

# CONTAMINATED LAND STRATEGY



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**SCARBOROUGH BOROUGH COUNCIL**

**Approved by Cabinet**

**14 January 2014**

## **EXECUTIVE SUMMARY**

The contaminated land regime was introduced in 2000 as a means of dealing with the legacy of contaminated land which has mainly arisen from a wide range of industrial, mining and waste disposal activities in past years.

Scarborough Borough Council has specific roles underpinned by statute with respect to contaminated land: firstly, to undertake an assessment of its area for contaminated land through a strategic approach and, secondly, where contaminated land posing an unacceptable risk to human health and/or the environment is identified, to ensure the contamination is remediated to reduce that risk to an acceptable level. The primary means whereby contaminated land is remediated in Scarborough Borough is by implementing robust and appropriate controls in the planning and development control process.

This document seeks to detail the Council's approach for dealing with contaminated land issues. Scarborough Borough Council's Contaminated Land Strategy firstly provides background to the issues and also details the key characteristics that make up the Borough. The strategy provides clear priority actions and details the proposed inspection programme and timescales, which will be adjusted according to the findings as the work progresses.

Addressing the issues of contaminated land is not a short-term project and the Council has looked to ensure that a holistic and rational long-term approach is adopted. The history of industry and development in the Borough has not left a significant legacy of numerous high-risk sites of contaminated land. However, through the approach detailed in this strategy document the Scarborough Borough Council is committed to ensuring that all potentially contaminated sites that come to light receive a clear, efficient and all-encompassing assessment, and are remediated in the manner appropriate to their current and proposed uses.

This latest revision of the Council's Contaminated Land Strategy replaces the previous strategy that was issued in 2001. There has been significant research and development within the contaminated land field since then, and changes to the legislation and guidance on how we deal with contaminated land has resulted in this current revision of the Council's strategy carried out in 2012.

The strategy sets out the approach that Scarborough Borough Council will take to identify and remediate contaminated land within the borough boundary.

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# CHAPTER 1

## 1.0 Introduction and Overview

Local Authorities have a duty to identify and deal appropriately with contaminated land. There are two ways of doing this, through the planning process, as contaminated sites are redeveloped and also by direct action using Part 2A of the Environmental Protection Act 1990 (EPA) to enforce remediation of contaminated sites.

Much progress has been achieved through the planning process in Scarborough Borough as many dormant sites have been, and remain to be, redeveloped and the contamination consequently dealt with to prevent any risks to the subsequent occupants of the land or other receptors. The Council intends to continue to use its resources to deal with contaminated land.

There is also a statutory duty under Part 2A of the EPA for Local Authorities to inspect land within their area from 'time to time', for the purpose of identifying and dealing with contaminated land within its district. Statutory Guidance requires each Local Authority to prepare, publish and adopt a strategy setting out how they will achieve this, a result of which was the publication of Scarborough Borough Council's first Contaminated Land Strategy in 2001.

There has been significant research and development within the contaminated land field since then and changes to the legislation and guidance on how we deal with contaminated land and this has resulted in this current revision of the Council's strategy in 2012.

The strategy sets out the approach that Scarborough Borough Council will take to identify and remediate contaminated land within the borough boundary.

## 1.1 Regulatory Context

Part 2A of the Environmental Protection Act 1990 ("the 1990 Act") is supported by statutory guidance, the Contaminated Land (England) Regulations 2006, and the Contaminated Land (England) (Amendment) Regulations 2012. Section 86 of the Water Act 2003, which was introduced in February 2012 by way of a commencement order, amended the definition of contaminated land in relation to pollution of controlled waters. The regime was extended in 2006 to include radioactive contaminated land.

A number of non statutory guidance publications also assist in the regulation of contaminated land, and are listed in Appendix E.

### 1.1.1 Statutory guidance issued April 2012

The most substantial change to the contaminated land regime is to the statutory guidance, which contains the detail of how regulators should operate the regime. The Statutory Guidance replaces Defra Circular 01/2006 and is shorter, simpler and more focussed towards achieving optimum results in terms of dealing with sites most in need of remediation. Guidance on radioactive contaminated land is now contained in a separate document. The Statutory Guidance provides information to local authorities on how they should investigate and identify contaminated sites in their areas including details on risk assessments and prioritisation, and seeks to achieve the right balance between a necessarily precautionary approach and empowering the regulator to make proportionate, clear and accountable decisions. 

Where sites are actually causing significant harm or significant pollution of controlled waters then it is likely that the land would be considered 'contaminated land' under Part 2A. However, current guidance states that enforcing authorities should seek to use Part 2A only where no appropriate alternative solution exists. The Part 2A regime is one of several ways in which land contamination can be addressed. For example, land contamination can be addressed when land is developed (or redeveloped) under the planning system, during the building control process, or where action is taken independently by landowners. Other legislative regimes may also provide a means of dealing with land contamination issues, such as building regulations; the regimes for waste, water, and environmental permitting; and the Environmental Damage (Prevention and Remediation) Regulations 2009.

The more difficult question is how to assess whether there is a significant risk of significant harm or significant pollution of controlled waters, and to assist with this process the Guidance contains a new categorisation process. Local authorities must start from the assumption that land does not pose a significant risk of significant harm unless there is reason to consider otherwise, supported by robust science-based evidence. Sites where there is an unacceptably high probability of a 'significant risk' of significant harm or there is a strong and compelling case that there is a 'significant risk' of significant water pollution are classified as Category 1. If there is no risk or the level of risk is low, then the site is classified as Category 4. There are plenty of sites that may not fall into either category, because the evidence is inconclusive or because the state of scientific knowledge is uncertain, in which case the site will fall into either Category 2 (where the site is possibly capable of being determined as contaminated land) or Category 3 (definitely not capable of being determined as contaminated land).

In the response to the consultation Defra indicated that an expert panel would be set up to assist local authorities to determine whether land should be Category 2 or Category 3 and case studies will be published. 

To date, local authorities have often based the assessment, and the standard of remediation required, on generic assessment criteria (GACs) such as the Environment Agency's soil guideline values (SGVs). The Guidance makes it clear that this is too cautious, and that it is possible in many circumstances to exceed the limits in GACs but remain well within Category 4 of the risk assessment. The current guidance also introduces the concept of 'normal contamination' where naturally occurring contaminants exceed target levels. To assist with the risk-assessment process, Defra

and the Environmental Industries Commission have been working on new screening levels for common contaminants and British Geological Survey is to provide technical guidance on background levels of contamination naturally present in certain parts of the UK.  This information is awaited at the time of writing.

## **1.2 Definition of Contaminated Land**

‘Contaminated Land’ is defined by the Environmental Protection Act 1990 section 78A(2) as ‘any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that;

- a) significant harm is being caused or there is a significant possibility of significant harm being caused; or
- b) significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused.’

The statutory guidance also contains guidance on the terms ‘significant harm’ and ‘significant possibility of significant harm’.

These definitions reflect the intended role of the Part 2A regime, which is to enable the identification and remediation of land on which contamination is causing unacceptable risks to human health or the wider environment.

## **1.3 Contaminated Land Register**

Local Authorities have a statutory duty to keep and maintain a register of contaminated land. The information stored on a formal register is that relating to regulatory action and remediation. The contents are specified in the Contaminated Land (England) Regulations 2000 and include the following:

- Remediation Notices
- Remediation Declarations/Statements
- appeals against Notices
- designation of special sites
- convictions for offences

This formal register is maintained at the offices of Scarborough Borough Council, Environmental Services, Town Hall, St Nicholas Street, Scarborough YO11 2HG

Members of the public are able to view the register free of charge during normal office hours 9.00am – 5.00pm by appointment. Requests for copies of documents may be made to the Environmental Services Section and a reasonable charge will be made.

## 1.4 Pollutant Linkages

The definition of contaminated land and the guidance is based on the assessment of risk to human health and the wider environment and involves the principle of significant pollutant linkages.

In order for a site to be determined as 'Contaminated Land', a 'pollutant linkage' must exist. The pollutant linkage consists of a pollutant (the contaminant), a pathway (the route for the contaminant to move along) and a receptor (person, property, ecosystem). All three must be linked in order for the land to be determined as contaminated.

A pollutant linkage is the relationship between a contaminant (pollutant), a receptor and the pathway that links the two. All three elements of a pollutant linkage must be identified in respect of a piece of land for the land to be identified as contaminated land. The Council must show that a pollutant linkage exists and that the pollutant linkage is significant with reference to DEFRA's current Statutory Guidance.

A contaminant is a substance, which is in, on, or under the land and has a potential to cause harm or to cause pollution to controlled waters. The existence of a source alone does not constitute contaminated land under the Part 2A regime, which is not intended as a method to clean up all contamination.

A receptor is defined in DEFRA's Statutory Guidance Circular of 2012 and can be either:

- (a) a living organism, a group of living organisms, an ecological system, or property which:
  - is in a category listed in Tables 1 and 2 of the Statutory Guidance and
  - is being, or could be, harmed, by a contaminant; or
- (b) controlled waters, which are being, or could be, polluted by a contaminant, or
- (c) a person who is or could be exposed directly or indirectly to a contaminant.

A pathway is one or more routes or means by, or through which a receptor:

- Is being exposed to, or affected by, a contaminant, or
- Could be so exposed or affected.

Controlled waters can be both a pathway as well as a receptor in a pollutant linkage.

The Council must be satisfied that:

- (a) a pollutant linkage exists in respect of a piece of land; and
- (b) the pollutant linkage is significant, in that it:
  - is resulting in significant harm being caused to the receptor in the pollutant linkage,

- presents a significant possibility of significant harm being caused to that receptor,
- is resulting in the pollution of controlled waters which constitutes the receptor,
- is likely to result in such pollution.

Before the Council can determine a site as contaminated land a pollution linkage must be established, and there must be a significant possibility of significant harm to a receptor. There may be more than one source, more than one receptor and therefore there may be a number of pollutant linkages on any one site.

## **1.5 Risk Assessment**

The contaminated land regime promotes a risk-based approach to dealing with land contamination. This approach aims to protect human health and the environment without the financial burden of cleaning up sites that do not pose a significant risk. Each site therefore will be assessed for risk on a site specific basis and remediation will be decided accordingly.

This approach also supports the 'suitable for use' approach, which consists of three elements:

1. ensuring that land is suitable for its current use (and all uses within that planning use class);
2. ensuring that land is made suitable for any new use, as official permission is given for that new use, and
3. 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 officially permitted future use of the land.

## **1.6 Roles and Responsibilities**

### **1.6.1 The Regulatory Role of the Local Authority**

Regulation of the contaminated land regime rests with both local authorities and the Environment Agency. The primary regulatory role under Part 2A of the Environmental Protection Act 1990 rests with local authorities at a unitary authority or district council level.

Part 2A requires that the Council acts in accordance with any statutory guidance issued by the Secretary of State. Statutory Guidance requires local authorities to undertake a strategic approach to their inspections and to describe and publish this in a written strategy.

The role of Scarborough Borough Council under Part 2A is:-

1. to cause their area to be inspected to identify contaminated land;
2. to determine whether any particular site contains contaminated land;

3. to consult with the Environment Agency on pollution of controlled waters.

Where a site has been determined as contaminated land and has been designated as 'a special site', enforcement responsibility will transfer to the Environment Agency;

Where land is identified and determined as being contaminated land the Council will have a number of key actions to implement as the enforcing authority.

- To establish who should bear responsibility for the remediation of land. Where a remediation notice is served, or the Council itself carries out the work, there will be a need to determine who should bear what proportion of the liability for meeting the costs of the work ;
- To establish what remediation is required in consultation with the Environment Agency;
- To ensure that such remediation takes place, either through agreement with the appropriate person, by serving a remediation notice or, in certain circumstances, through carrying out the work themselves.

The Council will also record certain prescribed information about its regulatory actions on a public register and will maintain the public register in accordance with the Contaminated Land (England) Regulations 2000 (as modified in 2006).

