Gateshead Contaminated Land Strategy

Adopted April 2013
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1. INTRODUCTION TO PART IIA OF THE ENVIRONMENTAL PROTECTION ACT 1990

1.1 Part IIA of the Environmental Protection Act 1990 (Part IIA) – inserted into that Act by Section 57 of the Environment Act 1995 (the 1995 Act) – introduced a new regime for the identification and remediation of contaminated land, which came into force on 1 April 2000. Guidance on the operation of the regime is given in ‘Contaminated Land Statutory Guidance’- Department for Environment Food and Rural Affairs (DEFRA), April 2012 (CLSG 2012). The Statutory Guidance supports the Act and sets out the UK Government Policy on contaminated land. This Guidance replaces the previous statutory guidance which was published as Annex 3 of Defra Circular 01/2006, and was issued in accordance with section 78YA of the Environmental Protection Act 1990 Act (1990 Act).


1.2 It is not the intention of this document merely to duplicate the procedures contained in the Statutory guidance but to interpret the regulations in the context of the procedures to be established to implement to regime.

1.3 The purpose of the regime is to deal with the legacy of past contamination. The Government’s objectives are:

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

1.4 In December 2001 Gateshead Council published its Contaminated Land Strategy. Since 2001 changes have been made to contaminated land law and to the huge volume of guidance that is associated with it. This updated strategy document provides a review of the progress that has been made to implement the Contaminated Land Strategy, and sets out what Gateshead Council will continue to do to carry out its’ statutory duties to identify and deal with “Contaminated Land” issues. It also reflects the major revisions to the Statutory Guidance introduced in April 2012 and replaces the previous Strategy published in 2001.
REQUIREMENTS OF PART IIA

2.1 Part IIA places the main responsibility for its implementation on the Council, although the Environment Agency (EA) also has a significant role.

Council’s Role

2.2 Under Part IIA, the Council has a duty to “cause its area to be inspected from time to time for the purpose of identifying contaminated land”.

2.3 Part IIA imposes the following duties on the Council:
- to inspect its area to identify contaminated land
- to determine whether a particular site is contaminated
- to act as an enforcing authority for all contaminated land not designated a ‘special site’ (see Appendix 1).

Council’s Duties

2.4 To comply with the regulations the Council:
- prepared and published a written strategy for the inspection of land in the borough in December 2001
- developed procedures for implementing the regulations
- established a database
- determined the priority of sites to be investigated
- carried out a survey of the Gateshead area.

Contaminated Land Statutory Guidance April 2012 sets out Local Authority duties which include the following :-
- Strategic and detailed inspection of the local authority area.
- Identification of contaminated land
- To decide whether any land is required to be designated as a special site
- To assess and prioritise risk to human health or the environment
- Determination of land as contaminated land
- To act as an enforcing authority for all contaminated land not designated a ‘special site’ (see Appendix 1).

2.5 Once land is determined as contaminated the Council has four main tasks:
- to establish who should bear responsibility for the remediation of the land (the "appropriate person" or persons),
- to decide what remediation is required and to ensure that remediation occurs either:
  by agreement,
  serving a remediation notice, or
  Council carrying out the work itself
- determine who is liable for the cost of the work
- record information about the determination of Contaminated Land and remediation procedures in a public register
In developing its strategy, the Council's approach has been rational, ordered efficient and has highlighted sites meriting detailed investigation. The most pressing and serious problems were dealt with first and resources were concentrated where contamination is likely to be found. The Council is committed to continue this work.

**Aim and Objectives**

Gateshead Council’s aim is to fulfil the requirements of the revised Statutory Guidance. It has therefore taken account of the principles of the guidance in developing its approach and, compliance will be achieved through the following objectives:

(a) Continue with the identification of contaminated land sites in a rational, ordered and efficient manner which reflects any local circumstances

(b) Be proportionate to the seriousness of any actual or potential risks

(c) Prioritise areas of land it considers likely to pose the greatest risk to human health or the environment

(d) Ensure that resources are concentrated on investigating areas where the authority is most likely to identify contaminated land

(e) Minimise or reduce potential property blight as far as it considers reasonable

(f) Encourage voluntary action to deal with land contamination issues as far as it considers reasonable and practicable

(g) Encourage the re-use and remediation of brownfield land through the planning regime in accordance with the National Planning Policy Framework to ensure that new developments are suitable for use

(h) Ensure wherever possible that the original polluter pays for land remediation carried out under the Part 2A regime

**Environment Agency’s Role**

2.7 The principal functions of the EA in relation to Part IIA are:

- to provide site specific guidance to local authorities
- to act as the regulator for any contaminated land categorised as a “special site”
- to publish reports and guidance on contaminated land
- to make arrangements for carrying out technical research and to act as a centre of expertise

2.8 It also has general responsibilities relevant to its work on contaminated land including:

- advice on planning applications
- dissemination of best practice
- advice to the Department for Environment, Food and Rural Affairs (DEFRA)
- research and development
- information exchange
Other aspects of its activities also relate to land contamination:
- regulation of industrial processes
- implementation of Integrated Pollution Control
- prevention and minimisation of pollution of the water environment
- development of national regulatory policies for waste management

“Suitable for Use” Approach

There are three elements to this approach:
- ensuring land is suitable for its current use
- ensuring land is made suitable for any new use as planning permission is given for that new use
- limiting requirements for remediation to work necessary to prevent unacceptable risks to human health or the environment in relation to the current or future use of the land for which planning permission is being sought

This approach recognises that the risks presented by a given level of contamination will vary according to the use of the land and a wide range of other factors such as the underlying geology. So risks need to be assessed on a site by site basis.

Polluter Pays Principle

Responsibility for remediation follows the ‘polluter pays’ principle, that is, the person or person(s) who caused or knowingly permitted the contamination are the appropriate persons to undertake the remediation and meet its costs (Class A person or person(s)). If it is not possible to find a Class A person or person(s), responsibility passes to the current owner or occupier of the land (Class B person or person(s)). Section 7 of the Statutory Guidance (2012) provides detailed guidance on apportioning liability for remediation.

Definition of Contaminated Land

Under Part IIA, 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 the significant possibility of such harm being caused; or
b) pollution of controlled waters is being, or is likely to be caused."
2.13 Section 4 of the Statutory Guidance provides information regarding the definition of “Contaminated Land”. It defines categories of significant harm and significant possibility of significant harm for four receptors;
• human beings
• ecological systems or living organisms within specially designated locations
• property in the form of crops, timber, produce grown domestically or on allotments for consumption, livestock, either owned or domesticated animals or wild animals subject to shooting or fishing rights
• property in the form of buildings

Principles of Risk Assessment

2.14 The definition of contaminated land is based on the principles of risk assessment, that is, a combination of:
• the probability or frequency of occurrence of a defined hazard, and
• the magnitude of the consequences.

Pollutant linkages

2.15 The presence of a significant pollutant linkage, that is a source (or contaminant) – pathway – receptor, is the basis for designating a site as contaminated land.

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

A “receptor” is something that could be adversely affected by a contaminant, for example a person, an organism, an ecosystem, property, or controlled waters.

A “pathway” is a route by which a receptor is or might be affected by a contaminant.

If all three elements cannot be identified, the land cannot be designated as contaminated under Part IIA. For a risk to exist there must be contaminants present in, on or under the land in a form and quantity that poses a hazard, and one or more pathway by which they might significantly harm people, the environment, or property; or significantly pollute controlled waters.
Cross Boundary Working

2.16 Section 78X(2) of the 1990 Act gives the Council powers to take action on contaminated land outside its area when receptors are within its own area. Basically, it may treat that land as if it were situated within its own area. The Council may also need to liaise with other authorities when it:

- owns or leases land in another authority’s area
- has owned or leased land in another authority’s area

(See also paragraph 13.11 to 13.14)
3. INTERACTION OF PART IIA WITH OTHER REGIMES

3.1 Part IIA is one of a range of powers that deal with various aspects of contamination. Its main task is to deal with the legacy of past contamination. Other regimes exist to prevent new contamination. There are situations where Part IIA overlaps or supplements other regulations and circumstances where it does not apply at all. This section outlines the other main regimes which interact with Part IIA.

Planning and Development Control

3.2 Land contamination is a material consideration for the purposes of town and country planning. Local authorities must consider its implications in preparing development plans and dealing with planning applications. Some remediation activities may require planning permission. Following the “suitable for use” approach, risks should be assessed and remediation requirements set on the basis of the current use of the land and any proposed new use.

Guidance relating to contamination and planning was previously contained in Planning Policy Guidance 23: “Planning and Pollution Control” (PPS23) but is now contained in the National Planning Policy Framework (NPPF) which was published on 27 March 2012. The NPPF is a material consideration in planning matters and it replaces almost all previous national planning policy statements (PPS) and planning policy guidance notes (PPG). One notable exception is PPS 10 on waste which remains in force until the National Waste Management Plan for England is published.

The NPPF introduces a presumption in favour of sustainable development.

The NPPF makes reference to contamination and in particular in the following paragraphs:

Paragraph 109 states:

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

● protecting and enhancing valued landscapes, geological conservation interests and soils;

● recognising the wider benefits of ecosystem services;
• minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

• preventing both 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 or land instability; and

• remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

Paragraphs 120 and 121 of the NPPF state:

120. “To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.”
Planning policies and decisions should also ensure that:

- the site is suitable for its new use taking account of ground conditions and land instability, including natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;

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

- Adequate site investigation information, prepared by a competent person, is presented.”

Planning decisions will be taken in accordance with the Local Plan, unless material considerations suggest otherwise.

It is considered that the planning regime, including development planning and development control will remain the principal means by which contamination is dealt with in the borough of Gateshead. However whilst planning powers can be used to secure remediation, it is not a foregone conclusion that a planning permission will be implemented. In certain circumstances, regardless of the existence of a planning permission with conditions requiring the remediation of a site, a remediation notice may still need to be served. Thus the planning regime needs support particularly with the technical aspects of contamination both in general terms and on a site specific basis. Legal support is particularly important where remediation notices must be served.
3.4 The Development and Enterprise Group has well established practices for identifying sites where contamination is an issue and for requesting contaminated land assessments on such land when applications for planning permission are made. Procedures have also been established for the assessment of the effectiveness of remediation strategies submitted in conjunction with development sites by the Transport Strategy (Reclamation and Landscape) service within the group.

**Building Control**

3.5 Building work is currently subject to Building Control under the Building Regulations 2010. Under Schedule 1 of the Regulations requirement C1 states that “Reasonable precautions shall be taken to avoid danger to health and safety caused by substances found on or in the ground covered by the building and any land associated with the building”. If contaminating substances in the ground have the potential to attack building materials, it may lead to a breach of Part A of these Regulations which relate to structural safety.

However, on 31 January 2012 the Department for Communities and Local Government launched a consultation on proposed changes to the Building Regulations regime and Building Control system in England. If implemented, these changes are expected to come into force in April 2013 with provisions which have a regulatory impact coming into force in October 2013.

The consultation document proposes to remove the current Annex A of Approved Document C in 2013. The new guidance aims to be consistent with the revised Part IIA statutory guidance introduced in 2012 and the consultation document invited comment on the current Approved Document C guidance. Currently specific details are unknown, though the consultation document recommends removal of the Warranty Link Rule to replace it with a warranty that covers all liabilities that may arise from a statutory notice to remediate contamination at new homes in order to protect new homeowners.

Current NHBC warranty is 10 years and LABC warranty is a 10 year transferable warranty.

**Statutory Nuisance**

3.6 The 1995 Act amended Section 79 of the Environmental Protection Act 1990 so that most land contamination issues have been removed from the Statutory Nuisance regime. However, it will continue to apply to land contamination issues where an abatement notice is still in force under Section 80(1), or an order of the Court under Section 82(2)(a) has already been issued under the 1990 Act. This enables any enforcement action taken under the Statutory Nuisance regime to continue.
3.7 Pollution from industrial installations is regulated under the Pollution Prevention and Control regime. This regime implements the EU Directive on Integrated Pollution Prevention and Control (IPPC) (2008/1/EC). The purpose of this regime is to achieve integrated prevention and control of pollution from listed (prescribed) industrial processes. This is done by preventing or reducing emissions to the air, water and land from these processes by a system of prior permitting so as to achieve a high level of protection of the environment as a whole. Permit conditions also have to address energy efficiency, waste minimisation, prevention of accidental emissions and site restoration. Any contamination occurring during the period of operation as a result of permitted activities will need to be remedied by the operator. Regulation of industrial processes under PPC may preclude a remediation notice being served under Part IIA, or may restrict the contents of the notice.

IPPC aims to reduce emissions from industrial installations and contributes to meeting various environment policy targets and compliance with EU directives. Since 31 October 2000, new installations are required to apply for an IPPC permit. Existing installations were required to apply for an IPPC permit over a phased timetable until October 2007.

In the UK, the IPPC regime has been established under the Pollution Prevention and Control (PPC) (England and Wales) Regulations 2000, (Statutory Instrument 2000/1973) as amended. The IPPC regime is regulated by the EA.

The Council cannot serve a remediation notice to remedy the same harm. The Contaminated Land Regulations 2006 (as amended) require the details of any enforcement action taken within the IPPC regime to be recorded in the register of action taken within the Part IIA regime.

3.8 The prohibition relates only to serving a remediation notice not to the initial duty of inspection. The Council have included operational sites in the inspection process and they may be identified as contaminated under the terms of Part IIA. However as stated above (paragraph 3.7) the Council cannot issue a remediation notice to remedy the same harm as that covered by IPPC.
Waste Management Licensing

3.9 There are three possible interactions with Part IIA:

- Site licences – harm or pollution of controlled waters may occur on land for which there is a site licence. In this case Part IIA does not apply and the usual remedy is via a condition attached to the site licence. If the harm or pollution is attributable to a cause other than the breach of a site licence then Part IIA does apply.
- Part IIA does not apply where contamination results from the illegal deposit of controlled waste.
- Remediation activities may fall within the definition of ‘waste disposal operations’ or ‘waste recovery operations’ and fall within the licensing system.


3.10 This gives the EA the powers to prevent or take action to prevent or remedy the pollution of controlled waters. This is usually done via the serving of a “works notice”. In view of the potential for overlap between this and the Part IIA regime, the Council will have regard to the EA’s policy statement “Environment Agency Policy and Guidance on the Use of Anti-Pollution Works Notices” and will liaise closely where contamination affects controlled waters.

Under section 78A(9) of Part IIA the term “pollution of controlled waters” means the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter.

Controlled waters, in summary, are relevant territorial waters, coastal, inland freshwaters (including lakes and ponds) and groundwaters.

Works Notice Procedure (section 161 & 162 of the Water Resources Act)

A works notice may be served where it appears to the EA that poisonous, noxious or polluting matter or any solid waste matter is likely to enter into, is or has been present in any controlled water. The notice may be served on any person who either (a) caused or knowingly permitted the matter in question to be present at a place from which it is likely to enter controlled waters or (b) caused or knowingly permitted the matter to be present in any controlled waters. The works notice may require removal, remedy or mitigation of the pollution, to restore the waters and/or to prevent further pollution entering the controlled waters. The EA may take steps to remediate and charge the responsible person for the EA’s costs. Similar powers apply where there is a threat to the environmental objectives of a water body such that its chemical or ecological status is not good. These powers do not require works to achieve a specific standard.

Other legislation related to the pollution of controlled waters also includes the following:-
The Environmental Permitting (England and Wales) Regulations 2010 Under these regulations, it is an offence to cause or knowingly permit a water discharge activity unless you are complying with an environmental permit or exemption.

Environmental Damage (Prevention and Remediation) Regulations 2009 (as amended)
The regulations implementing the Environmental Liability Directive require operators causing environmental damage to remedy that damage and, where there is a risk of damage, to prevent that risk from occurring. Remediation of environmental damage to water is mostly regulated by the EA. Liability can be strict for certain higher risk activities. Standard of remediation varies depending on whether it’s land or natural resources (water, protected species or habitats). This legislation does not apply to historic contamination (i.e. before March 2009).

This Directive lays down environmental quality standards (EQS) for priority substances and certain other pollutants as provided for in Article 16 of the Water Framework Directive 2000/60/EC (WFD), with the aim of achieving good surface water chemical status.

