

Contaminated Land Strategy

June 2019



South Tyneside Council

**HELLO TOMORROW
CHANGE IS HAPPENING**



Foreword

The North East of England has a history which is dominated by heavy industry, and the Borough of South Tyneside is no exception.

This industrial past has included ship building, coal mining and a variety of manufacturing works to name just a few. Although this industry was an important part of the Borough, its legacy has left more than an impression on the surrounding area.

With these industries came the potential for land contamination which at the time was not known or given much consideration. However, we now have a greater understanding of how some of these contaminants can affect human health and how they can be managed.

Contamination does not only affect human health, it can also affect the quality of our rivers, streams and groundwater and impact on the growth of flora and fauna.

Redevelopment is an important part of our region and aspirations for a better, healthier South Tyneside are integral to its growth. It is for these reasons that the management of potentially contaminated land is so important for our region.

It is our statutory duty as a Local Authority to assess land contamination and limit the risk to human health, vegetation and groundwater and it is the content of this strategy which will lead it forward in doing so.

Cllr Joan Atkinson



Executive Summary

Part 2A of the Environmental Protection Act 1990 requires that every Local Authority produces a strategy detailing how it will undertake its responsibilities in relation to identifying and addressing contaminated land within its Borough.

This Strategy describes the approach that South Tyneside Council will take in identifying, prioritising, investigating and remediating Contaminated Land. The Strategy provides an update to the previous version (dated 2006) and includes consideration of updated planning guidelines (National Planning Policy Framework) and updated Statutory Guidance (DEFRA's Part 2A Contaminated Land Statutory Guidance, 2012). This is a five year strategy and will be adopted to work alongside South Tyneside's implemented Local Development Framework and its emerging Local Plan to support safe and appropriate development within the Borough.

The Contaminated Land Strategy describes how it will be used together with the Council's overarching strategic objectives, Local Development Framework and planning system to ensure that land within the Borough is suitable for its intended end use. The Council will adopt an approach which is consistent with overarching best practice guidance for the management of contaminated land as set out in the Environment Agency's recently published guidance Land Contamination: Risk Management (2019). This updates the previous guidance CLR11 which is to be withdrawn. The Environment Agency publication "Guiding Principles for Land Contamination" (March 2010) also forms a key strategic document for the management and remediation of Contaminated Land both through the Planning and Part 2A regimes

The Strategy provides the process whereby detailed inspection of land will be carried out and risk assessment completed to determine whether land meets the definition of 'contaminated land' according to the legislation.

The process of determining land as contaminated is described, together with the approach that will be taken to apportioning liability. The requirements of land remediation are outlined.

A summary of the progress achieved within the Borough to date is provided and the procedures for information management are given, including details of the contaminated land register and provision of information to the general public and other interested parties.

The Strategy emphasises the importance of the planning regime in addressing potentially contaminated sites and ensuring that they are remediated to a condition that is suitable for their intended end use. This Strategy will be used in conjunction with the planning regime to address the legacy of land contamination within the borough.

The strategy indicates that South Tyneside Council will make every effort to secure voluntary remediation where this will appropriately mitigate risks associated with Contaminated Land, and that the serving of remediation notices under the Environmental Protection Act 1990 will be undertaken as a last resort.

The Council will strive to uphold the 'polluter pays' principle to ensure that as far as possible, those responsible for causing land contamination bear the costs of remediation.

The Council will continue to review and update its contaminated land strategy and its prioritisation of potentially contaminated sites.

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1 Introduction

1.1 Contaminated Land Legislation

The statutory system for the identification and remediation of Contaminated Land came into force on 1 April 2000. The primary legislation is contained in Part 2A of the Environmental Protection Act 1990 as inserted by section 57 of the Environment Act 1995 (referred to hereafter as Part 2A). The primary legislation is complemented by the Contaminated Land (England) Regulations 2006, Contaminated Land (England) (Amendment) Regulations 2012, and the Statutory Guidance laid out within the Department for Environment, Food and Rural Affairs (DEFRA) Contaminated Land Statutory Guidance 2012.

The system sets out a framework for the identification and remediation of 'Contaminated Land', in circumstances where there has not been any identifiable breach of waste management or pollution prevention systems. The regulations reinforce the 'suitable for use' approach to the assessment and remediation of contaminated land, which recognises that the risks presented by contamination vary according to the use of the land and its environmental setting. Risks posed by contaminated land therefore have to be assessed on a site by site basis and are considered in relation to the existing use of the land.

1.2 The Contaminated Land Strategy

In accordance with the statutory requirements of Part 2A, all Local Authorities are obliged to develop a Contaminated Land Strategy. The Strategy is required to outline how each authority will inspect its area to identify historic sources of contamination and undertake its statutory duties with regard to the management of contaminated land. The authority can then work with landowners to prevent, remedy or lessen any harm or pollution that may have resulted.

This Contaminated Land Strategy states the approach the Council will adopt to identify and ensure the remediation of land to a standard that is suitable for use. This document provides the current revision of the Contaminated Land Strategy for the borough of South Tyneside and replaces previous versions issued in 2001 and 2006. This Strategy reflects the regulatory developments and revisions to the authoritative guidance published in 2012 to assist councils in discharging their duties, and provides a summary of the progress made by the Council to date.

1.3 Links to Key Strategies and Plans

The Contaminated Land Strategy will be used to support the wider objectives of South Tyneside Council's Strategy for 2017-2020. This Contaminated Land Strategy links closely with several of the Council's stated 20 year strategic outcomes in supporting:

- Healthier people,
- A regenerated South Tyneside with increased business and jobs,
- Better housing and neighbourhoods,
- A clean and green environment.

In addition to fulfilling the statutory obligations of the Council, the Contaminated Land Strategy provides a framework that can be used to support the present Local Development Plan. The South Tyneside Local Development Framework – Core Strategy (2007) Policy EA5 outlines the requirements for Environmental Protection. The policy states that:

To complement the regeneration of the borough, the Council will control new development so that it:

- A acts to reduce levels of pollution, environmental risk and nuisance throughout the borough;*
- B minimises adverse impacts on the Magnesian Limestone Aquifer and its associated groundwater protection zones;*
- C focuses the treatment of contaminated and derelict land so as to achieve a balance between: i) the management of risk approach in its Contaminated Land Strategy; and ii) the regeneration of the riverside corridor;*
- D ensures that the individual and cumulative effects of development do not breach noise, hazardous substances or pollution limits; and*
- E does not permit unsustainable schemes to be located in those areas of the coast, Tyne corridor and Don Valley where flood risk is unacceptably high.*



The Council is now bringing forward its new Local Plan. Whilst at an early stage, the Contaminated Land Strategy will inform and evidence these policies and proposals and in due course will support their implementation. The Strategy provides the mechanism to identify and prioritise potentially contaminated land for remediation and subsequent sustainable and productive redevelopment. The principles set out in the National Planning Policy Framework 2018 will be adopted.

1.4 Public Access to Information

The Council acts in accordance with the requirements of the following statutes and regulations in making environmental information accessible to the public:

- Local Government (Access to Information) Act 1985;
- Environmental Information Regulations 2004;
- Data Protection Act 2018;
- General Data Protection Regulations 2018;
- Human Rights Act 1998;
- Freedom of Information Act 2000

1.5 Objectives and Priorities

As evidence of its strategic approach the strategy describes the mechanisms by which the Council will achieve the following:

- Efficient use of resources;
- A focus on the sites that present the most serious risks;
- Effective prioritisation of identified sites; and,
- Prompt inspection of those sites where solutions are most urgently needed.

When considering the setting of priorities, the Council will:

- Consider all land within the Borough on an equal basis;
- Consider the protection of human health as the highest priority overall; and,
- Take action in relation to any site where there is strong evidence that a problem exists, without waiting for the site to emerge from a prioritisation process.
- Acknowledge the importance of protecting and enhancing the quality of surface waters and groundwater's which are resources that are not only critically important to humans but also the plant and animal kingdom.

1.6 Consultation Process

In developing the Contaminated Land Strategy, the Council has consulted several organisations including the following:

- Environment Agency;
- Natural England;
- Historic England;
- DEFRA;
- Public Health England;
- The Marine Management Organisation;
- The Coal Authority, and;
- Tyne and Wear Archaeology Service.

The Council will ensure that all its relevant service teams, most notably the Environmental Health, Building Control, Development Management and Strategic Policy, Leisure, Regeneration and Asset Management teams are involved in the application of, and compliance with, this Contaminated Land Strategy.



2 Regulatory Context

2.1 The Contaminated Land Regime

The statutory system comes from the Environmental Protection Act 1990. It sets out how we look at land to evaluate whether there may be an unacceptable risk associated with any contamination that may be present in, on or under the ground. If there is an unacceptable risk, then the site must be remediated to make it suitable for its present or, where more appropriate, future use. It should be noted that the Part 2A regime only considers the existing land use or future use that would not require planning permission.

Under Part 2A of the 1990 Act, 'Contaminated Land' is defined as:

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

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

The presence and magnitude of 'Harm' is determined by using a risk assessment system. The risk assessment is based on a **Contaminant-Pathway-Receptor** methodology:

Contaminant: a substance in, on or under land, which has the potential to cause harm to or pollution of the environment.

Pathway: how the source can be brought into contact with the receptor, such as wind-borne dust or vapours, or by transport in groundwater.

