

Appendix A – Part IIA Inspection Strategy

A1. INTRODUCTION

The Environmental Protection Act 1990, Part IIA Contaminated Land places duties upon local authorities to inspect their areas for contaminated land and where necessary ensure the appropriate remediation. This initially involved developing a strategic approach to the inspection programme, ensuring that the sites of most concern are dealt with first. An initial Inspection Strategy was devised in October 2001 and revised in February 2007 to reflect changes in legislation and updated Statutory Guidance. This document updates the inspection strategy to reflect progress, current practice and future priorities. The Statutory Guidance has been under review by the Scottish Government since 2011 but its revision has been delayed. Therefore, as at April 2013, The Scottish Executive Paper SE/2006/44, Statutory Guidance on the Environmental Protection Act 1990: Part IIA Contaminated Land ('the Guidance') remains the current guidance.

A2. AIMS AND OBJECTIVES

Over and above the prevention of new contamination, the Scottish Government's objectives with respect to contaminated land are to:

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

These objectives form the basis of this inspection strategy. The Moray Council will seek to meet its statutory duties under Part IIA by ensuring that investigation, consultation and regulatory action are in compliance with legislation and guidance.

A3 LEGISLATIVE CONTEXT

Introduction

The Environmental Protection Act 1990, Part IIA Contaminated Land ('the Act') Section 78A(2) provides the definition of contaminated land as follows:

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

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

(b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.

In addition, it outlines the process for the identification and remediation of contaminated land and places a number of duties upon local authorities and the Scottish Environment Protection Agency (SEPA). The Act introduces and re-iterates a number of principles upon which the assessment, identification and remediation of contaminated land are based such as the 'suitable for use' and 'polluter pays' principles.

Local Authority Role

Section 78B(1) of the Act states that:

Every local authority shall cause its area to be inspected from time to time for the purpose

***(a) of identifying contaminated land; and
(b) of enabling the authority to decide whether any such land is land which is required to be designated as a special site.”***

To cause its area to be inspected from time to time, local authorities are required to develop, implement and keep updated a Contaminated Land Inspection Strategy. This document presents The Moray Council’s Contaminated Land Inspection Strategy.

To identify contaminated land, local authorities are required to gather sufficient information and undertake an assessment of that information to determine whether the circumstances of Section 78A(2) of the Act (as above) are being met. The Moray Council actively undertakes investigations and assessments of contamination for the purposes of identifying contaminated land in line with this statutory requirement.

In each case where a site has been identified as contaminated land, the local authority requires to make an assessment of whether the land meets the definition of a special site. This definition is detailed within sections 2 and 3 and schedule 1 of The Contaminated Land (Scotland) Regulations 2000 (‘the 2000 Regulations’) (as amended) and includes sites such as Ministry of Defence land, nuclear sites, explosives or weapon manufacturing sites and petroleum refineries. It also includes pollution of the water environment in certain specific circumstances.

Once contaminated land has been identified but is not designated as a special site, local authorities are responsible for securing remediation. Where the land has been designated as a special site, SEPA is responsible for securing remediation. In addition, the relevant enforcing authority also has duties to determine the appropriate level of remediation required; to determine who is responsible for that remediation, including apportionment of costs; and to maintain a public register of actions taken.

The Radioactive Contaminated Land (Scotland) Regulations 2007 (as amended) added new sections to the Environmental Protection Act 1990 covering radioactive contamination. Section 78BA states:

If at any time ... a local authority considers that any contaminated land in its area may be contaminated as a result of any radioactivity possessed by any substance, it shall give notice of that fact to the appropriate Agency.

The appropriate Agency is SEPA.

SEPA’s Role

Section 78C(3) of the Act states that

Before making a decision under paragraph (a) of subsection (1) above {whether land should be designated as a special site} in any particular case, a local authority shall request the advice of the appropriate Agency {SEPA}, and in making its decision shall have regard to any advice given by that Agency in response to the request.

Although this places a duty upon local authorities to consult SEPA when considering whether land meets the definition of a special site, it also places a duty upon SEPA to provide local authorities with site specific information and advice.

Where land is designated as a special site, SEPA assumes responsibility as the enforcing authority and as such has duties to determine what level of remediation is appropriate; who is responsible for that remediation, including apportioning costs; and to maintain a public register of actions taken. The provisions added to the Environmental Protection Act 1990 by

the Radioactive Contaminated Land (Scotland) Regulations 2007 (as amended) require SEPA to inspect and where necessary designate land if it appears that the land is contaminated as a result of any radioactivity possessed by any substance.

SEPA also has a duty to periodically prepare and publish a report on the “state of contaminated land”.

Enforcing Authority Role

The enforcing authority is the local authority where land has not been designated a special site and Section 78E(1) of the Act places the following responsibility upon enforcing authorities for non-designated sites:

the enforcing authority shall ... serve on each person who is an appropriate person a notice (in this Part referred to as a “remediation notice”) specifying what that person is to do by way of remediation and the periods within which he is required to do each of the things so specified.

The enforcing authority has the duty of establishing who is responsible for the remediation of contaminated land, i.e. the appropriate person and of serving a remediation notice where voluntary remediation cannot be secured. It is also responsible for apportioning remediation costs between appropriate persons, where applicable. This includes the responsibility for deciding what is required by way of either voluntary remediation or by service of a remediation notice, and in doing so the local authority must have regard to section 78E(4) of the Act which states that:

The only things by way of remediation which the enforcing authority may do, or require to be done, under or by virtue of this Part are things which it considers reasonable, having regard to (a) the cost which is likely to be involved; and (b) the seriousness of the harm, or pollution of the water environment, in question.

Where an imminent risk of harm or significant pollution of the water environment is identified by the enforcing authority, it may carry out urgent remediation itself and seek to claim costs back afterwards.

Enforcing authorities also have a responsibility to maintain a publicly available register of information and actions taken at all sites identified as comprising contaminated land. Section 78R of the Act outlines the information which requires to be held within such registers. However, in Scotland, this is supplemented by regulation 14 and schedule 4 of the 2000 Regulations (as amended). In summary, the following require to be included within the public register:

- Identification notices
- Remediation notices
- Appeals against remediation notices
- Remediation declarations
- Remediation statements
- Designations of special sites
- Notifications of claimed remediation of land
- Convictions for offences under section 78M of the Act
- Guidance issued under 78V(1)
- Other environmental controls as may be prescribed from time to time.

Principles of the Part IIA Regime

The legislative context of the Part IIA regime introduced a number of key principles as well as incorporating some principles from other regimes. Of note are the following principles upon which the regime is based.

Historic Contamination. The Act is concerned with historically contaminated land. In Scotland, the policy of preventing the creation of new contamination is implemented through: the Pollution Prevention and Control (Scotland) Regulations 2000; waste management licensing; and the The Water Environment (Controlled Activities) (Scotland) Regulations 2011. These functions all come under SEPA's remit.

Harm and Receptors. The Act and Statutory Guidance use the Source-Pathway-Receptor concept, where a risk can only be considered to exist where a contaminant source, a receptor and a pathway linking them are all present. This is referred to as a "pollutant linkage". The Act and Guidance define the terms 'harm' and 'receptor' and state what should be considered as 'significant harm' and the 'significant possibility of significant harm'. Only harm and receptor types included within the definition may be considered during the investigation of contaminated land. Any other type of harm should not be taken into account regardless of the receptor and, likewise, no regard should be given to receptors other than those listed.

Suitable for Use and Reasonableness of Remediation. In Scotland it is intended that contaminated land be tackled in ways that are reasonable, equitable and practical. Reasonableness requires regard to be given to the costs of remediation, the seriousness of the harm or pollution and the benefits that remediation would bring. It also requires enforcement authorities to adopt an approach that allows contamination to be addressed outwith the formal Part IIA procedures, consistent with the intention to encourage voluntary remediation. Equitability arises from the incorporation of the 'polluter pays' principle in assessing and apportioning legal and financial responsibilities for remediation operations. The practicability lies in the recognition that remediation need only be to a standard which allows the site to be suitable for its existing use. This therefore requires it to be assessed on a site by site basis and should not include any works over and above those required to break the existing significant pollutant linkages associated with the site.

Polluter Pays Principle. This principle is based upon the premise of taking responsibility for one's actions and requires initial consideration to be given to those who polluted or knowingly permitted pollution of land as being responsible for remediation actions and associated costs. Such persons are defined within the Guidance as 'Class A appropriate persons'. 'Class B appropriate persons' comprise the current owner or occupier of the land and they can be held responsible for remediation actions in the absence of any Class A person. However, Class B persons can only be held responsible for actions to address significant harm or the significant possibility of significant harm; they are not responsible for remediation in relation to the water environment. The Statutory Guidance advises that where a Class B person owns or occupies a dwelling on the contaminated land in question, the enforcing authority should consider waiving or reducing the recovery costs where that person satisfies the local authority that, at the time of purchase, he did not know and could not reasonably have been expected to have known, that the land was adversely affected by the presence of a pollutant.

Voluntary Action. Voluntary action in the investigation or remediation of contaminated land is encouraged within the Act and Guidance prior to its assessment by the local authority. This avoids the site being placed on the authority's Contaminated Land Public Register.

Orphan Sites. Where no appropriate person can be found or the appropriate person can reasonably claim hardship (the inability to meet remediation costs), the land becomes an 'orphan site' and the cost of its remediation will fall to the enforcement authority.

A4. THE COUNCIL'S AIMS, PRIORITIES AND TIMESCALES

The Moray Council will adhere to the principles of Part IIA as set out in the Statutory Guidance, such as 'suitable for use', reasonableness of remediation, and the polluter pays principle. The Council aims to investigate sites based on the significance of potential risk that they pose and will seek to address the sites of most concern first.

The Moray Council aims to encourage voluntary action throughout all stages of contaminated land works. Indeed, where sites are likely to be inspected in the near future, potential appropriate persons will be contacted and advised of this and provided with the opportunity to investigate their sites voluntarily. Where investigation is however carried out by the Council and significant pollutant linkages identified, the opportunity for voluntary remediation will be provided. Where works are being carried out voluntarily, the Council will aim to provide as much assistance and advice as possible to all interested parties. However, whilst voluntary action will be encouraged wherever possible, the Council's principal aim is to ensure the remediation of contaminated land and as such will seek to do so by regulatory action where necessary.

Prioritisation Requirements

In preparing inspection strategies, local authorities are required to assess and determine methods of prioritising areas for inspection and for the inspection of individual sites. Inspection priorities must reflect the application of principles set out in the Guidance and ensure their approach:

- Is rational, ordered and efficient.
- Is proportionate to the seriousness of any actual or potential risk.
- Seeks to ensure that the most pressing and serious problems are located first.
- Ensures that resources are concentrated on investigating areas where the authority is most likely to identify contaminated land.
- Ensures that the local authority efficiently identifies requirements for the detailed inspection of particular areas of land.

Statutory Guidance indicates that each authority, in determining its individual priorities for inspecting its area should take into account the particular circumstances of its area. These circumstances may be influenced by historic, industrial and other potentially contaminative land use activities and the area's geographic and demographic mix. They should reflect the authority's broader objectives in, for example, the context of economic development, land management, public health and environmental protection.

The Moray Council Priorities

The Moray Council's priorities in dealing with contaminated land will be to:

- Protect human health.
- Protect the water environment.
- Protect designated ecosystems.
- Prevent damage to property.
- Encourage voluntary remediation.
- Encourage the re-use of brownfield land.

Sites will be inspected in order of priority using a combination of proprietary software and the professional judgement of the Council's Contaminated Land staff. The Moray Council has purchased a system to prioritise, or risk rank, sites for inspection called ConSEPT developed by the British Geological Survey (BGS). This methodology is the result of research and development by BGS into a mechanism for the prioritisation of potentially contaminated land, based on previous land use and the likely susceptibility of designated receptors. It has been developed based on a review of techniques available elsewhere, and the statutory information supplied in legislation and associated official documentation (from DEFRA and previously DoE and DETR).

The methodology does not designate land as being contaminated and is not used by The Moray Council for this purpose. However, it does provide a ranking of potentially contaminated land allowing the Council to most effectively deploy its resources in undertaking Part IIA investigations in a systematic and defensible manner.

In generating the risk ranking, consideration is given to potential sources, pathways and receptors. The time periods and risk associated with each source are considered, along with the number and potential quality of pathways. The receptors considered are those defined by Part IIA, namely human health, the water environment, ecological receptors and property. The prioritisation is an automated process, culminating in a risk ranking for each of the following:

- human receptors via direct pathways
- human receptors via surface water pathways
- water environment via surface water pathways
- water environment via groundwater pathways
- ecological receptors via direct pathways
- ecological receptors via surface water pathways
- property receptors via direct pathways

A ranking of A to E, with A being the highest, is applied to each of the above scenarios, with the overall risk ranking reflecting the highest risk scenario. This ranking gives a range of sites with the same ranking, and professional judgement is then used to prioritise the sites further.

