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**TONBRIDGE & MALLING
BOROUGH COUNCIL**

**Contaminated Land
Inspection Strategy**



**Revised 2004, 2007 and
2010**

Latest revision 2016



Adopted July 2001



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1.0 Introduction

In April 2000, Part 2A of the Environmental Protection Act 1990 came into force introducing a new regime for the regulation of contaminated land in England. The main objective of Part 2A is to provide a system for the identification and remediation of land where contamination is causing an unacceptable risk to human health or the wider environment because of the historic or current use and circumstances of the land. To comply with this legislation Tonbridge & Malling Borough Council (TMBC) (the Council) produced the first edition of this Strategy in July 2001 detailing how it intended to inspect its area for the purpose of identifying contaminated land. The strategy has updated as different technical guidance documents have been published to take into account these changes.

This latest Strategy outlines how the Council will continue to adopt a rational, ordered and efficient approach to fulfil its statutory obligations through the identification and inspection of contaminated land throughout the borough.

Contaminated land has the potential to impact on public health, the built and natural environment and the local economy. The Council will ensure that all corporate priorities and statutory requirements are met in a balanced and proportionate manner.

1.1 Regulatory Context

The Environmental Protection Act 1990 states in section 78B (1) that:

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

- a) Of identifying contaminated land; and
- b) Of enabling the authority to decide whether any such land is land which is required to be a special site.

Section 78B (2) states that authorities must act in accordance with guidance issued by the Secretary of State, including the production of a formal contaminated land strategy document. This current revision has been produced following various policy and guidance updates.

1.1.1 Updates since last revision

National Planning Policy Framework

As of March 2014, the National Planning Policy Framework (NPPF) replaced the former Planning Policy Guidance (PPG) and Planning Policy Statements (PPS). This included the withdrawal of PPS23: Planning and Pollution Control, which gave guidance in relation to development on contaminated land.

The NPPF states that as a minimum land should not be capable of being designated as contaminated land under Part 2A after remediation via the planning process.

The NPPG provides general guidance on the addressing the issue of contamination within the planning process. This strategy should be read in conjunction with the NPPG and NPPF.

Both documents clearly state that responsibility for securing a safe development/remediating any contamination present on a site rests with the developer and/or landowner.

Part 2A New Statutory Guidance

In April 2012, the Department for Environment, Food and Rural Affairs (Defra), published revised Statutory Guidance, which replaced Annex 3 of Defra Circular 01/2006, with the aim of simplifying the contaminated land regime and making it easier for regulators to decide whether a site is 'contaminated land' or not. This was done by the introduction of a four category scoring system which designates sites according to whether they pose a 'significant possibility of significant harm to human health.'(SPOSHH)

Category 1: Sites where the Local Authority, supported by robust science-based evidence, decide there is an unacceptably high probability of significant harm occurring if no action is taken to prevent it.

Category 2: Sites where the Local Authority considers there is a strong case that the risks are of sufficient concern in respect to significant possibility of significant harm. This may include land where there is little to no evidence that similar sites have caused harm, but on the basis of available information there is a strong case for taking action under Part 2A on a precautionary basis.

Category 3: Sites where the strong case required for Category 2 does not exist, therefore the legal test for significant possibility of significant harm is not met. This includes land where the risk is not low but the Local Authority considers regulatory intervention is unnecessary due to other parties, such as the owner or occupier of the land, not being prevented from taking action to reduce the risks outside of the Part 2A regime.

Category 4: Sites where there is little or no risk that the land poses significant possibility of significant harm. This may include land where no relevant contaminant linkage has been established, only normal levels of contaminants exist in the soil, or contaminant concentrations do not exceed relevant Generic Assessment Criteria (GAC).

The revised guidance does not apply to sites affected by radioactive contamination. This is now covered by a separate guidance published by the Department of Energy and Climate Change (DECC) in April 2012.

Category 4 Screening Levels (C4SLs)

Defra Research Project SP1010 was designed to produce generic screening criteria which would allow 'low risk' sites (those falling within Category 4) to be dismissed from further risk assessment. To date these screening levels are only available for six substances, but with values produced for a wider range of site uses:

- Residential with home-grown produce
- Residential without home-grown produce

- Allotments
- Commercial
- Public open space near residential
- Public parks

Funding

Previously, Councils could apply for funding against the cost of site investigations and remediation from the Local Authority Contaminated Land Capital Programme. In December 2013 it was announced that this funding will be phased out. Up to £500k will still be available annually for emergency cases and on-going remediation projects, with full cease of funding from 2017.