Receptor: humans, wildlife, controlled waters (surface waters and groundwater), and property.

A contaminant linkage is said to exist where there is some evidence that a contaminant source in, on or under the land is impacting upon a relevant receptor via a feasible pathway. Central to the requirements for the assessment of risk is the development of an initial site-specific conceptual model setting out all the contaminant linkages identified in the context of the site's environmental setting.

Land can only be determined as Contaminated Land if there is at least one significant contaminant linkage operating. A contaminant linkage is significant when it:

- *Is resulting in significant harm being caused to the receptor;*
- *Presents a significant possibility of significant harm being caused to that receptor;*
- *Is resulting in the significant pollution of the controlled waters which constitute the receptor; or*
- *Presents a significant possibility of significant pollution to controlled waters.*

The situations when harm or pollution is to be regarded as significant are described within Section 4 of DEFRA publication Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance (2012). Land can be subdivided into four categories based on a system of screening, from Category 4, which indicates that land is definitely not contaminated land under the terms of the act, to Category 1 which indicates that there is an unacceptably high probability that land is Contaminated Land further detail regarding land categorisation are provided in section 4.1 below.

2.2 The Regulatory Role of the Council

As the local authority, the Council is the primary regulator for the identification and enforcement of remediation under Part 2A. Its main duties are to:

- Prepare, publish and agree a review mechanism for strategies for the inspection of the Borough for contaminated land;
- Implement the strategy in a rational and efficient manner, identifying the most pressing and serious problems first, and concentrating resources on areas where contaminated land is most likely to occur;
- Determine which sites meet the definition of 'contaminated land' (and whether such sites should be designated "special sites");
- Ensure appropriate remediation of contaminated land takes place (through encouraging voluntary remediation or serving remediation notices); and
- Maintain a public register of Part 2A regulatory action.



All new developments must demonstrate that potential risks associated with contaminated land are dealt with appropriately.

The Council is also responsible for enforcement activities for a variety of related issues, including environmental health, coastal management and planning policy.

The Council will adopt an approach which is consistent with overarching best practice guidance for the management of contaminated land as set out in the Environment Agency's recently published guidance Land Contamination: Risk Management (2019).

The Council believes it is important to differentiate between its role as landowner and its statutory regulatory duty under Part 2A.

In undertaking the role as contaminated land authority, the Council will develop and implement a prioritisation model for inspections based on an objective risk assessment of all land within the borough, irrespective of ownership. Where land within the Council's ownership is determined as

contaminated, then the Council, as a responsible landowner, will lead by example in the remediation of the site.

2.3 The Role of the Environment Agency

Under Part 2A, the Environment Agency generally has a secondary role, assisting local authorities and providing site-specific guidance. However, in certain circumstances, particularly when water pollution is involved, contaminated land may be designated as a 'Special Site'. The responsibility for enforcing remediation then passes from the Council to the Environment Agency.

The main duties of the Environment Agency are:

- To provide information to local authorities on land contamination where a potential special site exists;

- To ensure remediation of Special Sites;
- To maintain a register of remediation of Special Sites;
- To provide advice to local authorities on identifying and dealing with pollution of controlled waters;
- To provide advice to local authorities on the remediation of contaminated land; and,
- To prepare a national report on the state of contaminated land.

The Council acknowledges that the Agency has a key supporting role in the implementation of Part 2A, and is a source of professional advice on site-specific issues in relation to potential special sites. The Council is committed to working with the Agency and will continue to develop and maintain the strong and constructive partnership already established.

2.4 Contaminated Land and the Planning System

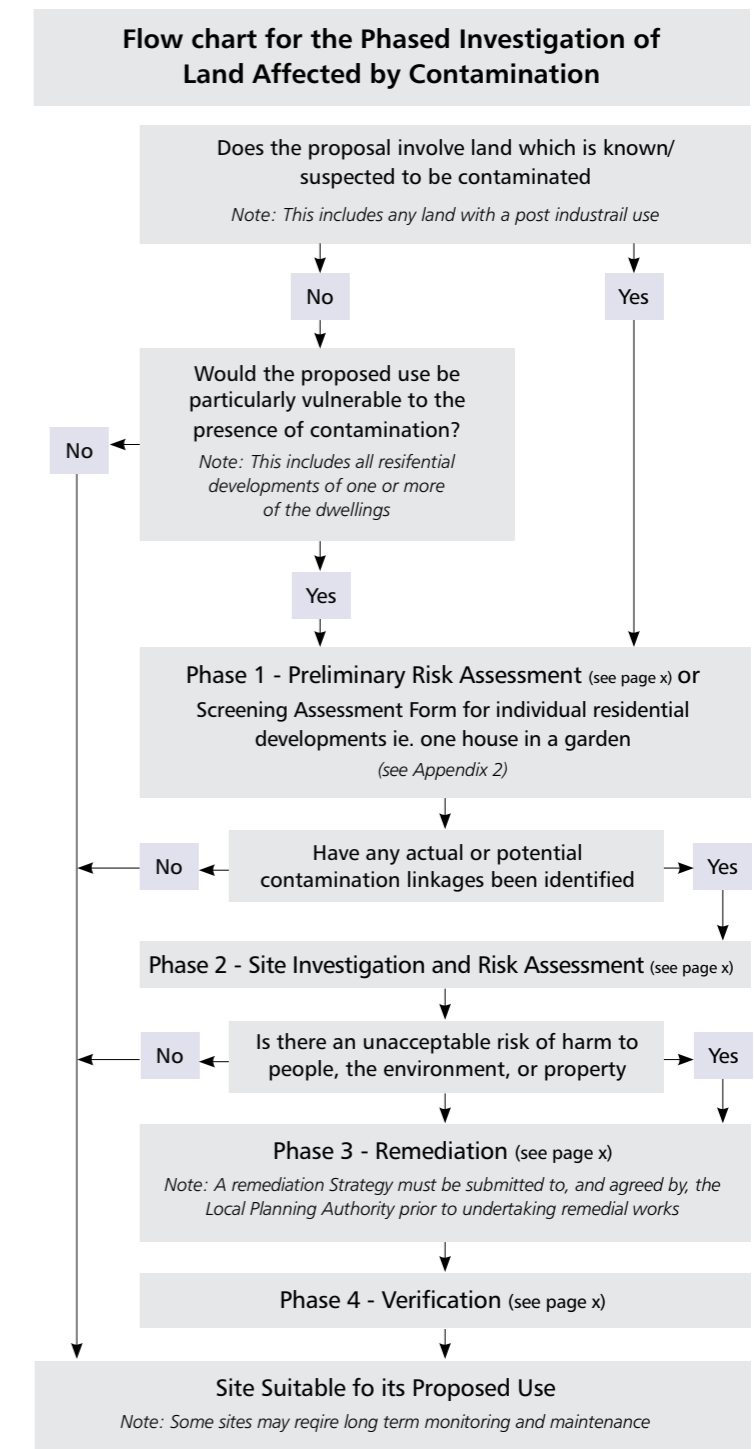
Whilst Part 2A deals with the historical contamination of land, the remediation of contaminated land for redevelopment purposes is managed through the planning system. The Council recognises that these two systems are interconnected.

The planning system recognises that land contamination, or the possibility of it, is a material consideration when preparing a Local Plan and determining planning applications. In respect of any proposed development, a local planning authority must satisfy itself that the potential for contamination is properly assessed, and the development incorporates any appropriate remediation measures necessary to render the site 'suitable for use'.

In addition, the Government's National Planning Policy Framework 2018 sets out the minimum requirements for land quality. Where a contaminated site can be appropriately dealt with through the Development Management system, then there should be no need to apply Part 2A to the same site. However, if undiscovered contamination issues emerge at a later date, then the use of Part 2A may need to be reconsidered. For this reason, it is important to ensure that all sites being dealt with under the development management process are thoroughly investigated and remediated to a standard suitable for current or permitted use. In addition, the Government's National Planning Policy Framework 2018 sets out the minimum requirements for land quality. Where a contaminated site can be appropriately dealt with through the Development Management system, then there should be no need to apply Part 2A to the same site. However, if undiscovered contamination issues emerge at a later date, then the use of Part 2A may need to be reconsidered. For this reason, it is important to ensure that all sites being dealt with under the development management process are thoroughly investigated and remediated to a standard suitable for current or permitted use.



Figure 1 –



The Council will review all planning applications in accordance with the Tyneside Validation Requirements to ensure that the process is in accordance with The Environment Agency’s Land Contamination: Risk Management guidance, which represents current and up to date best practice. Developers will be required to follow the procedures detailed within the Yorkshire and Lincolnshire Pollution Advisory Group (YALPAG) guidance document ‘Development on Land Affected by Contamination - Technical Guidance for Landowners, Developers and Consultants’ Version 8.2, 2017. This document sets out an appropriate phased approach to assessing and managing Land Contamination through the planning regime. A summary of the process is given in Figure 1 which is taken from the aforementioned YALPAG report.

Information submitted to the Council, as the Local Planning Authority, in connection with development on potentially contaminated sites will be subject to thorough review by the Environmental Protection Team to ensure that no unacceptable risks to future end users remain.

In accordance with the National Planning Policy Framework, paragraph 179, ultimate responsibility for securing a safe development rests with the developer and/or landowner.