The Moray Council in the first instance applied its resources to inspect those sites where the overall risk ranking was category A, particularly those where category A ranking derives from a risk to human health. Some category A sites will not be considered immediately, particularly those which are in continuing industrial use (e.g. railway lines, distilleries etc) and greater priority will be given to Category B sites with human receptors. Priority will be given to sites for which:

- there is an acute risk (e.g. landfills, explosive ordnance sites)
- there is a high likelihood of contamination being present (e.g. gasworks);
- the number of human receptors is large (e.g. multiple unit residential developments).

However, there will be times when sites require attention sooner than they ordinarily would have. These are listed below.

Urgent Sites. If, at any stage during the review of the area, information highlights a site causing an imminent risk of, or ongoing harm or water pollution, immediate attention shall be given. In such cases, the normal processes of applying Part IIA may be by-passed and, if a critical need is established, the Council, regardless of whether it is the owner of the land,

may carry out an investigation and/or remediation works. In some cases, timescales may not allow for consultation with landowners and other interested parties before action is taken.

Information Received from Other Organisations, Businesses and the Public. Where information is received regarding contamination, an initial assessment of the site and that information will be carried out. Where an imminent risk of harm to human health or the environment is identified, the site will be dealt with as an urgent site. Should the assessment of the information or complaint received identify one or more significant pollutant linkages in existence, the site will be raised in priority, above sites where only the potential for significant pollutant linkages exists. In some cases, it may be that, as well as the significant pollutant linkages that have been identified, other potential pollutant linkages require further investigation. Where this is the case, the significance of these potential pollutant linkages will be investigated prior to remediation works being considered. Where the assessment of the information received identifies potential pollutant linkages, without confirming any of these to be significant, this information will be recorded and the site will remain within the inspection programme or, if the source was previously unknown, added to the Council's databases. It may be, however, that the assessment of the site alters its risk ranking and, as such, its place in the programme. In some cases, information will be received confirming that no potential pollutant linkages exist at a site. This may be following voluntary investigations and/or remediation or works undertaken in support of planning applications. Where such information is received, an assessment will be made of the integrity of that information within a Part IIA context. Should the assessment confirm that no potential pollutant linkages exist associated with the site, the site may be removed from the inspection programme or allocated an appropriately low risk ranking.

Sites Subject to Planning Applications. The implementation of this strategy will take many years and, in the interim, planning applications will be received which relate to potentially contaminated sites that have not yet been addressed through Part IIA. In these cases, planning applications will be dealt with in accordance with the Council's policy as set out in Appendix B. In some cases, information submitted in support of planning applications may identify significant, or potential, pollutant linkages that require a site to be considered earlier than it otherwise would be through the implementation of this strategy. Information provided in support of planning applications will be treated in the same way as complaints and information received from other sources.

Land Transactions. Land owned by The Moray Council will be considered alongside privately owned land during the implementation of the inspection programme. However, should a Council-owned site be earmarked for disposal or development, earlier investigation works will be undertaken. These works will not be carried out under the provisions of Part IIA, but may provide information relevant for consideration in the Part IIA inspection programme.

Timescales

Over 5000 sites remain identified as requiring inspection, although many of these are low risk sources under current use, such as disused small gravel pits. However, over 200 are in Category A or B risk sites. Current resources are sufficient to allow between one and three sites to be inspected fully each year. However, the inspection process is supplemented by the investigation and remediation of land either voluntarily or, moreover, in support of planning applications. In addition, as the prioritisation process identifies the most hazardous sites, which are generally also the most complex, for early inspection, as the process progresses, the number of sites able to be inspected each year is likely to increase.

A5. ARRANGEMENTS FOR DETAILED INSPECTION

Management of the Inspection and Investigation Process

Management of the contaminated land regime rests with a Principal Environmental Health Officer. Individual projects will be managed by the Contaminated Land Technical Officer or Contaminated Land Officer. In general, as much investigation, assessment and associated work as possible will be carried out by the Council's Contaminated Land staff. In particular, all Phase I investigations will be carried out in-house, as will liaison and communication and the determination of contaminated land, etc. Phase II investigations, including their design, will be carried out in-house where possible, but due to limited resources, specialist external services will be used for large or complex site investigation works.

Specialist External Services

Where specialist external services are to be employed to assist in the inspection and investigation of contaminated land, these will be selected following a process complying with the Council's Procurement Procedures and Financial Regulations. Tenders will be invited and evaluated on the basis of best value, taking account of the technical requirements of the tender invitation as well as the cost. In addition, all companies providing specialist external services will be required to comply with the Council's conditions of contract, including, but not limited to, the provision of Public Liability Insurance and Professional Indemnity Insurance.

Inspection and Investigation

A phased approach to inspection and investigation allows the risk from the site to be re-evaluated at the end of each phase. All investigations will begin with a preliminary assessment of the information available relating to that land, including information requested from the owner/occupier, SEPA or any other party likely to hold useful information. An initial site visit will also be undertaken at this stage and a decision taken as to whether the potential risk from the site remains. If not, the site will be placed lower in the inspection programme, however, if the potential risk does remain, a Phase I investigation will be undertaken.

The Phase I investigation comprises a site walkover, combined with research of the site's historical uses; geological and hydrogeology conditions; regulatory consents, etc. Again, following the Phase I investigation, the potential risk will be re-considered and the site lowered in priority if appropriate. Otherwise, a Phase II investigation will be progressed.

There are three stages within a Phase II investigation, 'exploratory', 'main' and 'supplementary'. Dependent on the circumstances, it may be appropriate to carry out an exploratory investigation initially to better inform the main investigation, or to clarify limited risk. However, it is unlikely that an exploratory investigation alone would provide sufficient information to allow the significance of pollutant linkages to be adequately assessed. A main investigation would therefore follow. Supplementary investigations may be carried out where further clarification is required following main investigations.

Once sufficient investigation works have been undertaken to provide a satisfactory assessment of pollutant linkages, a decision will be made as to the significance of each linkage and whether the site, therefore, meets the definition of Part IIA contaminated land.

Risk Assessment

In assessing each pollutant linkage to determine its significance, use will be made of both qualitative and quantitative risk assessment. Regard will be given to all relevant guidance including that produced by DEFRA and/or the Environment Agency.

When considering the water environment, regard will be given to advice from SEPA concerning the significance of pollution of the water environment. Appropriate criteria will be applied to the consideration of surface waters, groundwater resource and any abstractions, combined with the use of appropriate risk assessment tools.

Health and Safety

As well as following The Moray Council's health and safety procedures, regard will also be given to site-specific and activity-specific risk assessments, together with the Health and Safety Executive Publication HS(G) 66, *Protection of Workers and the General Public During the Development of Contaminated Land*.

During the contracting process, specialist external service providers will require to demonstrate their ability to comply with health and safety legislation and ensure that the highest standards of health and safety are maintained throughout investigation and remediation works. Health and safety plans will be provided to the Council in advance of works being undertaken and the Council will, from time to time, visit sites where specialist external services are contracted to ensure that health and safety provisions are suitable.

A6. COMMUNICATION

Internal Communication

Representatives from various departments and sections of The Moray Council will be involved in the implementation of this strategy. Principal responsibility rests with the Environmental Health Section, but there will be frequent liaison with the Legal Section.

Where Council owned land is being considered, there will be liaison with the Estates Section and where the Council is potentially an appropriate person to bear the costs of remediation, the sections whose activities have created that potential will be informed and liaison and communication procedures established. In all cases, where there is the potential for the Council to incur unexpected expenditure, there will be liaison and communication with its Finance Department. Where there are plans to determine Council owned land, or land where the Council may be the "appropriate person" and as such liable for remediation costs, elected members will be informed at the earliest opportunity. Likewise, if the Council is likely to bear the costs of remediation by virtue of there being no other appropriate person and the site being considered to be an orphan site, or because the site is considered to be an urgent site, elected members will be informed at the earliest opportunity.

Scottish Environment Protection Agency and Other External Agencies

The Moray Council's Contaminated Land staff are in frequent communication with SEPA through its Contaminated Land Specialist, based in the Operations Technical Support Unit North at Dingwall.

The Council will use the Form A, B and C format of consultation with SEPA, with Form A used to request information held by SEPA regarding a particular site, Form B used for consultation regarding potentially significant pollutant linkages involving the water

environment and Form C for consultation regarding the potential for land to be designated as a 'special site'.

Consultation responses will generally be requested within 28 days, although it is acknowledged that in some complex cases, SEPA may be unable to achieve these timescales. It should also be acknowledged that in the case of urgent sites, shorter timescales than the usual 28 days may be necessary and in some cases, consultation in advance of emergency action may not be possible at all.

Liaison and communication will also be required with various other external agencies including, for example, the Scottish Government, Scottish Natural Heritage, Historic Scotland, the Health and Safety Executive and Health Protection Scotland. The need for communication with such agencies will be dependent on the pollutant linkages being considered but, where consultation or communication with any external agency is considered necessary, this will be initiated at the earliest opportunity.

Consultation responses will generally be requested within 28 days, however, again, these may require to be shortened or lengthened dependent on the specific circumstances.

Owners, Occupiers and Other Interested Parties

All reasonable efforts will be made to identify owners, occupiers and/or other interested parties prior to any Part IIA works commencing. However, in the case of urgent sites, time may not be available for communications with owners, occupiers and other interested parties before emergency action is undertaken. In such cases, owners, occupiers and other interested parties will be advised as soon as possible and communication links established and maintained thereafter.

Initial communication will generally be in writing to advise that the land in question is being considered under Part IIA and requesting any information that may help with the inspection of that land. An overview of the process will also be included, as will contact details for the Environmental Health Section. The Council's project manager will endeavour to ensure that owners, occupiers and other interested parties are informed of progress at each stage of the investigation, within the boundaries of confidentiality.

Where access to land is required, the rights of the owner/occupier will be respected and permission sought prior to site visits and works being arranged. However, in the case of urgent sites, where emergency action is required, there might not be time to consult owners/occupiers. Powers of entry under section 108 of the Environment Act 1995 (as amended) may be used in such cases. These powers may also be used where access to a site is considered necessary and the owner/occupier cannot be traced or denies access.

A7. INFORMATION MANAGEMENT

Digital Data Management

The contaminated land information management system comprises a mapping facility, a database and a prioritisation tool. The mapping facility is the Council's Geographical Information System (GIS). Historical maps have been procured in digital format and layered onto the GIS to support the identification of potential sources of contamination. Likewise, geological and hydrogeological maps have also been procured in digital format to provide site specific information and facilitate the prioritisation process. The GIS is linked to the database by means of shared site reference numbers, with the database currently used being the MVM Contaminated Land database. The prioritisation system used is the BGS ConCEPT tool as discussed above.

All internal and external reports are now compiled in digital format. Hard paper copies of earlier reports are kept in the Council's paper archive, but no new hard copy documents are produced.

Information Collection and Evaluation

In order to establish a database of sites requiring inspection, a number of sources of information were assessed to identify current and historic uses, which have had the potential to have caused ground contamination. These included historical Ordnance Survey maps, aerial photographs and Council records. More information continues to come to light including historical aerial photography, information volunteered by the public, information from planning applications etc. Potential sources of contamination are therefore subject to ongoing review and the database, GIS and prioritisation system are updated to reflect the information received.

Access to Information

Digital and paper records will only be readily available to the Environmental Health Section but it is acknowledged that requests for such information may be received from other interested parties. Details of the Council's procedures for providing information to interested parties are included in Appendix F.

Contaminated Land Public Register

The Moray Council has a duty to maintain a public register of Contaminated Land. The register includes the following:

- Identification notices
- Remediation notices
- Details of site reports obtained by the Council relating to remediation notices
- Remediation declarations
- Remediation statements
- Notifications of claimed remediation
- Designations of 'special sites'
- Appeals lodged against remediation and charging notices
- Convictions
- Any other environmental information as prescribed from time to time.

The public register does not hold details of historic land uses or other records used in the investigation of potentially contaminated land. The register is held by the Environmental Health Section at the Council Offices, High Street, Elgin and will be accessible on request during office hours.

Confidentiality

The Council is subject to the provisions of data protection legislation. Where complaints or information are received, providers will be requested to provide their names and contact details, which will remain confidential. However, in the circumstances where a remediation notice is appealed in a court of law and an adverse effect on a complainant's health was a reason for the original contaminated land determination, such information might require to be made public.

The Council is also subject to the provisions of freedom of information and environmental information legislation. Where information is provided to the Council, the presumption will be that it will be provided on request to interested parties. Should providers of information consider their submissions to be confidential, this should be made clear, in writing, along with the submission. However, such requests themselves will not guarantee confidentiality and an assessment will be made in each case whether the provisions of legislation allow for the information to remain confidential. If the Council decides the information provided cannot be kept confidential, the relevant information provider will be duly notified/ advised of the reasons why the information cannot be held as confidential. In such cases, advice will be sought from the Council's Legal Section. As the implementation of this strategy progresses, the Council will also gather information from its own investigations and again this is subject to the provisions of freedom of information and environmental information legislation. Likewise, the presumption will be that such information will be provided on request to interested parties. Legislative exemptions apply to the presumption to provide information, including for example, where the provision of information may compromise commercial confidentiality or where investigations are not yet complete. Such exemptions will be considered, along with advice from the Council's Legal Section, in considering whether information can be made available. Further information on confidentiality and how information requests are dealt with is included in Appendix F.