### **1.6.2 The Regulatory Role of the Environment Agency**

Although the responsibility of inspecting and determining whether land is to be considered contaminated land under the terms of Part 2A lies with the Council, the Environment Agency also has a number of roles by:

- Assisting the Council in identifying 'contaminated land', particularly in cases where pollution of controlled waters is suspected or apparent and to provide advice to the Council on identifying and dealing with pollution of controlled waters;
- Providing site-specific guidance to the Council on the remediation of contaminated land and to provide general advice to the Council on the remediation of contaminated land;
- Providing advice about the applicability of other Environment Agency duties and powers;
- Acting as the enforcing authority for any land designated as a 'special site'. Land to be designated as 'special sites' is described in the Contaminated Land (England) Regulations 2006;
- Ensuring remediation of a special site;

- Maintaining a public register of regulatory action for ‘Special Sites’, to publish a national report on contaminated land and to continue to carry out technical research and in conjunction with DEFRA, publish scientific and technical advice.

The Contaminated Land (England) Regulations 2006 define “Special Sites”, which include land associated with the following situations;

- pollution of controlled waters as defined in the regulations
- contamination by certain chemicals used as pesticides
- contamination by waste acid tars
- refining of petroleum
- manufacture of explosives
- nuclear sites
- land owned by the Ministry of Defence

The Environment Agency also has the power to provide site specific guidance on contaminated land, once notification of a determination by the Local Authority of contaminated land has been received. This site specific guidance is likely to be in connection with the following circumstances;

- Remediation options
- The standard to which land or waters should be remediated
- The reasonableness of remediation in regards to costs and the seriousness of the impact to controlled waters
- Identification of appropriate persons and the application of exclusion tests
- Apportionment of liability and recovery of costs of remediation

### **1.6.3 Other Regulatory Regimes**

The Part 2A contaminated land regime is intended to deal with historic contamination, there being several other existing regulatory regimes aimed to prevent new contamination occurring. There are several situations where other regulatory regimes are more applicable to deal with land contamination issues.

Overlaps with planning, water pollution, waste management licensing and Integrated Pollution Prevention Control (IPPC) legislation are considered the most important and are addressed here.

### **1.6.4 Planning and Development Control**

Land contamination, or the possibility of it, is a material planning consideration for the purposes of town and country planning. This requires the Local Planning Authority to consider the potential implications of contamination both when it is developing plans and when it is considering individual applications for planning permission. Local planning strategies set out the policy and practice in detail, including the relationship with Part 2A.

Scarborough Borough Council’s Contaminated land Officer works closely with planning officers and building control officers to ensure that where redevelopment takes place,

issues of land contamination are dealt with effectively so that land is suitable for its intended use. Remediation agreed as a planning condition will be enforced through planning controls and not Part 2A. The redevelopment of brownfield sites through robust and appropriate use of planning controls will remain Scarborough Borough Council's primary mechanism for dealing with contaminated land. In practice within Scarborough Borough, the overwhelming majority of sites with a previous potentially contaminating history are remediated to a condition suitable for use through the planning regime rather than the Part 2A legislation.

### **1.7 Pollution of Controlled Waters**

The Environment Agency has powers to take action to remedy or prevent pollution of controlled waters under the Water Resources Act 1991(Section 161). These powers would be used where a pollution incident has occurred and the pollutant is discharged directly into the body of water, or it has left land and is entirely in the body of water. However where pollution of controlled waters arises from substances in, on, or under land there is an overlap between these powers and the Part 2A regime. In cases of contaminated land affecting controlled waters the Council will:

- consult with the Environment Agency before determining land to be contaminated land;
- take into account any comments from the Environment Agency with respect to the requirements for remediation.

The Environment Agency for its own part will notify the Council should it identify a risk to controlled waters from land affected by contamination thus enabling the Council to formally identify the land as contaminated land for the purposes of the Part 2A regime.

### **1.8 Waste Management Licensing / Permitting**

All waste disposal and processing sites (including scrap yards) are subject to licensing under Part 2 of the Environmental Protection Act 1990 (as amended by the Environmental Permitting (England and Wales) Regulations 2010) by the Environment Agency. Contamination causing significant harm to human health or pollution of controlled waters will be dealt with as a breach of a condition of the licence or permit rather than through Part 2A.

Where a waste site is unlicensed or where the waste licence has been surrendered under the Control of Pollution Act 1974 regime, these sites could potentially be contaminated land and would be dealt with under the Part 2A regime. Moreover remediation activities may themselves fall within the definition of waste disposal or waste recovery operations and be subject to the licensing requirements or permitting regime.

### **1.9 Integrated Pollution Prevention Control (IPPC)**

The regime introduced by the Pollution Prevention Act 1999 and the Environmental Permitting (England and Wales) Regulations 2010, controls certain industrial activities prescribed under the regulations with the aim of preventing pollution arising from these industrial activities, including pollution to land. This regime is enforced by the Environment Agency (Part A1 activities) and by the Local Authority (Part A2 and Part

B) and any pollution resulting from such an activity occurring as a result of the breach of IPPC controls, including pollution to land will be dealt with by the enforcement of IPPC controls rather than the Part 2A regime.

For new Part A1 and Part A2 permit applications site operators are required to undertake a site condition survey prior to being authorised to operate. If the site condition is such that areas of land meet the definition of contaminated land then submission of a site survey may trigger action under Part 2A. Upon decommissioning of the operation on such a site there is a requirement to submit a further land condition survey. Should the survey reveal that areas of land meet the definition of contaminated land such land contamination would be dealt with by IPPC enforcement action and not Part 2A. The General Guidance Document available from DEFRA for Local Authorities contains a section on contaminated land including site assessment and restoration in relation to LA-IPPC. The Environment Agency has similar guidance. A PPC permit application site report should also highlight historic contamination which may be controlled by the Part 2A regime. It should be noted that Part B permits refer only to emissions to atmosphere.

Moreover remediation activities may themselves constitute activities or processes, which cannot be carried out without a permit issued under the PPC regime.

## **1.10 Situations where the Part 2A Regime does not apply**

### **1.10.1 Statutory Nuisance**

Issues of land contamination that may previously have been dealt with under the statutory nuisance provisions (Part 3 of the Environmental Protection Act 1990) are now dealt with through the Part 2A regime. However the statutory nuisance regime continues to apply to the effects of the contamination on land, e.g. odours that are deemed to constitute a nuisance. The exclusion of the statutory nuisance provisions applies only to harm and the pollution of controlled waters.

### **1.10.2 Waste on Land**

The Part 2A regime is not applicable where there is contaminated land arising from illegal tipping of controlled waste (fly tipping). This should be dealt with under Part 2 of the Environmental Protection Act 1990 (Section 59).

### **1.10.3 Food Safety**

Part one of the Food and Environment Protection Act 1985 gave ministers emergency powers to prevent the growing of food on contaminated land. Following the establishment of the Food Standards Agency by the Food Standards Act 1999 this power is now vested in the Secretary of State. Where the Council suspects that crops may be affected from contaminated land to such an extent that they may be unfit to eat, it will consult the Food Standards Agency and DEFRA to establish whether an emergency order may be necessary.

It should be noted that remediation of the site, if necessary, would be secured through the Part 2A regime.

#### **1.10.4 Organisms**

Part 2A does not apply to contamination caused by organisms such as bacteria, viruses or protozoa as they do not fall within the definition of substances. The Council will liaise with the Environment Agency as appropriate in relation to MOD land and it should be noted that even though contaminated sites used in connection with biological weapons must be designated special sites this only applies to non biological contamination.

#### **1.10.5 Risk of Harm to Employees**

Where there is a risk of harm to persons at work from land contamination, this should be dealt with under the Health and Safety at Work Etc Act 1974. The enforcing authority will be either Scarborough Borough Council or the Health and Safety Executive, depending on the main work activity at the site. Liaison between the Council (for Part 2A enforcement) and the Health and Safety Executive will be established to avoid duplication of controls and to ensure that the most appropriate regime is used.

#### **1.10.6 Risk of Harm following an Incident at a COMAH site (Control of Major Accident Hazard Regulations 1999)**

Where there has been a release, explosion or other major incident, which has caused land contamination, the restoration should be carried out as part of the COMAH on site/off site emergency restoration plan.

#### **1.10.6 Radon**

The presence of radon in, on or under the land does not constitute 'contaminated land'.

### **1.11 Development of the strategy**

All local authorities are required to take a strategic approach to inspecting land in their area for contamination. The statutory guidance requires that the approach adopted should:

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

## **1.12 Objectives of the strategy**

- to detail the strategic approach to be followed for the inspection of land within the Scarborough Borough;
- to make information available to all relevant sections of the Council to enable consideration to be given about land contamination in policy making processes, and bringing sites forward for economic development;
- to avoid any unnecessary blight of land;
- to provide information to the Environment Agency for its annual report on the state of Contaminated Land;
- to make available to interested parties, information about the Council's intentions with respect to Contaminated Land;
- to provide a mechanism whereby the strategy is reviewed on a regular basis to allow for changes in guidance etc;

## **1.13 Scarborough Borough Council's Priorities**

Scarborough Borough Council's priorities for dealing with contaminated land will be to:-

- protect human health
- protect controlled waters (in collaboration with the Environment Agency)
- prevent damage to property
- prevent any further contamination of land
- encourage voluntary remediation
- encourage re-use of previously developed sites ('brownfield land')

In all cases regard will be had to significance and likelihood of risk of harm or potential harm as required by current legislation and statutory guidance.

## **1.14 Powers of Entry**

Section 108 and Schedule 18 of the Environment Act 1995 give the Council authority to enter land so that it may fulfill its duties in respect of contaminated land. Unless it is considered that the land may present an imminent risk of serious harm to human health, or pollution of the environment, or such that it may be a danger to life or health, at least seven days' written notice of the proposed entry will be given to the person seemingly in occupation of the land in question.

Where land is determined to be a 'special site', detailed investigation of that land will be carried out by the Environment Agency on behalf of the Council. As such, the Council will authorise a person nominated by the Environment Agency to exercise the above powers on its behalf.

### **1.15 Determination of Contaminated Land**

Where land appears to meet the statutory definition of being 'contaminated land', the Council will prepare a written record of the fact that the land is contaminated. The Guidance requires that information contained within the statement includes, by reference to other documentation if necessary:

- a description of the particular significant pollutant linkage, identifying all three components of pollutant, pathway and receptor.
- a summary of the evidence upon which the determination is based.
- a summary of the relevant assessment of this evidence.
- a summary of the way in which the authority considers that the requirements of the Guidance have been satisfied.

### **1.16 Identifying and Notifying Responsible Persons**

For any land classified as being 'contaminated land', acting on the best information available at the time, the Council will, wherever possible, establish:

- who is the 'owner' of the land
- who appears to be in occupation of all or part of the land
- who appears to be an 'appropriate person' to bear responsibility for any remediation action that might be necessary

The Council will then give written notification to the above identified person(s), and the Environment Agency, that the land has been determined to be contaminated. The Council will also provide to the above identified person(s) and the Environment Agency, as appropriate, the following information:

- a copy of the written record of the determination made by the authority that the land appears to be 'contaminated land'.
- information on the availability of site investigation reports, with copies of the full reports being available on request.
- an indication of the reason why particular person(s) appear to the authority to be 'appropriate person(s)'; and
- the names and addresses of other persons notified at the same time or
- previously, indicating the capacity in which they were notified (e.g.: owner, or appropriate person).

- information relating to the ‘tests of exclusion’ from, and apportionment of liabilities. This information will enable those persons as identified above to know what information they need to provide to the Council, in order to make a case for their ‘exclusion’ from liability, or for a particular ‘apportionment’ of liability.

### **1.17 Liability for the Remediation of Contaminated Land**

‘Liability’ as described within this strategy is the bearing of responsibility for any particular thing required to be done by way of remediating contaminated land. As such, liability for the remediation of contaminated land is generally aligned with the ‘appropriate person(s)’. In most instances the appropriate person is the person, or person(s), who knowingly caused or knowingly permitted the substance/s, by reason of which the land is considered to be contaminated. Such an appropriate person is classified as being a ‘class A’ person. Where after reasonable enquiry a ‘class A’ person/s cannot be found, then the owner or occupier of the contaminated land is liable for remediation, as a ‘class B’ person.

Once the Council has determined that a site is contaminated, and has specified what must be done by way of remediation, the Council will then determine who is liable for the remediation and what proportion they must contribute. In doing so, the Council will observe all relevant advice given in Statutory Guidance, which has established a complex structure for the apportionment of liability and cost.