Groundwater Directives
The groundwater directives aim to protect groundwater from pollution. The existing Groundwater Directive (80/68/EEC) aims to protect groundwater from pollution by controlling discharges and disposals of certain dangerous substances to groundwater.

In the UK, the directive is implemented through the Environmental Permitting Regulations (EPR) 2010.

The existing Groundwater Directive is to be repealed by the Water Framework Directive 2000/60/EC (WFD) in 2013.

Health and Safety

3.11 Health and Safety Executive (HSE) and Local Authorities (in Gateshead Environmental Health & Trading Standards) deal with risks to the public or employees at business or other premises. Such risks could arise because of land contamination. Liaison will be required to ensure that controls are not duplicated and that the most appropriate regime is used to deal with the problem. Where mine gas is a public safety concern, the Coal Authority has safety hazard procedures which will be implemented in the case of such incidents (see paragraph 4.55).

Landfill Tax
3.12 Previously, waste material generated from the reclamation of contaminated land and subsequently sent to a landfill site was exempt from Landfill Tax provided it had a relevant certificate from HMRC. However, exemption for waste arising from the reclamation of contaminated land was abolished from 1 April 2012.

Unless it is specifically exempt landfill tax applies to all material disposed of:
- as waste
- by way of landfill, and
- at a landfill site covered by a licence or permit under specific environmental legislation

**Major Accident Hazards**

3.13 Operators of establishments handling prescribed dangerous substances are required to prepare on-site emergency plans and to agree off-site emergency plans with the local authority by the “Planning (Control of Major Accident Hazards) Regulations 1999 (as amended)” (COMAH). These include provisions for the restoration and clean up of the environment following a major accident.

**Food Safety**

3.14 There may be instances where land contamination may potentially affect crops, vegetables, livestock etc. The advice of the Food Standards Agency (FSA) and the Health Protection Agency (HPA) will be sought as appropriate to determine the possibility of health effects to foodstuffs, crops, livestock and human health implications. Liaison with the Gateshead Council Environmental Health & Trading Standards team will also be required to find out if these powers have been invoked and to assess the implications for Gateshead.
4. CHARACTERISTICS OF THE LOCAL AUTHORITY’S AREA

4.1 Map 1 shows the extent of the Gateshead area.

Location

4.2 Gateshead lies on the south bank of the River Tyne and stretches almost 13 miles along it, incorporating both urban and rural areas.

History

4.3 Historically, Gateshead's main activities have involved mining and heavy industry which have left a substantial legacy of contamination. The availability of cheap coal gave rise to a range of industries including coke, gas and electricity production, chemical manufacture, glass production, iron and steel production, locomotive building and other heavy industry. Other industrial activities included mining and quarrying.

4.4 Major concentrations of population developed close to the river because access was of great importance for the import and export of raw materials and finished products. Coal mines and their associated industrial uses were, however, distributed throughout the Gateshead area. Railway infrastructure was developed in the 19th Century which led to an expansion of the industrial centres and outlying centres.

4.5 Heavy industry began to decline in the period after the First World War. The economic depression which started in the 1920s continued throughout the inter-war period. In response to this, industrial diversification was begun in the 1930s and the borough's most well-known industrial estate, Team Valley Trading Estate, was opened in 1939 to provide sites for light industrial use.

4.6 The decline in heavy industry and attempts at diversification continued in the post-war period. Improvements to transportation made travel easier and resulted in the dispersal of population over a wider area as commuter housing developed further from the River Tyne. In the late 1970s and early 1980s the pace of economic change quickened with the run-down or closure of many major employers, most notably the cessation of deep mining.

4.7 With regard to the impact of historic development on the existence of possible contamination, it is important to acknowledge that land and water within Gateshead may be contaminated from sources outside its boundaries, possibly at some considerable distance away. Similarly other authorities may experience contamination or the pollution of controlled waters which has its source in Gateshead. Part IIA enables local authorities to undertake particular actions in these circumstances (see paragraphs 2.16 and 13.11 to 13.14).
**Geology, Hydrology and Hydrogeology**

Broad characteristics of the Gateshead area.

4.8 A summary of the various features within the Gateshead area is briefly provided below.

**Topography**

4.9 Gateshead’s landscape was shaped during the last period of glaciation and has changed little since that time. This has produced a rolling topography which is principally due to the coverage of superficial deposits, particularly ‘Glacial Till’ (commonly known as Boulder Clay) on all but the highest ground. The major river valleys of the Tyne, Team and Derwent have a major impact on the topography.

**Geology**

4.10 The bedrock below the superficial glacial deposits relates to the Coal Measures of Upper Carboniferous Age. Strata in this succession comprise principally sandstone and mudstone with widely spaced productive coal seams. This succession is generally known as the Durham Coalfiel, and Gateshead is situated in a part of the coalfield where worked seams and coal can occur close to the surface.

4.11 Glacial deposits (clay, sand, and gravel) of variable thickness and character overlie the Coal Measures strata across the majority of the Borough. A prolific thickness of glacial material occurs in the valleys of the Tyne, Team and Derwent, whilst higher ground areas may have limited cover or a complete absence.

4.12 There are significant areas of made ground (tipped or filled land) in the Gateshead area which mainly flank the major waterways and industrial centres, as well as intermittently elsewhere.

**Hydrology**

4.13 The regional hydrology of the Gateshead area is influenced primarily by the Tyne, the Derwent and the Team rivers which feed through a network of tributaries (generally known as denes) that outlet water into the main channels from higher ground catchments.

**Geography**

4.14 Today, the main industrial area remains in the east of the Gateshead area at Team Valley. Other industrial areas are located in Birtley, Portobello and Follingsby. Next to the river lie the industrial estates of Addison, Blaydon, Derwenthaugh, Dunston, Teams, East Gateshead, Felling, Bill Quay and Pelaw. In the west of the Borough there are small industrial estates at Stargate and Whinfield.
Currently, the principal industrial activities are mechanical engineering, ordnance, vehicle manufacturing, paint manufacture, electrical engineering, chemical manufacture, telecommunications, machinery and metal goods manufacture.

Employment by industry is as follows:

<table>
<thead>
<tr>
<th>Industry</th>
<th>2003, % of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>0.1%</td>
</tr>
<tr>
<td>Energy/Water</td>
<td>0.1%</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>16.5%</td>
</tr>
<tr>
<td>Construction</td>
<td>5.2%</td>
</tr>
<tr>
<td>Retail/Wholesale</td>
<td>20.6%</td>
</tr>
<tr>
<td>Hotels/Catering</td>
<td>4.4%</td>
</tr>
<tr>
<td>Transport/Communications</td>
<td>5.8%</td>
</tr>
<tr>
<td>Finance/Business</td>
<td>11.2%</td>
</tr>
<tr>
<td>Public Admin</td>
<td>11.3%</td>
</tr>
<tr>
<td>Education</td>
<td>7.9%</td>
</tr>
<tr>
<td>Health/Social Work</td>
<td>10.6%</td>
</tr>
<tr>
<td>Other Services</td>
<td>5.8%</td>
</tr>
</tbody>
</table>

Source: Gateshead Council Website, Economic Development

Population Distribution

The latest estimated resident population of Gateshead is **200,300** (Office for National Statistics mid-year estimate 2011).

As a result of historical development, the main centres of population lie in the north of the Gateshead area near the river and in the east (Map 1) along the former routes of the A1 and the east coast main line. The Gateshead area contains a number of towns, villages and settlements which have coalesced over the years. The main towns in the east of the Borough, Gateshead and Felling, have merged. South of these but separated by a small wedge of green belt lies Birtley. In the west of the Borough, the main concentration of population lies in the north in the towns of Whickham, Blaydon, Ryton and Crawcrook. Dispersed throughout the west of the borough and set amid green belt are the former mining settlements of Chopwell, High Spen, Greenside, Rowlands Gill, Kibblesworth, Sunniside and Marley Hill. Also located in the green belt are a number of small settlements; Clara Vale, Lockhaugh, Byer Moor, Eighton Banks, Barlow, Winlaton Mill and Marley Hill.

Current Land Use Characteristics

The total area of the Borough is 14,231 hectares of which the built up area comprises just over 40%. The remainder is rural. Industry occupies 7%, shopping centres just over 1% and Conservation Areas 8%, woodland occupies almost 8% and grassland 2%.

Details of Authority Ownership of Land

The Council is a significant owner of land. Details of the Council’s current land ownership are held by the Head of Legal and Corporate Services (Corporate Asset Strategy).
4.20 The Government expects the Council to bear fully its responsibilities for contamination as landowner and polluter. It considers that it is vital for public confidence that provisions for the inspection of Council owned land are clearly documented in this strategy. Details of the Council’s approach are contained in Section 6, paragraph 6.35 which deals with Council owned land. **Key Property Types and Protected Locations**

4.21 The Gateshead area contains a variety of protected habitats as well as buildings and locations of historic value. The Council’s Unitary Development Plan (UDP) contains a full description of them and the accompanying proposals map shows their geographic location. The Spatial Development service of the Development and Enterprise Group holds additional information pertaining to them. These designations are important because paragraph 24 of the Regulations (which regulations? requires the Council to take all reasonable precautions to avoid harm, water pollution or damage to natural resources or features of historical or archaeological interest which may be caused as a result of its investigation. In the case of Sites of Special Scientific Interest (SSSIs), it must consult Natural England on any action which requires its consent under Section 28 of the Wildlife and Countryside Act 1981. In addition, certain nationally designated ecological sites and systems are specifically mentioned as receptors in Table 1 of the regulations, which identifies Categories of Significant Harm. A summary of the number of special designations in Gateshead is contained in Table 2 below.

**Summary of Key Property Types**

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ancient monuments</td>
<td>16</td>
</tr>
<tr>
<td>Sites and monuments of local importance</td>
<td>39</td>
</tr>
<tr>
<td>Listed buildings</td>
<td>322</td>
</tr>
<tr>
<td>Conservation areas</td>
<td>22</td>
</tr>
<tr>
<td>Parks and Gardens of Special Interest</td>
<td>3</td>
</tr>
<tr>
<td>Historic battlefields</td>
<td>1</td>
</tr>
<tr>
<td>Areas of Potential Archaeological Interest</td>
<td>32</td>
</tr>
<tr>
<td>Sites of Special Scientific Interest</td>
<td>8</td>
</tr>
<tr>
<td>Local Wildlife sites</td>
<td>126</td>
</tr>
</tbody>
</table>

4.22 A number of wildlife corridors have been identified in the Gateshead area to allow the passage of wildlife species between designated sites. These can be identified on the UDP proposals map. In addition, the Durham Biodiversity Action Plan (July 2007) identifies a number of 'short-list' species in Gateshead (red squirrel, otter, brown hare, grey partridge, skylark, song thrush) which require protection. The Council’s State of the Environment Report contains a comprehensive description of sites of nature conservation value in Gateshead.
Landscape Quality

4.23 A landscape appraisal of the Borough was undertaken in 1991/92 which confirmed that there is much fine landscape worthy of protection. The UDP categorises landscape into highest, high or other quality and contains policies to protect those designated highest or high. Details are contained within the UDP. In addition The Gateshead Landscape Character Study’s identification of landscape sensitivity was also completed in 2007. The Gateshead Landscape Character Assessment did not assess the built environment, but concentrates on the open landscape surrounding the Gateshead conurbation. It provides specific information about the identity and character of an area to guide new development in a sustainable and appropriate way.

Implications for Part IIA

4.24 When determining “significant harm”, under this category, only those receptors mentioned in Table 1 and Table 2 of the Statutory Guidance (2012) should be considered. This is reproduced in Figure 4. In the case of “ecological system effects” this refers only to national designations. The types of harm considered significant is also defined in Table 1. Nationally designated locations and properties may require special consultations with public authorities prior to initiating any action on such sites (see Section 13, paragraph 13.15 onwards).

Key Water Resource Protection Issues

4.25 One aspect of determining if land is contaminated is if the pollution of controlled waters is occurring. Controlled waters are referred to in Section 104 of the Water Resources Act 1991 and include:

- Lakes, ponds that discharge into a relevant river or watercourse.
- Waters contained within underground geological strata.
- Rivers or watercourses above the freshwater limit, with the exception of designated public sewers, or sewers or drains that run into designated public sewers.
- Territorial waters that extend three miles seaward from the mean high tide.

4.26 The EA is the enforcing authority in water pollution cases where contaminated land is affecting controlled waters and their quality in relation to:

- wholesomeness of drinking water
- surface water classification criteria
- major aquifers
In Gateshead, there are three aspects to controlled water issues:

- River Water Quality
- Groundwater Quality
- Minewater

**River Water Quality**

Gateshead is drained by the Rivers Tyne, Derwent, Team and Don and some of their tributaries. They are tidal for all or part of their courses through Gateshead. The existence of tidal limits means that pollution can travel up or down the river.


The purpose of the Directive is to establish a framework for the protection of inland surface waters (rivers and lakes), transitional waters (estuaries), coastal waters and groundwater. It will ensure that all aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands meet ‘good status’ by 2015.

The Directive requires Member States to establish river basin districts and for each of these a river basin management plan. The Directive envisages a cyclical process where river basin management plans are prepared, implemented and reviewed every six years. There are four distinct elements to the river basin planning cycle: characterisation and assessment of impacts on river basin districts; environmental monitoring; the setting of environmental objectives; and the design and implementation of the programme of measures needed to achieve them.

The Directive has a series of implementation deadlines which stretch to December 2015 (the date by which environmental objectives must be met).

It is designed to:

- enhance the status and prevent further deterioration of aquatic ecosystems and associated wetlands which depend on the aquatic ecosystems
- promote the sustainable use of water
- reduce pollution of water, especially by ‘priority’ and ‘priority hazardous’ substances
- ensure progressive reduction of groundwater pollution
For surface waters there are two, separate, classifications for water bodies, ecological and chemical. For a water body to be in overall ‘good’ status both ecological and chemical status must be at least ‘good’.

The Water Framework Directive specifies the quality elements that are used to assess the ecological and chemical status of a water body. Quality elements are generally biological (e.g. fish, invertebrates, macrophytes) or chemical (e.g. heavy metals, pesticides, nutrients).

There are two status classifications which are commonly reported, ecological and chemical.

1). Chemical status classification
Chemical status is assessed from compliance with environmental standards for chemicals that are priority substances and/or priority hazardous substances. These are known as ‘Annex X’ substances as they were originally listed in Annex X of the Water Framework Directive. This has now been superseded by the Environmental Quality Standards Directive (2008/105/EC).

2). Ecological status classification
Ecological status classifications can be composed of three different assessments:

1. An assessment of status indicated by a biological quality element such as fish, invertebrates or algae (see table 1 in section 3). The presence of invasive species is also assessed as a separate test.
2. An assessment of compliance with environmental standards for supporting physico-chemical conditions.
3. An assessment of compliance with environmental standards for concentrations of specific pollutants.

Classification

4.30 The Classification System is linked to the ecological use of freshwaters and reflects the river quality needed by different types of river ecosystem including the types of fish that can be supported. Provisional target RE Classes have been set up for certain tributaries of the River Tyne. Under this system, in 2000 the River Team and the upper stretches of the River Derwent complied with their RE targets; the lower stretch of the Team from Rowletch Burn to the tidal limit is marginally failing to meet its target.

General Quality Assessment (GQA)

4.31 In 2009, under this classification, the chemical quality of the River Team varied between C, D and E, that is fairly good, fair and poor. The River Derwent (within the Borough boundary) and Barlow Burn were classified B and A respectively (that is good and very good).

Biological Water Quality
The EA also assesses water quality biologically by sampling invertebrate fauna that live amongst the sediment on the river bed. The GQA biology scheme is used to interpret this information. Under this system, which categorises A to F (good to bad), in 2009 the lower stretch of the River Team was classified C; fairly good, which is an improvement on previous years. In all instances river quality within the Borough had improved since previous surveys in 1990s.

**Drinking and Groundwater**

Groundwater is used to supply water for drinking and industry. It supplies surface water to springs, rivers, wetlands, their ecosystems and wildlife. Its removal or diversion can affect river flow. Once groundwater is polluted it is difficult and costly to remediate. Many activities can cause pollution through underground seepage.