A8. STRATEGY REVIEW

This inspection strategy, along with the Council's overall Contaminated Land Strategy document will be reviewed periodically, or when any significant changes in circumstances occur. Such circumstances may include, for example, significant changes to legislation, guidance or policy, changes to resources, etc. The findings of reviews will be reported to the appropriate committee of the Council but interim reviews of this inspection strategy will be completed with approval of the relevant Corporate Director.

Appendix B – Contaminated Land in the Development Management Process

B1. INTRODUCTION

Every planning authority has a duty to consider the potential for contamination as a material consideration when dealing with planning applications. In The Moray Council, this duty is undertaken by Contaminated Land staff in the Environmental Health Section, as a consultee within the development management process.

The role of the Contaminated Land staff is to facilitate development of brownfield and previously used land. Planning Advice Note (PAN) 33 states that “the planning system has a key part to play in addressing the problem of historical contamination” and even heavily contaminated former industrial land can be suitable for development. However, it is important that redevelopment of such land is undertaken in such a way that future users, residents and neighbours can have confidence that there is no risk to their health or the environment. The aim of the Environmental Health Section’s Contaminated Land staff is to assist developers, and their agents and consultants, fulfil their responsibilities for safe and sustainable development.

This policy sets out how this will be achieved in the context of national legislation and guidance, and summarises the contaminated land information that may be required to support planning applications. It deals solely with contaminated land issues and does not address any of the other issues that are dealt with by the Environmental Health Section through the planning consultation process, e.g. noise.

B2. REGULATORY CONTEXT

Contaminated Land as a Material Consideration

Section 37 of the Town and Country Planning (Scotland) Act 1997 (as amended) states:

where an application is made to a planning authority for planning permission....the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.

Annex A of the Scottish Planning Series Circular 4 2009: Development Management Procedures defines the tests in deciding whether a consideration is material and relevant and the range of considerations, which might be considered material. Examples of possible material considerations include National Planning Policy Guidelines, Scottish Planning Policies, Planning Advice Notes and Circulars.

One such Planning Advice Note [PAN] is PAN 33 “Development of Contaminated Land”. Under “The Role of the Planning System”, PAN 33 states:

whether confirmed or suspected, contamination is a material planning consideration

This requires that land contamination should be considered within the planning process.

The “Suitable For Use” Approach

The contaminated land regime focuses on a “suitable for use” approach, which PAN 33 describes as comprising three elements:

(i) ensuring that land is suitable for its current use – in other words, identifying land where contamination is causing unacceptable risks to human health and the environment, on the

basis of the current use and circumstances of the land, and returning it to a condition where such risks no longer arise (“remediating” the land)....

(ii) ensuring that land is made suitable for any new use, as planning permission is given for that new use – in other words, assessing the potential risks from contamination, on the basis of the proposed future use and circumstances, before permission is given for the development and, where necessary, to avoid unacceptable risks to human health and the environment, remediating the land before the new use commences; this is the role of the town and country planning and building control regimes.

(iii) limiting requirements for remediation to the work necessary to prevent unacceptable risks to human health or the environment in relation to the current use or future use of the land for which planning permission is being sought – in other words, recognising that the risks from contaminated land can be satisfactorily addressed only in the context of the specific uses of the land (whether current or proposed), and that any attempt to guess what might be needed at some time in the future for other uses, is likely to result either in premature work (thereby risking distorting social, economic and environmental priorities) or in unnecessary work (thereby wasting resources).

Therefore, as a planning application is submitted, the land should be considered for potential contaminative risks, and this should be done within the framework established by the Environmental Protection Act 1990: Part IIA. This assessment must be made before full planning permission is granted to ensure, as far as practicable, that the requirements to make the land suitable for the proposed use are known when consent is granted. Any remediation required must be undertaken before the land is put to its new use, but the level of remediation should be limited to that required for the purpose of the specific proposed use.

A site may not be posing any risk to human health or the water environment in its current state but a change of use could enable the formation of a pollutant linkage, e.g. the introduction of a receptor such as humans in a dwelling, or the creation of a pathway by removing hard capping on a site, creation of pathways to water resource receptors (e.g. through piling). Conversely, the development may remove linkages that were previously present or reduce their significance. Any investigation should consider pollutant linkages existing under the current use, as well as under the proposed use to ensure sufficient understanding of the contamination risks associated with the site. PAN 33 identifies the need for planning authorities to consider contaminated land “in its broadest sense”, and so all receptors need consideration, which complements the approach set out under Part IIA. Applying this approach for planning consultations ensures that the site should not have to be revisited under the Council’s Part IIA Inspection Strategy once the new use has commenced.

The above is reinforced by the more recent Part IIA Statutory Guidance (Annex 1, Paragraph 41):

In relation to planning decisions, land contamination may be regarded as a ‘material consideration’ when individual planning applications are considered as part of the statutory development control process. When determining a planning application the planning authority should satisfy itself that the potential for contamination has been properly assessed by the applicant, and the proposed development incorporates any necessary remediation. PAN 33 states that the planning authority must consider (often following expert advice) whether a developer’s restoration plan is adequate to avoid unacceptable risks to human health and the wider environment from the contamination of the site, both during the restoration period and for the final end use. If it is not adequate then there are grounds for refusal. Where necessary, any planning permission should include conditions requiring that remediation measures are implemented before commencement of any new use. It is also the responsibility of the planning authority to consider the potential risk of development works, and/or a proposed use, contaminating a site or the surrounding area. (This is in contrast to the approach under Part IIA, where only the current use and circumstances are considered)

PAN 33 also states:

Within this 'suitable for use' framework, it is important to recognise both that the use of any particular area of land may cover several different activities and that some potential risks arising from contamination (particularly impacts to water and the wider environment) may arise independently of the use of the land... In practical terms, the current use of any land should be taken to be any use which:

- (a) is currently being made of the land, or is likely to be made of it; and***
- (b) is consistent with any existing planning permission or is otherwise lawful under town and country planning legislation.***

Annex 3, Chapter A, Part 3 A.27 of the Part IIA Statutory Guidance gives further detail on the consideration of "current use".

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

- (a) the current use should be taken to include any temporary use, permitted under town and country planning legislation, to which the land is, or is likely to be, put from time to time;***
- (b) the current use includes future uses or developments, which do not require a new, or amended, grant of planning permission (but also see paragraph A. 37 below);***
- (c) the current use should, nevertheless, be taken to include any likely informal recreational use of the land, whether authorised by the owners or occupiers or not, (for example, children playing on the land); however, in assessing the likelihood of any such informal use, the local authority should give due attention to measures taken to prevent or restrict access to the land; and***
- (d) in the case of agricultural land, however, the current agricultural use should not be taken to extend beyond the growing or rearing of the crops or animals which are habitually grown or reared on the land.***

A.37 states:

When considering the possibility of significant harm being caused in relation to any future use or development which falls within the description of a "current use" as a result of paragraph A.27(b) above, the local authority should assume that if the future use is introduced, or the development carried out, this will be done in accordance with any existing planning permission for that use or development. In particular, the local authority should assume:

- (a) that any remediation which is the subject of a condition attached to that planning permission, or is the subject of the planning obligation, will be carried out in accordance with that permission or obligation; and***
- (b) where a planning permission has been given subject to conditions, which require steps to be taken to prevent problems, which might be caused by contamination, and those steps, are to be approved by the planning authority, that the planning authority will ensure that those steps include adequate remediation.***

The Council will therefore assess the site in terms of its most conservative receptor within that specific class of land use under the Town and Country Planning (Scotland) Act 1997. This will ensure that the site is safe for the most conservative land use in that particular class. The Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended) details the 11 classes of use within the planning process. Planning permission is generally required for changes of use between categories and as such the Environmental Health Section will be consulted. Any change of use to a more sensitive end use, such as residential, crèche etc. will require further information to ensure that the site is suitable for use if potential for ground contamination is identified.

Where there is no change of use or where the change of use is within the same land use category, particularly where the application is for minor works such as an extension or alteration to an existing individual residential property, it is the Council's policy not to ask for

further land contamination information to be provided to support the planning application. In such cases, PAN 33 gives guidance on how information can be provided with the planning consent:

Where planning consent is granted for a site on which the presence of contamination is known or suspected, an advisory note may be attached to the planning permission informing the applicant(s) that the responsibility for the safe development of the site rests with the developer.

In instances of no change of use, or change within a land use category, or for minor works that would not prompt a request for contaminated land information, Contaminated Land staff, will recommend to the Planning Officer that an 'informative note' be attached to any grant of consent. This will detail the potential sources of contamination on or in the vicinity of the site and advise the developer that they should satisfy themselves as to the condition of the site and investigate further prior to development commencing. The Council, however, does not require any work to be undertaken on site in such cases. In the event that contamination is discovered prior to or during development, the informative note requests that Environmental Health Section be informed immediately to enable advice to be given.

Responsibility for Assessment of Land Contamination

For planning applications, the responsibility for any investigation into potential contamination and subsequent remediation, if required, rests firmly with the developer of the site. PAN 33 states:

the developer must build-up a picture of the source(s), pathway(s) and receptor(s) that are relevant to the particular site, consider the risks that are relevant and design an appropriate remedial solution.

The advantages of assessing land contamination at an early stage in the planning process are also recognised in PAN 33:

The best way of minimising any associated risks is to ensure that potentially contaminated sites are identified at an early stage. The necessary investigations can then be carried out to enable cost-effective solutions to be devised and thus reduce the need for urgent and expensive emergency action later."

The Council's Contaminated Land staff advise developers of potential sources of contamination as soon as consulted and encourage agent/applicants to make contact at an early stage in the planning process, preferably prior to submission of any application. Contaminated Land staff will, on request, undertake screening assessments of proposed development sites as part of preliminary planning enquiries and will advise of the likely information required to support the intended application. Land with potential contamination can also be considered for inclusion within development plans, and the Environmental Health Section is also consulted during the formulation of the Local Plan, and advised of possible constraints. However, as PAN 33 states:

The allocation of a site for a particular use, however, does not in itself approve the suitability of a site for that purpose. Only investigation by the developer or applicant can confirm this.

Planning Conditions

PAN 33 discusses how a planning application should be accompanied with remediation measures:

where development is to take place on contaminated land, a key element of the 'suitable for use' approach is to ensure that land is made suitable for the proposed new use...Planning authorities should therefore require that applications include suitable remediation measures. If they do not, then there are grounds for refusal. Where applications are

approved, conditions should be put in place to ensure that land is remediated before the commencement of any new use”.

The Council requires the developer to undertake the necessary investigations in support of the planning application prior to its determination. This is essential to ensure the site will be suitable for its intended use. If remediation is required, a remediation strategy must be submitted to the Council, for approval in writing. The agreed remediation strategy becomes a legally binding document and part of the conditions of the consent if granted. Where adequate supporting information is not provided as part of the application, the Council will consider this as grounds for refusal.

In certain circumstances, such as the presence of buildings on a site that prevent full investigation before the application is determined, a further investigation/remediation strategy can be submitted. Any investigation that is possible before the planning application is determined, must be undertaken. Investigations to encompass areas not accessible at that time can be carried out post-consent as detailed in the developer's further investigation/remediation strategy.

The Part IIA Statutory Guidance (Annex 1, Paragraph 44) reinforces this.

“where new development is taking place, it will be the responsibility of the developer to ensure the required and necessary remediation is carried out. In many cases, the enforcement of any remediation requirements will be through compliance with planning conditions and building control requirements, rather than through a remediation notice issued under Part IIA.”

This reiterates that the responsibility for ensuring remediation is undertaken, lies with the developer and that this is done through planning conditions for the application as opposed to Part IIA of the Environmental Protection Act 1990.

Some confusion arises from Paragraph 37 of PAN 33 with regard to the use of conditions of planning consents to secure remediation works rather than the approach adopted in this policy to require investigation works before consent is granted. Paragraph 37 states;

Applications need not, however, be delayed pending an investigation by the developer unless there is good reason to suppose that the land is actually contaminated. Moreover, where there is potentially only slight contamination, planning permission may be granted on condition that development will not be permitted to start until a site investigation and assessment has been carried out and that the development itself will incorporate measures shown in the assessment to be necessary.

PAN 33 was published prior to implementation of the Contaminated Land (Scotland) Regulations 2000 and since then, work has been carried out by Contaminated Land teams across Scotland to research and identify potentially significant sources of contamination. In addition to carrying out these works, The Moray Council's Environmental Health Section has acquired a risk assessment tool (see Appendix A, Section A4), which assesses the significance of risk from a source of contamination to an identified property or development. This is used to assist consideration of contaminated land within the development management process. Therefore, the Environmental Health Section now has ready access to sufficient information to determine where there is good reason to suspect that contamination exists; where there is significant potential for such contamination to impact upon the proposed development; and, hence, when further information is required. **Only planning applications where a significant potential risk is identified will need to be supported with further information.** The use of suspensive conditions for site investigation is not the policy of the Council except where investigation is not possible prior to development. Where only a risk of slight contamination is identified, or where risk of contamination from former industrial use appears unlikely, no further information will be sought at the application stage but, an informative note on the potential for contamination will be recommended to the Planning Officer.