It is important to be clear that, whilst the Part 2A statutory guidance requires a strong case to be made that there is a significant possibility of significant harm/significant pollution occurring before land can be determined as Contaminated Land, assessment of potential contaminant linkages under the planning regime will be made on a significantly more precautionary basis with the burden placed upon the developer/landowner to demonstrate that residual risks are acceptably low such that the site is suitable for its intended

*Development on Land Affected by Contamination (Version 8.2)
YALPAG Technical Guidance for Developers, Landowners and Consultants*

end use. For this reason, published guidance designed to support categorisation of sites under the Part 2A regime, for example, Category 4 Screening Levels (DEFRA SP1010, 2014) may not be appropriate for assessment of sites via the planning system.

Information obtained regarding the investigation and remediation of sites within the planning regime will be used to update the LQMS and inform the ongoing inspection strategy for the borough.



2.5 Contaminated Land and Other Regulatory Systems

Part 2A deals with any harm or pollution that may arise from historic contamination of land as it affects current use. Some active sites, processes and land uses are regulated under other legislation, such as the Waste Management and Pollution Prevention and Control systems.

Where a site is already regulated, there will generally be no need to apply Part 2A. Should Part 2A inspections provide evidence that a breach of another pollution prevention system is occurring, action will normally be taken under that system.

2.6 Land Quality Management System

The Council has developed a comprehensive Geographic Information System (GIS) database, equivalent to a Land Quality Management System (LQMS), to serve as a single repository of environmental information for the borough, supporting both Part 2A work and planning activities together.

The information held in the LQMS will be used to inform the processes of identifying sites as contaminated land, and prioritising them for inspection and remediation. In turn, the Contaminated Land Strategy will provide a key contribution to the LQMS, creating a better understanding of potential liabilities, and risks to the environment throughout the borough.

The Council has acquired a portfolio of key data sets that underpins the LQMS, including:

- Historical site uses, derived from historical Ordnance Survey Maps;
- Sites with more recent industrial uses that involve potential contaminants, such as ship building yards, chemical works, engineering works, gas and coal processing sites;
- Waste treatment sites, including current and historical landfills;
- Schools, nurseries and children’s play areas;
- Residential properties;
- Rivers, streams and other controlled waters;
- Vulnerable aquifers and water abstractions;
- Natural and historic conservation areas, and other sensitive land uses;
- Agricultural land uses such as farms and allotments;
- Recreational areas.

The Part 2A Inspection Strategy will help develop a better understanding of potential environmental liabilities associated with contaminated land within the Borough. This information will be used to facilitate prioritisation of sites for remediation, to determine liabilities and resource implications, and thereby make a key contribution to long-term asset management and planning within the Council.

The LQMS is a live document in accessible electronic form, updated as information about the borough becomes available.

2.7 The Public Register

In accordance with the requirements of Part 2A, the Council has established and will continue to maintain a Public Register to act as a full and permanent record of sites determined to be Contaminated Land where remediation action is in hand or has been completed.

The Public Register is available for public inspection at the Town Hall and Civic Offices, Westoe Road, South Shields, NE33 2RL.

The Register is required to include all action taken by the Council in respect of the remediation of contaminated sites. It will not be a register of:

- Land that has been determined to be contaminated, but for which no Remediation Notice has yet been served;
- Land that is affected by contamination from other sites; or
- Land that may be contaminated land but has yet to be officially determined as such.

The Public Register was created in June 2001 and will be regularly updated to record information in compliance with the legislation as work progresses identifying and evaluating sites for which regulatory action may be required. There are currently no entries in the Contaminated Land Register.



Magnesian Limestone at Whitburn Coastal Park

3 Characteristics of the Borough

It is essential that the Contaminated Land Strategy is based on a detailed understanding of the Borough and the suitability of the land for its current use. Local circumstances, characteristics and historical land use are important to an understanding of how land has or might become contaminated.

3.1 Location and Setting

South Tyneside is situated on the south bank of the River Tyne and covers an area of approximately 6,700 hectares. It is located in the east of the Tyne and Wear conurbation and is served by a major port, the A19 and A194(M) roads, and a light railway system (Metro). A historically strong mining and shipbuilding history has given way to tourism and service industries, with pockets of specialised light industry.

Within the Borough there are several strong communities that can be independently identified given their growth around old towns and villages. Examples are Jarrow, Hebburn and South Shields. These traditional towns have grown rapidly over time and begun to merge through the building of estates on former greenfield land. However, there is only a finite supply of sustainably located land that is suitable to meet the Borough's long term needs. Greater emphasis is now being given to re-using brownfield land, wherever it is viable to do so. For this reason, the Contaminated Land Strategy plays an important role in the development of the Council's Planning Policies in its Local Plan.

3.2 Geology

The solid geology of South Tyneside is dominated by two geological units, the Carboniferous Coal

Measures (Westphalian) and the Permian Lower Magnesian Limestone. The Coal Measures comprise a sequence of mudstone, sandstone, siltstone, seat earth and coal, the latter of which was historically extensively mined in the area. The Lower Magnesian Limestone sits above the Carboniferous Coal Measures and forms most of the borough's rugged coastline.

The drift deposits overlying the bedrock consist of interbedded sands and clays of lake, river or glacial origin, depending on the location. There are also some areas of thick Durham Boulder Clay and areas where no drift deposits are found. Alluvial deposits are found in many areas alongside the River Tyne and where inlets once existed (e.g. Mill Dam).

There are extensive areas of made ground (i.e. artificial, man-made ground), especially alongside the river and coastline. Much of the former salt marshes and mud flats were built up using ship's ballast to form the outline of the Borough as it is now and it is apparent from historical documents that areas were also built up using industrial materials from nearby works.

3.3 Hydrology

The Rivers Tyne and Don, along with their tributaries, are the main surface water features in the area. The Tyne is saline estuary along its length in South Tyneside; the River Don is primarily freshwater and supports a population of water voles.

The North Sea delineates the eastern boundary of the Borough. The quality of the bathing waters within the coastal area of the Borough is classified as good according to the Environment Agency's bathing water quality classification system (2018).

3.4 Hydrogeology

Much of South Tyneside lies upon a 'Principal Aquifer' (the Magnesian Limestone) and this provides a significant resource of groundwater to the area around Sunderland; indeed, parts of South Tyneside lie within the Source Protection Zone (SPZ) for licensed public supplies. As such, the aquifer must be protected from pollution from anthropogenic and natural sources. The Permian Magnesian Limestone is a named formation under Schedule 1 of the Contaminated Land (England) Regulations 2006 and significant pollution from a site may therefore lead to that site being classified as a Special Site under Part 2A.

The Coal Measures are classified as a 'Secondary A Aquifer', locally important for small-scale abstractions and river base flow. Given the mining activities in the area, the natural flow pathways within the rock strata will have been significantly altered and there is a potential for the generation of iron-rich mine waters from old workings. Rising mine water may result in groundwater contamination.

The cover of clay drift materials usually acts as a barrier to downward migration of pollution from surface deposits and it is chiefly where this is absent or has been breached that the potential for contamination of the Major Aquifer exists. It should also be noted that the groundwater in the aquifer might be saline in nature in areas close to the coast.



The River Don at Jarrow

3.5 Landscape Character

The borough of South Tyneside is primarily low lying, but does have gentle slopes rising from the River Tyne valley. An area of higher ground on the Magnesian Limestone Plateau forms Cleadon Hills, although this is still less than 100m above sea level. South Shields itself has a series of sandy beaches stretching from within the Harbour Piers down to Trow Point. The coastline from Trow Point southwards is dominated by vertical sea cliffs of limestone; the extreme south of the borough around Whitburn Bents has much lower cliffs due to the nature of the rock in that area.

3.6 Industrial and Natural Heritage

The industrial heritage of the Borough was traditionally dominated by the geology and layout of the area, with shipbuilding along the riverside

and coal mining of the Carboniferous Coal Measures being major industries. In addition to those industries, the historic use of saltpans in the area brought about chemical and fertilizer plants. Modern industries in the area include an active port, small chemical plants, quarrying, fuel storage and other light industries.

In the past, the rich geological deposits of coal, clay and limestone have proved attractive, with extraction occurring since Neolithic times when eroded Boulder Clay deposits of flint were 'mined' from the borough's beaches. Given the nature of the coal outcrops in the area it is likely that work (in the form of bell pits) began in Roman times, and it was not until the invention of steam-driven pumping equipment that deep mining took place. The final coal mine, at Westoe Colliery, ceased production in 1993.

Quarrying of clay, sand and limestone has occurred throughout those areas with the natural resource. Many of the former quarries have been infilled with

domestic or industrial waste and have since been adopted as open space. The borough has one working limestone quarry at Marsden Quarry, and the ongoing extraction of coal and fireclay presently being carried out at Red Barns.