The EA produces Groundwater Vulnerability (GV) maps which identify the vulnerability of groundwater to contamination and where specific protection is required for individual sources. Groundwater vulnerability in the Gateshead area is classed as high because the soils have high leaching potential or readily transmit liquid discharges. Therefore there is the potential to pollute the groundwater within the sandstone of the coal measures strata and any watercourses which have a baseflow (groundwater) component. There are no Source Protection Zones (SPZ).

The EA uses the term “Coal measures a Secondary A aquifer” (variable permeability) which although it does not produce a large quantity of water for abstraction, is important for local supplies and base flows to rivers. Because of continuous water abstraction from Kibblesworth pit, the groundwater table is at an artificially low level.

There are relatively few abstraction points in the Gateshead area. Those that exist are mainly for industrial and agricultural use. This is because in the Gateshead area, potable water supply is sourced mainly from surface supplies in the River Tyne and Kielder Reservoir.

**Minewater**

A major threat to surface water and groundwater in Gateshead is the associated problems posed by disused coal mines. Deep mining has ceased in the Gateshead area, although pumping to prevent the old workings becoming inundated still continues at the former Kibblesworth shaft maintained by the Coal Authority. Abstracted groundwater from the Kibblesworth shaft is discharged into the River Team. The Coal Authority is currently considering a reduction in pumping at Kibblesworth and discharge of minewater into the River Tyne.
Cessation of minewater pumping in Gateshead will lead to a steady rise in groundwater levels across the Gateshead area, and previously dry abandoned workings will be immersed as a result of this action. Chemical processes within the ‘dry’ abandoned mine environment promote compounds that can seriously effect the quality of a water, these can freely dissolve in solution and be transported to the surface. Where pumping has ceased in other parts of the country deposits of iron hydroxide and aluminium hydroxide, transported to the surface by rising groundwater, have caused serious environmental damage. Red ferrous (ochre) and possibly white aluminium precipitates have a highly visible effect on the receiving watercourse. A less obvious impact, but still contributing significant hazard, is acidification as minewater, in many instances, is pronouncedly acid due to the chemical reactions that take place. Attempting to prevent or control patterns of minewater flow is very difficult because of the complexity of flow through old mine-workings. Rising groundwater would also displace mine gas to the surface by a process of ‘hydraulic push’.

Section 78J of the 1990 Act places certain restrictions on the possible requirements of remediation notices where contamination is wholly or partly a result of water pollution. It provides that no remediation notice shall require a person who is an appropriate person by virtue of Section 78F(4) or (5) to do anything by way of remediation which he could not have been required if the water pollution part of the definition of “contaminated land” did not exist. Thus the remediation required may only relate to harm to the health of living organisms, interference with ecological systems or harm to property. In relation to water pollution from abandoned mines Section 78J provides further restrictions and remediation notices relating to this may not go further than could be required were the contamination related only to significant harm or the significant possibility of significant harm. The restriction does not apply to owners or former operators of mines abandoned after 31 December 1999 and only applies to those permitting (as opposed to causing) such pollution or potential pollution.

Redevelopment History and Controls

The Gateshead area has been subject to considerable redevelopment. In particular, the decline of traditional industries along the riverside has led to significant redevelopment along the riverside. In such areas, the likelihood of contamination having been addressed will vary depending on the timing of the redevelopment. In areas prior to the introduction of the 1990 Act little regard may have been paid to the remediation of contamination prior to redevelopment. In more recent years, as knowledge, regulation and public awareness and concern have developed, it is more likely that some form of remediation has been undertaken prior to redevelopment. However, remediation technology and its durability advances rapidly and earlier schemes may not meet today’s more exacting standards, for example, Felling Riverside has been subject to remediation several times.
Known Information On Contamination

4.41 The decline of older industries caused substantial areas of potential contamination. In rural areas contamination has been mainly associated with coal mining, quarrying and mineral railways. In the urban areas it has arisen from the closure of factories, gas works, coke works, railway sidings and associated uses. Other land has gas problems caused by seepage from old mine workings.

4.42 The Council has access to a broad range of information on potential sources of contamination from its own activities in planning, development, waste disposal and landfill, highways and construction and its land ownership. It also has access to information from other bodies, in particular, the EA and the Coal Authority.

4.43 In addition, the Council has been active in land reclamation for many years and has developed a team of highly knowledgeable specialists. The Transport Strategy team in Development and Enterprise has a capital programme for reclamation schemes. Through its reclamation and other activities (see figure 2) the Council has assembled a significant amount of information on contamination, which is currently held in a number of locations (Figures 1 and 2). A by-product of the Strategy is that this information has been assembled in a single location. Large areas of the Gateshead area have already been remediated. There are also a number of schemes currently in progress dealing with the problem of contamination. Sites in the Gateshead area fall into two categories:

- Historic remediation
- Current remediation schemes

4.44 The sites listed here were not identified as a result of the implementation of Part II A and no statutory actions have been involved in relation to any of them. Therefore no entries will need to be made in relation to them on any register. They are included purely to demonstrate the extent of the Council’s past and present activities in remediation and the seriousness with which it has addressed the issue over a number of years.
4.45 Land can be designated as contaminated by virtue of mine, gas or landfill gas emissions if there is a significant harm from the land in question.

**Landfill Gas**

4.46 This is gas produced by microbial action on biodegradable material deposited at landfill sites. The Council maintains records of historic landfills to assist in its development management and development plan functions. The Council has a large number of former landfill sites, a number of which it monitors. In dealing with contamination from former landfill sites, the Council is guided by the Department of the Environment’s Waste Management Paper No 27, and the Environment Agency’s document (LFTGN 03) entitled “Guidance on the management of landfill gas” and will be for the purposes of Part IIA.

4.47 Operational landfill sites are required to incorporate monitoring boreholes and wells. Any control measures deemed necessary will be included in the monitoring plan and licence conditions for the site.
Mine Gas

4.48 Mine gas principally includes:

- Methane (commonly known as ‘Firedamp’) which is potentially explosive (between 5 and 15% by volume in air) and an asphyxiate at higher concentrations.
- Deoxygenated air (commonly known as ‘Blackdamp’ or ‘Stythe’) which is essentially composed of carbon dioxide and nitrogen, an asphyxiating mixture due to the diminished oxygen concentration. The oxygen concentration is reduced due to microbial and chemical oxidation processes, which tend to generate excess carbon dioxide levels.

4.49 Other gases which may occur, but are rarer in comparison to the above are:

- Carbon monoxide which is highly toxic by inhalation and is produced due to incomplete combustion of coal (i.e. exhaust gases from underground fires).
- Hydrogen sulphide which is highly toxic by inhalation and is mainly produced as a result of microbial action.

4.50 Methane is naturally released from coal when it is disturbed during the mining process, whereas the other gases mentioned typically arise through the chemistry of the environment or from other interactions.

4.51 The problems which can arise from mine gas emissions have been long known in Gateshead. Incidents have occurred in response to mine closures (when active ventilation is withdrawn) or passively from mine entries and outcropping rock strata when conditions have been conductive for migration. This is a consequence in part due to its location on an exposed coal field and its long legacy of coal mining. A number of factors contribute to the overall problem;

- Specific features relating to the geology of the area and mine location – these may include shallow mine workings, disused mine shafts, outcropping fractured sandstone in contact with old mine workings, and an absence of impermeable superficial cover, amongst others.
- Atmospheric pressure variations.
- Rising minewater (see paragraph 4.37 onwards).
- Cessation of active mine ventilation.

4.52 Evidence suggests that surface mine gas incidents are infrequent, records indicate that there have been only five incidents over a period of fifty years in Gateshead. It is considered that due to the nature of the problem records are unlikely to show a true reflection of the actual situation with regards to the hazard of mine gas.

4.53 In view of the costs associated with pumping mine water, alternatives are being considered by the Coal Authority at sites such as Kibblesworth. This could bring potential consequences associated with rising minewater and mine gas migration to the surface.
4.54 The Council already has a number of locations where it monitors mine gas emissions and this proactive stance will continue in the future. It has contingency plans should they approach unacceptable levels (Appendix 3). The Coal Authority also has safety hazard procedures for incidents where mine gas may be a public safety concern. They will make safe immediately, undertake investigation and, where appropriate, undertake longer remedial action.

Mine Gas and Ground Water Pollution

4.55 The Coal Authority is in close liaison with the EA regarding minewater in the coalfields. They have agreed a priority list of discharges where mine waters are polluting surface waters and a number of remedial projects are ongoing nationally. However, no locations in Gateshead feature in this list.
5. GENERAL POLICY OF THE COUNCIL

5.1 Gateshead’s Contaminated Land Strategy has not been formulated in a vacuum nor will it operate in one. The Statutory Guidance (2012) advises that local authorities should take into account the particular circumstances of its area, such as historical industrial activities, geographical aspects of the land and the balance of urban and rural use. These factors are reflected in the Strategy and placed in the context of the authority’s aims, objectives and priorities.

Vision 2030

5.2 The Council’s vision for Gateshead is set out in Vision 2030 which outlines its policies and priorities. Its overarching aim is for local people to be able to realise their full potential and enjoy the best quality of life in a healthy, safe and sustainable environment. The document sets out a framework for future development of the borough of Gateshead. It contains a number of broad policies encompassing issues relevant to the contaminated land regulations, such as the environment and health.

5.3 In delivering its services the Council seeks to;

- Provide “A safe place to live and visit”
- “Improving and protecting our local environment so that Gateshead is the best place to live and work”
- “To ensure a sound future for Gateshead, economic prosperity, making the best use of resources and an attractive local environment are the fundamental building blocks for a Sustainable Gateshead.”
- “Detailed attention will be given to the creation of such high quality open spaces. They need to be attractive, safe, accessible, interesting and aid movement between other spaces. High environmental standards will be adopted in the design and maintenance of the spaces and more natural areas will be created to encourage wildlife.”
- “Cleaner, greener Gateshead encourages people to be more active.”

5.4 The principle underlining the Council’s delivery of services is protection of the environment; the Council will aim to protect the local environment and promote sustainable development for future as well as present generations. At a more detailed level it wishes to work in partnership with others to eliminate the release of pollutants which may cause environmental damage and affect the quality of air, water or land.

5.5 These broad Council policies are given more detailed expression in the Unitary Development Plan (UDP) (2007).
5.6 The Local Plan provides the context for development in the Gateshead area, both public and private, as well as forming the basis for the consideration of applications for planning permission. The protection and enhancement of all aspects of the Borough’s environment is fundamental to the plan which incorporates a number of policies which address the issues relating to contaminated land.

Gateshead Council, in partnership with Newcastle City Council, is presently working on the development of a joint Core Strategy. This provides the spatial and strategic context for the development of the area to 2030. The strategy addresses a number of issues at a broad level, including contaminated land eg. Health & Wellbeing, Quality of Place.

In addition, Gateshead Council is also developing the Making Spaces for Growing Places (MSGP) Development Plan Document, which will sit underneath the overarching Core Strategy. This contains more detailed policies, land allocations and designations, including development management policies with specific criteria.

The Newcastle Gateshead One Core Strategy is programmed to be adopted in 2014, followed by the MSGP DPD.

Until this time a number of policies contained in Gateshead’s Unitary Development Plan (2008) have been saved, and will continue to be referred to in the development management process. These include the following two policies relating to contaminated land:

**ENV54 Land Affected By Contamination: Applications**

Applications for development on land affected by contamination will be permitted if:

- a) The site will be reclaimed to a standard which is suitable for the proposed end use;
- b) There is no threat to public health or safety;
- c) Environmental standards are not compromised;
- d) No threat is posed to controlled waters
- e) Appropriate measures are taken to protect local amenity while works are carried out; and
- f) Any nature conservation interest, habitat, species and geological features on the land are protected.
ENV55 Development Causing Contamination

Development that would cause or be likely to cause significant contamination of the ground will not be permitted. Where development would be likely to cause less severe contamination of the ground, appropriate conditions will be imposed to limit such contamination and to ensure its removal and treatment when the contaminating use ceases.
6. THE INSPECTION STRATEGY

Objectives of the Strategy Document

6.1 The basic objective of the strategy is to fulfil the statutory requirements of Part IIA and to set down how the Council will approach its duty to inspect the Gateshead area taking an approach which:

   a) is rational, ordered and efficient
   b) is proportionate to the seriousness of any actual or potential risk
   c) ensures the most pressing and serious problems are located first
   d) ensures that resources are concentrated on areas where contaminated land is most likely to be identified
   e) ensures that the authority efficiently identifies requirements for the detailed inspection of particular areas of land.

6.2 The other main objective of the Strategy is to assist in the regeneration of the Borough by helping to deliver the Council’s broader policy objectives contained in the documents **Vision 2030**, and the Unitary Development Plan as outlined in the previous section.

6.3 The preceding sections have summarised the history, geography, geology and other characteristics of the Gateshead area which have influenced the development of the Strategy.

Development of the Strategy

6.4 The preparation of the strategy required the involvement of a broad range of expertise drawn from across the Council’s five services:

   • Community Based Services
   • Development and Enterprise
   • Learning and Children
   • Local Environmental Services
   • Legal and Corporate Services

6.5 When the new statutory regime for the identification and remediation of contaminated land was introduced on 1 April 2000 a working group was set up. The Working Group was formed from Council Services relevant to the preparation and implementation of the Contaminated Land Strategy.
### Roles and Responsibilities

<table>
<thead>
<tr>
<th>Role</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lead Officer</td>
<td>Senior Planner (PES)</td>
</tr>
<tr>
<td>Development &amp; Enterprise (PES)</td>
<td>Assistant Planner</td>
</tr>
<tr>
<td>Commercial &amp; Consumer Services</td>
<td>Senior Environmental Health Officer</td>
</tr>
<tr>
<td>Design Services</td>
<td>Principal Structural Engineer</td>
</tr>
<tr>
<td></td>
<td>Principal Landscape &amp; Reclamation Architect</td>
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<td>Senior Planner (Landscape &amp; Reclamation)</td>
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<td>Estates</td>
<td>Group Estates and Valuation Officer</td>
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<tr>
<td>Development Control</td>
<td>Senior Planner (Development Control)</td>
</tr>
<tr>
<td></td>
<td>Building Control Manager</td>
</tr>
<tr>
<td>Highways &amp; Construction</td>
<td>Principal Engineer</td>
</tr>
<tr>
<td>Legal &amp; Corporate Services (Commercial &amp;</td>
<td>Principal Solicitor</td>
</tr>
<tr>
<td>Development)</td>
<td></td>
</tr>
<tr>
<td>Local Environmental Services (Client</td>
<td>Client &amp; Support Services Manager</td>
</tr>
<tr>
<td>Services)</td>
<td></td>
</tr>
<tr>
<td>Materials Testing Laboratory</td>
<td>Geotechnical Engineer</td>
</tr>
<tr>
<td>Central Services (Finance &amp; ICT)</td>
<td>Principal Accountant</td>
</tr>
</tbody>
</table>


After restructuring at Gateshead Council, responsibility for the update and implementation of the Strategy passed from the Service Director of Development & Public Protection to the Service Director of Transport Strategy.

(The roles of the members of the Working Group are shown in Figure 1.)

In order to update the current Strategy document, a draft was prepared by the Landscape and Reclamation team, in Transport Strategy, and circulated to the current equivalent Council officers for comment.

Those officers are now listed as follows:

**Lead Officer**

**Transport Strategy**
- Service Director of Transport Strategy
- Principal Landscape & Reclamation Architect
- Engineering Manager

**Development and Public Protection**
- Service Director of Development and Public Protection
- Environmental Health and Trading Standard Manager
- Development Control Manager
- Housing Renewal & Building Control Manager

**Property and Design** – Service Director of Property and Design
- Technical Team Leader
- Property Manager

**Environment & Regeneration** – Service Director of Environment & Regeneration & Economic Development

**Legal & Corporate Services** - The Strategic Director

**Local Environmental Services** – Service Director

**Finance and ICT** – Deputy Strategic Director of Financial Services
Arrangements for Inspecting and Determining Contaminated Land
There are several ways in which land can come within the scope of the Contaminated Land Regime, for instance, via the inspection process, by information supplied to the Council or by a complaint received from a local resident. This section describes the procedures which have been adopted for responding to these situations and the officers who were responsible for undertaking those procedures beginning with the inspection process. Later sections will describe the procedures relating to information received and complaints.

Inspection Process

The Service Director of Transport Strategy has overall responsibility. Reporting to him, the Principal Landscape Architect (Landscape and Reclamation) oversees survey work, evaluates data collection, recommends and commissions further work and is responsible for strategy development, data collection and management.