B3. PROCEDURE

Introduction

The Development Management Section of the Council needs to consider contaminated land as a material consideration in determining planning applications. In order to meet this requirement, a consultation procedure has been established such that the Environmental Health Section screen all applications, or at least all those involving groundworks or change of use.

The aims of the procedure are as follows:

- To ensure that a site of a proposed development subject to a planning application is suitable for its intended use.
- To protect statutory receptors identified in Part IIA of the Environmental Protection Act 1990 (human beings, ecological systems, property and the water environment).
- To prevent the need for re-assessment of that source of contamination through the Council's Contaminated Land Inspection Strategy under Part IIA of the Environmental Protection Act 1990.

The Council's Environmental Health Section is a consultee in the planning process. All planning applications submitted to the Council, with the exception of minor works applications involving no ground disturbance and no change of use, are screened by the Environmental Health Section for sources of contamination against a database of potential sources compiled from historical maps and council records. The procedure to be followed in the consultation is set out below. A similar process will be followed when the Environmental Health Section is consulted as part of preliminary enquiries prior to formal planning applications, although in such cases the timescale for submissions will not apply, at least until a formal application is actually submitted.

Screening

Planning applications are screened with regard to the proposed use stated in the application. For example, a residential house with additional ground within the site boundaries is classed as 'residential with gardens'; a flatted development with no additional ground is classed as 'residential without gardens'.

An area of 50 metres around the site is also screened for potential sources of contamination in order to consider possible migration of contaminants onto the subject site. Known current or former landfill sites are noted within 250 metres of the site. This is due to the much greater distances over which risk from landfill gases can arise. In addition, for new residential developments, the condition of the land is assessed using aerial photographs and internet-based photographic data, even where no contaminant sources are recorded. If necessary, a site visit may be undertaken to ascertain whether contaminant sources may be present.

The information obtained from the screening exercise is then evaluated with regard to the proposed land use and the design details specified in the planning application. Where no potential sources of contamination have been identified, no further action will be required and the consultation response is accordingly returned to the Development Management Section.

Further information in the form of a site history, desk study or site investigation will be requested where potential sources have been identified and are considered to be significant, and where the application is for a new building or structure, or involves the introduction of a

more sensitive receptor. In some cases, it will be clear that site investigation will be required from the outset and, in such cases, the initial steps can be avoided to save time and expense for the applicant, as long as the full and appropriate information is subsequently submitted, e.g. in the form of a combined Phase I/II report.

It is not the Council's intention to request further information where there is no change of use or where the change of use is within the same land use category, particularly where the application is for minor works or for an extension or alteration to an existing individual residential property. In such cases, information will be provided in the form of an informative note attached to any grant of consent. This provides the developer with details of the potential contamination sources of which the Council is aware. This allows the developer to make an informed decision as to the potential risks of contamination before commencing any work. It is reiterated that it is the developer's responsibility to ensure safe development and that the site is suitable for its proposed use.

Site History

Where further information is required, Contaminated Land staff will write to the agent or, in the absence of an agent, the applicant. This will detail the potential sources of contamination of which the Council is aware and request that a site history be submitted to the Council.

The site history submission typically consists of a letter with accompanying documents or photographs. It should include as detailed a description as possible of known activities on the site, including timescales, based on information from former owners and local residents, historical maps and documents. In the case of an application where there are agricultural buildings present, a *pro forma* will be sent out to the agent/applicant asking for specific details relating to the agricultural use. The agent/applicant will be asked to supply the information by a date that allows Contaminated Land staff's consultation response to be returned to the Development Management Section within the 14 day consultation period. If information cannot be provided within this timescale Contaminated Land staff should be contacted as soon as possible with a timescale by which the information will be submitted. Any extension to this timescale must be agreed in advance.

Adherence to these timescales is important to maintain the required Council performance for determining planning applications. Where no information is received by the date agreed, a reminder will be sent to the agent (or applicant). If after 14 days from the reminder, no information and no other correspondence have been received from the agent/applicant, the application may be recommended to the Planning Officer for refusal as a result of the lack of contaminated land information to support the application.

Information submitted to the Council will be reviewed to determine whether sufficient information is available to dismiss the risk from each individual source. Where sufficient information is submitted, a consultation response will be sent to the Development Management Section with the appropriate condition and/or informative note to be attached to any grant of consent. If the information submitted does not enable the risk to be ruled out, further information will be requested in the form of a full Phase I and possibly a Phase II investigation.

Phase I Investigation/Desk Study

The purpose of the Phase I investigation is to identify potential risks associated with possible contamination and facilitate a Phase II investigation, should one be required. It is recommended that developers employ an appropriately qualified and trained environmental professional to carry out this work.

A Phase I investigation incorporates a desk study and usually a site visit report. It should include all of the information obtained from the site history, but in greater detail, as well as

information relating to the geology, hydrogeology and environmental setting, Local Authority/Regulatory records and information from the site walkover. A Phase I may also be used to review existing information from previous environmental site investigations and remediation works, and to re-evaluate such information in the light of the proposed new use.

A Phase I report should include a conceptual model and preliminary risk assessment, which identifies the potential sources of contamination, who and what could be affected by the contamination (known as receptors), and whether mechanisms exist by which contaminants could reach these receptors (known as pathways). Where a source, pathway and receptor are all present, this is known as a "linkage". Full details of what the Council expects from a Phase I report will be made available to the agent/applicant or their appointed consultant at the time of the application or preliminary enquiry.

The Phase I report should be submitted to the Environmental Health Section for review. A recommendation should be included as to whether the site is suitable for the proposed use and that no further action is required, or whether the assessment should proceed to a Phase II investigation.

Proposals and recommendations for the Phase II investigation can also be included in the Phase I, or subsequently submitted. Although the Council's Environmental Health Section will not prescribe a scope of works for site investigation, contact at this stage is strongly encouraged as it enables Contaminated Land staff's comments to be taken into account, forestalling possible difficulties and delays following completion of the investigation works. The proposal should include the investigation methodology; sampling locations including rationale; number, depth and type of samples; the laboratory analytical suite; and how the results will be assessed.

If Contaminated Land staff have any comments or queries on the Phase I report, an email will be sent to whoever submitted the report, copied to the agent/applicant where appropriate. This will detail any issues from the report needing clarification, and these require to be addressed before any further works should be undertaken. If the report concludes that no further work is required and Contaminated Land staff accept this conclusion, a recommendation will be sent to the Development Management Section including any appropriate conditions that should be applied to the consent, if granted.

Phase II Investigation

A Phase II investigation, also known as an intrusive investigation, is required where the site history or Phase I investigation has not been able to rule out the risk from all potential sources of contamination. This phase typically involves sampling and analysis of soils and waters, and sometimes monitoring of monitoring of ground gases.

The purpose of a Phase II investigation is to quantify the nature, degree and extent of contamination on the site, as well as gathering information on the nature of pathways. It also enables a risk assessment to be undertaken to determine which linkages are in fact potentially significant linkages, i.e. those requiring to be addressed by remediation works.

In general, the Council expects that all Phase II investigation work that can be undertaken must be done so before the planning application can be determined. The Council must be provided with all the information on the nature and extent of contamination, the feasibility of remediation, and the implications for the development at the time the application is determined, unless there are exceptional circumstances where this is not possible. Where the presence of buildings or access restrictions prevent some works being carried out, a further agreed scope of works can be undertaken post-consent through the inclusion of appropriate conditions to the planning consent.

A Phase II investigation must be undertaken by an appropriately qualified and trained professional with full working knowledge of BS:10175, "Investigation of Potentially Contaminated Sites – Code of Practice"; BS:5930 "Code of Practice for Site Investigations"; and all other appropriate guidance. Communication between the environmental professional and Contaminated Land staff is strongly encouraged, both in formulation of the Phase II scope of works and during site works, should any changes to the proposed investigation plan become necessary. It is recommended that the developer ensures the environmental professional carries appropriate insurances for the work they undertake including public liability and professional indemnity insurances.

Once Phase II works have been undertaken a factual and interpretative report must be submitted to the Environmental Health Section for review. This should include an updated conceptual model and risk assessment including screening of results against suitable reference values. All supporting raw data, e.g. borehole logs, field observations, monitoring results and analytical data must be included in the report. The report must also have recommendations detailing whether further works are required and, if so, what these works will comprise. This may be supplementary investigation, for example to delineate suspected contamination, or remediation work to ensure the site is suitable for use.

If the Council's Contaminated Land staff have any comments or require any clarification on the report, an email will be sent to whoever submitted the report, copied to the agent/applicant as appropriate. Any outstanding issues must be addressed in writing. Once the Environmental Health Section has accepted the report, a recommendation will be sent to the Development Management Section including any appropriate conditions, which should be applied to the consent, if granted.

At this stage, the applicant may choose to undertake further investigation prior to formulating a remediation strategy, and indeed the Environmental Health Section may require such works where substantive concerns about the nature and extent of contamination are such that they have a bearing on the suitable remediation options. In such cases where further investigation is undertaken at this stage, there will be a second iteration of the process for the Phase II report as described above.

In some cases, further investigation may be carried out post consent, for example to investigate inaccessible areas or refine the details of a proposed remediation scheme. In such cases, a "Further Investigation/ Remediation Strategy", including details of the proposed scope of further investigation, requires to be submitted to the Environmental Health Section, which, when accepted, becomes the basis for the contaminated land condition for any consent granted.

Where no further investigation is required, but remediation works are necessary, a "Remediation Strategy" must be submitted to the Environmental Health Section, which, when accepted, becomes the basis for the contaminated land condition for any consent granted.

Remediation strategies are expected to include the following:

- objective of the remediation;
- remedial options appraisal;
- the selected option for remediation including rationale and explanation of how linkages will be broken;
- remediation targets with justification – if based on quantitative risk assessment, the full risk assessment will need to be submitted;
- relevant design details, including areas/volumes, treatment/disposal details if applicable, source of any imported material and validation methodology if required;
- details of the validation works to be undertaken;
- timescale for the submission of the remediation completion and validation reports;

- contingency plan should remediation be unsuccessful;

The strategy must be signed and dated by the applicant/agent or consultant on behalf of the applicant.

Implementation of the agreed Remediation Strategy is then required to ensure that the site is suitable for the proposed use, and this is why the Remediation Strategy is required at this time, so that it can become a legally binding condition of any consent granted.

Until this point has been reached, no recommendations can be made to the Development Management Section with respect to the planning application.

Remediation (Phase III)

Phase III works, also known as remediation or risk management, involves the breaking or controlling of significant linkages to ensure that the development can proceed without detrimental impact to receptors. Remediation can take many forms, e.g. removal of a source of contamination, breaking a pathway by inserting some form of barrier etc, and is entirely site-specific.

The specific details of the remediation will have been submitted within the remediation strategy. In some cases where the detailed methodology cannot be specified at the time of the submission of the strategy, the condition of consent will state that a detailed methodology must be submitted within a timescale prior to the commencement of the remedial works. All works to be undertaken must be accepted in writing by the Council's Environmental Health Section prior to any works commencing.

If, at any time, significant previously unidentified contamination is found then all work must cease until an appropriate investigation to determine the nature, extent and potential impacts of the contamination, or other agreed course of action, has been undertaken. Before works can recommence, a remediation method statement requires to be agreed with the Environmental Health Section.

Once the remedial works have been completed, a full report of the works should be submitted to the Environmental Health Section detailing all works that have been undertaken. Depending on the nature of the remediation, this report may also include the validation works, as described below.

Validation - Phase IV

Phase IV works, often referred to as Validation or Verification, are undertaken following Phase III works. Its purpose is to confirm the success, or otherwise, of these works and to identify whether any further remediation or risk management measures are necessary.

The report should detail what checks and analyses have been undertaken. The scope of validation works should be in accordance with those set out and agreed in the remediation strategy. All supporting data, including analytical certificates should be included in the report.

In some cases long term monitoring will be required, particularly for impacts on groundwater, the details of which will have already been agreed. Depending on the length of monitoring required, interim reports, with results to date, may be required and assessment made against any interim targets.

The final validation report must be submitted to the Environmental Health Section and, be accepted, in writing. If the Contaminated Land staff have any comments or queries on the Phase IV report, an email will be sent to whoever submitted the report, copied to the applicant/agent as appropriate.

If the validation report demonstrates that pollutant linkages have not been broken, and a risk to human health or the environment is still present, further contingency works may be required. Contaminated Land staff will consider, but not necessarily accept, cost-benefit analysis supporting a developer's proposal not to carry out further works. Where such analysis is accepted, this may not prevent the site being assessed under Part IIA of the Environmental Protection Act 1990 and hence the site may still be placed on the Council's Contaminated Land Register with a Remediation Declaration to state why no further work is considered necessary.