Historic Lime Kilns at Marsden

3.7 Nature Conservation

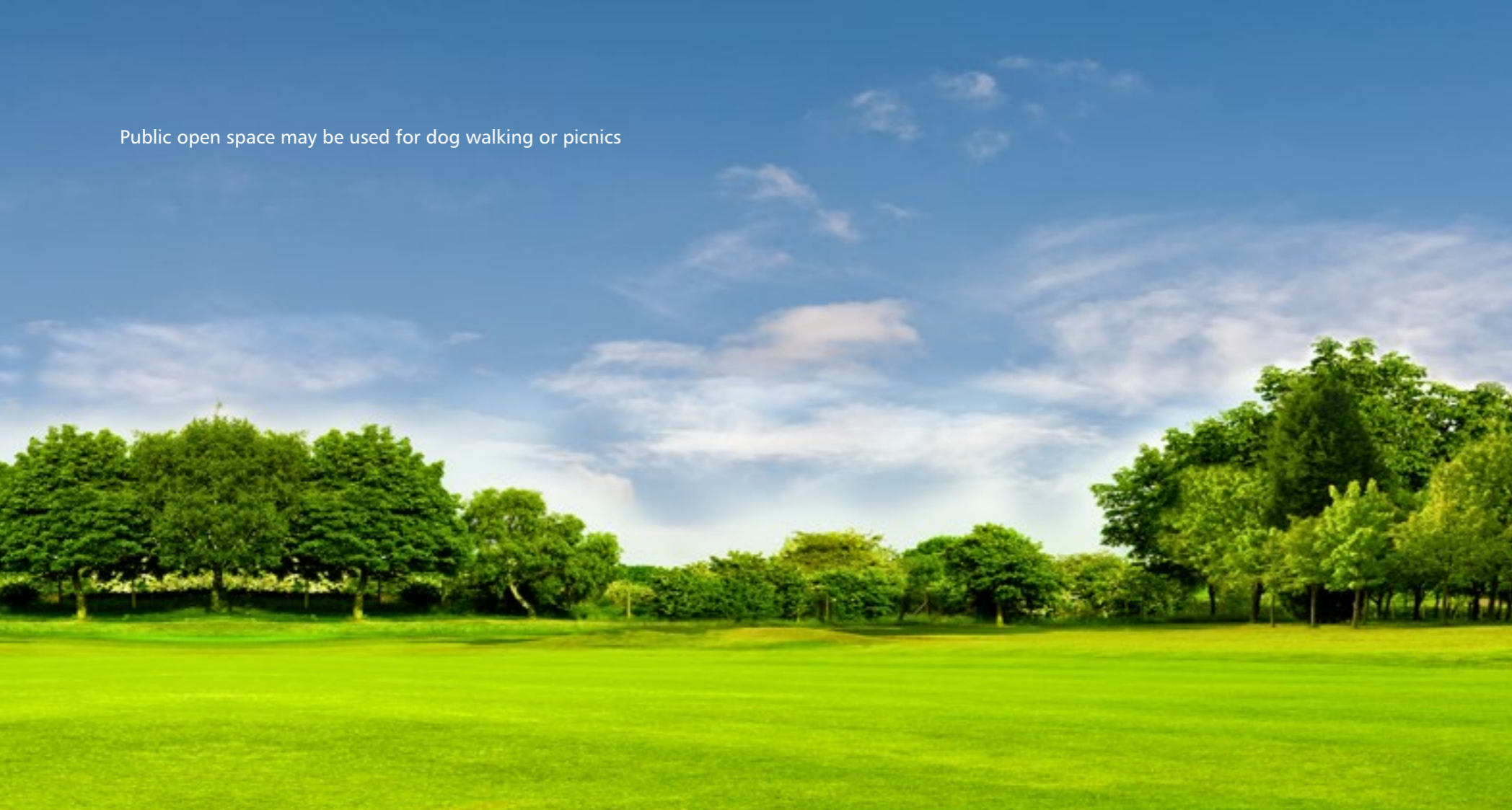
Many sites within the Borough have been identified as important to nature conservation. There are 37 locally designated sites (Sites of Nature Conservation Importance), 6 Local Nature Reserves (LNRs), and 5 Sites of Special Scientific Interest (SSSIs). The whole coastline has been long recognised as an important habitat for wading birds and littoral wildlife, having a SSSI classification and international designations of a Special Protection Area (SPA), a Special Area of Conservation (SAC) and a RAMSAR site. Sites with these designations form recognised receptors in the context of Part 2A.

3.8 Historic and Built Environment

South Tyneside has a rich history which is evidenced by its archaeological remains and historic buildings. The Tyne and Wear Historic Environment Record (HER) is a database of heritage assets in Tyne and Wear managed by the Tyne and Wear Archaeology Service. It includes archaeological sites and standing remains dating from the Roman period through Anglo-Saxon and medieval periods, to post-medieval and industrial remains.

South Tyneside contains a World Heritage site (Arbeia Roman Fort is part of the Frontiers of the Roman Empire: Hadrian's Wall World Heritage Site) and five nationally important designated Scheduled Monuments which are afforded protection by Part 2A. Scheduled Monument are protected by the Ancient Monuments and Archaeological Areas Act 1979. Listed Buildings, also of national importance, are protected by the Planning Act 1990. Non-designated above and below-ground heritage assets (identified in the HER) are protected by policies in the South Tyneside Core Strategy.

Public open space may be used for dog walking or picnics



is utilised for residential with gardens or in close proximity will be in group 1. Land that has had the potential to introduce contamination and is close to allotments will be in group 2 unless it is within group one due to close proximity to residential with gardens and so on.

The intent of this Contaminated Land Strategy is that sites within group 1 will be first to undergo detailed inspection, then group 2 sites, and so on. As the Council is committed to investigating sites where there is evidence of significant harm or pollution as soon as they are identified, this schedule will not prevent the Council from investigating other sites of concern that may arise during the prioritisation/investigation process. The Council will review the schedule as part of each overall Strategy Review.

Within each category in turn, sites will then be screened and prioritised using a prioritisation tool. Previously, the Council undertook the screening and prioritisation exercise in accordance with the Department of the Environment's Contaminated Land Research Report 6 – Prioritisation and Categorisation Procedure for Sites which may be Contaminated (CLR6), 1995 which is now withdrawn. It is the Council's intention to maintain a South Tyneside specific approach that will best suit the information within the LQMS



Children's play areas are potentially a sensitive site use

4.1 Screening

Screening will first seek to identify those sites within the selected category that may have the potential to constitute Contaminated Land. i.e. those sites which fall within Category 1 or 1, as defined in the DEFRA Contaminated Land Statutory Guidance (2012). A full definition of the four categories as given in the statutory guidance is provided in appendix A to this strategy. A summary of the categories is given in Table 2 on the next page.

4 Identifying Potentially Contaminated Land

The first stage in identifying potentially contaminated land involves preliminary screening of key data sets relating to all land within the Borough to identify sites where potential contaminant linkages of concern exist. The Council will use its existing GIS system and LQMS, as the principal tool in the screening process.

To ensure the optimum use of resources, the Council will prioritise the inspection of sites so that potential impacts on the most sensitive receptors are dealt with first. This revised Contaminated Land Strategy will consider human health as the prime receptor of concern, followed by controlled waters (surface waters and groundwater resources), animals, crops and ecosystems, and the built environment.

Table 1. Schedule of Land Use and Critical Receptor Priorities

Group	Land Use	Critical Receptor
1	Residential with gardens	Children and adults
2	Allotments	Children and adults
3	Children's play areas	Children and adults
4	Open Spaces (playing fields etc)	Children and adults
5	Residential without gardens	Children and adults
6	Commercial	Adults

Initially, land that has had the potential to introduce contamination will be divided into categories depending on how close they are to the receptors of concern listed above. For example, all land which

Table 2. Summary of Contaminated Land Categories

Category	Summary
1	Cases where the local authority considers there is an unacceptably high probability, supported by robust science-based evidence, that significant harm would occur if no action is taken to stop it. This category will also include cases where: similar situations or exposures are known to have caused or are strongly suspected (on the basis of robust evidence) to have caused harm elsewhere; significant harm may already have been caused and there is an unacceptable risk that it might continue or occur again.
2	Land should be placed into Category 2 if the authority concludes, on the basis that there is a strong case for considering that the risks from the land are of sufficient concern, that the land poses a significant possibility of significant harm, with all that this might involve and having regard to Section 1. Category 2 may include land where there is little or no direct evidence that similar land, situations or levels of exposure have caused harm before, but nonetheless the authority considers on the basis of the available evidence, including expert opinion, that there is a strong case for taking action under Part 2A on a precautionary basis.
3	Land should be placed into Category 3 if the authority concludes that the strong case described in 4.25(a) (i.e. Category 2 definition) does not exist, and therefore the legal test for significant possibility of significant harm is not met. Category 3 may include land where the risks are not low, but nonetheless the authority considers that regulatory intervention under Part 2A is not warranted. This recognises that placing land in Category 3 would not stop others, such as the owner or occupier of the land, from taking action to reduce risks outside of the Part 2A regime if they choose.
4	Cases where there is no risk or the level of risk is considered to be low. For example, this category would include sites where no viable contaminant linkage is present, those where risks have been shown to be low or those where levels of contaminants do not exceed normal levels.

It is likely that many sites will be screened out at this stage. These may include 'greenfield' land, that has always been agricultural, recreational or open space, and commercial or residential properties built on such land. Such sites will not be prioritised for detailed inspection and will be considered to fall within Category 4 as described by the DEFRA Contaminated Land Statutory Guidance (2012). They may be considered again in the future through the Strategy Review process, or if the Council receives any evidence of significant harm or pollution arising from these sites.