Where neither of the appropriate persons can be found the site is referred to as an ‘orphan site’ for which there are separate procedures set out in the Statutory Guidance.

### **1.18 Remediation and Remediation Notices**

Unless remediation of contaminated land is required urgently, the Council will encourage the appropriate person/s to remediate contaminated land through voluntary means wherever possible.

However, where agreement cannot be reached, or where suitable remediation action is not being carried out, the Council will serve a remediation notice on the appropriate person(s). The notice will specify what is to be done to remediate the land, and the times by when the remedial measures must be completed. Where there are two or more appropriate persons, the remediation notice will state the proportion of costs which each of the persons are respectively liable to pay. The Council will determine the amount payable in respect of individual liabilities using procedures set down within the Statutory Guidance.

When specifying what must be done by way of remediation, the Council will require only those things that it considers to be reasonable, having regard to the cost likely to be involved, and the seriousness of the harm, or pollution of controlled waters being caused. In doing so, the Council will ensure that a transparent and consistent assessment of the costs and benefits of the available remediation options is carried out.

## **1.19 Appeals against Remediation Notices**

Section 78L(1) of the Act makes provision for appeal against a Remediation Notice. To appeal against the service of a Remediation Notice, the person served has 21 days from the first day of its service to appeal to the Magistrates' Court. Where an appeal has been made, the Notice is suspended until the Court determines the outcome of the appeal, or the appeal is abandoned.

The Court may quash the Notice if there is a 'material defect' in it, or it may modify or confirm the Notice. Appeals against remediation served by the Environment Agency in respect of 'special sites' are made to The Planning Inspectorate (for contact details see section 9).

## **1.20 Non-Compliance with Remediation Notices**

Unless there is a 'reasonable excuse', section 78M of the Act, makes it an offence for appropriate person(s) not to comply with the requirements of a Remediation Notice. Where a Remediation Notice is not complied with, where appropriate, the Council will:

- prosecute those served with the Notice - a person found guilty of the offence on summary conviction (i.e.: within the Magistrates' Court) is liable to a fine of up to £5,000, plus an additional fine of up to £500 for each day after conviction that the action is not carried out. Where the site is an industrial, trade or business premises, the fine may be up to £20,000, plus an additional fine of up to £2,000 per day. The Council may choose to take proceedings within the High Court if it is of the opinion that such measures are necessary to secure an effectual remedy; or
- carry out the remediation action itself and recover the costs incurred in doing so (Sections 78N and 78P of the Act refer).

## **CHAPTER 2: Characteristics of Scarborough Borough**

This section will give the background to Scarborough Borough and an explanation of how this influences the Council's approach to inspecting for contaminated land.

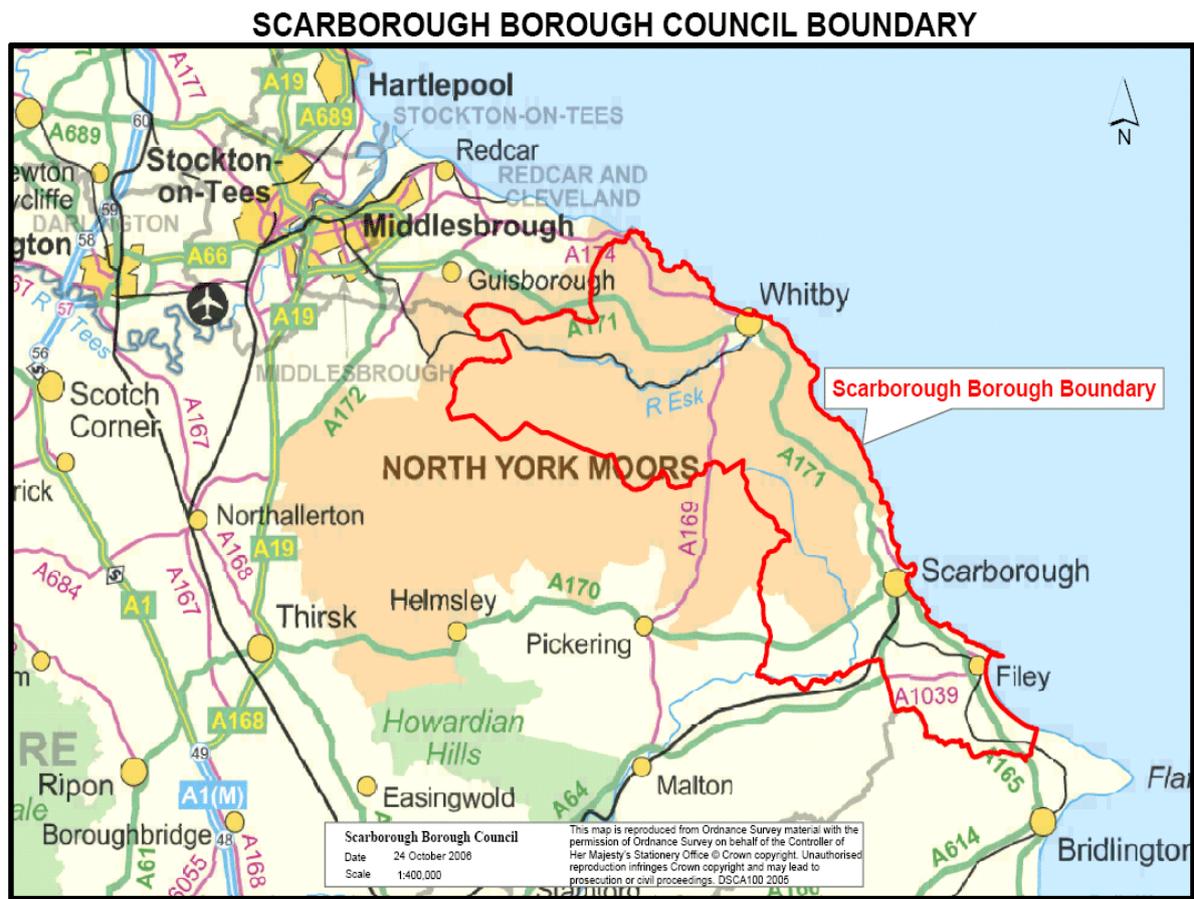
### **2.1 Description of Local Authority Area**

The Borough of Scarborough covers an area of 818 km<sup>2</sup> along the North Yorkshire Coast. Its population of 106,000 is largely concentrated in the three resort towns of Scarborough with a population of 53,000, the second largest town by population in North Yorkshire, Whitby (population 14,000) and Filey (population 7,000), with the remainder of the area comprising low density agricultural and moorland, small villages and remote hamlets. Scarborough, Whitby and Filey are the key towns and large areas are National Park or Heritage Coast. The environment of the area has provided the basis for a successful tourist economy. The influx of tourists can effectively double the population in the summer months with in excess of 5 million visitors to the Borough per year. The adjoining parts of the neighbouring local authorities' areas largely comprise agricultural land of a similar character to that found in Scarborough. The industrial conurbation of Teeside lies within 10km of the Borough's northern boundary, and the proximity of Whitby to this area attracts a large number of visitors throughout the year. Figure 2.1 shows Scarborough Borough Council's location and boundary.

#### **2.1.1 Topography**

The value of the spectacular cliffs, which form much of the Borough's coastline, has been recognised in the designation of the North Yorkshire and Cleveland, and Flamborough Heritage Coasts. Elsewhere extensive beaches and coastal and moorland scenery have long drawn large numbers of visitors. Inland the Borough's topography ranges from the chalk of the Yorkshire Wolds and the fertile Vale of Pickering in the south to the heather moorland of the North York Moors in the North. The natural beauty of the latter area has led to its designation as a National Park.

Figure 2.1



### 2.1.2 Broad Geological Characteristics

The surface geology of Scarborough Borough can be divided into six main bands, namely from south to north they are:-

- The chalk hills of the Yorkshire Wolds
- Alluvial deposits in the Hertford Dale
- Chalk along the southern edge of the North York Moors
- The sandstone massif of the North York Moors
- Alluvial deposits in the Esk Valley
- Sandstone hills between the River Esk and the coast

The geology of the area is covered fully in the detailed maps produced by the British Geological Survey sheets EO34CF99; EO43CF; EO53CF; EO54CF99 and EO55SDF.

### 2.1.3 Broad Hydro-geological Characteristics

As well as the Esk and Derwent river systems, there are a number of smaller but significant watercourses within the Borough. These include Staithes Beck, East Row Beck at Sandsend, Kings Beck and Marnar Dale Beck at Robin Hoods Bay, Hayburn Beck at Staintondale, Scalby Beck and a number of other minor becks along the coast.

Some of the streams that feed the River Esk arise in neighbouring districts, while Staithes Beck forms part of the boundary with Redcar and Cleveland, so are potentially at risk from contamination from outside the boundaries of Scarborough Borough.

There are three principal aquifers within the Borough which are vulnerable to penetration by contaminants from the surface, namely

- The Yorkshire Wolds, although only a small area of these is within the boundary of the Borough,
- The northern half of Hertford Vale running inland from Filey Brigg through into Ryedale District and into the hills immediately north of the vale. Boreholes at Irton and Cayton draw drinking water from this source.
- A somewhat smaller surrounding and to the north of Hackness,

The southern half of Hertford Vale running inland from the coast south of Filey, and much of the Esk valley is covered by impermeable strata and are therefore unlikely to be at risk from contamination from the surface.

Much of the North York Moors are regarded as a secondary aquifer, but relatively impermeable layers cover most of this area.

Principal aquifers consist of permeable rock strata which are capable of providing large quantities of water for abstraction. Secondary aquifers consist of variously permeable rock strata which do not provide large quantities of water for abstraction, but are nevertheless important for local water supplies and for supplying base flows to watercourses.

The hydrogeology of the Borough is covered by the detailed maps produced by the Environment Agency, specifically Sheet 9, North East Yorkshire.

#### **2.1.4 Groundwater Source Protection Zones**

Across England and Wales the Environment Agency have defined source protection zones for 2000 groundwater sources such as wells, boreholes and springs used for public drinking water supply. These zones show the risk of contamination from any activities that might cause pollution in the area. The closer the activity, the greater the risk. The maps show three main zones (inner, outer and total catchment) and a fourth zone of special interest, which is occasionally applied to a groundwater source.

The source protection zones are used by the Environment Agency in conjunction with their Groundwater Protection Policy to set up pollution prevention measures in areas which are at a higher risk, and to monitor the activities of potential polluters nearby. Copies of the source protection zone maps are available directly from the Environment Agency.

## **2.2 Land owned by the Council**

The Council owns a variety of land types throughout the District. These holdings principally relate to car parks, recreation space, industrial and commercial buildings and land.

## **2.3 Protected Locations**

Biodiversity and landscape quality are the major natural assets of the district, including:

- A portion of the North York Moors National Park
- A portion of the Cleveland and Flamborough Heritage Coast
- 25 Sites of Special Scientific Interest (SSSI)
- 1 National Nature Reserve
- approximately 4000 listed buildings
- 44 Scheduled Ancient Monuments
- More than 50 designated Conservation Areas

## **2.4 Key Water Resource / Protection Issues**

There are two main river systems within the Borough, the Esk and its tributaries, and the Derwent. All public water supply is provided by Yorkshire Water plc from six main sources within the borough as follows:-

- Boreholes at Cayton and Irton
- River abstraction (sink holes) from the river Derwent at Irton
- River abstraction from the Esk at Ruswarp
- Hazel Head springs south east of Goathland
- Scaling Dam reservoir (operated by Northumbrian Water)

Scarborough Borough Council inspects and monitors some 350 private water supplies which supply water to approximately 550 domestic and commercial properties within the Borough. The majority of these are in the valleys to the south of the river Esk, with a significant number in the Hackness and Troutdale areas.

## **2.5 Known information on Contamination**

The Council holds some information regarding land contamination, primarily as part of the development control process. As a significant portion of the district is within the North York Moors National Park, the National Park Authority is responsible for delivering development control within that part of the Borough.

Through the planning process, site investigations will be required where previous uses may indicate potential contamination. The requirement to undertake such investigations forms part of a planning condition attached to a planning consent. Planning records would therefore form an important resource during the investigation process.