When all queries and outstanding issues have been addressed, the Environmental Health Section will inform the Development Management Section that sufficient information has been submitted in relation to the relevant condition(s) such that the Development Management Section can consider discharging the condition. A condition will not be discharged until the Environmental Health Section is satisfied that all relevant information has been received.

Screening Criteria and Risk Assessments

To assess the risk to human health and the environment, reference concentrations, often called screening criteria, are used. For an initial assessment, generic screening criteria may be used. These may be Soil Guideline Values, published by the Environment Agency, values published by other organisations, or values derived by environmental consultancy companies for their own use. The values themselves, their source and, in some cases, appropriate justification should be included in the reports. Site-measured parameters, e.g. soil organic matter content, should be used wherever possible. All use of generic screening criteria needs to be consistent with the conceptual model, assess all relevant pathways, and be in accordance with published guidance for risk assessment relevant to Scotland. All risk assessment assumptions, data sheets, inputs and outputs, must be submitted along with reports to the Environmental Health Section for review.

Where there are exceedances of screening criteria, some further assessment will be expected, for example a site-specific detailed quantitative risk assessment or, otherwise, that these would be addressed via a remediation strategy. It is important to note that the Council will not set screening criteria or the remediation targets for the site. It is the responsibility of the developer and their consultant to propose appropriate criteria with all necessary reference and justification for the parameters and tools used. However, all remediation criteria must be reviewed and accepted by the Environmental Health Section in advance of works commencing.

Risks to human health and the water environment need to be considered separately. Human health risk assessment needs to be carried out according to guidance relevant to Scotland at the time of submission of the report. At the time of writing in 2013, relevant guidance on human health risk includes, but is not limited to, the following:

- Human health toxicological assessment of contaminants in soil. Environment Agency Science Report SR2.
- Updated Technical Background to the CLEA model. Environment Agency Science Report SR3.
- Compilation of Data for Priority Organic Pollutants for Derivation of Soil Guideline Values. Environment Agency Science Report SR7.
- Contaminants in Soil: Updated Collation of Toxicological Data and Intake Values for Humans. Environment Agency Toxicological Reports and Soil Guideline Values.
- Guidance on Comparing Soil Contamination Data with a Critical Concentration. CIEH/CL:AIRE.

The approach to human health risk assessment is continually evolving and practitioners need to keep up-to-date with accepted practice in Scotland. A wide range of models is available, although currently the CLEA model is typically used as representative of UK conditions. Where international models are used, the model should be adapted for applicability to Scotland.

Water environment risk assessments must follow up-to-date SEPA guidance. At the time of writing, the key relevant guidance and water quality standards include the following:

- WAT-PS-10-01 Assigning Groundwater Assessment Criteria for Pollutant Inputs.
- Water Pollution Arising from Land Containing Chemical Contaminants. 2nd Edition 2012.
- Water Use Supporting Guidance WAT-SG-53. Environmental Standards for Discharges to Surface Waters.

Screening criteria for the water environment should be relevant to the receptor(s) specific to the site. Where exceedances of screening criteria occur, either in soil water (leachate) or groundwater, some form of numerical modelling of contaminant fate and transport is likely to be required.

Where a significant impact on the water environment has occurred, or is considered likely to occur, SEPA will be consulted. The provisions of the Groundwater Daughter Directive 2006 (2006/118/EC on the protection of groundwater against pollution and deterioration) and related regulatory issues will need to be considered in the management of the site, in addition to issues specific to contaminated land regulation.

Gas and Vapour Monitoring and Risk Assessment

Gas and vapour monitoring and risk assessment should follow appropriate and up-to-date industry guidance, e.g. published by CIRIA, NHBC etc. Monitoring data must reflect a range of weather conditions with representative periods at low and falling atmospheric pressure. The frequency and duration of monitoring are site-specific, depending on site sensitivity and the age and nature of the gas source.

B5. TIMESCALES

The period allowed for a consultation response to planning applications is 14 days and every effort will be made by the Environmental Health Section to respond fully within this period. Where sufficient information is not available to provide a full response, for example where an agent/applicant has not supplied information or where a site investigation is required, a "Holding" response will be made advising that the application should not be determined until the final consultation response has been returned.

All information submitted in respect of planning applications will be responded to by Contaminated Land staff as soon as reasonably practicable, usually with a few working days. Actual timescales will depend on availability of staff resources and also on the appropriateness of the submission, and hence the time required to provide detailed comment. Maximum timescales are as follows:

- Site history – 5 working days
- Phase I investigation report – 10 working days
- Phase II investigation proposals – 5 working days
- Phase II investigation report (including risk assessments) – 20 working days
- Phase II re-submissions/supplementary reports – 10 working days

- Phase III & IV proposals – 20 working days
- Phase III & IV re-submissions – 10 working days
- Phase III & IV reports – 20 working days.

However, if SEPA or other external organisations need to be consulted, these timescales may need to be extended to allow one set of consolidated comments to be made to the consultant and agent/applicant.

The Environmental Health Section will seek to process planning applications in an efficient manner in the minimum possible time. However, the Development Management Section's timescales for determination of planning applications are unlikely to allow for investigations to be carried out after an application has been submitted. Where planning applications are not supported by sufficient information on contaminated land issues, delays will inevitably result and may well lead to the applicant needing to withdraw the application or to refusal of consent. Agents/applicants are strongly encouraged to consult the Environmental Health Section prior to submission of the planning application, for example at the time of a preliminary enquiry to the Development Management Section, so that the requirement for investigation can be identified and any work carried out prior to the submission of the formal application.

B6. COMMUNICATION

All correspondence in relation to planning applications will be sent primarily to the agent for the application or, in the absence of an agent, the applicant. Initial contact by the Environmental Health Section will be made by email or by letter in the absence of an email address in the planning application. Site details will not be discussed with any person other than the agent and/or applicant named on the planning application form unless instructed to do so, in writing, by the agent or applicant.

Information with regard to a site history must be submitted in writing, preferably in electronic format. Draft site reports, proposals and strategies can be submitted, preferably by email or other electronic format, for comment by Contaminated Land staff. Comments will be sent to the person who submitted the information, copied to the agent/applicant where appropriate. Final reports and strategies are again preferred in electronic format and must be signed by the author of the report on behalf of the person commissioning the report or by the applicant or agent himself or herself.

SEPA will be consulted by the Environmental Health Section on applications where it appears that there may be a significant impact upon the water environment. A response from SEPA will require to be provided within a pre-determined time period set by the Environmental Health Section. Generally this will be at least 10 working days, however, this may be reduced where an urgent response is required or the report/strategy being consulted upon is a re-submission. Nonetheless, realistic timescales will depend on the complexity of the issues on a particular site. If a site investigation shows a significant pollutant linkage associated with an ecological system, or ancient monument etc., consultation will be sought with Scottish Natural Heritage or Historic Scotland, as appropriate. Requested response times will be consistent with those applicable to SEPA consultations.

B7. INFORMATION MANAGEMENT

All information submitted in relation to contaminated land in support of a planning application will be held by the Environmental Health Section. Any comment required in the future in response to enquiries, planning applications etc. that may be received for that site will include reference to any works that were undertaken.

If a planning application is received where a previous application for that site had a site history submitted and the applicant is not the same person, the Environmental Health Section will ascertain whether any circumstances have changed since the previous application. In some cases, where the applicant is not the same person, the information may need to be requested again to ensure that there have been no changes in circumstances since the first application and also that the new applicant is aware of the information and can check that it is correct and complete.

The Council must be made aware in writing if any information submitted in support of an application has been requested to remain confidential. However, the Council is subject to freedom of information and environmental information legislation and cannot guarantee that material requested to be held as confidential will not be subject to release under such legislation.

Appendix C – Contaminated Land & Building Standards

C1. INTRODUCTION

The Moray Council receives a large number of building warrant applications every year and the Council has a duty to ensure that buildings are designed in such a way that the structure and the health of people in and around the building are protected from harmful or dangerous substances, including those that may have arisen from land contamination.

The role of Contaminated Land staff is to assist the Building Standards Section carry out its duty in this regard by the provision of information on potential land contamination during the building warrant application process.

This document outlines the legislative background and describes the procedures by which the consultation will be carried out, what applicants and agents can expect from the process and what information may need to be provided. The aim of the procedure is:

- To ensure that the Council carries out its duties in compliance with the Building (Scotland) Regulations 2004 to protect buildings and the health of people in around them;
- to ensure that the Council meets its duty under the requirements of the Environmental Information (Scotland) Regulations 2004 (as amended) to provide information on potential land contamination, which it holds, at any reasonable opportunity.

C2. REGULATORY CONTEXT

The Building (Scotland) Regulations 2004 (as amended) require that all buildings must be protected from harmful or dangerous substances. Regulation 9 of the Regulations, states,

Construction shall be carried out so that the work complies with the applicable requirements of Schedule 5.

Section 3 of Schedule 5 of the Regulations, relating to the environment, includes the following regarding “*Site preparation – harmful and dangerous substances*”.

Every building must be designed and constructed in such a way that there will not be a threat to the building or the health of people in and around the building due to the presence of harmful or dangerous substances.

Two technical handbooks, (The Scottish Building Standards, Technical Handbook, Domestic and Non-Domestic) have been issued by the Scottish Ministers to provide practical guidance with respect to the building regulations. There are two handbooks, one dealing with domestic buildings and the other non-domestic buildings.

Standard 3.1 of each handbook details what is meant by harmful or dangerous substances,

Harmful or dangerous substances include deposits of faecal or animal matter and any substance, or mixture of substances, which is, or could become, corrosive, explosive, flammable, radioactive or toxic or which produces, or could produce, any gas likely to have any such characteristic.

The consideration of potentially significant contamination within the planning regime encompasses the entire subject area of the application. However within the building standards process only the building itself and the immediately adjoining ground is taken into account.

Clause 3.1.2 of each handbook states, with regard to harmful or dangerous substances,

Because of their hazardous qualities, any ground below and immediately adjoining a building should have them removed or made safe.

The term 'ground immediately adjoining' *"is intended to cover ground that is disturbed as a direct result of the works"*.

C3. PROCEDURE

The Building Standards Section emails a weekly list of building warrant applications to the Environmental Health Section.

Many building warrant applications have parallel planning applications, which will already have been screened for potential land contamination concerns. In such cases, a memo will be sent to the Building Standards Section detailing conditions on the planning consent which require specific work to be undertaken, e.g. remediation, installation of protective membranes, removal of asbestos, etc. This enables the Building Standards officer to ensure harmful or dangerous substances have been considered as part of the construction works.

Where the building warrant applicant is different from the planning applicant, and where an informative note was placed upon the planning consent, an email (or letter) will be sent out to the building warrant applicant detailing the potential source of contamination affecting the property. This is in line with the duties of the Council under the Environmental Information (Scotland) Regulations 2004 (as amended), and is provided for the applicant's **information only**. The Council will not require any further work to be undertaken in relation to potential contamination, but the applicant may wish to investigate further.

In some circumstances, outstanding contaminated land issues may not have been resolved and planning conditions not finalised. The Building Standards Section, with advice from Contaminated Land staff, will advise the applicant of this. It is the applicant's responsibility to provide satisfactory information to the Council in relation to harmful or dangerous substances affecting the construction area and adjoining ground. Where this has not been provided, within the appropriate timescales, the Building Standards Section will not issue a building warrant or completion certificate.

Building warrant applications without a corresponding planning application will be screened against the Council's database of potential significant sources of contamination. This process is the same as described for planning applications in Appendix B (Section B3). Where the application is for a new construction or involves groundworks, Contaminated Land staff will discuss with the Building Standards Section if there is likely to be a material impact on the building work. The applicant will be advised of significant potential sources of contamination and, where necessary, will be required to provide further information. The procedure for requesting this information, e.g. site investigation report, will follow a similar process as for planning applications, as described in Appendix B. Contaminated Land staff will undertake a technical review of information submitted and provide advice to the Building Standards Section.

Where the application is for minor alterations with no groundworks, details of significant potential sources of contamination on the site will be sent to the applicant as an informative note. The Council will not require any further work to be undertaken.

C4. TIMESCALES

The Environmental Health Section will aim to review and respond to the weekly list of applications registered, within 5 working days of receipt of the list.

Where either no planning application exists, or the contaminated land issues are not resolved under the planning application, and there are significant potential sources of contamination, a response will be provided to the Building Standards Section within 5 working days of receipt. Building Standards will advise the applicant, where necessary, that further information should be submitted providing contact details for Contaminated Land staff. Timescales for the provision of such information is site specific and shall be agreed with Building Standards. Where no information is received within the pre-arranged timescales, or if the information is not satisfactory, the Building Standards Section will not issue either the building warrant or, where relevant, a completion certificate.

Maximum response times for review of information submitted in respect of building warrant applications will be the same as those for planning applications (see Appendix B). The Environmental Health Section will process information in relation to building warrants in an efficient manner in the minimum possible time. However, submission of insufficient supporting information on land contaminated issues will inevitably result in delays in issue of building warrants.