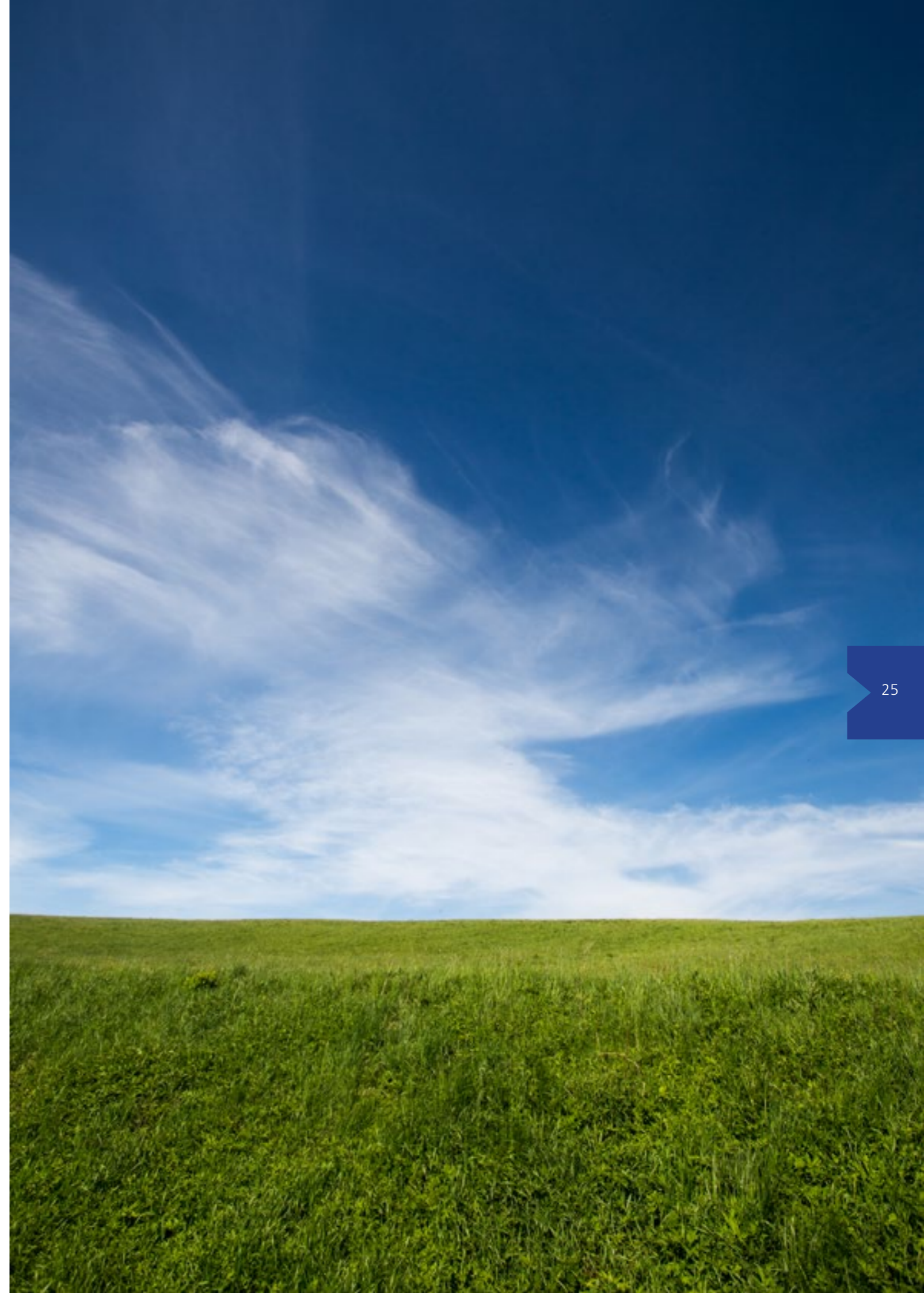
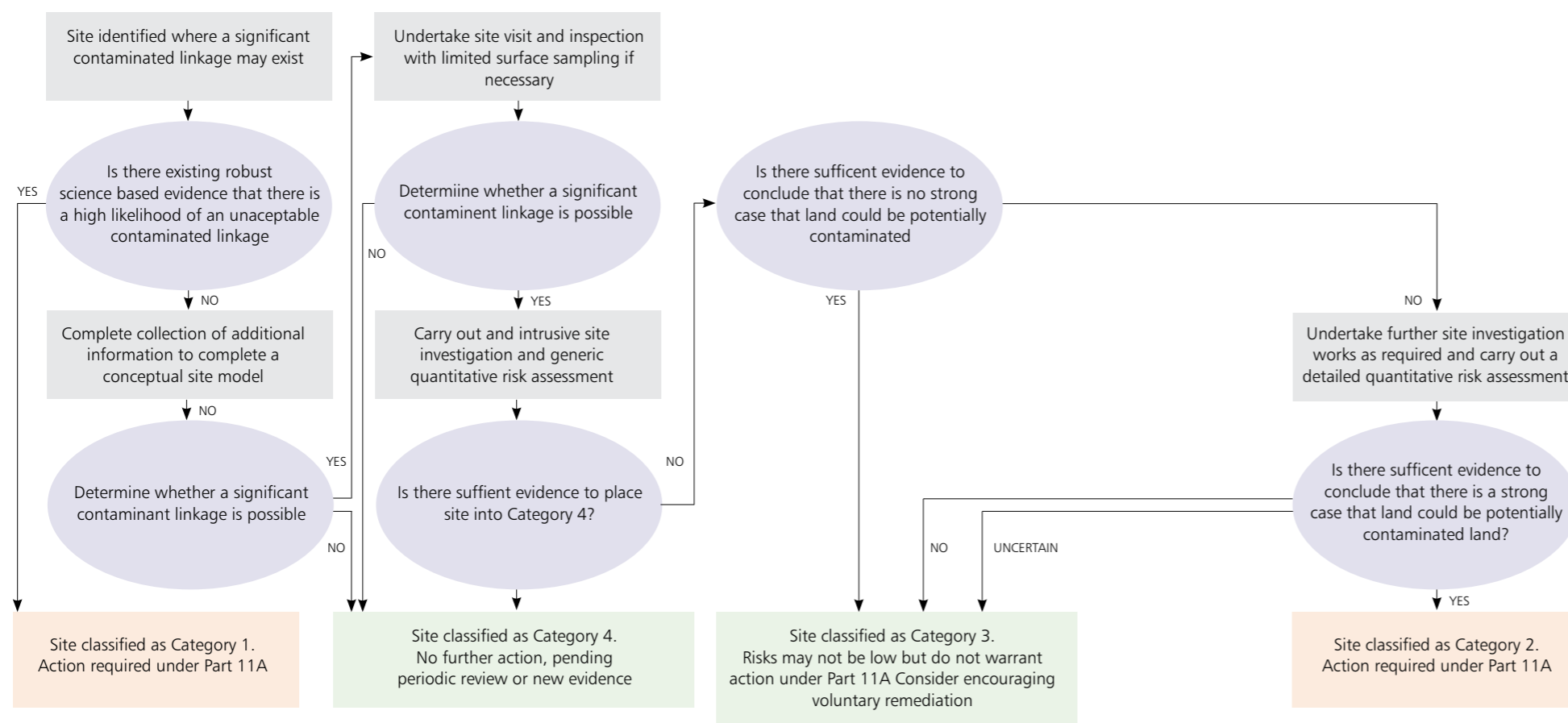


Figure 2 – Detailed Inspection Process for Part 2A assessments.



The Council will follow the best practice guidance as detailed within the recently updated Land Contamination: Risk Management (2019). This describes the preferred process for managing land contamination, beginning with preliminary investigations (stage 1) which provides the site specific background necessary to appropriately design and implement a site investigation. This will help determine the requirement for options appraisal (stage 2) and remediation (stage 3) if necessary. Additionally the EA publication “Guiding Principles for Land Contamination” March 2010 will be referred to.

5.1 Site Inspection

In all circumstances the Council will aim to gain the approval of the landowner and occupier (if different) prior to undertaking a site inspection. The Council recognises that investigations can be disconcerting to local residents, and will endeavour to communicate in a responsible and open fashion.

The Council will encourage the appropriate persons, whether they are the existing landowner, previous owners, current or previous site occupants and/or other responsible parties, to undertake their own site inspection. Nevertheless, the Council has the power, under Section 108 of the Environment Act 1995, to carry out an inspection using statutory powers of entry, so long as it is satisfied that there is a reasonable possibility that a potentially significant contaminant linkage exists on the land. The Council will not exercise these powers if detailed information exists to allow it to make a determination by other means.

5.2 Health and Safety

Health and Safety is of prime importance to the Council during inspection works. Prior to undertaking any site-based activity, the Council will ensure that works are conducted in accordance with appropriate Health and Safety Procedures, following a full risk assessment and, if necessary, the production of method statements. Where a consultant or outside contractor is employed to undertake such works, then it is expected that they will adhere to recognised Health and Safety regulations.

5.3 Requests for Environment Agency Site Inspections

Where land is suspected as being potentially contaminated land and could possibly be designated as a Special Site, then the Council will request in writing that the Agency inspects the site in its behalf. Where the Council asks the Agency to carry out an inspection it will, where necessary, authorise a person nominated by the Agency to exercise the powers of entry conferred by Section 108 of the Environment Act 1995. All relevant documentation for each site will be copied to the Agency for the purposes of their inspection.