## **2.6 Current and historical land use**

Scarborough Borough has a varied industrial history, which has influenced the level and types of contaminated land present. Historically, the inhabitants of Scarborough Borough have pursued agricultural practices the legacy of which includes sheep dips, pesticide stores, small landfills and oil tanks. Evidence exists of the exploitation of natural resources throughout the Borough, such as alum quarrying and processing near Ravenscar, iron ore mining and smelting in the Esk valley and brick and tile manufacture in Grosmont and Scarborough. Evidence of tanneries, gas works and various small scale manufacturing workshops are found particularly in the urbanised areas, and in relatively recent years industrial and commercial estates, petrol filling stations, and vehicle repair facilities have been developed in many of the towns and villages. The increase in urbanisation and development has resulted in a number of closed landfill sites bordering the major towns. In general, the history of industry and development in the Borough has not left a significant legacy of high-risk sites of contaminated land.

## **2.7 Redevelopment Controls**

The emphasis on the re-use of previously developed land over many years means that a number of contaminated sites have, and will continue to be, redeveloped for various uses, including those of a sensitive nature such as housing. The Council's planning policies provide that development on contaminated land will not be permitted unless evidence has been submitted to show that the possibility, nature and extent of any contamination has been properly investigated and taken into account and that any remediation measures to deal with contamination are effectively and appropriately implemented to minimise risk to the final occupiers. There also has to be no long term detrimental effect on the environment, nor unacceptable risks to the health and safety of the population as a result of the disturbance of contaminants during and after development.

Planning policies for that part of the Borough that lie within the North York Moors National Park require that there are no adverse effects arising from sources of pollution which would impact upon the health, safety and amenity of the public and users of the development.

## **CHAPTER 3: Scarborough Borough Council's Aims and Objectives**

Scarborough Borough Council's corporate aims and objectives are reflected in the aims and objectives of the Council's contaminated land inspection strategy.

### **3.1 Aims**

- To ensure compliance with and enforcement of Part 2A of the Environmental Protection Act 1990 and associated statutory guidance;
- To protect human health, controlled waters, ecosystems and property;
- To prevent the further contamination of land;
- To ensure that the planning process deals effectively with any land contamination so that land is suitable for its proposed used;
- To consider all Council owned land and former land holdings and to avoid liability associated with any land transactions;
- To encourage voluntary remediation;
- To encourage re-use of brownfield sites;
- To encourage sustainable methods of remediation of land as appropriate.

This list is presented in priority order and in all cases will have regard to significance and likelihood, as required by regulations.

### **3.2 Objectives**

- To evaluate development proposals within the borough as they are identified and compare these with historical records of contaminative uses;
- To ensure that developments on potentially contaminated sites will not be permitted unless evidence has been submitted to show that the possibility, nature and extent of contamination has been properly investigated and assessed and that any remediation measures necessary to deal with the contamination are effective either: -
  - i. prior to granting planning permission, or
  - ii. where the risks are lower, by imposing conditions for development;
- To ensure there is no long term detrimental effect on the environment or unacceptable risks to the health and safety of the local population as a result of the disturbance of contaminants during and after development;
- To evaluate all records on the Council's database to obtain a list of potentially contaminated sites across the district

- To compare the database of potentially contaminated sites with those in Council ownership to establish any potential liabilities;
- To inspect as soon as possible any sites that come to light as a matter of urgency where there is a significant risk to human health;
- To regularly update Scarborough Borough Council's planning department and the National Park Authority's planning department on information collected as a result of the inspection programme;
- To help, encourage and support voluntary remediation.

### **3.3 Strategic Approach to Inspection**

The statutory guidance requires that a strategic approach be taken in the identification of land that merits detailed individual study. The strategic approach must:

- Be rational, ordered and efficient.
- Be proportionate to the seriousness of any actual or potential risk.
- Seek to ensure that the most pressing and serious problems are located first.
- Ensure that resources are concentrated on investigating in areas where the authority is most likely to identify contaminated land.

In order to investigate and where necessary inspect land in district in an ordered and rational manner, sites need to be prioritised according to risk.

The Council's priorities for investigation of contaminated land are where:

- Human health is affected.
- Controlled waters are affected
- Protected organisms or ecosystems are affected
- Buildings are affected

### **3.4 Land in Council Ownership**

Along with all other sites within the district, land in Council ownership will be assessed according to the risk posed.

Where land owned by the Council is found to be contaminated land and is not a special site, there will be no enforcing authority. The Council will therefore deal with these sites as though it were the enforcing authority and will undertake the same consultations, assessments and seek appropriate remedial works as necessary. A formal relationship between Scarborough Borough Council's Environmental Services

and their Asset and Property Management Section will be developed to ensure that the identification, assessment and remediation of Council owned land is undertaken in accordance with Statutory Guidance as for privately owned sites.

To ensure transparency and consistency when dealing with land in Council ownership, the same procedures will be followed and detailed records will be maintained in the same way as for privately owned sites, in order of risk.

### **3.5 Consultation**

The data sources cited later in Section 4 may not identify all potentially contaminated sites. It is feasible that an area of land might be used for a high-risk contaminative activity (e.g. waste disposal) without ever being recorded on a map. Local consultation will therefore play a major role in identifying the gaps in this database.

### **3.6 Dealing with Urgent Sites**

If any verifiable reports of sites causing significant harm are identified during the initial consultation stages, the approach will be that they are given priority for investigation. This stage may include declaring some “special sites” and passing the lead regulatory role for these sites to the Environment Agency.

### **3.7 General Approach to Inspection**

The Council’s priority in dealing with contaminated land is to protect human health. Potentially contaminated land within the Borough will be identified, concentrating on areas with a high population density, as these areas are statistically more likely to have all three elements of a pollutant linkage (source, pathway, receptor). Consequently the risk of significant harm to human health arising is most likely in these areas.

### **3.8 Local Development Framework/ Local Plan**

Scarborough Borough Council is the Local Planning Authority for the part of the District that falls outside the North York Moors National Park. It is the role of the Planning Policy Service to produce the planning policy and guidance documents that will determine the location and design of development within the area, including the statutory local development plan. The aim of these documents is to ensure that development is carefully managed to meet the requirements of the Borough, and is sustainable. Contaminated land would be considered within this policy.

The North York Moors National Park is the planning authority for the National Park. There are mechanisms in place to enable the National Park to consult the Environmental Services department in matters relating to potentially contaminated land.

### **3.9 Threats to controlled waters, protected areas of the environment and buildings**

It is anticipated that investigations will bring to light information that would reveal threats to controlled waters or protected areas of the environment posed by contaminated land. If the evidence demonstrates a need for urgent action, this will be taken as soon as practicable.

### **3.10 Prioritisation**

A desktop study has so far identified 498 potentially contaminated land sites within the district, and it is likely that this number will increase as further information comes to light. As yet no prioritisation for inspection has been undertaken.

### **3.11 Timetable**

Scarborough Borough Council does not intend to produce a timetable for carrying out detailed inspections. Sites will be investigated as an integral part of the planning and development process, and where circumstances come to light when it is necessary that an urgent investigation is undertaken.

## **CHAPTER 4: Procedures - Arrangements for identification, inspection and collection of information.**

### **4.1 Internal management arrangements for inspection and identification**

Procedures have been drawn up to describe how contaminated land issues will be handled within the Council. This section will detail the level of service the business community and members of public can expect from the Council in dealing with these issues.

A suitably experienced Specialist Environmental Health Officer is designated the Lead Officer on Contaminated Land (the Contaminated Land Officer). The Contaminated Land Officer will deal with the day-to-day implementation of the Contaminated Land Strategy and will also be responsible for serving remediation notices, subject to consultation with the Council's legal department.

The day-to-day responsibility for gathering and assimilating information with regard to sites within the Borough rests with the Contaminated Land Officer. This involves populating the Contaminated Land database with potentially contaminated sites identified from current and historical maps, local knowledge and information that comes to light through other means. It also involves amassing and responding to information from a variety of sources for entry onto this database. The designated Contaminated Land Officer will also undertake the initial site visits/assessments, however it is likely that certain aspects of the investigation and remediation will require the involvement of specialists in various aspects such as:

- Intrusive site investigations
- Laboratory analysis of potentially contaminated soils
- Specialist consultations
- Remedial techniques

As well as implementing the strategy, a major function of the Environmental Services team in addressing land contamination is through the planning process. The Contaminated Land Officer works closely with Scarborough Borough Council's Planning and Development Control Department in developing procedures and agreeing planning conditions in line with the local Planning Policy.

Other duties undertaken by the Contaminated Land Officer with respect to land contamination issues include the investigation and collation of information, requests or enquiries by the public, solicitors and other bodies as part of searches or similar.

Elected members will be informed at the earliest opportunity of any plans to designate an area of Council-owned land, or land where the Council is the 'appropriate person' and may be liable for remediation costs.

### **4.2 Information Management**

The Council's corporate Geographical Information System (GIS) is the ideal tool for mapping any potentially contaminated land sites. Landfill sites only are the only contaminated land category currently displayed on this system. A risk assessment software package, Contaminated Land Risk Evaluator (CLARE), is a useful tool that

can be used to correlate information and determine the proximity of potential receptors (residents, controlled waters) to sources of contamination, and produce a final prioritisation list . Currently no risk assessments or prioritisation of sites have been carried out by Scarborough Borough Council.

### **4.3 Complaints and voluntary information provision**

From time to time, the Council may receive a complaint regarding contaminated land from a member of the public, business or community group. Interested residents may also voluntarily supply information relating to land contamination that is not directly affecting themselves, their families or their property. These complaints or acts of information provision may impact on the approach to inspection and so the procedures to be adopted are detailed here.

#### **4.3.1 Complaints/service requests**

A complaint or service request regarding contaminated land will be dealt with following the same procedure as currently used by Environmental Services to deal with statutory nuisance complaints.

All complainants may expect:

- their complaint to be logged and recorded;
- to be contacted by the Contaminated land Officer regarding their complaint as soon as possible after receipt;
- to be kept informed of progress towards resolution of the problem.

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

- i. Proof of a viable pollutant linkage before any formal designation as contaminated land might only be possible following a detailed investigation
- ii. Prior consultation with interested parties before designation as contaminated land
- iii. A minimum of a three month period between designation and serving of a remediation notice
- iv. The requirement for the enforcing authority to make every effort to identify the original polluter of the land (or “Class A” person)

The regulations allow conditions (ii) and (iii) to be waived in extreme cases, but not conditions (i) and (iv).

#### **4.3.2 Voluntary provision of information**

If a person or organisation provides information relating to contaminated land that is not directly affecting their own health, the health of their families or their property, this will not be treated as a complaint. The information will be recorded and may be acted

upon. There will, however, be no obligation for the Council to keep the person or organisation informed of progress towards resolution, although it may choose to do so as general good practice.

#### **4.4 Confidentiality**

All complainants will be asked to supply their names and addresses and, if appropriate, the address giving rise to the complaint. The identity of the complainant will remain confidential. The only circumstance in which this information might be made public would be in the case of a remediation notice being appealed in a court of law and an adverse effect on the complainant's health was an important reason for the original contaminated land designation.

#### **4.5 Anonymously supplied information**

The Council does not normally undertake any investigation based on anonymously supplied information, and this general policy will be adopted for contaminated land issues. This policy does not, however, preclude investigation of an anonymous complaint in exceptional circumstances.

#### **4.6 Anecdotal evidence**

Any anecdotal evidence provided to the Council relating to contaminated land will be noted, but no designation of contaminated land will occur without robust scientific evidence. In all cases, the Contaminated Land Officer will use knowledge and experience to decide what, if any, further investigation is required following a complaint, service request or a provision of information.

#### **4.7 Risk Assessment**

Risk is defined as the combination of:

- (a) The probability, or frequency, of occurrence of a defined hazard (for example, exposure to a substance with the potential to cause harm); and
- (b) The magnitude (including the seriousness) of the consequences.

Information on contaminants will be evaluated in the first instance using current government guidelines, or by use of prescribed risk assessment models.

##### **4.7.1 Risk Assessment of Controlled Waters**

Advice will be sought from the Environment Agency on risk assessment if controlled waters are the receptor in a particular pollutant linkage. It is anticipated that risk assessments and remediation will be carried out in accordance with Environment Agency guidance as laid down in "Methodology for the Derivation of Remedial Targets for Soil and Groundwater to Protect Water Resources" (EA R&D Publication 20, 1999).