C5. COMMUNICATION

Communication with the applicant/agent will initially be undertaken by the Building Standards Section, while, subsequently, communications on technical matters (e.g. investigation reports) will be directly between Contaminated Land staff and the applicant/agent or their nominated environmental consultant. Contaminated Land staff will not discuss site details with any person, other than the agent and applicant named on the building warrant application, and officers within the Building Standards Section unless instructed to do so by the agent or applicant.

Draft reports, site proposals and strategies should be submitted in writing, preferably by email or other electronic means. Comments will be sent to the person who submitted the information, copied to the agent/applicant where appropriate. Final reports and strategies are again preferred in electronic format and must be signed by the author of the report on behalf of the person commissioning the report or by the applicant or agent themselves.

C6. INFORMATION MANAGEMENT

All information submitted in relation to contaminated land in support of a building warrant application will be held by the Environmental Health Section. Responses to any future enquiries, planning applications, warrants etc in relation to the same site will include reference to any works that were undertaken.

Appendix D – Contaminated Land & The Moray Council Estate

D1. INTRODUCTION

The Moray Council has purchased and inherited a varied Estate, which inevitably includes potentially contaminated sites. Some of these sites may have been contaminated by the Council's activities and others contaminated prior to Council ownership, although this does not necessarily mean that the Council will not be liable for contamination at sites where it was not the original polluter.

When the Council sells or leases land, it does not wish to retain any financial or other liability associated with contamination and has an opportunity to remove itself from future liability for contamination by providing the purchaser with sufficient information on the condition of the land. The Council also wishes to be a responsible landowner and provide potential purchasers of its land with information to ensure they are sufficiently aware of contamination that exists at the site and provide purchasers with advice and guidance regarding the impact of contamination upon plans they may have for the land. When purchasing land, the Council has the opportunity to establish the land's condition prior to purchase so as to make itself aware of the potential contamination liability and financial risk associated with that land.

To effectively manage financial and other risks associated with contamination, the Council has an established policy in place to assess and address contamination during the sale or purchase of land. The Council's policy is set out below.

D2. LEGISLATIVE CONTEXT

Introduction

The Part IIA Statutory Guidance details the process for attributing financial responsibility for the remediation of contaminated land between appropriate persons. An appropriate person is defined by section 78F(2) and (4) of the Environmental Protection Act 1990 as:

any person, or any of the persons, who caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land in question is such land to be in, on or under that land is an appropriate person {Class A appropriate persons}

or, in the absence of such a person,

the owner or occupier for the time being of the contaminated land in question {Class B appropriate persons}

In apportioning costs for remediation between appropriate persons, the Statutory Guidance details six exclusion tests, at Annex 3 Part 5 paragraphs D47 to D72 inclusive, which should be applied to remove a person or persons from liability. These give consideration to the following:

- Test 1 – “Excluded Activities”
- Test 2 – “Payments Made for Remediation”
- Test 3 – “Sold With Information”
- Test 4 – “Changes to Substances”
- Test 5 – “Escaped Substances”
- Test 6 – “Introduction of Pathways or Receptors”

Whilst Council land, as with land in any other ownership, will be considered in terms of all potential exclusion tests, this strategy considers contaminated land whilst selling or purchasing land. Accordingly, Test 3 – “Sold With Information” is specifically relevant.

Test 3 – “Sold With Information”

Paragraph D.57 of Annex 3 of the Guidance states that:

The purpose of this test is to exclude from liability those who, although they have caused or knowingly permitted the presence of a significant pollutant in, on or under some land, have disposed of that land in circumstances where it is reasonable that another member of the liability group, who has acquired the land from them, should bear the liability for remediation of the land.

Paragraph D.58 goes on to define the circumstances which require to be met before this test can be applied:

- (a) one of the members of the liability group (the “seller”) has sold the land in question to a person who is also a member of the liability group (the “buyer”);***
- (b) the sale took place at arms’ length (that is, on terms which could be expected in a sale on the open market between a willing seller and a willing buyer);***
- (c) before the sale became binding, the buyer had information that would reasonably allow that particular person to be aware of the presence on the land of the pollutant identified in the significant pollutant linkage in question, and the broad measure of that presence; and the seller did nothing material to misrepresent the implications of that presence; and***
- (d) after the date of the sale, the seller did not retain any interest in the land in question or any rights to occupy or use that land.***

Of particular note in the consideration of circumstances, which require to be met before this test can be applied, are sections D.58(a) and D.58(c). These are discussed further below.

Sections D.57 and D.58(a) require that the purchaser of the land is within the Class A liability group, i.e. that the purchaser caused or knowingly permitted the presence of the pollutant. However, section D.61 goes on to state that:

This test does not imply that the receipt by the buyer of the information referred to in paragraph D.58(c) above necessarily means that the buyer has “caused or knowingly permitted” the presence of the significant pollutant in, on or under the land.

Whilst it is reasonable that simply being provided with information does not imply that a person caused contamination, the key question is: how long does a person require to be in receipt of the information before they are considered a “knowing permitter”? There is no guidance or case law currently available on how long a person requires to have held such information before they are considered a “knowing permitter”, but it is accepted that its purpose is to prevent liable parties disposing of land that is imminently likely to be determined as contaminated land to persons who otherwise would not be implicated within liability. In any case, the Council will give regard to the timing of any transaction in comparison with any potential determination of land as contaminated land, to ensure that liability would be successfully transferred. This is a site-specific matter for which legal advice will be sought on an individual basis.

Section D.58(c) requires that the buyer of land has information regarding the presence of the pollutant(s) as well as a broad measure of that presence; however, no guidance is available as to what constitutes a ‘broad measure’. Whilst a Phase I (Desk Study) Investigation may provide information on the potential for a pollutant to exist at a site, it cannot confirm that presence nor provide a broad measure of the presence. As such, unless a Phase I Investigation identifies no potential for contamination to exist, it is unlikely that a Phase I Investigation report itself will be sufficient to sell with information and negate future liability.

When considering Phase II (Intrusive) Investigations, there are a number of stages available, including Exploratory Investigations, Main Investigations and Supplementary Investigations. The objectives of each of these types of investigation are defined by BS10175:2011, Investigation of Potentially Contaminated Sites – Code of Practice, Section 4 Setting the Objectives of an Investigation, Table 1, as follows:

Exploratory Investigation

- *To test the conceptual model* {as developed by the Phase I Investigation} *of contamination and site characteristics.*
- *To obtain further information in relation to potential sources of contamination, likely pathways, features of immediate concern.*
- *To obtain further information on the geology, geochemistry, hydrogeology and hydrology of the site.*
- *To provide further information to aid the design of the main investigation, including health and safety aspects.*
- *To provide data for a review of the conceptual model and to update the risk assessment.*

Main Investigation

- *To obtain data on the nature and extent of contamination, the geology, geochemistry, hydrogeology and hydrology of a site.*
- *To provide data to review the conceptual model and to update the risk assessment.*
- *To provide data for the selection and design of remedial works.*

Supplementary Investigations

- *To provide clearer delineation of a particular area of contamination or a contamination plume.*
- *To address or clarify specific technical matters (e.g. to confirm the applicability and feasibility of potential remediation options or obtain information for their design).*

In establishing the presence and broad measure of pollution, it is likely that a combination of Exploratory Investigation and Main Investigation will be most appropriate. An exploratory investigation alone, whilst likely to establish the presence of a pollutant, is unlikely to provide sufficient information on the broad measure of that presence. A Main Investigation, however, will contain additional works to consider the geology, geochemistry, hydrogeology and hydrology of the site, as well as to facilitate risk assessment and remediation design, which may not be necessary to establish the presence and broad measure of contamination. Supplementary investigations are unlikely to be necessary unless the investigation previously undertaken identified unsuspected contamination requiring delineation.

Leasing of Land

Section D.59 of Annex 3 of the Guidance outlines principles that should be applied in determining whether the circumstances detailed in Section D.58, above, are met and the exclusion test can therefore be applied. With regard to the lease of land, section D.59(a) states the following:

“a sale of land should be regarded as being either the transfer of ownership of the land or the grant or assignment of a lease”

As such, it is appropriate for the Council to give the same consideration to land it leases as to that which it sells.

Selling To and Buying As a Large Commercial Organisation or Public Body

Whilst Test 3 – “Sold With Information” establishes the need for sellers of land to provide purchasers with sufficient information to eliminate themselves from future liability, a further principle of section D.59 is as follows:

(d) in transactions since 1 January 1990 where the buyer, at the time of the transaction, is a large commercial organisation or public body, permission from the seller for the buyer to carry out his own investigations of the condition of the land should normally be taken as sufficient indication that the buyer had the information referred to in paragraph D.58(c) above.

This means that where the Council is selling land to a large commercial organisation or public body, it is not necessary for the council to provide information on the condition of the land with respect to contamination. Instead, it is sufficient for the Council simply to provide that purchaser with permission to carry out its own investigations in this regard. However, where land is being sold on the open market and the Council is unable to determine in advance that the purchaser will be a large commercial organisation or public body, it is likely that the Council will have to undertake its own investigations, and provide the results of these to all interested parties, in order that their bids reflect the contamination issues identified.

This principle also affects the Council as a buyer of land and means that whenever the Council is seeking to purchase land, the seller will not be required to provide the Council with information on the presence and broad measure of contamination. In order for the Council to be aware of the contamination issues and financial risk associated with a site it is considering purchasing, it will carry out its own investigations. There is no statutory guidance on this type of investigation as it is entirely at the discretion of the Council. However, in order to have sufficient information to establish the risk associated with the site, it would be appropriate to carry out investigations similar to those required to sell with information, i.e. to establish the presence and broad measure of pollutants.

D3. PROCEDURES

Introduction

Contaminated land will be addressed in the same manner regardless of whether the site is being sold or purchased by the Council and will follow a phased approach as detailed below. At each stage, the cost of carrying out further stages will be balanced against the associated risk and a decision taken on a site-by-site basis as to the level of information to be provided. Advice in this regard will be provided to the Council's Estates Section by the Environmental Health Section's Contaminated Land staff and the Legal Section.

Screening of Sites

The first stage in the process will be screening the site against the Contaminated Land databases to identify whether there are potential sources of contamination on or within the vicinity of the site. In considering the vicinity of the site, regard will be given to industry standard distances including a 50 metre radius for all potential sources of contamination and 250 metres for landfilled or large expanses of infilled land. Smaller areas of infill, such as sand or gravel pits will be considered within a 100 metre radius.

Requests for screening will be initiated by the Estates Section and provided to the Environmental Health Section's Contaminated Land staff via e-mail. The request will detail the name and address of the site, its current use, any previous uses the Estates Section is aware of and the potential purchaser and proposed use, if this is known. A map or plan will also be provided clearly identifying the boundaries of the land in question.

The site will be screened against the Contaminated Land GIS and databases to identify potential sources of contamination. These will be detailed in an e-mailed response to the Estates Section along with a recommendation for information to be provided to a potential purchaser or for any further stages of investigation to be undertaken. Where there is uncertainty regarding the benefit of undertaking additional works in comparison with the level

of income likely to be generated, or the level of risk associated with selling or purchasing the land without additional works, it will be recommended that advice be sought from the Legal Section.

Phase I Desk Studies

Where screening has identified potential sources of contamination, which may impact upon the subject site, the next stage of investigation recommended will normally be a Phase I Investigation. However, occasionally, the screening process itself may be sufficient to identify the likely contaminants and it may be more cost effective to progress directly to Phase II works.

Phase I Investigations will be undertaken following e-mailed requests from the Estates Section. The investigation report will contain a detailed history of the site, including past and present uses, complete with map extracts and information obtained from current and archived Council records on Planning and Building Warrant Applications, archived newspaper articles and other Council records. They will also contain information from SEPA, geological, hydrogeological and hydrological information as well as information obtained from a site walkover, including the identification of any constraints to a Phase II investigation.

The report will conclude with a conceptual model identifying the potential sources of contamination, the potential pathways by which the contaminants could travel and the potential receptors that could be affected by the contaminants. A recommendation of whether any further action is required will also be included. An electronic copy of the Phase I Investigation report will be provided to the Estates Section.

Phase II Intrusive Investigations

Phase II Investigations will be carried out on behalf of the Estates Section, following an e-mailed request, in one of two ways: either undertaken by Contaminated Land staff; or, where sufficient staff resources are not available or specialist assistance is required, undertaken by external environmental contractors and managed by the Contaminated Land staff.

Where the investigations are to be carried out internally, the process will begin with a detailed design of the investigation works. The purpose of the investigation will be to establish the presence and broad measure of contamination and will comprise a combination of targeted and non-targeted sampling works, as appropriate. Once the design has been completed and costs estimated, details of this will be provided to the Estates Section for approval before site works commence. Following e-mailed approval, the investigation will be carried out in accordance with the agreed design. Once completed an investigation report will be compiled and provided to the Estates Section, electronically.