If the Council considers that there is a reasonable possibility that a contaminant linkage (contaminant – pathway – receptor) which could result in an unacceptable level of risk exists in respect of any land, then it will carry out a more detailed inspection to obtain sufficient information to determine whether the land appears to be Contaminated Land, and whether it is a Special Site. Information will be gathered in an iterative process until sufficient data is available to categorise the site according to categories 1 to 4 as described by the DEFRA Contaminated Land Statutory Guidance (2012).

The process of detailed inspection will follow the requirements of the DEFRA Contaminated Land Statutory Guidance (2012) and may include the following activities:

- A review of existing desk study and site investigation information;
- An additional desk study to gather and assess further information;

- A site visits for visual inspection and possibly limited sampling to determine the likelihood of contaminant linkages being present; and/or,
- An intrusive site investigation, involving the sampling and analysis of soils, surface water and groundwater, to characterise actual or potential contaminant linkages.
- A remedial options appraisal and remedial works.

In cases where intrusive site investigation is proposed, the Council will also consider the need for an archaeological evaluation of the site before works commence.

This stage of work will also involve identifying those parties responsible for any contamination at the site and the process of attribution of liability will begin.

The process of detailed inspection and categorisation of land is summarised in Figure 2 above.

5.4 Intrusive Investigation

The site investigation procedures to be followed will comply with current best practice and authoritative guidance. Currently, site investigation procedures need to comply with the following, as a minimum:

- Environment Agency, Technical Aspects of Site Investigation;
- British Standard (BS) 10175:2011 + A2:2017 – The Investigation of Potentially Contaminated Sites – Code of Practice;
- BS 5930: 2015 – Code of Practice for Ground Investigations;
- BS ISO 18400 – Soil Sampling;
- H&S Executive HS(G)66 – Protection of Workers and the Public during the Development of Contaminated Land;
- Environment Agency - Land Contamination: Risk Management (2019)
- CIRIA C665 (Assessing the Risks posed By Hazardous Ground Gases to Buildings)
- BS ISO 5667-11 2009 (Water Quality. Sampling. Guidance on Sampling of Groundwaters)
- BS ISO 5667-22:2010 (Water Quality. Sampling. Guidance on the Design and Installation of Groundwater Monitoring Points)

Site investigations will be designed to target the potential contaminant linkages of concern and provide sufficient information to enable the Council to make an informed decision of the likely levels of associated risk present.

5.5 Assessing Contamination

Evaluation of chemical data within the context of Part 2A will be undertaken in accordance with current UK best practice. Analytical results will initially be compared with authoritative and scientifically based generic guideline values developed specifically for the English context, including;

- Category 4 Screening Levels developed by DEFRA for use with Statutory Guidance and Part 2A. DEFRA SP1010 (2014);
- Soil Guideline Values generated by the most recent version of the Contaminated Land Exposure Assessment (CLEA) model developed by the Environment Agency and DEFRA;
- LQM/CIEH S4ULs for Human Health Risk Assessment (2015);
- AGS/EIC/CL:AIRE, Soil Generic Assessment Criteria for Health Risk Assessment (2009);
- Environmental Quality Standards in line with the requirements of the Water Framework Directive;
- UK Drinking Water Regulations, etc.
- Guidelines in Drinking Water Quality, World Health Organisation.

Where no national guidance is available for a particular contaminant or receptor, the Council may consider comparison with European guidelines where these can be shown to be relevant and in accord with the UK policy approach.

It is likely that a site-specific detailed quantitative risk assessment will be necessary when making robust judgements about whether land meets the definition of contaminated land. This level of assessment will be expected to include consideration of site specific soil and groundwater conditions, site specific exposure models based on receptor and land use characteristics and site specific contaminant information.



5.6 Normal Levels of Contaminants in Soil

It is not the intention of Part 2A to apply to those sites where levels of contaminants in soil are normal or commonplace across the district of South Tyneside. In assessing the level of risk posed by a specific site the authority will take into consideration whether contamination is within the bounds of what might be considered normal in the context of naturally occurring background concentrations or occurring regionally or nationally in broadly similar circumstances. In 2012 DEFRA published a series of Technical Guidance Sheets on Normal levels of Contaminants in UK soils, which are designed to support implementation of Part 2A and its associated Statutory Guidance, and so will provide a useful indication of likely normal background concentrations.

5.7 Hazardous Ground Gas and Vapours

Potentially significant contaminant linkages may be present owing to the presence of hazardous ground gas or vapour generating substances.

Hazardous ground gases meriting consideration may include but are not limited to:

- Permanent gases such as carbon dioxide or methane, which may arise from historic mine workings or the degradation of organic materials below the ground surface;
- Vapours arising from certain hydrocarbons or solvents in the ground.

The potential for significant contaminant linkages associated with hazardous ground gas or vapours will be assessed in accordance with appropriate current best practice guidance documents including;

- British Standard (BS) 8485:2015 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings
- CIEH 2008 Local Authority Guide to Ground Gas;
- CIRIA C665 2007 Assessing Risks Posed by Hazardous Ground Gasses to Buildings;
- CIRIA C682 2009 The VOCs Handbook
- CIRIA C735 2014 Good Practice on the Testing and Verification of Protection Systems for Buildings Against Ground Gas.



Surface waters are a receptor under Part 2A

6 Determination of Land as 'Contaminated Land'

In assessing potentially contaminated land the Council will follow the procedure shown in Figure 1. Information will be gathered and reviewed as an iterative process until sufficient evidence is available for the Council to place the site within categories 1 to 4 in accordance with the DEFRA Contaminated Land Statutory Guidance. Category definitions as taken from the guidance are included as appendix A for reference and are summarised in Section 4.1 above.

Sites which fall within categories 1 or 2 are deemed to have met the definition of Contaminated Land and further action will be required.

If harm is posed to an ecosystem, the Council will consult Natural England. In making a determination that relates to controlled waters, the Council will consult the Environment Agency before making its decision. We will also take into consideration any archaeological interests, and will, where necessary, consult with Historic England.

If the Council finds that a significant contaminant linkage is likely to be present and that it is likely to cause significant harm or pollution, or obtains evidence that significant harm or pollution has been caused, it will formally determine the site to be Contaminated Land, and give written notice to:

- The Land Owner, if applicable;
- Any person who appears to be the occupier of the land;
- Each person who appears to be an **appropriate person**.

Details of the site and the circumstances of the determination will then be entered into the Public Register.

6.1 Special Sites

When the Council has identified a site as Contaminated Land, it will be assessed to see if it meets one or more of the prescribed descriptions in the Contaminated Land (England) Regulations 2006 and amendments that would cause it to be designated as a Special Site. The Council will liaise with the Environment Agency in advance of formal action to agree the basis of any such designation, bearing in mind that the Agency will become the enforcing authority in this event. The status of any such site will be kept under review as further information becomes available. The Council will act in accordance with the Statutory Guidance in the determination of land that may be a Special Site.

If the Council decides that the land is required to be designated (under Section 78C (3)) of Part 2A of the Environmental Protection Act, then the authority will give written notice to: -

- The Environment Agency;
- The Land Owner if applicable;
- Any person who appears to be the occupier of the land;
- Each person who appears to be an appropriate person.

At the formal designation stage, the Agency will consider whether it agrees with the Council that the land should be so designated. If it does not agree, then it must notify the Council in writing within 21 days of the Council notification, giving a statement and reasons for its decision. Responsibility for regulating the site will then remain with the Local Authority.

If the Agency agrees with the Council, then the Contaminated Land in question will be designated as a Special Site.

Copies of all documentation relating to the site will be copied and forwarded to the Environment Agency for their records. The Council will request that any additional work carried out after the site has been formally transferred is documented and copies provided to the Council for its records.



7 Remediation

In Where a site is determined as Contaminated Land, then the enforcing authority will generally be the Council, except for those sites designated as Special Sites, for which the Environment Agency will be the enforcing authority. The enforcing authority is under a duty to require appropriate remediation of the site solely to a standard so that it no longer meets the criteria for determination as Contaminated Land.

7.1 Liability

The liability for the costs of remediation falls on the appropriate person, who is defined by the application of the “polluter pays principle”, that is anyone who caused or knowingly permitted the contaminant linkage. Such a person is referred to in the legislation as a Class A person. In some cases, there may be more than one Class A person.

If a Class A person cannot be found, then the liability may transfer to a Class B person, who is usually the current owner or occupier.

There is a complex system of exclusions and apportionment of liability that takes into account the possibility of the existence of several persons being held responsible to the costs of remediation. The Council will follow the prescribed process for determining liability as detailed within the DEFRA Contaminated Land Statutory Guidance (2012).

It is intended that, wherever practicable, remediation should proceed by agreement with the appropriate person, rather than by formal action of the enforcing authority. If such action is not forthcoming, then the Council will serve a Remediation Notice requiring action to be taken or undertake the work itself and seek to reclaim the costs from the appropriate person(s).

7.2 Remediation Objective

Under Part 2A, the enforcing authority has a duty to require appropriate remediation of the site to a standard so that the site no longer meets the criteria for determination as Contaminated Land. Remediation need mitigate only those linkages that led to the site being determined as contaminated land, i.e. so that it no longer poses a significant risk to the identified receptor(s). The remediation must therefore deal with every contaminant linkage at the site relevant to the determination.