Appointment of Consultants

The Council operates a system of framework contracts for chemical and associated site investigations. The framework contract for 'Transportation and Civil Engineering - Geotechnical Services' includes:

- Site Assessments
- Geoenvironmental / Geotechnical Consultancy services
- Ancillary works such as site reinstatement
- Site Supervision
- Landslip and ground stability advice
- Ground investigation works
- Site investigation and reporting

This procedure applies to the appointment of consultants for sites identified under Part IIA. The framework is subject to regular review. Detailed specifications for various types of testing, for example gas monitoring, chemical analysis of solid samples and water samples, borehole and soil investigations and reporting requirements are determined for each individual site.

INSPECTION METHOD

First Stage

The inspection process was initiated by comparing areas of potential contamination with areas where there are sensitive receptors. The geographical coincidence of the two confirmed the existence of two parts of a pollutant linkage. This enabled the Council to identify and prioritise areas for inspection.
Gateshead covers a large land area. To make the process of inspection manageable, the Gateshead area was divided into five sub-areas:

- Sub-area 1 – River Team Catchment
- Sub-area 2 – South Bank of the River Tyne
- Sub-area 3 – East of the Borough
- Sub-area 4 – River Derwent Catchment
- Sub-area 5 – Blaydon/Barlow/Stanley Burn Catchments

These sub-areas are illustrated on Map 2.

Boundaries were defined for each of these areas following easily identifiable features and landmarks. For ease of inspection, Sub-area 2 was further divided into three:

- Sub-area 2a (east)
- Sub-area 2b (central)
- Sub-area 2c (west)

The relevant factors for choosing these areas are:

- a concentration of humans (the primary receptors) and their activities
- a history of potentially contaminating previous uses
- dynamic areas of change (new development introducing new receptors)

Historically the south bank of the river was occupied by a number of heavily contaminating activities. There have been a number of proposals to revitalise the area for commerce, housing and recreational purposes. A proportion of these proposals have been achieved and this will continue under the currently emerging policies.

Second Stage

Method of Inspection within Sub-Areas of Borough

Task 1 - Priority Sites

Within each sub-area known areas of concern were examined. These were locations where incidents have been reported or where the Council has some prior knowledge regarding potential contamination. Sites which might be identified as ‘special sites’ were also identified at this stage, though none have been determined.

Task 2 - Identifying Potential Sources of Contamination

Attention was then paid to areas which on the basis of historic uses had the potential to be contaminated. These were identified from historic Ordnance Survey (OS) maps (First Edition 1850s, Second Edition 1890s, 1920s and 1939), information on historic landfill sites and other more up to date sources. These activities were plotted on an OS map base.
The potentially contaminating uses which were identified included:

- Gas works.
- General industrial works (alloy, brass, cement, chemical, coke, engine, engineering, glass, iron, lampblack, lead, paint, photographic dryplate, sewage, steel and tar works).
- Collieries
- Railways and associated uses.
- Other heavy industry (shipbuilding, shipbreaking).
- Former landfill sites, old clay pits, gravel pits, quarries and sand pits.
- Areas of significant methane emissions.

The EA has provided information relating to other potential sources of contamination, for example landfill sites, sites subject to waste management licences, Integrated Pollution Control and Consents to Discharge. They were also plotted on the same OS base.

6.16 Task 3 - Identify Sensitive Receptors.

In areas where potentially contaminating uses were identified potential sensitive receptors were plotted on the basis of Table 5. The sites where the two coincide was established. Further investigation was undertaken on the basis of land use in the order shown in Table 5. Sites currently or formerly owned or leased by or leased to the Council was identified in each land use grouping and assessed first.

Working in the same order as shown in Table 5, the prioritisation procedures set down in CLR6 “Prioritisation and Categorisation Procedure for Sites which may be Contaminated” was followed. This enabled each site to be placed in one of four “Priority Categories” for action described in Table 5.

**PRIORITY CATEGORIES FOR ACTION**

<table>
<thead>
<tr>
<th>Priority Category 1</th>
<th>Site probably or certainly not suitable for present use and environmental settings.</th>
<th>Contaminants probably or certainly present and very likely to have an unacceptable impact on key targets.</th>
<th>Urgent action needed in the short term.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority Category 2</td>
<td>Site may not be suitable for present use and environmental setting.</td>
<td>Contaminants probably or certainly present, and likely to have an unacceptable impact on key targets.</td>
<td>Action may be needed in the medium term.</td>
</tr>
</tbody>
</table>
Priority Category 3
- Site considered suitable for present use and environmental settings.
- Contaminants may be present but unlikely to have an unacceptable impact on key targets.
- Action unlikely to be needed whilst site remains in present use or otherwise remains undisturbed.

Priority Category 4
- Site considered suitable for present use and environmental setting.
- Contaminants may be present but very unlikely to have unacceptable impact on key targets.
- No action needed while site remains in present use and remains undisturbed.

Table 6 Order of Investigation of Sensitive Receptors

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Residential with gardens</td>
</tr>
<tr>
<td>2</td>
<td>Residential without gardens</td>
</tr>
<tr>
<td>3</td>
<td>Schools and nurseries</td>
</tr>
<tr>
<td>4</td>
<td>Allotments</td>
</tr>
<tr>
<td>5</td>
<td>Recreational/Parks, Playing Fields, Open Space</td>
</tr>
<tr>
<td>6</td>
<td>Commercial/industrial</td>
</tr>
<tr>
<td>7</td>
<td>Ecological systems or living organisms forming part of a system within protected locations, for example, SSSI</td>
</tr>
<tr>
<td>8</td>
<td>Controlled Waters</td>
</tr>
<tr>
<td>9</td>
<td>Ancient Monuments/Buildings</td>
</tr>
<tr>
<td>10</td>
<td>Agricultural land, forestry areas, other open spaces, rivers, lakes and so on</td>
</tr>
</tbody>
</table>

6.22 Task 4 - Outside areas identified as having the potential to contaminate, the sub-area was divided on a grid basis working from north to south. Sites were investigated for harm to potential receptors on the same basis as shown in Table 5 and assessed under the procedure set out in CLR6.

6.23 Sites requiring urgent action were discovered during the investigation process, so inspection and remediation procedures ran concurrently.

Methods of Inspection and Investigation

6.24 Prioritisation of sites for inspection and determining whether any action is required and how urgently, involves the following activities:

- desk top survey
- walk over survey/site inspection
- intrusive investigations

6.25 CLR6 includes methodologies for preliminary desk top surveys and site visits which indicate the need for exploratory surveys.
Where sites are placed in Priority Categories 1 and 2 (paragraphs 6.21) further detailed investigation is required to develop a conceptual model to assess the presence and significance of contamination on the site as well as to identify the source(s) – pathway(s) – receptor(s) relationship. BS10175: 2011 “Investigation of potentially contaminated sites – Code of Practice” is used to guide this process.

Procedure Relating to Site Inspection

Powers of Entry

6.27 Section 108 of the Environment Act 1995 confers powers on the Council which allow it to authorise a person to exercise specific powers of entry. However, before doing so, the Council will continue to ensure that;

- there is a reasonable possibility that a pollutant linkage exists on the land
- it is likely that the contaminant is actually present
- the receptor is actually present or likely to be present

6.28 The Council will not carry out intrusive investigations if:

- it has already been provided with detailed information on the condition of the land sufficient to provide a basis for a determination
- a person offers to provide such information within a reasonable and specified time

6.29 If at any stage the Council considers that there is no longer a reasonable possibility that a pollutant linkage exists, no further investigations will take place.

Contacting ‘appropriate persons’ to arrange site investigation

6.30 Before exercising its powers of entry the Council will endeavour to contact all ‘appropriate persons’ to inform them of the need to undertake intrusive investigations as well as to make appropriate arrangements for access.

6.31 The Council may be liable to pay compensation for any disturbance caused during an inspection using statutory powers of entry under paragraph 6, Schedule 18 of the Environment Act 1995.

Potential Special Sites

Identification

6.32 Where it appears that a site could fall within the definition of 'special sites' as defined by the 1990 Act, the authority will seek relevant Cabinet approval and will notify the EA in accordance with the procedures laid down in S78C(3) of the 1990 Act. It will give notice in writing to:
If the EA disagrees with the designation and notifies the Council within 21 days, the Council must refer its decision to the Secretary of State. If the EA fails to notify its disagreement within 21 days the site will be designated as a ‘special site’.

Where the Council and the EA are in general agreement over the site’s status, the Council will approach the EA to carry out the inspection of the land. The Council will authorise the person undertaking the inspection on behalf of the EA to exercise the powers of entry conferred by section 108 of the Environment Act 1995.

Radioactive contamination of land

The new Statutory Guidance (2012) does not apply to radioactive contamination of land. Radioactive contaminated land is covered by separate statutory guidance. In the event that land is affected by both radioactive and non-radioactive contaminants both sets of statutory guidance will apply, and Gateshead Council will decide what is a reasonable course of action having due regard for the relevant primary legislation and advice from the EA.

Considering Local Authority Interests in Land

During the survey phase of the process, priority for investigation was given to land which the Council currently owns or has formerly owned or leased, but which has not been passed on ‘with information’ or where no payments for remediation have been made (Liability Exclusion Tests 2 and 3).

In the future, the database will be updated as and when information is required or obtained.
7. DEALING WITH INFORMATION RECEIVED AND COMPLAINTS

7.1 The other ways in which potentially contaminated land is brought to the attention of the Council is via information received and complaints made. It comes from a variety of sources; other public bodies, local residents, businesses and voluntary organisations. Such information has been directed to the Planning and Environmental Strategy Service and the Landscape and Reclamation team in Development and Enterprise, and has come in the form of a complaint or information volunteered.

Complaints

7.2 Complaints about potentially contaminated land are received by the Council via a number of services. The Council has a customer service charter entitled ‘Your Services – Our Commitment’ which details how employees will deal with members of the public in person, by telephone, by letter and by e-mail. These standards of service have been followed in relation to the Contaminated Land Strategy. A formal protocol was adopted whereby complaints were directed to the Planning and Environmental Strategy service. The complaint was logged and an initial investigation was made. A Council Officer then contacted the complainant either by telephone or in writing within 5 working days. If the query was not responded to fully within that time the letter or e-mail was acknowledged within 3 working days and a full response was produced within 10 working days. Communications are now directed to the Landscape and Reclamation team in Transport Strategy, Development and Enterprise.

7.3 The nature of Part IIA regulations complicates this procedure considerably insofar as the definition of contamination is highly specific and extensive investigations in some cases needed to be undertaken before a determination can be made and a remediation action or actions proposed. It can be therefore take some considerable time for an individual’s query to be resolved in some way. However, the Council endeavours to resolve complaints quickly and efficiently and to give complainants regular progress reports throughout what can be a very time-consuming process in some instances.

Voluntary Provision of Information

7.4 Information provided on a voluntary basis is dealt with under the same procedure as for complaints.

Anonymously Supplied Information

7.5 The Council is aware that anonymous information and complaints can have malicious intent. However, there may be genuine reasons for someone wishing to remain anonymous, particularly when the information provided is of a sensitive nature. The information may also be valuable. Therefore such information will continue to be noted and investigated. No action will be authorised unless information has been thoroughly and scientifically validated.
Anecdotal Evidence

7.6 This information will continue to be noted and investigated. However, action will only be instigated when the information has been thoroughly tested and proved to have a scientific basis.

Confidentiality

7.7 The Council cannot guarantee the confidentiality of complainants or individuals providing information and they will be advised of this when making their complaint or providing information.

Results of the Investigation

7.8 Both the process of inspection and the investigation of complaints or information received ultimately lead to the assembly of sufficient information to determine whether or not the land in question can be classified as contaminated under the terms of Part II A.

7.9 The complete process is illustrated diagrammatically in figures 3 and 5.
8. THE DETERMINATION

8.1 This procedure is summarised in figure 3. The Service Director for Development & Public Protection will make this determination in consultation with the Principal Landscape Architect (Landscape and Reclamation), and the Strategic Director of Legal & Corporate Services.

8.2 For a site to be determined as contaminated under the terms of Part II A, the existence of a pollutant linkage or linkages must be proved. Therefore, the purpose of the determination is to confirm the existence of a pollutant linkage or linkages on the site.

Grounds for Determination

8.3 There are four possible grounds for the determination of land as contaminated land

(a) Significant harm is being caused to a human or relevant non-human, receptor.
(b) There is a significant possibility of significant harm being caused to a human, or relevant non-human, receptor.
(c) Significant pollution of controlled waters is being caused.
(d) There is a significant possibility of significant pollution of controlled waters being caused.

Identification of the pollutant linkage or linkages

8.4 The Council will identify a particular pollutant linkage or linkages as the basis for determination.

All three elements of the pollutant linkage will need be identified.

It will also consider whether:

- additive or synergistic effects between potential pollutants might result in a significant pollutant linkage
- a significant pollutant linkage might result from several different pathways
- there is more than one significant pollutant linkage on the land. If there are, each should be considered separately, as different people may be responsible for the pollutant linkage.

8.5 The Council will take into account all relevant and available evidence and will carry out an appropriate scientific and technical assessment of that evidence.
8.6 The Council will prepare a written record of the determination which will include:

- a description of the particular pollutant linkage, identifying the pollutant, the pathway and the receptor.
- a summary of the evidence on which the determination is based
- a summary of the relevant assessment of the evidence
- a summary of the way in which the Council considers that the requirements of Chapters A and B of the Statutory Guidance (2012) have been satisfied.
- the location, boundaries and area of the land in question

8.7 Once the determination has been made, the Council has a choice of ways forward depending on the individual circumstances of the case. It must also consider if it is precluded from serving a remediation notice.

**Making Determinations in urgent cases**

8.8 If there is an urgent need to determine particular land, the Council may make the Determination in a timescale it considers appropriate to the urgency of the situation.

Reference will be made to Table 1 and Table 2 of the “Contaminated Land Statutory Guidance - Environmental Protection Act 1990: Part 2A (DEFRA)” , 2012.
9. REMEDIATION

VOLUNTARY REMEDIATION

9.1 It is possible that in the course of investigating a potentially contaminated site that the owners or occupiers of the site make it known that they intend to put forward a voluntary scheme for remediation. Section 78H (5)(b) of The 1990 Act prevents the Council from serving a remediation notice if it is satisfied that appropriate things are being done by way of remediation without a remediation notice being served. Those who wish to take this route will be encouraged to do so but will have to satisfy the Council that:

- what is proposed will address the harm, pollution or risk arising from the contamination
- work has already started or will take place and will be satisfactorily completed on an acceptable timescale.

9.2 If an owner or occupier wishes to pursue this course of action, the Service Director for Development & Public Protection will initiate negotiations supported by the Principal Landscape Architect (Landscape and Reclamation) and the Strategic Director of Legal and Corporate Services.

Serving a Remediation Notice

9.3 Under normal circumstances, the Council will respect the three month moratorium between determining land which is contaminated and issuing a remediation notice. During this period the Service Director of Development & Public Protection will make reasonable endeavours to consult the following on the question of what should be done by way of remediation:

- the person on whom the notice is to be served
- the owner of the land to which the notice relates
- any person who appears to be in occupation of the whole or any part of the land
- any other person of any other description as may be prescribed.

9.4 The Service Director of Development & Public Protection will also consult:

- the owner or occupier of any relevant land or waters
- persons who might be required to grant, or join in granting the necessary rights.

The consultations will be undertaken by the Service Director of Development & Public Protection advised by the Strategic Director of Legal and Corporate Services.
Emergency Action

9.5 The three month moratorium and duty to consult can be dispensed with in cases where there is imminent danger of serious harm or serious pollution of controlled waters being caused. In such instance, a remediation notice will be served by the Service Director of Development & Public Protection.

9.6 In all of the foregoing instances, the determination and recommended course of action will be referred to the Strategic Director of Legal and Corporate Services and, if necessary, Gateshead Council Cabinet before any action is taken.
10. HEALTH AND SAFETY PROCEDURES

10.1 The Council has a Health and Safety Policy Statement which contains general statements applicable to all Council employees in relation to health and safety at work procedures. However, the investigation of contaminated land has special requirements.