Where the investigations cannot be undertaken internally, Contaminated Land staff will carry out a tendering and tender evaluation exercise in accordance with the Council's procurement procedures and provide the Estates Section with a written summary of the tenders received and a recommendation for the most appropriate tender. This will take account of costs as well as the ability of the tender to meet the requirements of Test 3 – "Sold With Information". Contaminated Land staff will then arrange and manage the contract with the appropriate contractor, following approval from the Estates Section. Following receipt of the contractor's Phase II Investigation report, this will be reviewed by Contaminated Land staff. Where appropriate, the contractor may be asked to review the document in light of any necessary comments or clarification required. Once the final report has been received, it will be provided electronically to the Estates Section with an accompanying non-technical summary.

Remediation and Validation

Remediation and validation will not normally be carried out in advance of selling or purchasing land. However, should particular circumstances arise where this is necessary, Contaminated Land staff will provide all necessary assistance to the Estates Section to ensure that such works are undertaken successfully and cost effectively.

Charges

The Environmental Health Section will charge the Estates Section for all work carried out on its behalf. The level of charge will be as set by the Policy and Resources Committee and will be reviewed annually. Charges are made because generally, financial gain is being obtained as a result of the transaction for which information is being provided.

Upon completion of each investigation undertaken, the charge will be applied via DTAC and a memo will be sent electronically to the Estates Department advising of site details and associated costs. Additionally, at the end of each financial year an invoice will be sent to Estates with the charges for individual screening reports.

Further charges may be incurred during investigations, such as requesting information from SEPA, road opening permits, etc. The Estates Section will also meet these charges.

Advice and Guidance

In addition to the specific services detailed above, Contaminated Land staff will undertake to provide advice and guidance to the Estates Section whenever requested.

D4. TIMESCALES

Responses to initial requests for screening sites will generally be provided within 10 working days. However, if the request is more urgent, Contaminated Land staff will make every effort to meet shorter timescales as requested by the Estates Section.

Phase I Investigation reports will be provided within 25 working days of receipt of the request. Unfortunately, it is unlikely that these timescales can be expedited as the response time provided by SEPA for the information it provides for inclusion in Phase I reports is 20 working days. However, where a Phase I Investigation is required urgently, the Environmental Health Section will request a shorter response time from SEPA and make every effort to ensure the timescales requested by the Estates Section are met.

The timescales associated with Phase II Investigations, and also remediation works, will depend on the extent and the complexity of the works and whether the site works are being undertaken by Contaminated Land staff or by external contractors. The Estates Section will be advised of the likely schedule for such works on a site-specific basis.

D5. LIAISON AND COMMUNICATION

Where subject sites are not in the Council's ownership or are leased by the Council at the time of investigation, communication arrangements will be agreed between the Environmental Health Section and the Estates Section. In some cases, the Estates Section prefers to maintain all communications with that land owner. Any written communication between Contaminated Land staff and landowners will be held in Environmental Health records with copies made available to the Estates Section. A record of any verbal communication will also be kept on file.

All consultations with other agencies necessary to facilitate contaminated land investigations will be carried out by Contaminated Land staff.

D6. INFORMATION MANAGEMENT

All information gathered in support of contaminated land works carried out on behalf of the Estates Section will be held by the Environmental Health Section and will be made available to the Estates Section on request. Records will normally be held electronically.

Where the Estates Section requests that information it provides be treated as confidential, Contaminated Land staff will adhere to the request. Any enquiries regarding such confidential information will be referred directly to the Estates Section. Where information provided by external parties is requested to be held as confidential, this will be noted by Contaminated Land staff. However, the Council is subject to freedom of information and environmental information legislation and cannot guarantee that material requested to be held as confidential will not be subject to release under such legislation.

Appendix E – Contaminated Land & Council House Sales

E1. INTRODUCTION

The Council sells properties from its housing stock. As a responsible landowner, and in line with the relevant regulations, the Council has a duty to provide purchasers with information regarding possible contamination issues affecting the property. In addition, when selling property and land, the Council has an opportunity to remove itself from future liability for contamination by providing the purchaser with sufficient information on the condition of the land.

The Council has an established procedure for providing information when requested by the Council's Legal Section, which is then included in Council House Sale offers.

E2. REGULATORY CONTEXT

Regulation 4(1) of The Environmental Information (Scotland) Regulations 2004 (as amended) ("The Regulations"), states that:

A Scottish public authority shall take reasonable steps to organise and keep up to date the environmental information, relevant to its functions... with a view to the active and systematic dissemination of that information to the public.

See Appendix F for more details of the implications of this for information held by the Council on Contaminated Land.

In addition, the Part IIA Statutory Guidance details the process for attributing financial responsibility for the remediation of contaminated land between appropriate persons and exclusion tests. As such, Test 3 "Sold With Information" applies to sales of council houses. A more detailed explanation of this is provided in Appendix D.

In Council house sales, the Council endeavours to provide information to the buyer in the conveyancing transaction of the potential sources of significant contamination on and in the vicinity of the site. However, it would be unreasonable and expensive to carry out full investigation of every property, and so only limited desk study information is provided along with a risk ranking (Appendix A, Section A4). Further information can be made available on request in the form of a Land Use report (Appendix F), which gives further detail on the location of the potential sources along with geology, hydrogeology and archived information etc.

E3. PROCEDURE

The Council's Legal Section sends requests for information on potential contamination to the Environmental Health Section with details of the subject site. The site is then screened against the Council's database of potential sources of contamination. The site is screened according to its current land use based on the information available, e.g. a dwelling house with additional garden ground in its boundaries will be classed as 'residential with gardens', a flat with no additional land within its boundaries will be classed as 'residential without gardens'.

In considering the vicinity of the site, industry standard distances are used including a 50 metre radius for all potential sources of contamination and 250 metres for landfilled or large expanses of infilled land. Smaller areas of infill, such as sand or gravel pits are considered within a 100 metre radius. The details of the potential significant sources of contamination

are provided in a response via e-mail to the Council's Legal Section. The source, direction and distance from the site, as well as the map groups upon which the sources appear, are included in the response along with the risk ranking.

The response may recommend further action. The Council's Housing Section may request a Land Use Report, which provides details of the potential sources of contamination on, or within the vicinity of, the site in question. It is not the intention of the Land Use Report to provide information on the nature and extent of the potential contamination. Only by undertaking further research and intrusive site investigation could the nature and extent of contamination be determined.

E4. CHARGES

The Environmental Health Section will charge the Council's Housing Section for all work carried out on its behalf. The level of charge will be set by the Policy and Resources Committee and will be reviewed on an annual basis. Charges are made because generally, financial gain is being obtained as a result of the transaction for which information is being provided. A system is in place, which issues automatic payment to the Environmental Health Section upon completion of the sale of the property.

Where further work is requested, such as Land Use Reports, this will be carried out and invoiced at the current charge for that work at the time of compilation, as opposed to the financial year end.

E5. TIMESCALES

Response to requests for contaminated land information will be provided within 5 working days. Where the response is required urgently, timescales may be shortened, if possible upon request. Where further information is required, such as location plans, a response will be provided within 5 working days of that information being received by the Environmental Health Section. Where further information, such as a Land Use Report, is requested, this will be provided within the timescales detailed in the Contaminated Land Information Requests policy (see Appendix F).

E6. INFORMATION MANAGEMENT

All records used in the provision of information are held, or able to be accessed, by the Council's Environmental Health Section. Records of requests and responses will be held in computerised files only accessible by Contaminated Land staff.

Appendix F – Information Requests

F1. INTRODUCTION

The Council gathers and holds a variety of environmental information. Through statute it has a duty to provide such information including that which it holds on contaminated land. The Council also seeks to be open and transparent with the information it holds, whilst taking account of the confidentiality and the appropriateness of providing information. This policy sets out the ways the information can be provided by the Council, the charges applicable and the reasons when such information cannot be supplied.

F2. REGULATORY CONTEXT

The Regulations

The Environmental Information (Scotland) Regulations 2004 (as amended) (“the Regulations”), regulation 4(1), states that:

A Scottish public authority shall take reasonable steps to organise and keep up to date the environmental information, relevant to its functions, which it holds and at least the types of information listed in paragraph (2), with a view to the active and systematic dissemination of that information to the public and shall make that information progressively available to the public by electronic means unless it was collected before 14th February 2003 and is not available in electronic form.

Information listed in paragraph (2) held by the Environmental Health Section in relation to land contamination includes:

- reports on the state of the environment;
- data or summaries of data derived from the monitoring of activities that affect or are likely to affect the environment;
- environmental impact studies and risk assessments.

Applicable Fees

Regulation 8(1) states that fees may be charged for the production of such information;

...where a Scottish public authority is under a duty to make environmental information available..., it may charge a fee for so doing.

It is The Moray Council’s duty as a local authority to ensure it provides such environmental information when the opportunity arises. In order to meet this requirement, the Council provides information on potential sources of contamination held on its database within Property Enquiry Certificates requested from the Council, for which a fee is payable. In addition, contaminated land information is also made available through Contamination Enquiry Reports, Land Use Reports and Map Packages, which are also chargeable services. Fees have been derived through a time recording exercise to determine the time spent in compiling and issuing the information. The fees cover the Council’s costs in providing the information, with little profit made from the charges. Details of current fees can be found on The Moray Council’s website, http://www.moray.gov.uk/moray_standard/page_40164.html or on request from the Council’s Contaminated Land Team.

Exceptions

There are circumstances detailed in the Regulations where there are exceptions from the presumption to provide environmental information. In particular Regulation 10(4) states;

A Scottish public authority may refuse to make environmental information available to the extent that-

- (a) it does not hold that information when an applicant's request is received;***
- (b) the request for information is manifestly unreasonable;***
- (c) the request for information is formulated in too general a manner and the authority has complied with its duty under regulation 9;* {regulation 9 details the duty that a local authority must undertake in such an instance, to ask the applicant within 20 days of the request to provide more information in relation to and assist in providing those particulars}**
- (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or***
- (e) the request involves making available internal communications.***

Of particular note, is Regulation 10(4)(d): ***“The request relates to material which is still in the course of completion, to unfinished documents or to incomplete data”***. This includes information, which is part of an ongoing investigation, which has not yet been concluded or, as is often the case, has not been progressed further than identifying historic potentially contaminative land use.

F3. PROCEDURES

Introduction

The Environmental Health Section's Contaminated Land staff are willing to discuss general and site-specific issues either face-to-face or by telephone. However, provision of information in writing is a chargeable service. Contaminated land information in written form can be requested from the Council in the following ways;

- Property Enquiry Certificates;
- Contamination Enquiry Reports;
- Land Use Reports, Levels 1 and 2;
- Map Packages.

Property Enquiry Certificates

The Environmental Health Section is sent a request for information from the Council's Legal Section when a request for a Property Enquiry Certificate has been received.

The subject site is screened against the Council's database of potential sources of contamination. The site is screened according to its current land use based on the information available, e.g. a dwelling house with additional garden ground in its boundaries will be classed as 'residential with gardens', a flat with no additional land within its boundaries will be classed as 'residential without gardens'.

The result of this screening process includes a risk ranking (see Appendix A Section A4), This will be a letter ranging from A (high risk from potential contamination) to E (negligible risk from potential contamination). This risk ranking is provided in a response to the Legal Section for inclusion in the overall Property Enquiry Certificate. The Moray Council would recommend that further action be taken where the risk ranking is A or B (high risk). Where it is C, this relates to a moderate risk and as such further action may be considered, for informative purposes, on the potential contaminants possibly present.

The Council also aims to provide answers, as far as possible, to the Council of Mortgage Lenders questions within Property Enquiry Certificates. However, several of the questions take the form of what the Council is planning to do, for example;

Has the Council resolved to serve any notice relating to the property under s.78B(3)?

In nearly all cases, a definitive answer cannot be provided to this question and, in the Council's view, it would come under the exclusion in the Environmental Information (Scotland) Regulations 2004 [Regulation 10(4)(d) related to material in the course of completion, to unfinished documents or to incomplete data].

Land Use Reports

Land Use Reports were designed to provide a summary of information held in the Council's GIS system including geology, hydrogeology, site visits, anecdotal information held by the Council, other environmental information held on Council's database systems and historical Ordnance Survey maps. The risk ranking is also included within the Land Use Report. Two levels of report are available.

Level 1 Land Use Reports detail the following information:

- Historic industrial uses within 50 metres of the site.
- Historic waste disposal activities within 250 metres of the site.
- Review of historic maps of the site and its vicinity.
- Review of aerial photographs of the site and its vicinity.
- Information held by the Environmental Health Section in relation to land contamination on the site and its vicinity.
- Planning and Building Warrant applications for the site and adjacent land.
- Local Authority archives pertaining to the site and its vicinity.
- Newspaper archives pertaining to the site and its vicinity.
- Non-confidential information on complaints, spills and incidents on the site or adjacent.
- Non-confidential information on historic licences on the site or adjacent land.
- Non-confidential information on outstanding notices or orders on the site.
- Information on licences held for the site or adjacent land.
- Geology and hydrogeology of site and surrounding area.
- Groundwater vulnerability.
- Private water supplies within 250 metres of the site.
- Human health, surface water, ecological and property receptors.