The land does not have to be returned to its original condition or made suitable for future use, Part 2A remediation should be undertaken to a standard so that the condition of the site is suitable for its current use although the appropriate person may voluntarily carry out additional remediation to achieve wider objectives.

Harm or pollution can be prevented by undertaking one or more of the following actions:

- Removing or treating the source;
- Breaking or removing the pathway; or.
- Protecting or removing the receptor.

Regardless of who proposes a remediation scheme, the enforcing authority must be satisfied that this represents the best practicable option for remediation of the linkages that led to the site being determined under Part 2A. Such evaluation should include:

- The extent to which the scheme would achieve the specific remediation objectives;
- Whether the scheme would be reasonable having regard to the cost which is likely to be involved and the seriousness of the harm or pollution of controlled water being mitigated;
- Whether the scheme represents the best combination of practicality, effectiveness and durability.

The programme for remedial action will be site-specific, but the Council will seek to bring about action at each site in a timely manner related to the seriousness of the situation.

7.3 Verification

The successful completion of remedial works must be supported by suitable verification information which demonstrates that the viaremedial actions have been effective and that the identified contaminant linkages no longer present an unacceptable risk to receptors. The remediation design should include a verification plan in accordance with Land Contamination: Risk Management (LCRM) which details those data requirements that are needed in order to demonstrate that the remedial objectives are being met.

As detailed within LCRM, The verification report report incorporates all site test data and measurements of quality-critical parameters, as well as records of the management of recovery or disposal of materials at the site. This includes materials that have been re-deposited on site, recovered for reuse, taken off site for treatment or imported as backfill. The report needs to demonstrate that remediation has complied with relevant legislation and that the outcome of the project has met its remediation objectives and criteria. Where monitoring and/or maintenance of remediation are required, the verification report is only a snapshot in time. In these circumstances the provision of long term monitoring reports should be viewed as being complementary to the verification report.”

Verification requirements will vary depending on the site specific remediation design, however, where relevant it is expected that information will be presented in accordance with the requirements of relevant guidance documents including but not limited to:

- CIRIA C735 2014 ‘Good Practice on the Testing and Verification of Protection Systems for Buildings Against Ground Gas.
- Yorkshire and Lincolnshire Pollution Advisory Group 2017 ‘Development on Land Affected by Contamination, Technical Guidance for Landowners, Developers and Consultants.’ V8.2.
- Yorkshire and Lincolnshire Pollution Advisory Group 2016 ‘Verification Requirements for Cover Systems, Technical Guidance for Landowners, Developers and Consultants.’ V3.3.
- Yorkshire and Lincolnshire Pollution Advisory Group 2016 ‘Verification Requirements for Gas Protection Systems, Technical Guidance for Landowners, Developers and Consultants.’ V1.1.



8 Information Management

8.1 Principles

The Council will strive to work in co-operation with all land owners, occupiers and other interested parties in the development and implementation of the strategy.

The Council recognises that public perception of the risks associated with contaminated land is critical to the success of the Contaminated Land Strategy. A site cannot be considered suitable for use unless the public can have confidence in the methods employed to assess it and in any remedial activity carried out. Accordingly, the Council will aim to communicate information in a clear, consistent and concise manner at all times.

The Council will make appropriate use of decision records as recommended within LCRM to clearly record decisions made at each of the key points

within the contaminated land management process. The EA publication "Guiding Principles for Land Contamination", March 2010 will also be used for the management and remediation of contaminated land both through the Planning and Part 2A regimes.

Wherever possible we will openly invite public participation and keep the public informed as to why, where and how works are going to be undertaken. The Council will publicly advertise site investigations, primarily through direct contact with those residents most likely to have concerns. Direct contact details of a Council officer will be included in any such communications so that any questions can be answered by a knowledgeable individual.

The Council's LQMS will be used to present information where possible, so that it can be understood within the geographical context of the borough.

8.2 Complaints

Our Service aims to make initial contact with all complainants within 3 working days to register complaints and action any required investigation. It will operate a strict confidentiality system and the identity of complainants will not be disclosed. This is to allow people who complain to feel safe in doing so and to make anonymous complaints less likely. Should information be provided, its credibility will be assessed by the Council, possibly with the assistance of a specialist third party.

Anyone can provide the Council with information via any of the Key Contacts listed at the end of this document.

8.3 Information Management

Information will be managed in a logical manner to ensure its efficient use and validity. The Council will strive to continue improvement relating to Information Management.

As far as is reasonably possible the Council will aim to store information in an electronic format, the LQMS within the GIS system.

Paper based information will be contained at a single location.

Management of information within the Inspection Strategy will be administered by the Environmental Protection Team.

Information produced or provided and used within the Inspection Strategy will be treated as confidential. The Council will act in accordance with the Data Protection Act 1998 and Environmental Information Regulations 2004. Accuracy of information will be reviewed prior to use within the Inspection Strategy.

South Tyneside Council takes great pride in the transparent and open manner in which it operates and recognises citizens' fundamental right to information. The Council therefore acts in accordance with the statutory and regulatory requirements, making environmental information accessible to the public.

Given the sensitive and technical nature of the contaminated land system, the Council's strategy seeks to balance the public's right to clear and substantiated environmental information with the Council's requirement to avoid unnecessary alarm.

In compliance with the above and the requirements of the Contaminated Land (England) Regulations 2006, information held on the Council's Part 2A Public Register, will be accessible by the public and will be available for viewing at the Town Hall during normal office hours.

8.4 Providing Information to Third Parties

The Council recognises the amount and type of baseline information about sources, receptors and pathways that needs to be collated to develop the LQMS and the running of the prioritisation model may be



of interest to third parties. This may be site-specific information or data relating to the entire borough.

The Council will make this information accessible to third parties including the public. Particular attention will be paid to liaison with the Environment Agency in accordance with agreed national guidelines.

Factual site-specific information such as historical land uses will be made available to the public, conveyancers or other interested parties on request in writing. However, at the Council's discretion, certain information, which is deemed to be confidential, commercially sensitive, personal, or related to law enforcement will be withheld. The Council will of course comply with the legal requirements governing public access to information.

Requests should be made in writing, where appropriate enclosing the appropriate fee, to the Contaminated Land Officer and should, if possible, include a plan clearly identifying the site

boundaries. The charging scheme for the provision of environmental information is reviewed annually; therefore the relevant fee should be confirmed prior to making the request.

Due to the specialist nature of contaminated land site investigations, interpretative data resulting from specific site inspections will not be made publicly available. These documents are internal to the Council and are a prerequisite of the decision-making process and intrinsic to the enforcement of the statutory system. Once a site is determined, all relevant documents will be entered in the public register.

Information such as desk studies and site investigations which are gathered during planning applications are publicly accessible via the planning portal on the South Tyneside Council website.

8.5 Provision of Information to the Environment Agency

The Environment Agency is obliged to prepare and publish a report on the state of Contaminated Land in England. Part 2A requires each Local Authority to provide any information necessary to produce this report. The Council will provide information on the determination of Contaminated Land as it arises, and any other information requested on an annual basis. A standard format for the provision of information has been agreed nationally for this purpose and the Council reports on this year on year.

The implementation of this Inspection Strategy requires close liaison with the Agency on water protection issues and dealing with Special Sites. Elements of the information gathered as part of the inspection process will relate to this aspect and such information will be made available to the Agency as required or requested. It is envisaged that this will normally be necessary whenever it is needed to determine whether a land is to be classified as a Special Site.



9 Review of Strategy Document

The Statutory Guidance requires that the Council review the Inspection Strategy periodically.

This is the second revision of the Contaminated Land Strategy that the Council has produced, and provides consideration of:

- Our experience in developing and implementing the strategy;
- Our experience of dealing with contaminated land regulated by Part 2A;
- New guidance and emerging best practice; and,
- Our management of coastal issues.

The Council will review this strategy periodically to ensure it reflects changes in legislation and its working practices. Accordingly, any revised Contaminated Land Strategy and the provision of services relating to the system will be reviewed within 5 years as a minimum following the adoption of this document, unless legislative and regulatory requirements require the document to be reviewed earlier.

APPENDIX A

EXTRACTED FROM: Environmental Protection Act

1990:Part 2A Contaminated Land Statutory Guidance, April 2012

Category 1: Human Health

4.19 The local authority should assume that a significant possibility of significant harm exists in any case where it considers there is an unacceptably high probability, supported by robust science-based evidence, that significant harm would occur if no action is taken to stop it. For the purposes of this Guidance, these are referred to as “Category 1: Human Health” cases. Land should be deemed to be a Category 1: Human Health case where:

(a) the authority is aware that similar land or situations are known, or are strongly suspected on the basis of robust evidence, to have caused such harm before in the United Kingdom or elsewhere; or

(b) the authority is aware that similar degrees of exposure (via any medium) to the contaminant(s) in question are known, or strongly suspected on the basis of robust evidence, to have caused such harm before in the United Kingdom or elsewhere;

(c) the authority considers that significant harm may already have been caused by contaminants in, on or under the land, and that there is an unacceptable risk that it might continue or occur again if no action is taken. Among other things, the authority may decide to determine the land on these grounds if it considers that it is likely that significant harm is being caused, but it considers either: (i) that there is insufficient evidence to be sure of meeting the “balance of probability” test for demonstrating that significant harm is being caused; or (ii) that the time needed to demonstrate such a level of probability would cause unreasonable delay, cost, or disruption and stress to affected people particularly in cases involving residential properties.