## **4.8 Interaction with Other Regulatory Regimes**

There are other regulatory actions that can be taken to deal with contamination on land. Overlaps with planning, water pollution, waste management licensing and Integrated Pollution Prevention Control (IPPC) legislation are considered the most important and are addressed here. Any issues of land contamination that may previously have been dealt with under the statutory nuisance regime will now be dealt with through the Part 2A regime.

## **4.9 Planning and Development Control**

The vast majority of contaminated land issues in Scarborough Borough are currently addressed through the planning regime, where contamination is a material planning consideration. It is anticipated that redevelopment of brownfield sites, and the associated planning controls, will remain the primary mechanism for dealing with contaminated land. Any remediation agreed as a planning condition will be dealt with under planning controls and not under Part 2A.

Environmental Services works closely with Planning and Development Control on all matters relating to pollution and the current arrangements for consultation are believed to be sufficiently robust to encompass contaminated land issues.

The Council also gives advice to developers through its developers guide which has been produced by the Yorkshire and Humberside Pollution Advisory Committee's (YAHPAC) contaminated land sub-group. The guide has been adopted by most Local Authorities in Yorkshire and Humberside and gives detailed information to a developer on what information is required as far as contaminated land is concerned when they submit their planning applications. (see appendix D)

## **4.10 Water pollution**

The Water Resources Act 1991 gives the Environment Agency powers to deal with harm to controlled waters being caused by contaminated land. While Part 2A legislation does not revoke these powers, DEFRA have indicated that such problems should be dealt with under the contaminated land regime. The following steps will be taken:

- The Council will consult with the Environment Agency before designating any contaminated land as a result of risk to controlled waters and will take into account any comments made with respect to remediation.
- If the Environment Agency identifies a risk to controlled waters from contaminated land, the Council will be notified to enable designation of the land, and remedial action will be taken under Part 2A.

## **4.11 Integrated Pollution Prevention and Control (IPPC)**

Under legislation to regulate pollution from industrial processes, certain site operators are required to undertake a site condition survey prior to receiving a permit to operate, and upon decommissioning of a permitted installation. If the site condition is such that areas of land meet the definition of contaminated land, then submission of a site survey may trigger action under Part 2A.

#### 4.12 Collection of Information

Many sources of information will be required to identify potential sources of contamination and potential receptors. Some of the resources are detailed below.

Resource	District Specific	Use
Historic maps	Paper copies and 25 years of planning applications	To identify sources
Geological maps	Identification of the geology of the District	To characterise sources and pathways
Hydrogeological Maps	The Groundwater Vulnerability Maps	To identify receptors (controlled waters)
Maps	Produced by the Environment Agency will be used to assess the potential for contamination of groundwater	(Controlled waters)
Source Protection Zones	Areas of groundwater that receive special protection by the Environment Agency are identified on the EA website.	To characterise receptors (controlled waters)
Environmental Health records	The District Council maintains records of complaints and investigations	To identify known information on contamination
Planning records	The District Council holds detailed planning records of development in the area including information on ground condition presented in surveys	To identify known information on contamination
Local Development Framework	This is a valuable source of up-to-date information on land use	To identify receptors (particularly historic monuments and protected areas of the environment)
Integrated Pollution Control register	The Council has a public register containing details of authorised industrial processes in the District	To identify sources of contamination
Waste Management Licences	The Environment Agency maintain a public register of sites licensed for waste management activities.	To identify sources of contamination
Register of licensed surface water and groundwater abstractions	Provided by the Environment Agency.	To identify receptors of contamination
Register of closed landfill sites	The Environment Agency will provide a register of closed landfill sites	To identify sources of contamination

The main source of information on historical contaminative uses within the district has been historical maps and local knowledge. This will be cross-referenced against other identified sources of information with regard to the possible presence of contaminants and information on pollution.

Information relevant to contamination may also be forthcoming from statutory and non-statutory consultees during the draft strategy consultation process. See contact details for consultees at Appendix B. Anecdotal information identifying sites where potentially contaminative uses do or have occurred may also be obtained from other sources. All this information will be checked and cross-referenced with information already held.

Further consultation on a site-specific basis, will be undertaken once the detailed site inspection stage is reached, through more extensive research into historic land use and through consideration of other sources of information.

#### **4.13 Receptors**

The Council's priorities for receptors and information has been gathered from various sources and preliminarily examined with respect to the location of potentially sensitive targets. Information on human receptors identifies the following:

- Residential Areas
- Allotments
- Recreational Areas
- Commercial and Industrial Areas

With respect to environmental receptors the following will also be included;

- Sites of special scientific interest
- Designated Conservation Areas
- Areas of Outstanding Natural Beauty
- Nature Reserves
- Special Area of Conservation
- Special Protection Area
- Sites of Importance for Nature Conservation

#### **4.14 Controlled Waters**

Controlled waters are defined in Section 78A (9) by reference to Part 3 (Section 104) of the Water Resources Act 1991 and includes 'territorial waters which extend seaward for three miles, coastal waters, and inland fresh waters, that is to say, the waters in any relevant lake or pond or of so much of any relevant river or water course as is above the freshwater limit and ground waters, that is to say, any waters contained in underground strata'.

Information on the quality of ground water for the major aquifers is available from the Environment Agency. This covers a ground water observation network of boreholes, which are regularly monitored for ground water levels and quality. This information is not sufficient to identify pollution of controlled waters on this scale and the impact on controlled waters will be assessed on a site-specific basis. Information on pollution of controlled waters is also likely to be received from:

- Notification by the Environment Agency.
- Notification by another sources/business.
- Notification by a member of the public.

#### **4.15 Special Sites**

Part 2A of The Environmental Protection Act 1990 creates a particular category of contaminated land called 'Special Sites' which the Government considers the Environment Agency is best placed to regulate on the basis of its particular expertise and experience. The descriptions of land required to be designated as Special Sites are set out in the Contaminated Land (England) Regulations 2006. See Chapter 6.2 for more detail.

#### **4.16 Evaluation of Information**

All information collected or received with respect to land contamination will be evaluated according to risk.

## **CHAPTER 5: Procedures - Arrangements for Detailed Inspections**

### **5.1 Categorisation and Prioritisation**

Categorisation and prioritisation of potentially contaminated sites will identify sites that justify more detailed investigation according to the risk they pose. These site specific investigations will enable the Council to determine whether it has sufficient information to conclude that one or more significant pollutant linkages occur at a site and thereby establishing whether or not a particular site is contaminated land according to the definition in the Act, and whether the land is also likely to be a 'special site'. The following stages detail how sufficient evidence can be obtained to decide whether a site can or cannot be determined as contaminated land.

### **5.2 Desktop Study and Site Walkover**

The first stage of the site investigation is to collect and assess as much information as possible about a particular site from maps, historical records, the records held by other Council departments and from consultation with other bodies.

Much of this information will be available as a result of the prioritisation process but it is likely that further knowledge will be required to fill in any gaps. This will involve a site visit to carry out a visual inspection and if necessary, limited sampling of surface deposits to assess the validity of the desktop study data. This forms a preliminary risk assessment and will be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

The site owner, occupier or their agent will be contacted prior to any site visit to discuss the Council's concerns and to arrange access. It is preferable, if possible, to arrange for the site owner, occupier or their agent to be present at such a site visit as this can aid the process of identification. This could also encourage the voluntary remediation of the land.

If following this stage it is shown that a pollutant linkage does not exist, or is not significant then the investigation will cease and no further action will be taken. It may be that circumstances will be identified whereby a significant pollutant linkage could occur at some point in the future, this being the case arrangements will be made to keep the situation under review.

#### **5.2.1 Reviewing Site Specific Information Provided by Others**

Before carrying out an intrusive investigation the Contaminated Land Officer will check:-

- whether detailed information has been provided, by the Environment Agency, the owner of the land, another Local Authority or some other source sufficient to make a determination on the status/condition of the land;
- whether someone such as the landowner has offered to make the necessary information available within a reasonable period of time;

Before proceeding with any intrusive investigation

- of any area of special scientific interest (SSSI), Special Areas of Conservation, and Special Protection Areas, consultation with Natural England on any specific consents or approvals that may be required will be undertaken;;
- any intrusive investigation remediation work consultation with Natural England will be undertaken to establish whether any existing 'contaminated' sites are of conservation value or are of great geological value where the use of intrusive techniques could be potentially damaging;
- on any site designated as a Scheduled Ancient Monuments, consultation with the Yorkshire & Humber Regional Office of English Heritage will be undertaken;
- on any site of national archaeological importance, consultation with the Sites and Monuments Records of the North Yorkshire County Archaeological Section, will be undertaken. For those sites that lie within the National Park, reference will be made to the National Park Authority's Historic Environment Record;
- on any site, consultation with the ground water section of the Environment Agency will be undertaken to minimise contamination of water resources under or surrounding land to be inspected.

### **5.3 Detailed Site Inspection**

If the evidence from the preliminary risk assessment shows there is a reasonable possibility that a significant pollutant linkage exists, an intrusive site inspection will be necessary before a determination can be made that the land is contaminated according to the statutory definition.

#### **5.3.1 Intrusive Site Inspection**

If an intrusive investigation is required to assess the significance of the pollutant linkage it will be necessary for Scarborough Borough Council to employ 'suitable persons' on its behalf to undertake:

- The detailed investigations (trial pitting and drilling)
- Laboratory analysis of soils and water
- Specialist risk assessment
- Remediation proposals.

Detailed specification of investigation and sampling including health and safety procedures to be followed will be formulated on a site-specific basis and will be in accordance with current scientific and authoritative guidance. Intrusive investigations will be undertaken in accordance with British Standards Code of Practice, BS: 10175:2011 – Investigation of Potentially Contaminated Land, and Contaminated Land Report CLR 11 - Model Procedures for the Management of Land Contamination. British Standard BS 5930“Code of Practice for Site Investigation will be applied in relation to all site investigations to ensure analysis and sampling comply with relevant ISO standards.

## **5.4 Suitable Persons and Consultants**

Statutory Guidance does not define 'suitable persons' for the inspection and assessment of contaminated land but consultants working in this field come from a range of disciplines including environmental health, other environmental science disciplines, surveyors, engineers, chemists, geologists, hydro-geologists and soil scientists. The qualifications, experience and laboratory accreditation of such consultants/organisations will be verified to ensure their suitability for such specific site investigations.

## **5.5 Funding**

The Environment Agency administers the Contaminated Land Capital Projects Programme to help local authorities in England cover the capital cost of implementing the contaminated land regime under Part 2A of the Environmental Protection Act 1990, and Defra provide the funding for this work. If a detailed site investigation is identified (and/or a remediation programme), an application for funding will be made to the Environment Agency.

The Council will bid for such funding in order to undertake its programme of site investigations. This funding is with respect to the Council's enforcement role and not as a landowner. Should funding be required for investigation or remediation on the Council's own land, then funding will be considered on a case-by-case basis.

## **5.6 Statutory Powers of Entry**

Section 108 (6) of the Environment Act 1995 and Section 108 of the Environment Act 1995 provide the Council with powers to enter, or to authorise in writing other "suitable persons' to enter, premises to carry out an inspection of the land – known as 'inspection using statutory powers of entry'.

These powers, which an authorised person can exercise, are extensive and include:

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

Before inspecting using statutory powers of entry, the Council will ensure: -

- In all cases that there is a reasonable possibility that a pollutant linkage exists on the land and further (in the case of intrusive work) that;
- The contaminant is actually present and a receptor(s) exists, given the current land use.
- It cannot obtain the information from third parties (within a reasonable timescale) without the need for entering the site.
- Only properly authorised officers will carry out an inspection.

Where the Council is arranging an intrusive inspection of a site the Council will always serve such a notice on the site owner/occupier giving at least 7 days notice of the date

of the investigation to residential occupiers and to occupiers of land where heavy plant is to be used. Consent to enter must be obtained from the landowner/occupier and if refused, access to investigate will be obtained by warrant under Schedule 18 of the Environment Act 1995. This is to prevent unnecessary expense and wasted time should consultants/plant etc visit to inspect and find that access is being denied.