10.2 Detailed site investigation work will be undertaken by specialist consultants with the experience of dealing with contaminated land. The Council will require the consultants to clearly demonstrate this expertise. Assessment of risk is the cornerstone of health and safety management and control and is a requirement of The Management of Health and Safety at Work Regulations and the Control of Substances Hazardous to Health Regulations. Such assessments must be carried out by a competent person or body and the significant elements of the assessment must be in writing. When awarding a contract and to assist contractors, the Council will supply a pre-tender health and safety plan which will indicate the type and extent of the expected operations. This will be prepared by the Principal Landscape Architect (Landscape and Reclamation). The contractor will use this as a basis for the submission of a construction phase Health and Safety Plan for each site under investigation under the terms of the Construction (Design and Management) Regulations 2007 (CDM). Where CDM is not applicable, for example, for a small contract, the contractor will be required to submit a health and safety method statement to cover his operation.

10.3 It is expected that both the pre-tender and contractors’ Health and Safety Plan will draw on references such as:

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BS10175:2011</td>
<td>Investigation of potentially contaminated sites – Code of Practice</td>
</tr>
<tr>
<td>HS(G)66</td>
<td>Protection of workers and the general public during the development of contaminated land (H.S.E.)</td>
</tr>
<tr>
<td>R132</td>
<td>A guide for safe working on contaminated sites (CIRIA)</td>
</tr>
</tbody>
</table>
11. INFORMATION EVALUATION

11.1 The primary objective of the inspection strategy is to obtain the information needed to decide whether or not the land appears to be contaminated. That is if:

(a) Significant harm is being caused to a human or relevant non-human, receptor.
(b) There is a significant possibility of significant harm being caused to a human, or relevant non-human, receptor.
(c) Significant pollution of controlled waters is being caused.
(d) There is a significant possibility of significant pollution of controlled waters being caused.

11.2 The Council holds a considerable amount of environmental information which assists in the process of identifying contaminated land in the Gateshead area. The majority of this information is held in an electronic database.

Ground Contamination Risk Assessment Process

11.3 The Statutory Guidance states that “risk” means the combination of:
(a) The likelihood that harm, or pollution of water, will occur as a result of contaminants in, on or under the land; and
(b) The scale and seriousness of such harm or pollution if it did occur
Risk assessments should be based on information which is:
(a) Scientifically based
(b) Authoritative
(c) Relevant to the assessment of risks arising from the presence of contaminants in soil; and
(d) Appropriate to inform regulatory decisions in accordance with Part IIA and the revised Statutory Guidance

Identification of the contaminant linkage and whether it is significant is ascertained by following a staged process of risk assessment. This is to gain an understanding of the risks presented by the land and any associated uncertainties. The risks are then communicated in what is known as a site conceptual model. The staged process commences with a strategic preliminary inspection which is informed by the collection of desk-based information and a site walkover, possibly with limited soil and / or water sampling. Where this strategic preliminary risk assessment suggests that further understanding of the risks is required, a more detailed site inspection is then carried out.

Detailed site inspection commences with a generic quantitative risk assessment whereby detailed information on the ground conditions is collected to further develop the site conceptual model through gaining a more thorough understanding of the risks and uncertainties involved. Depending on the findings of the generic quantitative risk assessment it may become necessary to carry out various further stages of more detailed risk assessment to support a decision as to whether or not a site meets the definition of contaminated land under Part IIA.
Generic assessment criteria are cautious estimates of levels of contaminants in soil at which there is considered to be no risk to health or, at most, a minimal risk to health. Generic assessment criteria and other technical tools are used as screening tools in human health risk assessment to help assessors decide when land can be excluded from the need for further detailed inspection and assessment, or when further work may be warranted.

There is a requirement for further screening values to be produced so that a wider array of commonly encountered contaminants, both organic and inorganic, can be effectively assessed at a generic level for a wider range of land uses.

All soils contain substances that could be harmful to human or environmental receptors, although in the very large majority of cases the level of risk is likely to be very low. In conducting risk assessment under the Part IIA regime, the local authority focuses on land which might pose an unacceptable risk.

The Council uses a range of technical approaches to assess human health risk from land contamination which is in accordance with the tiered/ phased approach set out in the DEFRA and Environment Agency (EA) Publication:CLR 11: Model Procedures for the Management of Land Contamination (Defra/ EA 2004).

It is common practice in contaminated land risk assessment to use “generic assessment criteria” (GACs) as screening tools in generic quantitative human health risk assessment to help assessors decide when land can be excluded from the need for further inspection and assessment, or when further work may be warranted. Gateshead Council uses GACs and other technical tools to inform certain decisions under the Part IIA regime, provided they have been produced in an objective, scientifically robust and expert manner by reputable organisation that is in accordance with Part IIA and the Statutory Guidance. Overall GACs represent cautious estimates of levels of contaminants in soil at which there is considered to be no risk to health or, at most, a minimal risk to health.

To assist in the risk assessment process, the Council has referred to the Contaminated Land Exposure Assessment (CLEA) framework reports and model software and various. These are technical tools used to assist in the assessment of human health risks from land contamination. In 2002 (Defra) / (EA) launched the original CLEA (Contaminated Land Exposure Assessment) framework together with associated documentation and software and a limited suite of Soil Guideline Values (SGVs) relevant to the assessment of land contamination. SGV’s were ‘trigger values’ for screening-out low risk areas of land contamination. They gave an indication of representative average levels of chemicals in soil below which the long-term health risks are likely to be minimal. In 2008, the SGVs and CLEA 2002 software was withdrawn. They were replaced with draft versions of Science Report (SR) 2, SR3, SR4, SR7 and the CLEA v1.03 software. These documents were finalised in 2009 and a suite of SGVs and revised toxicology reports were released along with the CLEA v1.04 software. The CLEA v1.05 software was released later in 2009 to correct for lifetime exposure and was replaced shortly afterwards with v1.06 to correct for a password protection issue. To date, SGVs have only been released for a limited number of chemical substances. However, the framework reports and CLEA software provide a starting point for the assessment of a much wider range of chemicals.
The CLEA Guidance is non-statutory and consequently other alternative risk assessment approaches were used as they also satisfied the legislative requirements. If an SGV (or equivalent) was not available for a substance identified in soil at a site, alternative generic assessment criteria were used using (where appropriate) the generic models used to define SGVs, based on appropriately sourced physical-chemical and toxicity data. Other risk assessment models were also used to use Generic Assessment Criteria (GAC) produced by private sector organisations such as WS Atkins (SSV’s) and Land Quality Management/Chartered Institute Environmental Health.

Professionals and regulators assessing risks to health from land contamination are not required to use SGVs and the supporting technical guidance. Alternative approaches can be used provided that they satisfy the legislative requirements.

The understanding of the risks is developed through a staged approach to risk assessment, often involving a preliminary risk assessment informed by desk-based study; a site visit and walkover; a generic quantitative risk assessment; and various stages of more detailed quantitative risk assessment. The process continues until it is possible for the local authority to decide: (a) that there is insufficient evidence that the land might be contaminated land to justify further inspection and assessment; and/or (b) whether or not the land is contaminated land.

For land to proceed to the next stage of risk assessment there has to be evidence that an unacceptable risk could reasonably exist. If the Council considers there is little reason to consider that the land might pose an unacceptable risk, inspection activities will stop at that point, and will redirect its efforts to the inspection of other land in line with its approach to prioritisation.

"Normal" presence of contaminants

The Part IIA regime is not intended to apply to land with levels of contaminants in soil that are commonplace and widespread throughout the Gateshead area for which in the very large majority of cases there is no reason to consider that there is an unacceptable risk.

Normal levels of contaminants in soil will not normally be considered to cause land to qualify as contaminated land, unless there is a particular reason to consider otherwise. The Statutory Guidance (2012) states that the Part IIA regime should not apply to land with levels of contaminants in soil that are common place and widespread throughout England and for which in the majority of cases there is no reason to consider that there is an unacceptable risk.

The Statutory Guidance also states that, “normal” levels of contaminants in soil may result from:

(a) The natural presence of contaminants (e.g. caused by soil formation processes and underlying geology) at levels that might reasonably be considered typical in a given area and have not been shown to pose an unacceptable risk to health or the environment.
(b) *The presence of contaminants caused by low level diffuse pollution and common human activity other than specific industrial processes. For example, this would include diffuse pollution caused by historic use of leaded petrol and the presence of benzo(a)pyrene from vehicle exhausts, and the spreading of domestic ash in gardens at levels that might reasonably be considered typical.*

Gateshead Council will consider whether contamination is within the bounds of what might be considered typical or widespread: (a) locally, if there is sufficient information to make a reasonable consideration of what is normal within a local area; and/or (b) regionally or nationally in broadly similar circumstances, having due regard to similarity in terms of land use and other relevant factors such as soil type, hydrogeology, and the form of the contaminants; and (c) there is no specific reason to consider that those levels of contamination are likely to pose an unacceptable risk. It is possible that specific pieces of land at or slightly above normal levels of contamination with regard to specific substances may pose sufficient risk to be contaminated land, and that remediation of such land may bring significant net benefits. However, such cases are likely to be very unusual.

In October 2012 Defra published a report and Technical Guidance Sheets on Normal Background Levels of Contaminants in English Soils and was commissioned to support the revised Statutory Guidance. Normal levels of contaminants are considered to be those levels which are not significantly different to those likely to be typical or widespread within the authority’s area e.g. resulting from soil formations or geology and have not been shown to pose an unacceptable risk to health or the environment, or, resulting from human activity such as the historic use of unleaded petrol or the spreading of domestic ash in gardens at levels that might reasonably be considered typical.

**Significant possibility of significant harm to human health**

The following health effects should always be considered to constitute significant harm to human health: death; life threatening diseases (e.g. cancers); other diseases likely to have serious impacts on health; serious injury, birth defects; and impairment of reproductive functions.

Other health effects may be considered by the local authority to constitute significant harm. For example, a wide range of conditions may or may not constitute significant harm (alone or in combination) including: physical injury; gastrointestinal disturbances; respiratory tract effects; cardio-vascular effects; central nervous system effects; skin ailments; effects on organs such as the liver or kidneys; or a wide range of other health impacts. In deciding whether or not a particular form of harm is significant harm, the local authority will consider the seriousness of the harm in question: including the impact on the health, and quality of life, of any person suffering the harm; and the scale of the harm. The authority should only conclude that harm is significant if it considers that treating the land as contaminated land would be in accordance with the broad objectives of the regime as described in Section 1 of the Statutory Guidance.
In deciding whether the possibility of significant harm being caused is significant, Gateshead Council decides whether the possibility of significant harm posed by contamination in, on or under the land is sufficiently high that regulatory action should be taken to reduce it.

In accordance with the Statutory Guidance (2012) in deciding whether or not land is contaminated land on grounds of significant possibility of significant harm to human health, Gateshead Council will now use the categorisations described below:

Categories 1 and 2 encompass land which is capable of being determined as contaminated land on grounds of significant possibility of significant harm to human health. Categories 3 and 4 would encompass land which is not capable of being determined on such grounds.

In considering whether a significant possibility of significant harm exists, the local authority will consider the number of people who might be exposed to the risk in question and/or the number of people it estimates would be likely to suffer harm.
**Category 1: Human Health**

Statutory Guidance paragraph 4.19 states “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.”

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......

(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......

(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.

**Categories 2 and 3: Human Health**

Statutory Guidance paragraph 4.19 states “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.

The authority will then, 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 IIA on a precautionary basis.
(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 IIA 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 IIA 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.

Category 4: Human Health
Statutory Guidance states in paragraph 4.20 that “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 local authority will 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
(c) Land that has been excluded from the need for further inspection and assessment because contaminant levels do not exceed relevant generic assessment criteria or relevant technical tools.
(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).

The local authority may also consider that land other than the types described above 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.
Risk Assessment for Controlled Waters

11.5 With regard to risk assessment for certain controlled waters matters, the Council consults the EA for advice. Risk assessment and remediation has been carried out in accordance with “Methodology for the Derivation of Remedial Targets for Soil and Groundwater to Protect Water Resources” (Environment Agency R&D Publication 20, EA, 2006).

In order to assess the potential risks presented to controlled waters (both groundwater and surface waters) the soil leachate and groundwater concentrations have been compared against the following Level 1 assessment criteria:
• The Water Supply (Water Quality) Regulations 2000, (as amended).

Under section 78A(9) of Part IIA the term “pollution of controlled waters” refers to the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter. The term “controlled waters” in relation to England has the same meaning as in Part 3 of the Water Resources Act 1991, except that “ground waters” does not include waters contained in underground strata but above the saturation zone.

Under Section 78A (5 of the1990 Act): The questions – (a) what harm or pollution of controlled waters is to be regarded as “significant”, and (b) whether the possibility of significant harm or of significant pollution of controlled waters being caused is “significant”, will be determined in accordance with guidance issued for the purpose by the Secretary of State in accordance with Sections 4.3- 4.4 of the Statutory Guidance.

Significant pollution of controlled waters

The following types of pollution will be considered to constitute significant pollution of controlled waters:
(a) Pollution equivalent to “environmental damage” to surface water or groundwater as defined by The Environmental Damage (Prevention and Remediation) Regulations 2009, but which cannot be dealt with under those Regulations.
(b) Inputs resulting in deterioration of the quality of water abstracted, or intended to be used in the future, for human consumption such that additional treatment would be required to enable that use.
(c) A breach of a statutory surface water Environment Quality Standard, either directly or via a groundwater pathway.
(d) Input of a substance into groundwater resulting in a significant and sustained upward trend in concentration of contaminants (as defined in Article 2(3) of the Groundwater Daughter Directive (2006/118/EC))5.

5
In deciding whether significant pollution of controlled waters is being caused, the local authority will consider that this test is only met where it is satisfied that the substances in question are continuing to enter controlled waters; or that they have already entered the waters and are likely to do so again in such a manner that past and likely future entry in effect constitutes ongoing pollution.

Land will not be determined as contaminated land on grounds that significant pollution of controlled waters is being caused where: (a) the relevant substance(s) are already present in controlled waters; (b) entry into controlled waters of the substance(s) from land has ceased; and (c) it is not likely that further entry will take place.

**Significant Possibility of Significant Pollution of Controlled Waters**

Before making its decision on whether a given possibility of significant pollution of controlled waters is significant, the local authority will consider:

(a) The estimated likelihood that the potential significant pollution of controlled waters would become manifest; the strength of evidence underlying the estimate; and the level of uncertainty underlying the estimate.

(b) The estimated impact of the potential significant pollution if it did occur. This should include consideration of whether the pollution would be likely to cause a breach of European water legislation, or make a major contribution to such a breach.

(c) The estimated timescale over which the significant pollution might become manifest.

(d) The authority’s initial estimate of whether remediation is feasible, and if so what it would involve and the extent to which it might provide a solution to the problem; how long it would take; what benefit it would be likely to bring; and whether the benefits would outweigh the costs and any impacts on local society or the environment from taking action. The authority will then decide which of the following categories the land falls into. Categories 1 and 2 will comprise cases where the authority considers that a significant possibility of significant pollution of controlled waters exists. Categories 3 and 4 will comprise cases where the authority considers that a significant possibility of such pollution does not exist.
12. INFORMATION MANAGEMENT

12.1 The Council’s Geographical Information System (or GIS) is the primary tool used to manage contaminated land information. The GIS system is used to correlate all information and determine the proximity of potential receptors (residents, controlled waters) to sources of contamination. The GIS is linked to an Access database, which allows statistical information to be drawn together for reporting and monitoring. The administration of these systems comes under the jurisdiction of the Principal Landscape Architect (Landscape and Reclamation) who is responsible for their establishment and maintenance.

The GIS database is used to manage the large amount of information being acquired. They are used to store all of the data in a single secure system that it is fully validated and provides a facility that gives immediate access to the history of sites, maps and photographs of its current use and links to the information contained within the Sections records including any action that has been taken to manage contamination problems. Digital historical maps have been purchased to allow the history of land within the Gateshead area to be traced. The current use of land is assessed using both current Ordnance Survey mapping and recent digital aerial photography.

The computerised systems provide a systematic method to collect information required to determine whether or not a site is contaminated under the terms of Part IIA. All official documentation, such as remediation notices is held on the database. The Council has copied all relevant information placed on its register to the EA. Similarly the EA has provided relevant information on its database to the Council.