Category 4: Human Health

4.20 The local authority should not assume that land poses a significant possibility of significant harm if it considers that there is no risk or that the level of risk posed is low. For the purposes of this Guidance, such land is referred to as a “Category 4: Human Health” case. The authority may decide that the land is a Category 4: Human Health case as soon as it considers it has evidence to this effect, and this may happen at any stage during risk assessment including the early stages.²¹

4.21 The local authority should consider that the following types of land should be placed into Category 4: Human Health:

(a) Land where no relevant contaminant linkage has been established.

(b) Land where there are only normal levels of contaminants in soil, as explained in Section 3 of this Guidance.

(c) Land that has been excluded from the need for further inspection and assessment because contaminant levels do not exceed relevant generic assessment criteria in accordance with Section 3 of this Guidance, or relevant technical tools or advice that may be developed in accordance with paragraph 3.30 of this Guidance.

(d) Land where estimated levels of exposure to contaminants in soil are likely to form only a small proportion of what a receptor might be exposed to anyway through other sources of environmental exposure (e.g. in relation to average estimated national levels of exposure to substances commonly found in the environment, to which receptors are likely to be exposed in the normal course of their lives).

4.22 The local authority may consider that land other than the types described in paragraph 4.21 should be placed into Category 4: Human Health if following a detailed quantitative risk assessment it is satisfied that the level of risk posed is sufficiently low.

4.23 Local authorities may decide that particular land apparently matching the descriptions of paragraph 4.21 (b) or (d) immediately above poses sufficient risk to human health to fall into Categories other than Category

4. However, such cases are likely to be very unusual and the authority should take particular care to explain why the decision has been taken, and to ensure that it is supported by robust evidence.

Categories 2 and 3: Human Health

4.24 For land that cannot be placed into Categories 1 or 4, the local authority should decide whether the land should be placed into either: (a) Category 2: Human Health, in which case the land would be capable of being determined as contaminated land on grounds of significant possibility of significant harm to human health; or (b) Category 3: Human Health, in which case the land would not be capable of being determined on such grounds.

4.25 The local authority should consider this decision in the context of the broad objectives of the regime and of the Government’s policy as set out in Section 1. It should also be mindful of the fact that the decision is a positive legal test, meaning that the starting assumption should be that land does not pose a significant possibility of significant harm unless there is reason to consider otherwise. The authority should then, in accordance with paragraphs 4.26 to 4.29 below, decide which of the following two categories the land falls into:

(a) Category 2: Human Health. Land should be placed into Category 2 if the authority concludes, on the basis that there is a strong case for considering that the risks from the land are of sufficient concern, that the land poses a significant possibility of significant harm, with all that this might involve and having regard to Section 1. Category 2 may include land where there is little or no direct evidence that similar land, situations or levels of exposure have caused harm before, but nonetheless the authority considers on the basis of the available evidence, including expert opinion, that there is a strong case for taking action under Part 2A on a precautionary basis.²²

(b) Category 3: Human Health. Land should be placed into Category 3 if the authority concludes that the strong case described in 4.25(a) does not exist, and therefore the legal test for significant possibility of significant harm is not met. Category 3 may include land where the risks are not low, but nonetheless the authority considers that regulatory intervention under Part 2A is not warranted.

This recognises that placing land in Category 3 would not stop others, such as the owner or occupier of the land, from taking action to reduce risks outside of the Part 2A regime if they choose. The authority should consider making available the results of its inspection and risk assessment to the owners/occupiers of Category 3 land.

4.26 In making its decision on whether land falls into Category 2 or Category 3, the local authority should first consider its assessment of the possibility of significant harm to human health, including the estimated likelihood of such harm, the estimated impact if it did occur, the timescale over which it might occur, and the levels of certainty attached to these estimates. If the authority considers, on the basis of this consideration alone, that the strong case described in paragraph 4.25(a) does or does not exist, the authority should make its decision on whether the land falls into Category 2 or Category 3 on this basis regardless of the other factors discussed in paragraph 4.27.

4.46 The local authority should consider these factors in the context of the broad objectives of the regime as set out in Section 1. It should also consider how the factors interrelate (e.g. likelihood relative to impact). The authority should then decide which of the following categories the land falls into. Categories 1 and 2 would comprise cases where the authority considers that a significant possibility of significant pollution of controlled waters exists. Categories 3 and 4 would comprise cases where the authority considers that a significant possibility of such pollution does not exist.

(a) Category 1 (Water): This covers land where the authority considers that there is a strong and compelling case for considering that a significant possibility of significant pollution of controlled waters exists. In particular this would include cases where there is robust science-based evidence for considering that it is likely that high impact pollution (such as the pollution described in paragraph 4.38) would occur if nothing were done to stop it. ²⁹

(b) Category 2 (Water): This covers land where: (i) the authority considers that the strength of evidence to put the land into Category 1 does not exist; but (ii) nonetheless, on the basis of the available scientific evidence and expert opinion, the authority considers that the risks posed by the land are of sufficient concern that the land should be considered to pose a

significant possibility of significant pollution of controlled waters on a precautionary basis, with all that this might involve (e.g. likely remediation requirements, and the benefits, costs and other impacts of regulatory intervention). Among other things, this category might include land where there is a relatively low likelihood that the most serious types of significant pollution might occur.

(c) Category 3 (Water): This covers land where the authority concludes that the risks are such that (whilst the authority and others might prefer they did not exist) the tests set out in Categories 1 and 2 above are not met, and therefore regulatory intervention under Part 2A is not warranted. This category should include land where the authority considers that it is very unlikely that serious pollution would occur; or where there is a low likelihood that less serious types of significant pollution might occur.

(d) Category 4 (Water): This covers land where the authority concludes that there is no risk, or that the level of risk posed is low. In particular, the authority should consider that this is the case where: (a) no contaminant linkage has been established in which controlled waters are the receptor in the linkage; or (b) the possibility only relates to types of pollution described in paragraph 4.40 above (i.e. types of pollution that should not be considered to be significant pollution); or (c) the possibility of water pollution similar to that which might be caused by "background" contamination as explained in Section 3.

Glossary of Terms

Appropriate Person	Person responsible for that land or the contamination of it.
Brownfield Land	Formerly developed or industrial land where there is the possibility of the ground being contaminated e.g. gas works
Conceptual Model	A drawing or schematic showing how, in theory, the contaminant can get to the receptor and which pathways it will use.
Contaminant linkage	The situation where a contaminant source, pathway and receptor are present resulting in the potential for effects upon the receptor to occur.
Critical Receptor	The receptor (person, building or ecosystem) that is most affected by the contamination on site. In cases where houses are to be built this is taken to be a female 6 year old child living there for life. This is because they will be most damaged if the contamination is not dealt with.
Detailed Quantitative Risk Assessment (DQRA)	A detailed assessment of potential contaminant exposure and risk carried out on a site specific basis using measured site parameters wherever possible. This level of assessment gives the most realistic appraisal of the likely levels of risk present.
Ecosystem	A collection of living things and the environment they live in.
Generic Quantitative Risk Assessment	An assessment of risk from contaminants in soil by comparing site specific contaminant concentrations with generic screening criteria developed for general use in line with best practice guidance. Such criteria are typically very conservative in their assumptions about allowable exposure and risk
GIS	Geographical Information System
Greenfield Land	Land that has not been used for building or industry before e.g. open fields.
LNR	Local Nature Reserve
LQMS	Land Quality Management System.
Polluter Pays Principle	The principle that if you made the mess, you tidy it up. For example, an industrial site is going to be turned into houses; we know that Company X which once had a factory there used to make paint. When we do an investigation we find the site is contaminated with paint. Company X polluted the site so it is Company X who pays to make it safe.
Principal Aquifer	These are layers of rock or drift deposits that have high intergranular and/or fracture permeability - meaning they usually provide a high level of water storage. They may support water supply and/or river base flow on a strategic scale. In most cases, principal aquifers are aquifers previously designated as major aquifer.
Qualitative Risk Assessment	A basic view of how a contaminant may cause harm. For example, if you think there may be lots of coal dust in the ground then the result might be a fire. At this time you only think, but do not know, if there is any coal dust there or if there is enough to cause a fire.
Secondary (A) Aquifer	Permeable layers capable of supporting water supplies at a local rather than strategic scale, and in some cases forming an important source of base flow to rivers. These are generally aquifers formerly classified as minor aquifers;
Special Site	Land meeting the definition of a Special Site as described within the Contaminated Land (England) Regulations 2006.
SSSI	Site of Special Scientific Interest
Suitable for use	This means the site will be safe for whatever use it is put to now. If a site is planned to be used for something else then remediation is looked at through the planning system. For example, if a site is, or is going to be, houses with gardens it must be much safer than a site used as a factory. This is because people, children and pets spend much more time there and are more likely to dig in the gardens or eat soil.

Key Contacts

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If you know someone who needs this information in a different format, for example large print, Braille or a different language, please call Marketing and Communications on 0191 427 1717.