ECPS may be aware of specific information about the site that can help you with such enquires and can also provide information to help individuals interpret or put the results of the private search into context. In many cases the provision of additional information will enable a pass certificate to be issued.
- **If a pass certificate is received**
The private searches are based solely on the historic land use of the site in question and in no way give a guarantee that the land in question does not meet the statutory definition of contaminated land. There may be additional data or information held by the Borough of Poole which would be advantageous to be aware of before making a purchase. It is always worth going through the results of the private search rather than relying solely on the 'pass' certificate to check whether the purchaser is happy with the results. It may be worth contacting ECPS to discuss whether any further information is held.
- **Directly to ECPS before commissioning a private search**
Residents, purchasers or legal representatives are welcome to come directly to the Borough of Poole for a search prior to undertaking the private search to avoid paying for 2 searches.

7.4 What a BoP environmental search will contain:

Ultimately BoP cannot tell anyone whether or not to buy a specific property. We aim to provide all available information to enable an informed decision to be made. Whilst the Borough of Poole can provide advice and information, in the end it is the property purchaser's responsibility to satisfy themselves that their concerns have been addressed.

A Borough of Poole search will contain:

- Site history based on Historical Ordnance Survey Mapping noting the presence of any potentially contaminating former land uses (e.g. landfills and industrial processes)
- Permitted Processes under the Environmental Permitting Regulations 2011
- Information from Site Investigations and Remediation reports held.
- Any known records of gas emissions and contamination issues in the immediate area
- Any known remediation or remediation notices
- Data regarding groundwater, waste and landfill sites and pollution incidents known to the team
- Details of the site in regards to our Inspection Strategy under Part IIA of the Environmental Protection Act 1990.

The amount of information contained in each contaminated land search may vary depending on the site and the information available to the service unit.

7.5 How to obtain further information

In many instances the information provided by the Borough of Poole is sufficient to satisfy concerns regarding risk at a site or enable a 'pass' certificate to be gained from a private search company. Sometimes there is not much information available about a site, for instance if no investigations have been carried out on the land. In these situations whilst it can be stated that based on current evidence the site is not legally contaminated land, there is no way for us to prove that contamination is not present – just that the site has not been tested.

In such cases the following options are available to property purchasers:

1. Make enquiries with the developer of the site or property in question. The original builder/developer may have some information on any contamination found and/or remediation undertaken at the site. If it is a transaction involving a recent development then a site investigation report might be available. If the property was built after April 1999 then the National House Builders Council (NHBC) may have information on contamination, or may have provided a warranty against contamination.
2. Carry out testing privately to determine whether the land is affected by contamination. However, it should be noted that sampling and testing may be required for soil, groundwater and ground gas and that the investigation and interpretation should be undertaken by an appropriately qualified contaminated land consultant, something that can be expensive and time consuming. Whilst this option may provide actual site data it should be noted that you may require a substantial amount of information to determine whether a site meets the statutory definition of contaminated land, and a lesser amount of data would only give an indication. ECPS are unable to undertake this sampling

or advise about appropriate consultants. We can provide comments or discuss the outcome of any sampling if this route is taken.

3. Investigate insurance products on the market to protect against any potential risk. It is possible to get indemnity insurance in relation to land contamination from insurance companies. The Borough of Poole are unable to advise on the types and quality of such policies and would recommend speaking to your conveyancing solicitor or insurance company if this option is something you wish to look into.

8.0 GLOSSARY

- Contaminated land:** Land which meets the Part 2A definition of contaminated land due to levels of contamination in, on or under the land that causes significant harm or the significant possibility of significant harm. Other terms such as “land affected by contamination” or “land contamination” are used to describe much broader categories of land where contaminants are present or may be present but usually not at a sufficient level to be contaminated land. “Potentially contaminated land” is used where the site has been subject to a land use which could give rise to contamination but actual sampling has not taken place.
- Desk study:** The collation and review of information already available about a site which is carried out at an early stage of site appraisal to inform and guide the remainder of the site investigation
- Detailed Inspection:** Obtaining information on actual ground conditions and contaminant levels, and the carrying out of risk assessments to support decisions on whether sites meet the legal definition of contaminated land.
- Determined/
Determination:** A formal written record that a site meets the legal definition of contaminated land
- Intrusive investigations:** The gathering of soil, gas and groundwater data for sampling and analysis to form part of detailed inspection.
- Part 2A (P2A):** Part 2A of the Environmental Protection Act (as amended)
- Remediation:** The doing of any works in relation to contaminated land in preventing, minimising or cleaning up the cause of any significant harm or pollution of controlled waters
- Statutory guidance:** DEFRA Contaminated Land Statutory Guidance, April 2012
- Strategic Inspection:** Gathering information to make a broad assessment of land within an authority’s area, and then identifying priority land for more detailed consideration (detailed inspection)

- Suitable for use: Requires land to be assessed on a site by site specific basis, in that different levels of contamination or risk will be acceptable depending on its use. For instance higher levels of contamination could remain under a tarmacked car park than in a residential garden where vegetables are grown.
- Unacceptable risk: a risk of such a nature that it would give grounds for land to be considered contaminated land under Part 2A
- Walkover: A visual inspection of the site and its surrounding area noting receptors, pathways and visual indicators of contamination

9.0 REFERENCES

Department for Environment Food and Rural Affairs: Environmental Protection Act 1990: Part 2A, Contaminated Land Statutory Guidance. April 2012

Department for Local Communities and Local Government: National Planning Policy Framework, March 2012

Borough of Poole: Contaminated Land Strategy. July 2001

Borough of Poole: Contaminated Land Strategy first review. November 2006

Borough of Poole: Statement of Policy – Contaminated Land Cost Recovery and Hardship. December 2011

APPENDIX 1 : PLANNING GUIDANCE FROM OTHER LOCAL AUTHORITIES

Yorkshire and Humberside Pollution Advisory Council: Technical Guidance for Developers, Landowners and Consultants: Development on Land Affected by Contamination, January 2014
<https://www.york.gov.uk/info/20062/contaminated-land/1817/yorkshire-and-humberside-pollution-advisory-council-guidance>

Yorkshire and Humberside Pollution Advisory Council: Technical Guidance for Developers, Landowners and Consultants: Verification Requirements for Cover Systems, January 2013
<https://www.york.gov.uk/info/20062/contaminated-land/1817/yorkshire-and-humberside-pollution-advisory-council-guidance>

Liverpool City Council:
Advice for Developers and Technical Note for Consultants, 2012
Gas Protection Validation Proforma,
Gas Protection Validation Examples:
All found at <https://liverpool.gov.uk/business/environmental-health/contaminated-land/>

Runnymede Borough Council: Advice on the Installation of Gas Membranes
<https://www.runnymede.gov.uk/article/5666/Contaminated-land>