Schedule 18 of the Environment Act 1995 makes clear the circumstances when the Council must pay compensation for loss or damage as a result of the use of these powers. Scarborough Borough Council will ensure therefore that only suitable persons and appropriate technical procedures are used for site investigations and will ensure that the utmost care is taken at all times. Site conditions will be carefully recorded prior, during and after completion of any necessary works including the taking of photographic records.

### **5.7 Arrangements for Inspection by the Environment Agency**

If a site determined by Scarborough Borough Council to be “contaminated land” is designated a ‘special site’ by the Council, then the Environment Agency will become the regulatory authority.

The Environment Agency will therefore need to inspect such sites at various stages during the assessment process. In some cases the Council will notify the Environment Agency of the existence of a potential ‘special site’ as early as possible and make arrangements with the Agency to carry out the inspection of the land on behalf of the Council. This could occur for example where land has been occupied by the Ministry of Defence.

In instances where the Council feels that there is a reasonable possibility of a pollutant linkage being present but is unsure, and where the presence of that pollutant linkage would require the site to be designated a ‘special site’, the Council will make arrangements for the Environment Agency to have a formal role at the inspection stage. Such instances could be where the pollutant linkage would be the pollution of controlled waters.

In such instances, a nominated Environment Agency officer will be authorised by the Council under S108 Environment Act 1995 to carry out the inspection on behalf of the Council. Procedures will be agreed with the local Environment Agency office to undertake this process.

### **5.8 Liaison with Neighbouring Local Authorities**

Officers has already established good contact with neighbouring Local Authorities’ staff working in land contamination and will liaise with them at the earliest opportunity about cross boundary priority sites. Each such site will be dealt with individually and consultation will be carried out to determine whether it is appropriate for one or both authorities to undertake a detailed inspection. This may depend on the extent of the site falling within each authority area where the potential contaminant(s) and receptor(s) are located etc. Information held by the two authorities will be shared and Scarborough Borough Council will ensure that both authorities are involved in the decision making process.

## 5.9 Evaluation of Site Inspection Information

All information collected or received with respect to land contamination will be evaluated according to risk. This is a highly technical phase of the evaluation process and published information and guidance is very likely to alter and develop over time. The following information is current and will only apply until guidance and advice from the Secretary of State alters.

## 5.10 Risk Assessment

Site-specific risk assessments will be undertaken according to the principles in Contaminated Land Report CLR 11 'Model Procedures for the Management of Land Contamination'. This procedure involves a number of stages from preliminary risk assessment to quantitative and qualitative risk assessments and remedial options appraisal and essentially is comprised of the following general stages:

1. **Hazard Identification** - where a desktop study and site inspection is used together with information about previous contaminative uses, general physical and geological conditions, so as to gain a preliminary understanding of potential risks associated with the identification of the contamination likely to be present on the site.
2. **Risk Estimation** - includes the design and execution of a detailed investigation and analysis to collect sufficient data to allow estimation of the risk that contaminants may pose to receptors.
3. **Risk Evaluation** - where all available risk based information is reviewed to decide whether the estimated risks are unacceptable, taking into account their nature, scale and any technical uncertainties, which may be associated with the risk estimation process. The estimation process includes the use of models and detailed guidance to assess the risks to human health and other receptors such as controlled waters, ecological systems etc.

### 5.10.1 Soil Guideline Values (SGV's)

To complement the risk based approach of the contaminated land regime, a new set of guidelines were published in the form of The Contaminated Land Report (CLR) series of guidance documents (CLR 7 to10, Soil Guideline Values (SGV's) and Toxicological (TOX) series). These are intended to 'provide regulators, developers, landowners and other interested parties with relevant, appropriate and scientifically based information and advice on the assessment of risks arising from the presence of contamination in soil'.

Soil Guideline Values (SGVs) are guidelines on long term exposure which pose a tolerable or minimal risk to human health. They represent trigger values above which there might be a possibility of significant harm to human health.

DEFRA have identified almost 50 contaminants that are classed as having the potential to affect human health and the environment, but to date, only a limited number of contaminants have had SGVs calculated and published by DEFRA and the Environment Agency.

### **5.10.2 Risk Assessment for Other Substances**

It is likely that guideline values will be required for substances that are not yet covered by SGVs. In such cases, reference may be made to other sources of information such as generic guideline values from other countries however these will only be used for comparison on a site specific basis and within the UK context, adopting the principles outlined in the CLR7 document.

### **5.10.3 Risk Assessment Models**

While generic guidelines will be used where they exist, it may be necessary to further define the risk by generating a site-specific value for a contaminant. To achieve this, a risk assessment model will be used. Where SGVs do not exist for specific contaminants, site-specific assessment criteria can be derived using the Contaminated Land Exposure Assessment or CLEA model. This is used in accordance with the principles outlined in CLR7-10 and the relevant Soil Guideline Values (SGV) and Toxicological (TOX) reports. However other risk assessment models that adopt either deterministic or probabilistic methods of deriving the risk will be considered.

### **5.10.4 Risk Assessment for Controlled Waters**

Where the receptor in a pollutant linkage is found to be controlled waters the Environment Agency will be notified and their advice sought on risk assessment. It is anticipated that risk assessments and remediation will be carried out in accordance with Environment Agency guidelines.

### **5.10.5 Risk Assessment for Radioactivity**

The Radioactively Contaminated Land Exposure Assessment (RCLEA) is the recommended model for radiation exposure assessments in connection with the Part 2A regime. Local authorities are the lead regulator for land affected by radioactive contamination but will respond via consultation and guidance from the Environment Agency.

## **CHAPTER 6: Procedures Determinations, Enforcement and Remediation Notices**

This chapter deals with Scarborough Borough Council's procedures on how the it will deal with land that is considered or determined to be contaminated land. It also details how the Council will record and process the information to ensure the remediation of land. It also discusses the enforcement process.

### **6.1 Determinations on Land Being Contaminated Land**

Once the Council is satisfied that a significant pollutant link with reference to DEFRA's Contaminated Land Statutory Guidance 2012 exists at a particular area of land, the Council will undertake the formal process of determining the land as contaminated land.

The possible grounds for determining land as contaminated land are:

- i) Significant harm is being caused to a human or relevant non-human receptor;
- ii) There is a significant possibility of significant harm being caused to a human or relevant non-human receptor;
- iii) Significant pollution of controlled waters is being caused;
- iv) There is a significant possibility of significant pollution of controlled waters being caused.

The Council has to decide if it can make a determination on the condition of the land and in making a determination will carry out appropriate robust scientific and technical assessments on all relevant evidence it has acquired on the land in question. The determination will identify all three elements (pollutant, receptor and pathway) of a significant pollutant linkage or linkages and will identify their significance in accordance with the statutory guidance. If the Council considers that conditions for considering the land to be contaminated land do not exist, it should not decide that the land is contaminated land.

#### **6.1.1 Where a Determination on Land Being 'Contaminated Land' cannot be made**

Situations may arise where it is not possible, with the information available, to determine whether a pollutant linkage is significant in accordance with statutory guidance. In such cases and where additional data collection is not possible or is unlikely to help in deciding whether land is contaminated land, the Council will on the balance of probabilities consider the land not to fall within the statutory definition. However, the decision will be kept under review in the event that additional information comes to light, or when it revisits its decision at some point in the future.

If the Council considers further information should be collected before making a determination, it will collect (or arrange to collect) the relevant information before proceeding further.

Inspection may identify contamination that would form a significant pollutant linkage should new receptors be introduced. In such circumstances this information will be recorded and the site monitored where the introduction of relevant new receptors are likely. The information will also be made available to the Council's Planning and Development Control Department should such a site be identified for future development.

## **6.2 Land Which May be a 'Special Site'**

As referred to previously, special sites are the most complex and hazardous contaminated sites. Where the Council considers that any particular contaminated land might be a special site, the Council will seek the advice of the Environment Agency. Once the Council has, in consultation with the Environment Agency, determined that a site is classified as a special site, it will give written notification of the fact to the Environment Agency; the owner of the land; any person who appears to be in occupation of all or part of the land; and each person who appears to be an appropriate person. The Environment Agency may also consider sites that should be designated as 'Special Sites', should it so determine that a site be designated a 'Special Site', it must notify the Council of this fact. If the Council disagrees with the Environment Agency, the Secretary of State will designate the site as appropriate.

## **6.3 Format of Information**

The purpose of a detailed inspection is to generate information the Council needs to determine whether or not land is 'contaminated land' according to the statutory definition. All information supporting such a decision must be technically robust, defensible and the decision process must be transparent and consistent. To ensure this is the case for all sites within the district all factual information will be recorded in an ordered, specified manner to aid decision making and to ensure consistency.

A written record of determination will be made and will include:

- The exact boundary of the site that is determined including grid references.
- A description of the pollutant linkage(s) confirmed, including a conceptual model;
- A summary of the risk assessment(s) upon which the pollutant linkage(s) were considered to be significant;
- A summary of the way that the requirements of the statutory guidance were satisfied.

## **6.4 Liability**

Land may be declared contaminated upon the identification of one significant pollutant linkage. Full liability therefore cannot be decided until all significant pollutant linkages on the site have been identified. Only then can the procedure relating to the apportionment of liability commence. The apportionment of liability has five distinct stages as follows:

- Identifying potential appropriate persons and liability groups

- Characterising remediation actions
- Attributing responsibility to liability groups
- Excluding members of liability groups
- Apportioning liability between members of a liability group

These procedures are complex and will be undertaken in accordance with the statutory guidance. All appropriate persons for any one linkage are a 'liability group'. These may be 'Class A' or 'Class B' persons.

#### **6.4.1 Appropriate Persons**

**Class A** – These are generally speaking the polluters who caused the contamination in the first place but also include persons who 'knowingly permitted' to pollution to occur. This includes developers who leave contamination on a site which subsequently results in the land being determined to be contaminated.

**Class B** – Where no Class A persons can be found liability reverts to the owner or occupier of the land. These are the Class B persons.

The Council will make all reasonable enquiries to identify class A persons before liability reverts to the current owner occupiers.

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

#### **6.4.2 Apportionment of Costs**

Usually the members of a liability group will have the total costs falling on the group as a whole apportioned between them. It may also be necessary to apportion costs between liability groups.

### **6.5 Enforcement**

#### **6.5.1 Remediation Notices**

The Council will complete the extensive consultation process and give ample encouragement and opportunity to appropriate persons to arrive at informal solution before remediation notices are served. The Council will do all it reasonably can do to consult the appropriate person(s), owners occupiers etc about their views on the state of the land.

Remediation notice will be served as a last resort (notwithstanding urgent cases) and only after the aforementioned consultation process. The serving of remediation notices will not be undertaken unless the Council is satisfied that:

- the remediation actions will not otherwise be carried out and;
- the Council has no powers to carry out the work itself

If it is satisfied of these two facts the Council will serve a remediation notice on each appropriate person however this can only be undertaken three months after formally notifying the appropriate persons that the land is determined as contaminated land. This three-month period will not apply where there is an imminent risk of serious harm and urgent action is deemed necessary.

The Council will specify on the remediation notice what remediation measures are necessary. These works will be both appropriate and cost effective and in accordance with the statutory guidance will employ 'best practicable techniques'. The purpose of the remediation is to ensure that after its completion the land is no longer contaminated land by taking the shortest and lowest cost means to do so. The required remediation works must be 'reasonable', balancing the costs of doing the works against the cost of failing to, in terms of the harm or potential harm from the continuing pollution. In most cases this would involve focusing remediation on the pathway, rather than the receptor or the contaminant to break the pollutant linkage. It will not therefore necessarily involve the removal of the contaminant from the land.

### **6.5.2 Remediation by the Council**

Before the Council can serve a remediation notice it will first determine whether it has the power to carry out any of the remediation actions itself.

There are five specified circumstances where the Council have the power to carry out remedial actions:

- Where urgent action is required;
- Where no appropriate person can be found (and the site is an orphan site);
- Where one or more appropriate persons are excluded (on grounds of hardship);
- Where the Council has made an agreement with the appropriate person(s) that it should carry out the remediation;
- In default of a remediation notice.