Level 2 Land Use Reports contain the same information as above with the addition of the following, if a wider area is to be covered:

- Historic and current industrial uses within 250 metres of the site.
- Historic and current waste disposal activities within 1km of the site.
- Private water supplies within 1km of the site.
- Human health, surface water, ecological and property receptors within 1 km.
- Map package.

If further information is discovered by the Council as part of its research for the compilation of the report, this will be included. In addition, if this information enables a potential source of contamination to be ruled out or its risk reduced, the risk ranking will be revised and included within the report. There may be very rare situations where further research increases the risk ranking. This will be revised within the Land Use Report and details given as to why the risk has been increased. Contact details are provided within the report should further advice be required. The Land Use Report supersedes the information on contaminated land provided in the Property Enquiry Certificate, where the PEC pre-dates it and this is confirmed within the report text.

The Land Use Report provides details of the potential sources of contamination on or within the vicinity of the site in question. It is not the intention of the report to provide information on the nature and extent of contamination. Only by undertaking extensive research and intrusive site investigation can the nature and extent of contamination be determined. Nor is it the intention of the Land Use Report to provide sufficient information to meet the requirements under Test 3 of Part IIA of the Environmental Protection Act 1990, 'Selling With Information'. It is for the person/organisation who requested the report to decide whether more detailed information is required for their purpose.

If further investigation is undertaken, this information can be submitted voluntarily to the Council for inclusion in a revised Land Use Report. Written permission from the owner of that information will be required to confirm that it may be reproduced.

The provision of a revised Land Use Report will be charged at the appropriate fee for the level of report required. The fee will also cover any advice and guidance given in the design of the investigation, the review of the subsequent reports and any discussions undertaken with consultants. If, based on the results of the investigation, the risk ranking can be revised this will be done. However the Council makes no comment on the accuracy or reliability of the information undertaken by a third party and gives no warranty on any Land Use Report including third party information.

Contamination Enquiry Reports

Since land contamination information in conveyancing is now routinely provided to solicitors by commercial organisations, demand for Land Use Reports has reduced. However, the Council's Contaminated Land staff are asked to provide information on contamination sources in response to issues arising from commercially produced environmental searches. Such information is usually required urgently to help complete the conveyancing process. Sufficient information can sometimes be provided by telephone. However, where a written response is required, the Council can provide a Contamination Enquiry Report, which was devised specifically for the purpose of providing the key information on contaminant sources in the very short timescale required by the customer. The report details potential sources of contamination on, or in close proximity to, the site obtained from the Council's GIS system and includes a brief summary of other relevant information held by the Council. The risk ranking is also included within the Contamination Enquiry Report.

Contamination Enquiry Reports detail the following information:

- Historic industrial uses within 50 metres of the site.
- Historic waste disposal activities within 250 metres of the site.
- Relevant additional information held by the Environmental Health Section on land contamination for the site and its vicinity e.g. information in relation to site investigations and remediations that have been carried out on the site or in the immediate vicinity.
- With respect to the site and adjacent land, any action taken under the Environmental Protection Act 1990, Part IIA: Contaminated Land.

As is the case for Land Use Reports, the report does not provide detailed information on the nature and extent of the potential contamination nor is it the intention for the Contamination Enquiry Report to provide sufficient information to meet the requirements under Test 3 of Part IIA of the Environmental Protection Act 1990, 'Selling With Information'. It is the person/organisation who requested the report who must decide whether more detailed information is required for their purpose. It is not the Council's policy routinely to release detailed information, e.g. site investigation reports or remediation reports as part of such enquiries.

Map Packages

The Council can provide copies of the historical and present day Ordnance Survey maps which it holds. These are produced on A3 paper or electronically. The maps highlight the boundary of the subject site and show the locations of the potential sources of contamination. Potential source sites are those identified through the Council's research of maps and Council records, etc.

F4. TIMESCALES

Property Enquiry Certificates - within 5 working days of the request being received from the Legal Section.

Land Use Reports Level 1 - within 10 working days of the request or if the request is urgent, in some cases this can be reduced to 5 working days.

Land Use Reports Level 2 - within 15 working days of the request.

Contamination Enquiry Reports - within 5 working days, but where sufficient resources are available the aim is to issue the report by the end of the working day following the request. This may not be possible where information is held in the Council's off-site paper archive and the person requesting the report will be advised accordingly.

Map Packages - within 10 working days.

F5. LIAISON AND COMMUNICATION

Requests for Contamination Enquiry Reports, Land Use Reports and Map Packages must enclose an exact location plan and be made, preferably by e-mail, although letters, which should be addressed to the Environmental Health Section, will also be accepted.

The final report will be issued in pdf format by email to the person who requested the information. If a specific request is made, a paper copy can be provided instead. The Council's Contaminated Land staff are committed to providing an advice and guidance service; therefore, contact details are provided with all reports.

Information provided in reports is gathered from databases etc held by the Council and therefore no external consultation with other bodies is undertaken. Contact details are provided within Land Use Reports and Contamination Enquiry Reports for other external bodies, e.g. SEPA, should the client wish to make any further enquiries.

F6. INFORMATION MANAGEMENT

All information used in the provision of reports is held by the Environmental Health Section.

Where information is submitted to the Council it will be deemed non-confidential unless a written request is received by the Council's Environmental Health Section detailing why the information is confidential. The Council cannot guarantee that the information will remain confidential as the Council is subject to freedom of information and environmental information legislation. Any information submitted by the person/organisation who requested the report remains their property and will not be reproduced by the Council without written approval, except where that information is required by freedom of information and environmental information legislation.

Appendix G – Complaints & Notifications about Contaminated Land

G1. INTRODUCTION

The Part IIA Statutory Guidance states that a “*local authority should include in its strategy... arrangements and procedures for... responding to information or complaints from members of the public, businesses and voluntary organisations.*”

The Council’s Contaminated Land staff aim to respond promptly and efficiently to incoming calls and correspondence relating to the Council’s duties under Part IIA of the Environmental Protection Act 1990. Where other legislation applies, the complaint will be passed to the relevant regulatory body. The procedures to be adopted by staff in the event of a complaint or notification are set out below. This policy aims to align the process for dealing with complaints and notifications with the overall Part IIA inspection strategy (see Appendix A).

G2. REGULATORY CONTEXT

Contaminated Land & Statutory Nuisance

The statutory nuisance regime was used for the regulation of contamination issues prior to Part IIA legislation and continues to be used where the effects of deposits of substances on land giving rise to such offence to human senses (such as odours) as to constitute a nuisance.

However, as the Statutory Guidance states: ‘*Any matter which would otherwise have been a statutory nuisance will no longer be treated as such, to the extent that it consists of, or is caused by, land “being in a contaminated state”*’. The definition of land which is “in a contaminated state”, and where the statutory nuisance regime is therefore excluded, covers all land where there are substances in, on, or under the land which are causing harm or where there is a possibility of harm being caused”. This requires any complaints received where there is the potential for contaminated land, now to be addressed under Part IIA legislation.

Urgent Action

In some cases, urgent action may need to be taken. Annex 2 Paragraph 5.1 of the Statutory Guidance states;

Where it appears to the Enforcing Authority that there is an imminent danger of serious harm or serious pollution of the water environment being caused as a result of a significant pollutant linkage that has been identified, that authority may need to ensure that urgent remediation is carried out.

In this case a remediation notice can be served to ensure threat of imminent danger is addressed but in some cases it is appropriate for the local authority to undertake the urgent action to protect against imminent danger. This would generally be to take action quicker than could otherwise be secured. In cases where the Council would not be the appropriate person liable for remediation works, the Council would seek to recover its costs from appropriate persons thereafter. It should also be noted that there is no definition of “imminent danger” and that the risk of such is a judgement for the local authority to make. The work required to protect against such an imminent danger may not address all the pollutant linkages present.

Annex 2 Paragraph 5.2 of the Guidance states;

It is likely that any remediation action carried out on an urgent basis will be only a part of the total remediation scheme for the relevant land or water environment, as not all of the remediation actions will need to be carried out urgently.

Any further potential pollutant linkages requiring investigation will be addressed under the Council's Part IIA Inspection Strategy.

Exceptions

Section 78YB(3) of Part IIA of the Environmental Protection Act 1990 states:

If, in a case falling within subsection (1) or (7) of section 59 above [relating to environmental permits], the land in question is contaminated land, or becomes such land by reason of the deposit of the controlled waste in question, a remediation notice shall not be served in respect of that land by reason of that waste or any consequences of its deposit, if and to the extent that it appears to the enforcing authority that the powers of a waste regulation authority or waste collection authority under that section may be exercised in relation to that waste or the consequences of its deposit.

Therefore, any complaint which refers to the illegal deposit of waste cannot be dealt with under Part IIA and the complaint will be passed to SEPA as the waste regulation authority. Section 27 of the 1990 Act also enables SEPA to take action to remedy harm where there is a breach of a Pollution Prevention and Control (PPC) permit and again the local authority is precluded from serving a remediation notice.

Part IIA legislation will not be used where more appropriate legislation can be used to deal with a complaint, e.g. The Health and Safety at Work etc. Act 1974.

The Radioactive Contaminated Land (Scotland) Regulations 2007 place the responsibility for dealing with radioactive contaminated land with SEPA. Local Authorities who consider that any land may be radioactively contaminated are required to advise SEPA.

G3. PROCEDURES

When a complaint of potentially contaminated land is received by the Council's Contaminated Land staff, it is initially assessed to determine whether it is appropriate to address it under Part IIA of the Environmental Protection Act 1990 or under other legislation. If the complaint is more relevant to other legislation the complaint will be passed to the appropriate department and the complainant informed. If the issue is relevant to Part IIA legislation, an assessment will be made of the information available to consider the potential for significant harm to any statutory receptors.

A site visit will be conducted by a member of Contaminated Land staff to carry out a visual assessment of the site and to obtain any further information. This may include discussions with the complainant, neighbours, the polluter etc.

If urgent action is required, discussions with the likely appropriate person, where possible, will be initiated as soon as is reasonably possible to ensure the imminent danger is addressed. If urgent action is not required the site will then be evaluated within the Council's overall Part IIA prioritisation (see Appendix A). Where a potential significant pollutant linkage is identified and the potential for significant harm or pollution of the water environment is demonstrated, the site's prioritisation within the overall strategy will be reviewed and increased accordingly where appropriate.

Agreement with the polluter will always be sought for voluntary remediation. If this can be agreed within a reasonable timescale, the Council will endeavour to provide advice and guidance on the procedure to be undertaken. The polluter will be expected to assess and address all the pollutant linkages to ensure no re-occurrence of the contamination can be created. All information relating to the work undertaken at the site should be submitted to the Council for review to ensure the pollutant linkage has been broken and the site will not require to be inspected again under Part IIA of the Act for matters associated with the complaint.

Where voluntary remediation cannot be agreed, or is not completed satisfactorily, the Council will act under its powers of enforcement under the Part IIA legislation. The Part IIA Inspection Strategy (Appendix A) details the process of such enforcement action.

G4. TIMESCALES

Contact will be made with the complainant within 24 hours of the Environmental Health Section receiving the complaint of potentially contaminated land. If the complaint of potentially contaminated land cannot be appropriately addressed under Part IIA of the Act, it will be passed to the appropriate regulatory authority and the complainant informed of this by the Environmental Health Section within the following 24 hours.

The Council will always firstly seek for a resolution of the complaint through voluntary remediation. A reasonable timescale must be allowed for the polluter to consider the options available except in a situation where an imminent danger exists. If voluntary remediation cannot be secured, the Council will be obliged to consider undertaking enforcement action, which will be carried out according to the procedures set out in the Part IIA Inspection Strategy (Appendix A).

G5. COMMUNICATION

Communication will be maintained with the complainant and any other interested parties, such as neighbours, land owners, the appropriate person etc throughout the investigation of the complaint. The nature of the complaint of potentially contaminated land may require consultation with other Council sections, regulatory bodies and organisations as appropriate. If there is the potential for pollution of the water environment, SEPA will be contacted and where there are potential effects on an ecological system, consultation with Scottish Natural Heritage will be made.

Contaminated Land staff will provide advice and guidance to the appropriate person and complainant in the resolution of the complaint. Any discussions with others acting on behalf of, or contracted by the appropriate person or complainant, will only be carried out after written approval has been received from the appropriate person or complainant, as appropriate. Once the complaint of potentially contaminated land has been resolved to the satisfaction of the Council, the complainant, appropriate person and any other interested party will be informed in writing.

G6. INFORMATION MANAGEMENT

The details of the original complainant will remain confidential. All information relating to the complaint of potentially contaminated land will be held by the Environmental Health Section. The information will be used to re-assess the site's position within the Council's Inspection Strategy and prevent any re-assessment of the site under Part IIA. The information will be held within the Geographical Information Systems database which can only be accessed by Contaminated Land staff. Further information as to what information held can and cannot be made available to the general public is provided in Appendix F.