The Register

12.2 The Contaminated Land (England) Regulations 2006 specify the contents of the Register (Section 13). A public register held by the Council in accordance with Section 78(R) of the 1990 Act is available. It records information on sites that have been formally determined as contaminated land and have been subject to a remediation statement, a remediation agreement or a remediation notice. The register also records the 'Designation' of Special Sites. Therefore it is not a register of contaminated land, it is a register of the actions taken, or proposed to be taken, in order to remEDIATE contaminated land.

The public register of designated “Contaminated Land” sites under Part IIA of the 1990 Act can be accessed from the Contaminated Land web page on the Council web site.

This information includes risk Summaries which explain Gateshead Council’s understanding of the risks. The Statutory Guidance (2012) has introduced Risk Summaries for any land where, on the basis of its assessment, the local authority considers it is likely that the land in question may be determined as contaminated land.
The contaminated land public register is available to view free of charge during office hours (9am - 5pm Monday to Friday) except during public holidays and other days when the council’s offices are closed. A standard fee is charged for copying any information from the contaminated land public register. The register contains detailed documentation relating to contaminated land sites in the Gateshead area. If members of the public have any special requirements they should call the council before visiting to make sure that they can access the information. The register is in electronic and paper format.

Confidentiality of Information on the Register

12.3 Some information may be withheld if the site owners or persons responsible have proven that it is commercially confidential or that it is not in the public’s best interest.

If information:

- Is commercially confidential or
- Its inclusion would be against the interests of national security it may be excluded from the public register in accordance with Sections 78(S)(I) and 78(T)(I) of the 1990 Act. In the case of the latter, the Secretary of State will issue a direction specifying the information or types of information, which, in his view affect national security. The Council is required to inform the Secretary of State of any information it excludes on this basis. If the Council considers that information falls within the ambit of Section 78(S)(I) it can give notice to the Secretary of State and request a determination if the information should be included or excluded from the register.
Requests for Information

12.4 The Council already has a well established procedure for dealing with requests for information on potentially contaminated land, which will continue. It is administered in the Transport Strategy service. A fee is charged for the provision of information under this system.

To obtain information from the Council about whether land is potentially contaminated, members of the public can request a site-specific search.

To find out which sites the Council are considering as potential contaminated land in specific locality members of the public can write and request for a site search to be undertaken by the Council’s Landscape and Reclamation team in Transport Strategy. A standard fee is charged for this service. (Currently £173.60 for standard conditions -2012/2013).

In addition, the Council’s Legal and Corporate department also provide a local land search service for designated “Contaminated Land” in the Gateshead area.

The Council will issue site-specific environmental information available in accordance with the Environmental Information Regulations 2004. A disclaimer is generally added to the written response making it clear that the information provided is only that available to the Council at that time, and comes from various sources.
The Council acknowledges that there may be circumstances when information should remain confidential. The Council will be guided by the Environmental Information Regulations 2004.

Information gathered or held by the Council in the course of inspecting the Gateshead borough may constitute “information relating to the environment” and fall within the ambit of the “Environmental Information Regulations 2004”. The Council as a public body in possession of such information is obliged to make it available to any person who requests it unless it falls within certain exemptions, including:

- the subject matter of any investigation undertaken with a view to any proceedings or enquiry
- it would affect the deliberations of any relevant person (for example the Council itself)
- it would involve the supply of a document or other record which is still in the course of completion or of any internal communication of a relevant person
- it would affect the confidentiality of matters to which any commercial or industrial confidentiality attaches.

Each request for information must be assessed against the criteria set out in the Regulations. Information which must be treated as confidential is limited to information whose disclosure would contravene a statutory requirement or involve the breach of an agreement, personal information contained in records held on individuals and information supplied voluntarily in circumstances where the authority is not entitled apart from the 2004 regulations to disclose it. Some information on contamination or on proposed remediation might constitute information provided voluntarily and so could not be disclosed.

Other acts which may affect the Council’s ability to disclose information are the Data Protection Act 1998 and the Freedom of Information Act 2000.

**Cabinet Papers and Reports**

12.5 Information on potentially contaminated sites could well be contained in reports to Cabinet and background papers. A decision must therefore be made as to whether such information is “exempt information” under Part 100A of the Local Government Act 1972. This includes:

- Information relating to the business or financial affairs of a particular person.
- Certain types of expenditure under contracts proposed to be incurred by the authority.
- Information which would reveal that the authority proposes to give a statutory notice imposing requirements upon a person.
- Instructions to and opinions of counsel and advice received, information obtained or action to be taken in connection with legal proceedings and any other matter affecting the authority.
Definition of “Commercially Confidential”

12.6 For the purposes of the 1990 Act the information is commercially confidential if its inclusion on the register would prejudice to an unreasonable degree the commercial interests of the relevant person or business.

Use of Information by Other Council Services

12.7 The authority does not have a corporate database. However, data held by the Transport Strategy service will be available on request to other services, depending on any confidentiality or copyright constraints associated with the information requested. See section 12.4

Provision of Information to Environment Agency

12.8 The EA is required to prepare an Annual Report for the Secretary of State on the state of contaminated land in England and Wales. It will include:

- summary of local authority inspection strategies including a progress report on the strategy and its effectiveness
- the amount of contaminated land and the nature of the contamination
- measures taken to remediate land

12.9 The local authority must also provide information to the EA whenever a site is designated as contaminated, or whenever a remediation notice, statement or declaration is issued or agreed. The EA has provided standard forms for the supply of this information (Appendix 5 ).
13. GENERAL LIAISON AND COMMUNICATION STRATEGY

13.1 There are two aspects to this:

- part of the preparation of the Inspection Strategy;
- part of the procedures implementing Part IIA.

Liaison on the Inspection Strategy

Consultation with Public Bodies and Organisations.

13.2 The Statutory Guidance on Part IIA requires the Council to consult the public authorities listed below in the preparation of its strategy:

- Environment Agency
- Natural England
- English Heritage
- Ministry of Agriculture, Fisheries and Food
- Food Standards Agency

Owners, Occupiers and Other Interested Parties

13.3 The point of contact initially will be the Development and Enterprise Group. Procedural matters and technical matters can be discussed with the Principal Landscape Architect (Landscape and Reclamation). Once matters have progressed into the realm of legal procedures the contact point will be the Strategic Director of Legal & Corporate Services.

Wider Community

13.4 General queries will be directed to the Principal Landscape Architect (Landscape and Reclamation).

Cross Boundary Issues

13.5 There have been occasions when contamination is caused by pollution from or results in pollution on sites in adjacent local authority areas. This can also be an issue when the Council owns or leases land in another authority’s area.

13.6 Section 78X(2) of the 1990 Act allows the Council to exercise its functions as an enforcing authority on such land as if it were situated in its area. In such circumstances the Head of Development & Public Protection will consult the authority concerned.

13.7 On instances of cross boundary issues, the Council will consider contacting neighbouring authorities to establish a cross boundary joint liaison sub-Committee.

Site Specific Liaison
13.8 Where a site holds a particular designation, for example, a Listed building or Site of Special Scientific Interest (SSSI), the Council will liaise with the appropriate organisation to ensure that the appropriate methods of access and investigation are agreed so that no avoidable damage occurs to the protected building or ecosystem.

**Liaison with English Heritage**

13.9 If a site is designated as Contaminated Land under Part IIA and it is a site for which English Heritage is responsible, the Council will notify them in writing and consult on the appropriate course of action. The remediation of contaminated land may involve engineering operations and require planning permission. Any work within the Scheduled Area of a Scheduled Ancient Monument may require Scheduled Monument Consent from the Department of Culture, Media and Sport. The Council will consult with English Heritage and the regional Ancient Monuments Inspector before making such an application. Any works within the curtilage of a Listed Building is likely to require Listed Building Consent from the Council.

**Liaison within Development & Enterprise and the County Archaeologist**

13.10 Where a site is designated as contaminated under Part IIA and involves:

- Conservation Area
- Listed Building or Works within the curtilage of one
- Historic parks and gardens
- Historic battlefields
- Any site on the County Sites and Monument Record

The advice of the Council’s own Senior Planner (Environment and Regeneration) will be sought to ensure that any remediation is designed and undertaken to result, where possible, in the least damage to the feature or building located on the site. Liaison will be carried out within the Development & Enterprise Group with the relevant officers. If necessary this officer will take the advice of the County Archaeologist.

**Liaison with Natural England**

13.11 The Council will consult Natural England before carrying out any intrusive investigation or any action, which if carried out by the owner/occupier would require the consent of Natural England under Section 28 of the Wildlife and Countryside Act 1981. If land designated as contaminated under Part IIA forms all or part of a Site of Special Scientific Interest, the Council will notify Natural England and will seek guidance on any proposed course of action with the intention of minimising harm and disturbance. Advice may also be sought on the restoration of the site.
Liaison with the Environment Agency

13.12 There are a number of occasions when the Council must liaise with the EA;

- When a remediation notice is served
- If the Council considers a site to be a ‘special site’
- To obtain any site specific information which the EA might hold
- When pollution of controlled waters is occurring

Liaison with the Coal Authority

13.13 The Coal Authority has liaised with the Council on mining issues. It also assists with particular problems relating to mine gas, mine shafts and ground water pollution. It has provided information from its record sources which documents historic mining activity in the Gateshead area. The Coal Authority also liaises with the Council, if surface hazards are discovered during the investigation process and their procedures must be implemented.

The Council will continue to consult with the Coal Authority concerning land contamination issues.
14. RISK COMMUNICATION STRATEGY

14.1 Contamination is a complex and difficult subject to understand and is potentially highly emotive. An effective communication strategy is therefore important. It is important to realise that each individual’s perception of the risks associated with contamination will be different and will be influenced by certain factors: knowledge and familiarity of particular contaminants, whether or not their impact is immediate and irreversible or otherwise, whether individuals or communities can exercise a degree of control over their exposure to the risk. Where the degree of control is low, people often experience a high “fear” or “dread” factor, for example in relation to nuclear weapon fallout. However, other hazards, such as antibiotics, have a low “fear” or “dread” factor because of the degree of control individuals feel they can exert over them.

14.2 In dealing with the concerns of members of the public, the Council will treat them seriously and with respect. It will ensure that any decisions made about contaminated land are defensible and transparent.

14.3 However, Part IIA grants only limited powers to local authorities and its definition of contamination is quite restrictive. It is therefore essential to communicate clearly the boundaries of the regulations to members of the public.

14.4 It is also essential that the Strategy does not have an unintended blighting effect on parts of the Gateshead area. In some cases during the process of strategic inspection, the local authority will seek to minimise or reduce such potential blight as far as it considers reasonable. The authority will be open to moves by the land owner (or some other interested party) to help resolve the status of the land themselves. For example, the authority may decide that the land is, or is not, contaminated land on the basis of information provided by the land owner or other interested party, provided the authority is satisfied with the robustness of the information.
15. REVIEW MECHANISMS

Triggers for Inspection

15.1 The Inspection Strategy is not a static process. It is therefore necessary to make provisions for the incorporation of planned and unplanned events.

15.2 The Guidance requires the Council to review its Inspection Strategy on a regular basis. There are two aspects to this:

- triggers for the review of inspection decisions
- formal Review of the Inspection Strategy

15.3 Triggers for undertaking non-routine inspection will include:

- unplanned events, for example, an incident has caused changes in the use of the land or surrounding land
- introduction of new receptors
- supporting voluntary remediation
- identification of localised health effects
- responding to information, for example, about unusual or abnormal site conditions, or from other statutory bodies, or from owners and occupiers of the land and other interested parties

15.4 The Council will decide if such occurrences require an immediate response or if examination can be delayed.

Triggers for early review

15.5 The Review will be a more formal process and will be used to audit the inspection procedures and may also be required to accommodate:

- significant changes in legislation
- establishment of significant case law or precedent
- revision of guidelines values for exposure assessment

Strategy Review

15.6 The initial ten-year programme of inspection has come to an end. Progress in implementing the strategy has been made more difficult due to limited funding opportunities for possible site investigations from Central Government and Council finances.

A summary of the work carried out so far in relation to the Strategy is given in section 18.
16. RESOURCES

16.1 Funding for investigating and remediating contaminated land was provided through the Contaminated Land Supplementary Credit Approval (SCA) programme. Current funding is available through the Local Authority Contaminated Land Capital Projects Programme which is currently managed by the EA.

The EA administers the Contaminated Land Capital Projects Programme to help local authorities in England cover the capital cost of implementing the contaminated land regime under Part IIA of the Environmental Protection Act 1990. The Department for Environment, Food and Rural Affairs (DEFRA) provides the funding for this work.

Central government funding for all Strategy projects in England has steadily been reduced from £21 million available in 2001-2002 for combined Local Authorities and Environment Agency capital programmes.

From 1 April 2011 the Local Authority Contaminated Land Capital Projects Programme (LACLCP) was combined with the EA’s capital projects programme for special sites, with all funding coming out of a single ‘pot’. The combined budget for 2011/12 was £4.35m.

The Programme procedure is outlined below:

A local authority applies to the Environment Agency for funding, explaining what a proposed project would involve, why they think it’s necessary, and how much capital it needs.

The EA assesses the proposed project against technical merit and value for money principles, adjusting proposed work and costs if necessary.

The EA also gives the application a priority score based on the risk to human health and scale of environmental impacts.

The EA decides which projects to approve, using priority scoring to prioritize and sift bids and award funding as limited by the budget for that year.

The local authority organizes and undertakes the investigation, assessment, remedial or monitoring works, and submits claims for payment either once the works are complete or on an interim basis as the works are being carried out.
16.2 Although the (LACLCP) has been running for a number of years, changes have been introduced to reflect the implementation of Part IIA. Two categories of works for which funding may be available are:

- Intrusive investigations to determine if the land is contaminated under the terms of Part IIA.
- Remediation which meets the definition of “remediation” under the terms of Part IIA and could include:
  - assessment actions
  - remedial treatment actions
  - monitoring actions

16.3 The Council may also be eligible to receive support where:

- it owns or occupies the land to which the project relates,
- it would be the appropriate person to bear responsibility for remediation of the land,
- it has some legal or contractual obligation to investigate or remediate the land,
- the works are to remediate land contaminated because of illegal deposits of controlled wastes

Special Sites

16.4 The EA is the enforcing authority for these sites (see paragraph 2.7 and Appendix 1). Thus EA’s capital projects programme is not generally available for such sites because Part IIA requires the Council to make arrangements with the EA for the investigation of suspected Special Sites. There have been no designated Special Sites within the Gateshead area. (Nov 2012).

16.5 Funding may be available if the Council owns or is otherwise the appropriate person for a Special Site.

16.6 The Council has powers to carry out remediation and to cover some or all of its reasonable costs.
17. **MILESTONES AND TIMETABLE**

17.1 Although the Guidance has not given a timescale within which the Inspection Strategy should be completed, it does require the Council to set out in the Strategy appropriate timescales for the strategic inspection of different parts of the Borough. The timetable is outlined below but is subject to ongoing review.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Production and publication of statutory contaminated land strategy</td>
<td>December 2001</td>
</tr>
<tr>
<td>Deal with urgent sites</td>
<td>January 2002</td>
</tr>
<tr>
<td>Establish database</td>
<td>March 2002</td>
</tr>
<tr>
<td>Commence site inspections</td>
<td>2002 - 2005</td>
</tr>
<tr>
<td>Inspection of the district, identification of potentially contaminated sites, prioritisation for further investigation</td>
<td>April 2005</td>
</tr>
<tr>
<td>Final site prioritisation</td>
<td>2005 - 2007</td>
</tr>
<tr>
<td>Detailed inspection and assessment of priority category 1 and 2 sites</td>
<td>As required</td>
</tr>
<tr>
<td>Undertake remediation to address unacceptable risks to human health and the wider environment</td>
<td>As required and as funding allows</td>
</tr>
</tbody>
</table>
18. CURRENT SITUATION


850 potentially contaminated sites in the Gateshead area have been identified. (October 2012). Some overlap between potentially contaminated sites and sites which have been developed under the planning regime will exist. Desk top studies will continue to highlight such sites and reduce the number requiring further levels of inspection.

Detailed assessment is currently being undertaken on land identified as a Category 1 or 2 sites. The standard for further assessment and / or remedial action will be to reduce the risk rating to a minimum of a category 3 status and to remove any unacceptable pollutant linkages. There are currently 43 sites classified as Category 1 or 2.