### **6.5.3 Remediation on Council Owned Land**

Where land owned by the Council is identified as contaminated land and is not a special site, the Council is prohibited from taking formal action requiring remediation. The Council will therefore deal with these sites as though it were the enforcing authority and will seek appropriate remedial works as necessary in order to satisfy the demands of the regime to be open, transparent and consistent. The detail of the remedial works will be entered onto the Public Register as a Remediation Statement.

Where possible, the highest standards of remediation shall be employed to ensure that the land no longer falls within the definition of contaminated land.

## **6.6 Urgent Action**

The Council will undertake urgent remedial work at a site where it is satisfied that there is an imminent danger of serious harm, serious pollution of controlled waters or serious harm attributable to radioactivity being caused by the contaminated land. In such circumstances the Council will use its statutory powers of entry to undertake the remedial works, which may involve forced entry onto the land.

The Council will only undertake remediation in urgent cases where it is the enforcing authority if it is of the opinion that the risks would not be mitigated by enforcement action. In the case of a Special Site once the site has been determined to be contaminated land and the Council has notified the Environment Agency of its designation as a special site in accordance with the statutory guidance, the Environment Agency becomes responsible for the remediation of the site.

In appropriate cases the Council will seek to recover costs of remediation works it has completed.

## **6.7 Appeals**

Section 108 of the Clean Neighbourhoods and Environment Act 2005 provides that all appeals against remediation notices shall be made to the Secretary of State for the Environment, Food and Rural Affairs (DEFRA). The rights of appeal against a remediation notice and the appeal procedure are contained with the Contaminated Land (England) Regulations 2006, Regulation 8.

In the case of an appeal against a remediation notice being duly made, the remediation notice concerned is suspended and remains suspended until such time as either the appeal is finally determined or the appeal is withdrawn. Duly made means within the stipulated timescale and in accordance with the requirements of the Regulations.

As with all other statutory notices served by the Council's Environmental Regulation Team, the remediation notice(s) sent to the appropriate person(s) will contain all necessary notes on the rights of appeal against the notice(s).

## **CHAPTER 7: Communication and Liaison**

Much of the work proposed in this strategy will be collaborative and require effective liaison with other bodies including the following. A list of consultees contacted appears in Appendix B

### **7.1 Statutory Consultees**

Statutory Consultees for the Contaminated Land Inspection Strategy are:

- Environment Agency
- Natural England
- English Heritage
- Department for Environment, Food and Rural Affairs
- Food Standards Agency
- North Yorkshire County Council

Each organisation will be consulted as part of the strategy.

### **7.2 Non-Statutory Consultees**

There is great scope for members of the public, businesses and voluntary organisations to play an important role in dealing with contaminated land in the district. The consultation exercise will be undertaken with Parish Councils on a site specific basis and efforts will be made to encourage participation in the process of identifying and investigating contaminated land. Other consultees include neighbouring local authorities and the North York Moors National Parks Authority. This collaborative approach to dealing with contamination issues will be maintained and built upon.

### **7.3 Communicating with Owners, Occupiers and Other Interested Parties**

Scarborough Borough Council's approach to its regulatory duties is to seek voluntary action before taking enforcement action. This approach will be adopted for issues of land contamination, recognising that in many cases as much or more effective remediation can be achieved through agreement than by enforcement.

This approach requires effective communication with owners, occupiers and other interested parties. The Contaminated Land Officer will be the central contact point within the authority on contaminated land issues and as such will ensure owners, occupiers and other interested parties are kept informed at each stage of an investigation, regardless of whether there is a formal designation of contaminated land.

Where a formal designation of contaminated land is required, the following actions will be undertaken:

### **7.3.1 Designating an Area of Contaminated Land**

In designating an area of contaminated land Scarborough Borough Council will:

- Write to the owner and/or the occupier of the land at least 5 working days prior to designation, explaining in summary the reason for designation.
- Write to the owner and/or the occupier explaining the land has been designated as contaminated land and seeking appropriate remediation without service of a notice.
- If requested, dispatch a copy of the written risk assessment to the owner and/or occupier of the land within 5 working days of receipt of a request.
- Write to the owner/occupier of neighbouring properties and/or the complainant within 5 working days of designation.

### **7.3.2 Serving a Remediation Notice**

In serving a Remediation Notice Scarborough Borough Council will:

- Provide a written remediation notice to the owner/occupier specifying action required.
- Write to the owner/occupier of neighbouring properties and/or the complainant within 5 working days of notice being served.

Should an urgent designation of contaminated land be required, these steps will be observed as far as practicable although some deviation from the time scales specified is to be expected.

## **7.4 Powers of Entry**

Under Section 108(6) of the Environment Act, the Council is granted powers of entry to carry out investigation. At least seven days notice will be given of proposed entry onto any premises, unless there is an immediate risk to human health or the environment.

## **7.5 Enforcement Action**

The Council will have regard to the Enforcement Concordat and its Enforcement Policy to ensure consistent, fair, and transparent practices are used when taking enforcement action.

## **7.6 Risk Communication**

The complex nature of contaminated land issues do not lend themselves to easy explanation to the layperson. Development of effective methods of risk communication is therefore essential.

The Council will treat any concerns raised by a member of the public seriously and with respect, recognising the importance of the issue to the individual. In all instances,

the Council will recognise and try to overcome the critical barriers to effective risk communication.

These regulations grant only limited powers to local authorities to deal with materials present in, on or under the ground. Many members of the public believe that any material that is not naturally present in the ground should be removed, especially if it is in the vicinity of their own home. It will be critical to explain this can only be done where there is a risk of significant harm, and it is to be expected that some members of the public will have difficulty accepting this.

It is important to appreciate that the expectations of some members of the public will not be met by the powers local authorities may exercise under contaminated land legislation.

### **7.7 Public Register of Contaminated Land**

The Contaminated Land (England) Regulations 2000 require the Council to maintain a register for contaminated land. The Contaminated Land Public Register will serve as a permanent record of all regulatory activity undertaken to ensure the remediation of any site, which has been determined to be contaminated land. The regulations clearly specify the information that can be recorded on this register. This register will therefore include:

- Remediation notices
- Details of site reports obtained by the authority relating to remediation notices
- Remediation declarations, remediation statements and notifications of claimed remediation
- Designation of sites as 'special sites'
- Any appeals lodged against remediation and charging notices
- Convictions

The public register will not include details of historic land use and other records used in the investigation of potentially contaminated land. These are research documents and as such will not be made available to the public.

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

As Local Authorities are the lead regulators on contaminated land, with the Environment Agency regulating only some categories of sites, the national survey will clearly be reliant on information provided by local authorities. A memorandum of understanding has been drawn up between the Environment Agency and the Local Government Association that describes how information will be exchanged between the Local Authority and the Environment Agency. The Council will therefore provide information to the Environment Agency following the guidelines agreed through this national forum.

The Local Authority must also provide information to the Environment Agency whenever a site is designated as contaminated land, and whenever a remediation notice, statement or declaration is issued or agreed. The Environment Agency has provided standard forms allowing this information to be provided in a consistent format and the Council will adopt these to fulfil its reporting requirements.

Once notification of a determination of contaminated land has been received, the Environment Agency has the power (under Section 78(V) of the Environmental Protection Act 1990) to provide site specific guidance concerning:-

- Remedial options
- The standard to which land or waters should be remediated
- The reasonableness of remediation in regards to cost and the seriousness of the impact to controlled waters
- Identification of appropriate persons and the application of exclusion tests
- Appointment of liability and recovery of costs of remediation

The Environment Agency will only use its power under Section 78(V) where it can clearly provide added value to the Council in the particular site-specific circumstances.

Whenever a remediation notice, statement or declaration is issued or agreed, the Council must notify the Environment Agency. The Environment Agency has provided standard forms allowing this information to be provided in a consistent format and the Council will adopt these to fulfil its reporting requirements.

The Environment Agency is required to prepare an Annual Report for the Secretary of State on the state of contaminated land in England and Wales. The report will include:-

- A summary of local authority inspection strategies, including progress against the strategy and its effectiveness.
- The amount of contaminated land and the nature of contamination.
- Measures taken to remediate land.

## **7.9 Provision of Information to Interested Parties**

Implementation of the strategy will result in a vast amount of information, including historical information, which will be held by the Council and which could be useful to other parties. Information can be requested through Council Searches, under the Freedom of Information Act 2000 and under the Environmental Information Regulations 2004. Regard will be had for the Data Protection Act 1998 when providing information. Some of this information will be of a more general nature whereas some, when relating to site inspection information could be of a confidential nature.

## **7.10 Environmental Enquiry - General information**

The Council will respond to requests made by the public, solicitors or other interested parties on a site specific basis under the Environmental Information Regulations 1992

(as amended in 2004). These regulations require the Council to make any environmental information they hold available on request, subject to certain exemptions. For the purpose of the Regulations, 'information' includes records registers, reports, returns and information on computers.

Requests should be made in writing and addressed to:

Scarborough Borough Council, Environmental Services, Town Hall, Scarborough YO11 2HG. Telephone 01723 232323. email [EHS@scarborough.gov.uk](mailto:EHS@scarborough.gov.uk)

Requests should include:

- Specific details on the information required
- A plan of the site
- A site address

A charge will be made for such requests and will be required as an advance payment before the information is provided. Charges are reviewed annually and are included in the Council's Approved Scheme of Charges.

The Council will respond in writing within 20 working days and will provide as much relevant environmental information about a site as is held by the Council.

### **7.11 Information from detailed site inspections**

Certain site specific information obtained and held as a result of detailed site inspection may be confidential or may be interpretative in nature e.g. risk assessment findings. Such information may be unverified and/or interpretive and while being used during the decision making process will be regarded as confidential and will not be divulged to the public as part of an environmental enquiry. Once the Detailed Inspection is complete and a decision has been made that the site is, or is not contaminated land such information can be provided.

If the site is determined to be Contaminated Land once the detailed site inspection and risk assessment of site is complete, such information will be entered into the Public Register.

The public register is paper-based, which is accessible to view, on request, during normal office hours Mondays to Fridays at the Environmental Services Offices at the aforementioned address. Facilities are available to obtain copies of register entries but a charge will be made according to the Council's Scheme of Charges.

## **CHAPTER 8: Review Mechanism**

This strategy outlines the approach and timescale the Council will take to inspect land within the district for contamination. It is anticipated that the process of inspection will be continuous, particularly in light of new information or if a change in land use is proposed. This section describes instances when inspections will occur outside the general inspection framework, circumstances under which previous inspection decisions should be reviewed and the measures to be taken to ensure the strategy itself and the Public Register remain effective and up to date.

### **8.1 Triggers for Undertaking Non-Routine Inspections**

It is recognised that circumstances may arise where inspections have to be undertaken outside the strategic framework.

Non routine inspections may be undertaken under the following circumstances:-

- Proposed changes in the use of surrounding land.
- Unplanned changes in the use of land (e.g. unauthorised use by a sensitive receptor).
- Unplanned events - spillages, accidents, fires, flooding etc.
- Reports of localised health effects relating to a particular area of land.
- Reports of unusual site conditions from:
  - Voluntary organisations
  - Business
  - The public
- Responding to information from other statutory bodies.
- Responding to information from owners, occupiers of land or other relevant parties.

Flexible trigger review mechanisms are built into the inspection programme to allow for priorities to be amended in the light of unforeseen circumstances.

### **8.2 Triggers for Reviewing Inspection Decisions**

Circumstances may arise where it will be necessary to review the findings of previous inspections. This may be necessary where there are:-

- Significant changes in legislation.
- Revision of guideline values for exposure assessment.
- Establishment of significant case law or other precedent.
- Reports of localised health effects relating to a particular area of land.
- Reports of unusual site conditions from:
  - Voluntary organisations
  - Business
  - The public
- Responding to information from other statutory bodies.
- Responding to information from owners, occupiers of land or other relevant parties.

It is therefore important to ensure that all factual information is documented in an ordered, specified manner to aid decision making, to ensure consistency and to allow an efficient review.