The Council’s contaminated land GIS dataset layer will continue to be developed and its data reviewed and updated. By maintaining an accurate record of former land use in this format the Council will try to ensure that any unacceptable risks are identified efficiently during the development control process

The following action, subject to appropriate resource allocation, will be undertaken between 2012-2014:

<table>
<thead>
<tr>
<th>Action</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Input historic and new information into the prioritisation process in order to refine sites for inspection.</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Progress Category 1 and Category 2 sites Stage 1 investigations (*)</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Progress Category 1 and Category 2 sites Stage 2 investigations (**)</td>
<td>Ongoing as funding allows</td>
</tr>
<tr>
<td>Deal with urgent / imminent risks</td>
<td>As required</td>
</tr>
<tr>
<td>Secure remediation to address unacceptable risks to human health or to the wider environment</td>
<td>As required</td>
</tr>
<tr>
<td>Review and if necessary republish the Contaminated Land Strategy</td>
<td>2013</td>
</tr>
</tbody>
</table>

* Stage 1 – Desk top survey collating all available documentary evidence about a site. This includes a site walkover to identify topography, surface soil types, nearby surface waters, flora and fauna, structures and visible contamination. The initial identification and prioritisation of sites is an informed estimate of the potential for contamination to be present at a site and the possibility that it may pose a risk to health or the environment.
**Stage 2** – Detailed investigation involving various intrusive techniques such as trial pits, boreholes, soil sampling, ground water and gas monitoring to enable a quantitative risk assessment to be undertaken.

18.2 **Review**

Whilst the Council has a duty to inspect the Gateshead area to identify contaminated land, the frequency of inspection is not actually prescribed. In practice, inspection will be a continuum, balancing a systematic approach with the availability of resources. The Council has a duty to review its inspection strategy on a regular basis and to meet its statutory responsibilities, two main aspects of review need to be built into this strategy:

- Triggers for reviewing inspection decisions, and
- Review of the inspection strategy

In addition to the routine review of inspection findings there will be situations that will trigger re-assessment including:

- Change of use of surrounding land (introduction of new receptors)
- The potential for pollutant linkages to become significant or urgent as a result of unplanned events (e.g. flooding, subsidence, spillages etc), or a change in circumstances
- Identification of a localised effect that could be associated with the land
- Responding to new information

The Strategy as a whole will be reviewed every 2 years and any proposed changes will be incorporated as necessary.

Particular matters that will be kept under review include:

- The content of the strategy generally
- Priorities for further investigation of potentially contaminated sites
- The potential for the introduction of new receptors
- The potential for new contamination
- Progress on voluntary remediation
- The enforcement process generally and the identification of appropriate persons particularly
- Identification of special sites
- Progress with the implementation
18.3 Costs

Potentially significant sums may be required to undertake more detailed investigation of sites and, where necessary, to take appropriate enforcement action to ensure sites found to be contaminated are remediated.

Should a significant Phase 2 investigation and/or remediation be identified, an application for funding from the Local Authority Contaminated Land Capital Projects Programme (LACLCPP) will normally be made, specifically relating to that site.

Should land in possession of the Council be identified as contaminated land, then the funding of any remediation will be considered on a case-by-case basis. In the event of significant costs being involved, it is likely that an application may also be made via the LACLCPP.

18.4 Works Programme

The prioritisation process continues to focus on targeting the most sensitive end uses and the work programme is therefore primarily addressing human receptors at this stage. The Council will continue to carry out detailed site inspections for those potentially contaminated sites which have been identified under the prioritisation process.

18.5 New Development

The contaminated land regime is designed to deal with contamination problems which cannot be addressed under other legislation such as the planning system. Given the extensive redevelopment of land now taking place across the Gateshead area, it is particularly important that any contamination problems at new development sites are identified straight away and not left for the future. To help facilitate this, a guide has been produced for developers and consultants, which explains how planning controls are used, and sets out the Council’s standards for remediation when any problems are found. This will ensure that land is properly assessed before any development work starts, and that an appropriate standard of remediation is implemented in any new schemes.

Where contaminated land is identified as a planning consideration a Preliminary Land Contamination Assessment (often called a Preliminary Risk Assessment or PRA) will be need to be submitted with the planning application, in accordance with the Tyne and Wear Validation requirements and relevant national, regional and planning policy.

Primarily it is the applicants’/developers’ responsibility to ensure that the development is safe and the site is suitable for its proposed use and the Local Planning Authority’s (LPA) duty to ensure that the developer undertakes this assessment and implements any remedial requirements in a responsible and effective manner.
The guides below are provided to aid applicants /developers in understanding the constraints and requirements of development that has a sensitive end use and / or is proposed on land which may be contaminated.

The guides have been produced by Council Officers from Development Management and the Landscape and Reclamation Team in the Development & Enterprise Group with the aim of encouraging a consistent approach to the presentation and information content of contaminated land reports provided to the Local Planning Authority.

The guide is now available to all prospective developers within the Gateshead Council area. (Link below)
19. OUR FUTURE COMMITMENTS

19.1 The actions identified for the implementation of the Contaminated Land Strategy are:

- to continue to respond to the Council’s strategic management priorities
- to progress with the detailed inspection and remediation of sites identified as potentially contaminated, in order of priority
- to continually review progress to ensure that the Council’s objectives and strategic priorities are being fulfilled.

The Council has an ongoing programme of work focused on the Council’s Corporate Objectives for health, the environment, and the Council’s statutory responsibilities under Part IIA. Work will continue with detailed site inspections for those potentially contaminated sites which have been identified under the prioritisation process. The Council’s priority remains to protect the health of those living and working in the Gateshead area.
APPENDICES

APPENDIX 1

Definition of “Special Site”
Extract from S1 2006 No. 1380
The Contaminated Land (England) Regulations 2006
(as amended)

Land required to be designated as a special site (subject to EA assessment and agreement)

1. (1) **Land required to be designated as a special site**
   
   Contaminated land of the following descriptions is prescribed for the purposes of section 78C(8) as land required to be designated as a special site—
   
   (a) Land affecting controlled waters in the circumstances specified in regulation 3;
   
   (b) land which is contaminated land by reason of waste acid tars in, on or under the land;
   
   (c) land on which any of the following activities have been carried on at any time—
      
      (i) the purification (including refining) of crude petroleum or of oil extracted from petroleum, shale or any other bituminous substance except coal; or
      
      (ii) the manufacture or processing of explosives;
   
   (d) land on which a prescribed process designated for central control has been or is being carried on under an authorisation, where the process does not solely consist of things being done which are required by way of remediation;
   
   (e) land on which an activity has been or is being carried on in a Part A(1) installation or by means of Part A(1) mobile plant under a permit, where the activity does not solely consist of things being done which are required by way of remediation;
   
   (f) land within a nuclear site;
   
   (g) land owned or occupied by or on behalf of—
      
      (i) the Secretary of State for Defence;
      
      (ii) the Defence Council;
      
      (iii) an international headquarters or defence organisation; or
      
      (iv) the service authority of a visiting force,

   being land used for naval, military or air force purposes;
(h) land on which the manufacture, production or disposal of –

(i) chemical weapons;

(ii) any biological agent or toxin which falls within Section 1(1)(a) of Biological Weapons Act 1974 (restriction on development of biological agents and toxins)(b); or

(iii) any weapons, equipment or means of delivery which falls within Section 1(1)(b) of that Act (restriction on development of biological weapons),

has been carried out at any time;

(i) Land comprising premises which are or were designated by the Secretary of State by an order made under section 1(1) of the Atomic Weapons Establishment Act 1991 (arrangements for development etc of nuclear devices)(c);

(j) land to which section 30 of the Armed Forces Act 1996 (land held for the benefit of Greenwich Hospital)(a) applies; and

(k) land which is contaminated land wholly or partly by virtue of any radioactivity possessed by any substance in, on or under that land; and

(l) land which—

(i) is adjoining or adjacent to land of a description specified in any of sub–paragraphs (b) to (k); and

(ii) is contaminated land by virtue of substances which appear to have escaped from land of such a description.

(2) For the purposes of paragraph (1)(b) above, “waste acid tars” are tars which –

(a) contain sulphuric acid;

(b) were produced as a result of the refining of benzole, used lubricants or petroleum; and

(c) are or were stored on land used as a retention basin for the disposal of such tars.

(3) In paragraph (1)(d), “authorisation” and “prescribed process” have the same meanings as in Part 1 of the 1990 Act (integrated pollution control and air pollution control by local authorities) and the reference to designation for central control is a reference to designation under section 2(4) (which provides for processes to be designated for central or local control).

(4) In paragraph (1)(e), “Part A(1) installation”, “Part A(1) mobile plant” and “permit” have the same meanings as in the Pollution Prevention and Control (England and Wales) Regulations 2000(a).
(5) In paragraph (1)(f) above, “nuclear site” means -

(a) any site in respect of which, or part of which, a nuclear site licence is for the time being in force; or

(b) any site in respect of which, or part of which, after the revocation or surrender of a nuclear site licence, the period of responsibility of the licensee has not come to an end;

(6) In paragraph (5), “nuclear site licence”, “licensee” and “period of responsibility” have the meaning given by the Nuclear Installations Act 1965(b).

(7) For the purposes of paragraph (1)(g) above, land used for residential purposes or by the Navy, Army and Air Force Institutes shall be treated as land used for naval, military or air force purposes only if the land forms part of a base occupied for naval, military or air force purposes.

(8) In paragraph (1)(g) above -

“international headquarters” and “defence organisation” mean, respectively, any international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964(c);

“service authority” and “visiting force” have the same meaning as in Part I of the Visiting Forces Act 1952(d)

(9) In paragraph (1)(h) above, “chemical weapon” has the same meaning as in subsection (1) of Section 1 of the Chemical Weapons Act 1996(e) disregarding subsection (2) of that section.
SCHEDULE 3

REGISTERS

A register maintained by an enforcing authority under section 78R shall contain full particulars of the following matters-

Remediation notices

1. In relation to a remediation notice served by the authority-
   (a) the name and address of the person on whom the notice is served;
   (b) the location and extent of the contaminated land to which the notice relates (in this paragraph referred to as the “contaminated land in question”), sufficient to enable it to be identified whether by reference to a plan or otherwise;
   (c) the significant harm or pollution of controlled waters by reason of which the contaminated land in question is contaminated land;
   (d) the substances by reason of which the contaminated land in question is contaminated land and, if any of the substances have escaped from other land, the location of that other land;
   (e) the current use of the contaminated land in question;
   (f) what each appropriate person is to do by way of remediation and the periods within which they are required to do each of the things; and
   (g) the date of the notice.

Appeals against remediation notices

2. Any appeal against a remediation notice served by the authority.

3. Any decision on such an appeal.

Remediation declarations

4. Any remediation declaration prepared and published by the enforcing authority under section 78H(6).
5. In relation to any such remediation declaration-
   
   (a) the location and extent of the contaminated land in question, sufficient to enable it to be identified whether by reference to a plan or otherwise; and

   (b) the matters referred to in sub-paragraphs (c), (d) and (e) of paragraph 1 above.

Remediation statements

6. Any remediation statement prepared and published by the responsible person under section 78H(7) or by the enforcing authority under section 78H(9).

7. In relation to any such remediation statement-
   
   (a) the location and extent of the contaminated land in question, sufficient to enable it to be identified whether by reference to a plan or otherwise; and

   (b) the matters referred to in sub-paragraphs (c), (d) and (e) of paragraph 1 above.

Appeals against charging notices

8. In the case of an enforcing authority, any appeal under section 78P(8) against a charging notice served by the authority.

9. Any decision on such an appeal.

Designation of special sites

10. In the case of the Environment Agency, as respects any land in relation to which it is the enforcing authority, and in the case of a local authority, as respects any land in its area-
   
   (a) any notice given by a local authority under subsection (1)(b) or (5)(a) of section 78C, or by the Secretary of State under section 78D(4)(b), which, by virtue of section 78C(7) or section 78D(6) respectively, has effect as the designation of any land as a special site;

   (b) the provisions of regulation 2 or 3 by virtue of which the land is required to be designated as a special site;

   (c) any notice given by the Environment Agency under section 78Q(1)(a) of its decision to adopt a remediation notice; and

   (d) any notice given by or to the enforcing authority under section 78Q(4) terminating the designation of any land as a special site.
Notification of claimed remediation

11. Any notification given to the authority for the purposes of section 78R(1)(h) or (j).

Convictions for offences under section 78M

12. Any conviction of a person for any offence under section 78M in relation to a remediation notice served by the authority, including the name of the offender, the date of conviction, the penalty imposed and the name of the Court.

Guidance issued under section 78V(1)

13. In the case of the Environment Agency, the date of any guidance issued by it under subsection (1) of section 78V and, in the case of a local authority, the date of any guidance issued by the Agency to it under that subsection.

Other environmental controls

14. Where the authority is precluded by virtue of section 78YB(1) from serving a remediation notice-

(a) the location and extent of the contaminated land in question, sufficient to enable it to be identified whether by reference to a plan or otherwise;

(b) the matters referred to in sub-paragraphs (c), (d) and (e) of paragraph 1 above; and

(c) any steps of which the authority has knowledge, carried out under section 27, towards remedying any significant harm or pollution of controlled waters by reason of which the land in question is contaminated land.

15. Where the authority is precluded by virtue of section 78YB(3) from serving a remediation notice in respect of land which is contaminated land by reason of the deposit of controlled waste or any consequences of its deposit-

(a) the location and extent of the contaminated land in question, sufficient to enable it to be identified whether by reference to a plan or otherwise;

(b) the matters referred to in sub-paragraphs (c), (d) and (e) of paragraph 1 above; and

(c) any steps of which the authority has knowledge, carried out under section 59, in relation to that waste or the consequences of its deposit, including in a case where a waste collection authority (within the meaning of section 30(3)) took those steps or required the steps to be taken, the name of that authority.
16. Where, as a result of a consent given under Chapter II of Part III of the Water Resources Act 1991 (pollution offences)(a), the authority is precluded by virtue of section 78YB(4) from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice,-

(a) the consent;

(b) the location and extent of the contaminated land in question, sufficient to enable it to be identified whether by reference to a plan or otherwise; and

(c) the matters referred to in sub-paragraphs (c), (d) and (e) of paragraph 1 above.
To ensure that all new and existing council owned buildings are safe, the Property and Design Service has developed a procedure to assess and deal with the risks associated with contaminated land and in particular the danger from migrating methane gas, whatever the source.

A ground appraisal is initially carried out for the area or site under consideration and would generally take the form of:

- Historical study – where ancient maps and records are researched.
- Geological appraisal – where past in house site investigations and national geological plans are inspected. If necessary expert advice would be sought for detailed interpretation.
- Reference to the landfill register.

The nature and extent of a site investigation to confirm the ground conditions and the presence and intensities of contamination can then be defined.

Supervision is generally provided on site during the work to ensure that the investigation presents a comprehensive knowledge of the conditions.

A risk assessment of the development/site is then undertaken which will reflect the extent of the contamination/methane against the proposed or existing use of the land.

The most appropriate method to deal with contamination/methane can then be determined. Measures may include:

- Impermeable ground barriers to prevent migration of gas.
- Ground ventilation by pumping gas or by passive trench ventilation.
- The introduction of positive ventilation within existing buildings.
- A design policy that prohibits the construction of cellars or basements to eliminate the risk of gas accumulation.
- The incorporation of ground ventilation systems or gas barriers in the construction of a new development, or in extreme cases both. The grade and quality of the membrane is also considered.

Agreement of the measures are then sought by Building Control to ensure that they are in line with council standards.

The investigation of private property is the responsibility of the owner, who will commission specialist consultants to investigate possible occurrences and to advise on appropriate action.
FIGURES

CONTAMINATED LAND WORKING GROUP ROLES AND RESPONSIBILITIES

Figure 1

DEVELOPMENT & ENTERPRISE
(DEVELOPMENT AND PUBLIC PROTECTION-Development Management, Spatial Development)
- PLANNING APPLICATIONS
- PLANNING POLICY
- BUILDING REGULATIONS
- INFORMATION ON CONTAMINATION
- CONTAMINATED LAND DETERMINATIONS
- ENFORCEMENT

DEVELOPMENT & ENTERPRISE
(TRANSPORT STRATEGY - Landscape & Reclamation)
- CO-ORDINATION
- DATA MANAGEMENT
- INFORMATION ON CONTAMINATION AND PAST REMEDIATION
- SITE INVESTIGATION
- REMEDIATION ADVICE
- REMEDIATION
- STRATEGY PRODUCTION
- INFORMATION ON:
  - GEOLOGY
  - HYDROLOGY
  - GROUND CONDITIONS
  - CONTAMINATION

LEGAL AND CORPORATE SERVICES
(COMMERCIAL AND DEVELOPMENT)
- LEGAL ADVICE
- TRACING "APPROPRIATE PERSONS"
- ISSUING LEGAL NOTICES
- REPRESENTING COUNCIL AT APPEAL

FINANCIAL IMPLICATIONS

FINANCIAL IMPLEMENTATIONS

LEGAL AND CORPORATE SERVICES
(TRANSPORT STRATEGY – Landscape and Reclamation)
- INFORMATION ON CONTAMINATION/REMEDIATION

LOCAL ENVIRONMENTAL SERVICES
(WASTE SERVICES AND GROUNDS MAINTENANCE)
- INFORMATION CLOSED LANDFILL SITES

DEVELOPMENT & ENTERPRISE
(TRANSPORT STRATEGY – Landscape and Reclamation)
- INFORMATION ON CONTAMINATION/REMEDIATION

DEVELOPMENT & ENTERPRISE
(ENVIRONMENTAL HEALTH)
- ENFORCEMENT
- INFORMATION ON CONTAMINATION

DEVELOPMENT & ENTERPRISE
(PROPERTY AND DESIGN)
- COUNCIL LAND OWNERSHIP
- COUNCIL LAND SALES
- MANAGEMENT OF COUNCIL OWNED LAND

DEVELOPMENT & ENTERPRISE
(COMMERCIAL AND DEVELOPMENT)
- LEGAL ADVICE
- TRACING "APPROPRIATE PERSONS"
- ISSUING LEGAL NOTICES
- REPRESENTING COUNCIL AT APPEAL

(FINANCE / ICT)
- FINANCIAL IMPLICATIONS

LOCAL ENVIRONMENTAL SERVICES
(WASTE SERVICES AND GROUNDS MAINTENANCE)
- INFORMATION CLOSED LANDFILL SITES

DEVELOPMENT & ENTERPRISE
(PROPERTY AND DESIGN)
- COUNCIL LAND OWNERSHIP
- COUNCIL LAND SALES
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DEVELOPMENT & ENTERPRISE
(DEVELOPMENT AND PUBLIC PROTECTION-Development Management, Spatial Development)
- PLANNING APPLICATIONS
- PLANNING POLICY
- BUILDING REGULATIONS
- INFORMATION ON CONTAMINATION
- CONTAMINATED LAND DETERMINATIONS
- ENFORCEMENT
## SOURCES OF INFORMATION FOR PART IIA

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<th>Information</th>
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<td>Radon/Potentially Harmful</td>
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<td>British Geological Survey (BGS.)</td>
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<td>Elements/Methane Gas and Oil Seeps</td>
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<tr>
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### Local Authority Data Sources

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<td>Local Designations</td>
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<td>Planning application files</td>
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<td>Commercial and Consumer Services</td>
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<td>Integrated Pollution Control Register</td>
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<td>Records of Complaints</td>
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<td>Ground Investigation Reports/</td>
<td>S/R/P</td>
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<td>Borehole data</td>
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<td>Landfill Monitoring Records</td>
<td>S/R/P</td>
<td>Local Environmental Services</td>
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<td>Methane Emissions</td>
<td>S/R/P</td>
<td>Development and Enterprise /</td>
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<td>Local Environmental Services</td>
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**Key**
- **S** = possible source of contamination
- **P** = possible pathway
- **R** = possible receptor
Table 1: Ecological system effects

<table>
<thead>
<tr>
<th>Relevant types of receptor</th>
<th>Significant harm</th>
<th>Significant possibility of significant harm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any ecological system, or living organism forming part of such a system, within a location which is:</td>
<td>The following types of harm should be considered to be significant harm:</td>
<td>Conditions would exist for considering that a significant possibility of significant harm exists to a relevant ecological receptor where the local authority considers that:</td>
</tr>
<tr>
<td>- a site of special scientific interest (under section 28 of the Wildlife and Countryside Act 1981)</td>
<td>- harm which results in an irreversible adverse change, or in some other substantial adverse change, in the functioning of the ecological system within any substantial part of that location; or</td>
<td>- significant harm of that description is more likely than not to result from the contaminant linkage in question; or</td>
</tr>
<tr>
<td>- a national nature reserve (under s.35 of the 1981 Act)</td>
<td>- harm which significantly affects any species of special interest within that location and which endangers the long-term maintenance of the population of that species at that location.</td>
<td>- there is a reasonable possibility of significant harm of that description being caused, and if that harm were to occur, it would result in such a degree of damage to features of special interest at the location in question that they would be beyond any practicable possibility of restoration.</td>
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<tr>
<td>- a marine nature reserve (under s.36 of the 1981 Act)</td>
<td>In the case of European sites, harm should also be considered to be significant harm if it endangers the favourable conservation status of natural habitats at such locations or species typically found there.</td>
<td>Any assessment made for these purposes should take into account relevant information for that type of contaminant linkage, particularly in relation to the ecotoxicological effects of the contaminant.</td>
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<td>- an area of special protection for birds (under s.3 of the 1981 Act)</td>
<td>In deciding what constitutes such harm, the local authority should have regard to the advice of Natural England and to the requirements of the Conservation of Habitats and Species Regulations 2010.</td>
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<td>- a “European site” within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2010</td>
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<td>- any habitat or site afforded policy protection under paragraph 6 of Planning Policy Statement (PPS 8) on nature conservation (i.e. candidate Special Areas of Conservation, potential Special Protection Areas and listed Ramsar sites); or</td>
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<tr>
<td>- any nature reserve established under section 21 of the National Parks and Access to the Countryside Act 1949.</td>
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<tr>
<td>Relevant types of receptor</td>
<td>Significant harm</td>
<td>Significant possibility of significant harm</td>
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<tr>
<td><strong>Property in the form of:</strong></td>
<td>For crops, a substantial diminution in yield or other substantial loss in their value resulting from death, disease or other physical damage. For domestic pets, death, serious disease or serious physical damage. For other property in this category, a substantial loss in its value resulting from death, disease or other serious physical damage.</td>
<td>Conditions would exist for considering that a significant possibility of significant harm exists to the relevant types of receptor where the local authority considers that significant harm is more likely than not to result from the contaminant linkage in question, taking into account relevant information for that type of contaminant linkage, particularly in relation to the ecotoxicological effects of the contaminant.</td>
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<tr>
<td>- crops, including timber;</td>
<td>The local authority should regard a substantial loss in value as occurring only when a substantial proportion of the animals or crops are dead or otherwise no longer fit for their intended purpose. Food should be regarded as being no longer fit for purpose when it fails to comply with the provisions of the Food Safety Act 1990. Where a diminution in yield or loss in value is caused by a contaminant linkage, a 20% diminution or loss should be regarded as a benchmark for what constitutes a substantial diminution or loss.</td>
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<td>- produce grown domestically, or on allotments, for consumption;</td>
<td>In this Chapter, this description of significant harm is referred to as an “animal or crop effect”.</td>
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<td>- livestock;</td>
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<td>- other owned or domesticated animals;</td>
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<td>- wild animals which are the subject of shooting or fishing rights.</td>
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<tr>
<td><strong>Property in the form of buildings.</strong> For this purpose, “building” means any structure or erection, and any part of a building including any part below ground level, but does not include plant or machinery comprised in a building, or buried services such as sewers, water pipes or electricity cables.</td>
<td>Structural failure, substantial damage or substantial interference with any right of occupation. The local authority should regard substantial damage or substantial interference as occurring when any part of the building ceases to be capable of being used for the purpose for which it is or was intended. In the case of a scheduled Ancient Monument, substantial damage should also be regarded as occurring when the damage significantly impairs the historic, architectural, traditional, artistic or archaeological interest by reason of which the monument was scheduled.</td>
<td>Conditions would exist for considering that a significant possibility of significant harm exists to the relevant types of receptor where the local authority considers that significant harm is more likely than not to result from the contaminant linkage in question during the expected economic life of the building (or in the case of a scheduled Ancient Monument the foreseeable future), taking into account relevant information for that type of contaminant linkage.</td>
</tr>
<tr>
<td></td>
<td>In this Chapter, this description of significant harm is referred to as a “building effect”.</td>
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</table>
Figure 5 Flow chart showing main stages in dealing with potentially contaminated and contaminated land under the Environmental Protection Act 1990 Part II A

1. **Complaint / information / verbal / letter / message – suspected contamination**
   - Gatehead Council

2. **Development & Enterprise Landscape and Reclamation**
   - Inspection Strategy
     - Collates existing information on site if any.
       - (Initial desktop survey)

3. **Inspection Strategy**
   - Initial analysis of information (Landscape and Reclamation)

4. **Further information needed**
   - Further remediation notice required
     - Remediation notice submitted?
       - Appeal decision
         - Appeal to high court
           - No
             - Charges repaid

5. **No**
   - Remediation required
     - No
       - Consider making entry on public register any – reasons for excluding information?
         - Yes
           - LA gives notice in writing to: Environment Agency owner of land occupier(s) of land appropriate persons
             - Environment Agency agrees site is a ‘Special Site’
               - Yes
                 - Environment Agency is enforcing authority

6. **Yes**
   - LA decides site is a ‘Special Site’
     - LA refers its decision to SOS
       - SOS determines who is responsible for site
         - Yes
           - Recovery of costs
             - Authority prevented from recovering costs
               - No
                 - Environment Agency resourced from own budget

7. **Further remediation action required**
   - Council undertakes work itself
     - Issue remediation notice
       - Appeal submitted?
         - Appeal decision
           - Appeal to high court
             - No
               - Charges repaid

8. **No**
   - Remediation notice upheld
     - No
       - Enquiry notice upheld
         - Yes
           - Environment Agency is enforcing authority

9. **Agreed Remediation**
   - Standards of remediation agreed with appropriate persons
     - Remedy remediation notice required
       - No
         - Remediation completed to standard required
           - Yes
             - Sign off site
               - No
                 - Remediation notice upheld
                   - Yes
                     - Charging notice upheld

10. **No**
    - Site not contaminated under Part II A
        - Refer to originator of query with reasoned response
          - Deal with under other procedures
            - File analysis
              - Compendium of information (Landscape and Reclamation)

11. **Information not conclusive**
    - Compile a site investigation
      - Compromise preliminary desk top study

12. **Not urgent**
    - Define standards of remediation required
      - Urgent remediation action required
        - LA refers its decision to SOS
          - SOS determines who is responsible for site
            - Yes
              - Recovery of costs
                - Authority prevented from recovering costs
                  - No
                    - Environment Agency resourced from own budget

13. **Is it a Special site?**
    - Yes
      - Consult the Environment Agency
        - Environment Agency notifies LA within 21 days why it disagrees
          - Copy of notice and statement to SOS
            - Environment Agency is enforcing authority

14. **No**
    - Consider making entry on public register any – reasons for excluding information?
      - Yes
        - LA gives notice in writing to: Environment Agency owner of land occupier(s) of land appropriate persons
          - Environment Agency agrees site is a ‘Special Site’
            - Yes
              - Environment Agency is enforcing authority

15. **Yes**
    - LA gives notice in writing to: Environment Agency owner of land occupier(s) of land appropriate persons
      - Environmental Agency agrees site is a ‘Special Site’
        - Yes
          - Environment Agency is enforcing authority

16. **Sign off site**
    - No
      - Remediation notice upheld
        - Yes
          - Charging notice upheld

17. **Further remediation notice required**
    - Remediation completed to standard required
      - Yes
        - Sign off site
          - No
            - Remediation notice upheld
              - Yes
                - Charging notice upheld

18. **No**
    - Site not contaminated under Part II A
      - Refer to originator of query with reasoned response
        - Deal with under other procedures
          - File analysis
            - Compendium of information (Landscape and Reclamation)
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Contract Documents: ‘Term Contract for Chemical and Associated Site Investigations’ and ‘Transport and Civil Engineering Consultancy Framework’


Gateshead Council – Vision 2030 – Sustainable Community Strategy for Gateshead –
GLOSSARY OF TERMS

References to Section 78 relate to the Environmental Protection Act 1990.

1990 Act: means the Environmental Protection Act 1990

Appropriate person: defined in Section 78A(9) as:

“any person who is an appropriate person, determined in accordance with section 78F…, to bear responsibility for any thing which is to be done by way of remediation in any particular case.”

Assessment action: a remediation action falling within the definition of remediation in section 78A(7)(a), that is the doing of anything for the purpose of assessing the condition of the contaminated land in question, or any controlled water affected by that land or any land adjoining or adjacent to that land.

Class A liability group: a liability group consisting of one or more Class A persons.

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

Class B liability group: a liability group consisting of one or more Class B persons.

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

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

Contaminated land: defined in section 78A(2) as

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

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

(b) pollution of controlled waters is being, or is likely to be, caused.”

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

Enforcing authority: defined in section 78A(9) as:

(a) in relation to a special site, the Environment Agency;

(b) in relation to contaminated land other than a special site, the local authority in whose area the land is situated.

EA: means the Environment Agency
Exclusion: any determination by the enforcing authority under section 78F(6) (that is, that a person is to be treated as not being an appropriate person.

Harm: defined in section 78A(4) as:

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

Hazard: danger, risk, an element that possesses the ability to cause harm by virtue of the properties of the substance and the circumstance in which it exists.

Intrusive investigation: an investigation of land (for example by exploratory excavations) which involves actions going beyond simple visual inspection of the land, limited sampling or assessment of documentary information.

Liability group: the persons who are appropriate persons with respect to a particular significant pollutant linkage.

Monitoring action: a remediation action falling within the definition in section 78A(7)(c), that is “making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters”.

Owner: defined in section 78A(9) as:

“a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or where the land is not let at a rack rent, would be so entitled if it were so let.”


Pathway: one or more routes or means by, or through, which a receptor:

(a) is being exposed to, or affected by, a contaminant, or

(b) could be so exposed or affected.

Pollutant: a contaminant which forms part of a pollutant linkage.

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

Pollution of controlled waters: defined in section 78A(9) as:

“the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter.”

Possibility of significant harm: a measure of the probability, or frequency, of the occurrence of circumstances which would lead to significant harm being caused.
Receptor: either:

(a) a living organism, a group of living organisms, an ecological system or a piece of property which:
   (i) is in a category listed in Table A in Chapter A as a type of receptor, and
   (ii) is being, or could be, harmed, by a contaminant; or

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

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

Remedial treatment action: a remediation action falling within the definition in section 78A(7)(b), that is the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose:

(a) of preventing or minimising, or remedying or mitigating the effects of any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land, or

(b) of restoring the land or waters to their former state.

Remediation: defined in section 78A(7) as

"(a) the doing of anything for the purpose of assessing the condition of -
   "(i) the contaminated land in question;
   "(ii) any controlled waters affected by that land; or
   "(iii) any land adjoining or adjacent to that land;

"(b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose -
   "(i) of preventing or minimising, or remedying or mitigating the effects of any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land;
   or
   "(ii) of restoring the land or waters to their former state; or

"(c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters."
Remediation action: any individual thing which is being, or is to be, done by way of remediation.

Risk: the combination of:

(a) the probability, or frequency, or occurrence of a defined hazard (for example, exposure to a property of a substance with the potential to cause harm); and

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

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

Significant pollutant: a pollutant which forms part of a significant pollutant linkage.

Significant pollutant linkage: a pollutant linkage which forms the basis for a determination that a piece of land is contaminated land.

Significant possibility of significant harm: a possibility of significant harm being caused which, by virtue of section 78A(5), is determined to be significant in accordance with the statutory guidance in Chapter A.

Sold with Information: an exclusion test for Class A persons set out in Part 5 of Chapter D.

Special site: defined by section 78A(3) as:

“any contaminated land –

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

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

The effect of the designation of any contaminated land as a special site is that the Environment Agency, rather than the local authority, becomes the enforcing authority for the land.


Substance: defined in section 78A(9) as:

“any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.”