### **8.3 Review of the Strategy**

It was recognised in the 2001 strategy that regular reviews of the strategy would be both necessary and beneficial. This is the first fundamental review and it is necessary to :-

- Update the strategy with respect to guideline values.
- Update the strategy with respect to the information management and data storage systems developed for handling and reporting on information held.
- Update contact details etc.
- Update the strategy with respect to the appeal procedure.
- Update to take account of legislative changes and the recent introduction of revised Statutory Guidance (April 2012)

### **8.4 Review of the Public Register**

The register is required to contain detail of all the information prescribed by the Contaminated Land (England) Regulations 2006 including full particulars of any convictions for a failure to comply with a remediation notice, which includes the name of the offender, The Council will however have regard to the Rehabilitation of Offenders Act 1974 and Government recommendations that the register should be regularly reviewed with the aim of identifying and removing spent convictions. Nevertheless, the register will continue to record that an offence has taken place.

## **Appendix A**

### **DoE Industry Profiles**

These Industry Profiles provide developers, local authorities and anyone else interested in land contamination, with information on the processes, materials and wastes associated with individuals industries. They are not definitive studies but they introduce some of the technical considerations that need to be borne in mind at the start of an investigation for possible contamination.

Their usefulness to the risk management process is such that the decision was made to provide access to them, and the 47 original publications in the series have been scanned and are available as free PDF downloads from the Environment Agency at <http://www.environment-agency.gov.uk/research/planning/33708.aspx>

The industries covered by the guides are:-

- Airports
- Animal & Animal processing works
- Asbestos manufacturing works
- Ceramics, cement and asphalt manufacturing works
- Chemical Works - coatings, paints and printing inks manufacturing works
- Chemical Works - cosmetics and toiletries manufacturing works.
- Chemical Works - disinfectants manufacturing works
- Chemical Works - explosives, propellants and pyrotechnics manufacturing works
- Chemical Works - fertiliser manufacturing works
- Chemical Works - fine chemicals manufacturing works
- Chemical Works - inorganic chemical manufacturing works
- Chemical Works - linoleum, vinyl and bitumen-based floor covering manufacturing works.
- Chemical Works - mastics, sealants, adhesives and roofing felt manufacturing works
- Chemical Works - Organic
- Chemical Works - pesticide manufacturing works
- Chemical Works - pharmaceutical manufacturing works
- Chemical Works - rubber processing works
- Chemical Works - soap and detergent manufacturing works
- Dockyards and dockland
- Engineering Works - aircraft manufacturing works
- Engineering Works - electrical and electronic equipment manufacturing works (including works manufacturing equipment containing PCBs)
- Engineering Works - railway engineering works
- Engineering Works - ship building repair and ship breaking including naval shipyards
- Engineering Works - vehicle manufacturing works
- Gas works, coke works and other coal carbonisation plants
- Metal manufacturing, refining and finishing works - electroplating and other metal finishing works

- Metal manufacturing, refining and finishing works - iron and steel works
- Metal manufacturing, refining and finishing works -lead works
- Metal manufacturing, refining and finishing works - non-ferrous metal works (excluding lead works)
- Metal manufacturing, refining and finishing works - precious metal recovery works
- Oil refineries and bulk storage of crude oil and petroleum products
- Power stations excluding nuclear power stations
- Profile of miscellaneous industries
- Pulp and paper manufacturing works
- Railway land
- Road vehicle fuelling, service and repair - garages and filling stations
- Road vehicle fuelling, service and repair - transport and haulage centres
- Sewage works and sewage farms
- Textile works and dye works
- Timber products manufacturing works
- Timber treatment works
- Waste recycling, treatment and disposal sites - drum and tank cleaning and recycling plants
- Waste recycling, treatment and disposal sites - hazardous waste treatment plants
- Waste recycling, treatment and disposal sites - landfills and other waste treatment or waste disposal sites
- Waste recycling, treatment and disposal sites - metal recycling sites
- Waste recycling, treatment and disposal sites - solvent recovery works

## **Appendix B**

### **Consultees**

A copy of the draft strategy was sent to each of the statutory and non-statutory consultees below:-

#### **Statutory Consultees**

Area Contaminated Land Officer  
Environment Agency  
Coverdale House, Aviator Court, Amy Johnson Way, Clifton Moor, York YO30 40Z  
[info@environment-agency.gov.uk](mailto:info@environment-agency.gov.uk)  
Tel: 01904 822519

Natural England  
[enquiries@naturalengland.org.uk](mailto:enquiries@naturalengland.org.uk)

Defra  
[defra.helpline@defra.gsi.gov.uk](mailto:defra.helpline@defra.gsi.gov.uk)

English Heritage  
[yorkshire@english-heritage.org.uk](mailto:yorkshire@english-heritage.org.uk)  
Tel: 0845 3010 003

Waste Services Manager  
NYCC , County Hall, Northallerton DL7 8AH  
[www.northyorks.gov.uk](http://www.northyorks.gov.uk)  
Tel: 0845 8727374

Food Standards Agency, Aviation House, Room 707C,125 Kingsway  
London WC2B 6NH  
[helpline@foodstandards.gsi.gov.uk](mailto:helpline@foodstandards.gsi.gov.uk)

#### **Other Consultees**

North York Moors National Parks Authority  
The Old Vicarage, Bondgate, Helmsley YO62 5BP  
[info@northyorkmoors-npa.gov.uk](mailto:info@northyorkmoors-npa.gov.uk)  
Tel: 01439 770657

CRCE (Nottingham)  
Health Protection Agency,  
Institute of Population Health, Nottingham City Hospital, Hucknall Road  
Nottingham NG5 1PB

[CRCENottingham@hpa.org.uk](mailto:CRCENottingham@hpa.org.uk)

Tel: 0844 225 4524

Planning and Regeneration Service, Legal Service, Finance and Asset Management  
Service, Scarborough Borough Council

All Parish and Town Councils within Scarborough Borough

Adjacent Local Authorities namely

- Ryedale District Council
- East Riding of Yorkshire Council
- Redcar and Cleveland Council
- Hambleton District Council

Consultation responses and acknowledgements were gratefully received from North  
York Moors National Parks Authority; East Riding of Yorkshire Council; CRCE  
(Nottingham); and English Heritage.

## **Appendix C**

### **Technical guidance for developers (YAHPAC)**

Development on Land Affected by Contamination, Technical Guidance for Developers, Landowners and Consultants - produced by: Yorkshire and Humberside Pollution Advisory Council (YAHPAC) Version 4.2 – August 2012 (Regularly updated – please see Scarborough Borough Council website)

Verification requirements for Cover Systems – produced by : Yorkshire and Humberside Pollution Advisory Council (YAHPAC) Version 2.1 – December 2012 (Regularly updated– please see Scarborough Borough Council website)

– Follow the link on Scarborough Borough Council’s website [www.scarborough.gov.uk](http://www.scarborough.gov.uk) under ‘Pollution’ > Contaminated Land for the latest version.

## Appendix D

### GLOSSARY OF TERMS

The Act	Environmental Protection Act 1990
The Regulations	The Contaminated Land (England) Regulations 2006 The Contaminated Land (England) (Amendment) Regulations 2012
The Guidance	Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance – April 2012
Apportionment	Any determination by the enforcing authority under section 78F(7) (that is, a division of the costs of carrying out any remediation action between two or more appropriate persons).
Appropriate Person	Any person who is an appropriate person, determined in accordance with section 78F of the Act, to bear responsibility for anything which is to be done by way of remediation in any particular case.
Class A Person	A person who is an appropriate person by virtue of section 78F(2) (that is, because he has caused or knowingly permitted a pollutant to be in, on or under the land).
Class B Person	A person who is an appropriate person by virtue of section 78F(4) or (5) (that is, because he is the current owner or occupier of the land in circumstances where no Class A person can be found with respect to a particular remediation action).
CLEA	A set of generic guidelines, and a risk assessment model – The Contaminated Land Exposure Assessment published by DEFRA.
Contaminant	A substance that is in, on or under the land and which has the potential to cause significant harm, or to cause significant pollution of controlled waters.
Controlled Waters	As defined by section 78A(9) by reference to Part III (section 104) of the Water Resources Act 1991, which includes territorial and coastal waters, inland fresh waters, and ground waters.
Enforcing Authority	For land not designated as being a ‘special site’, the enforcing authority within the Scarborough Borough is the Council. For land designated as being a ‘special site’, the enforcing authority is the Environment Agency.
Exclusion	Any determination by the enforcing authority under section 78F(6) (that is, that a person is to be treated as not being an appropriate person)
Local Authority	Scarborough Borough Council
Owner	As defined by section 78A(9) of the Act as being: “a person (other than the mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or where the land is not let at a rack rent, would be so entitled if it were so let.”
Part IIA	Means Part IIA of the Environmental Protection Act 1990.

Pathway	One or more routes or means by, or through, which a receptor is or might be affected by a contaminant
Precautionary Principle	Article 130 of the "Treaty on European Union" places the basis for environmental protection upon the 'Precautionary Principle'. Where, in the absence of firm scientific evidence regarding the effects of a particular substance or activity, the protection of the environment should be the first concern. Furthermore, there is no need for scientific proof before preventative action is taken. In summary, the reduction of risks to the environment by taking avoiding action before any serious problem arises.
The Polluter Pays Principle	Article 130 of the "Treaty on European Union" looks to ensure that the costs of environmental damage caused by polluting activities are borne in full by the person responsible for such pollution (the polluter). The principle accepts that: (i) the polluter should pay for the administration of the pollution control system; and (ii) the polluter should pay for the consequences of the pollution (e.g. compensation and remediation).
Receptor	Something that could be adversely affected by a contaminant, for example a person, an organism, an ecosystem or controlled waters.
Register	The public register maintained by the Council under section 78R of the Environmental Protection Act 1990.
Remediation	As defined by section 78A(7) of the Act, means: The doing of anything for the purpose of assessing the condition of: (i) the contaminated land in question; (ii) any controlled waters affected by that land; or (iii) any land adjoining or adjacent to that land; The doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose: (i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land; or (ii) of restoring the land or waters to their former state; or the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters. Cognate expressions shall be construed accordingly.
Remediation Action	Any individual thing that is being, or is to be, done by way of remediation.
Remediation Package	All of the remediation actions, within a remediation scheme, which are referable to a particular significant pollutant linkage.
Remediation Scheme	The complete set or sequence of remediation actions (referable to one or more significant pollutant linkages) to be carried out with respect to the relevant land or waters.
Risk	The combination of (a) the probability, or frequency, of occurrence of a defined hazard (e.g. exposure to a property of a substance with the potential to cause harm), and (b) the magnitude (including the seriousness) of the consequences.

Special Site	Land that has been designated as such by virtue of sections 78C(7), 78D(6), or 78Q(4) of the Act, and that further defined within regulations (2), (3), and schedule (1) of the Regulations.
Substance	As defined by section 78A(9) of the Act, means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.
Suitable for Use	<p>The 'suitable for use' approach consists of 3 elements:</p> <ol style="list-style-type: none"> <li>1. Ensuring that land is suitable for its current use through the identification of land where contamination is causing unacceptable risks to human health and the environment, assessed on the basis of the current use and circumstances of the land, and returning the land to a condition where such risks no longer arise. The new contaminated land regime provides the mechanism to achieve this.</li> <li>2. Ensuring that land is made suitable for any new use, as planning permission is given for that new use. This is achieved by assessing the potential risks from contamination, on the basis of the proposed future use and the circumstances, before official 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. The Town and Country Planning and Building Control regimes provide the mechanism to achieve this.</li> <li>3. Limiting requirements for remediation to the work necessary to prevent unacceptable risks to human health and the environment in relation to the current use or future use of land for which planning permission is sought.</li> </ol>

## **APPENDIX E**

The following **non-statutory** technical guidance relevant to Part 2A has been considered as part of this strategy:

Contaminated Land Report 11 – Model Procedures for the Management of Land Contamination (Environment Agency/Defra, September 2004)

Local Authority Guide to the Application of Part 2A of the Environmental Protection Act 1990 (Defra/Chartered Institute of Environmental Health, 2007)

Guidance on the Legal Definition of Contaminated Land (Defra, July 2008)

Guiding Principles for Land Contamination (Environment Agency, March 2010)

BS 10175:2011 – Investigation of potentially contaminated sites – Code of Practice (British Standards Institute, 2011)

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

The following **statutory** guidance relevant to Part 2A has been considered as part of this strategy:

Environmental Protection Act 1990: Part 2A, Contaminated Land Statutory Guidance, (DEFRA, April 2012)