1.1.2 Regulatory role of the local authority

The primary regulatory role of the regime under Part 2A of the Environmental Protection Act 1990 rests with the local authority. Therefore, the role of TMBC is to:

- prepare a strategy to identify contaminated land;
- implement the strategy by inspecting its area in order to identify potentially contaminated land;
- determine whether a particular site is contaminated land;
- act as an enforcing authority for all contaminated land which is not designated as a 'special site' ;
- compile and maintain a public register containing details of regulatory action taken in respect of the remediation of contaminated land.

1.1.3 Regulatory role of the Environment Agency

TMBC has a close relationship with the Environment Agency in identifying and remediating contaminated sites.

The Environment Agency has a key role to play in terms of:

- assisting local authorities in identifying contaminated land, particularly in cases involving the pollution of controlled waters;
- providing site-specific guidance to local authorities on contaminated land;
- acting as the enforcing authority for any land designated as a special site;
- acting as the enforcing authority for any land designated as contaminated land by virtue of radioactivity;
- acting as the enforcing authority for any land where there is a mixture of radioactive and non-radioactive contamination;
- publishing periodic reports on contaminated land at a national level.

1.1.4 Definition of contaminated land under Part 2A

Contaminated land is defined in section 78A(2) of the Environmental Protection Act 1990 as –

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

- (a) significant harm is being caused, or there is a significant possibility of such harm being caused; or
- (b) pollution of controlled water is being or is likely to be caused.'

Where harm is attributable to radioactivity, the definition of contaminated land, as modified by the Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (England) (Amendment) Regulations 2010 is:

'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) harm is being caused; or
- (b) there is a significant possibility of such harm being caused'.

1.1.5 Principles of pollutant linkages and risk assessment

In order for a contamination risk to be present at a particular site, three components must exist; contaminant sources, pathways and receptors.

Defra's Contaminated Land Statutory Guidance 2012 states that:

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

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

A **Pathway** is a route by which a receptor is or might be affected by a contaminant.

If all three components are present, or are thought to be present at a site, then a pollutant linkage exists. Where a pollutant linkage is established, a formal risk assessment will be undertaken to determine whether the linkage is a "significant pollutant linkage". This forms the basis for the determination of contaminated land and will trigger further investigations and remedial works to break this linkage.

Defra's Statutory Guidance states that a **significant pollutant linkage** is a contaminant linkage which gives rise to a level of risk sufficient to justify a piece of land being determined as contaminated land.



In the case of radioactive contaminated land, that pollutant linkage is resulting in harm so far as attributable to radioactivity being caused to any person or significant possibility of harm so far as attributable to radioactivity being caused to any person in the pollutant linkage.

2.0 Development of the Strategy

TMBC has developed this contaminated land inspection strategy after consultation with all relevant internal and external parties. The responsibility for securing its implementation lies with the Environmental Protection Team within the Planning, Housing and Environmental Health Service and in particular with the designated Scientific Officer (Contaminated Land.)

2.1 Overall Aims and Objectives of the Strategy.

2.2 Overall aims

The specific aims of TMBC's inspection strategy are designed to reflect local circumstances and to meet the requirements of the statutory guidance. The overall aims are:

- to carry out a risk prioritisation of sites already identified as being potentially contaminated, specifically highlighting those sites which pose an unacceptable risk to receptors, in particular human health;
- to identify and prioritise special sites;
- to work with landowners/developers to remediate land that poses a significant risk to human health or the local environment; and
- to further inform decisions about future land uses through the Local Plan process.

2.3 Objectives

The specific objectives of TMBC's inspection strategy are designed to reflect local circumstances and to meet the requirements of the statutory guidance. They are:

- to update and publish a contaminated land inspection strategy that takes a rational, ordered and efficient approach to identifying, assessing and remediating any contaminated land within the borough
- to review the contaminated land inspection strategy periodically and prepare an implementation plan
- to continue the development of in-house information storage systems, for the collection and collation of information such as historic and current uses, any past development, geological and hydro-geological data
- to identify new sites on the basis of newly available data and information

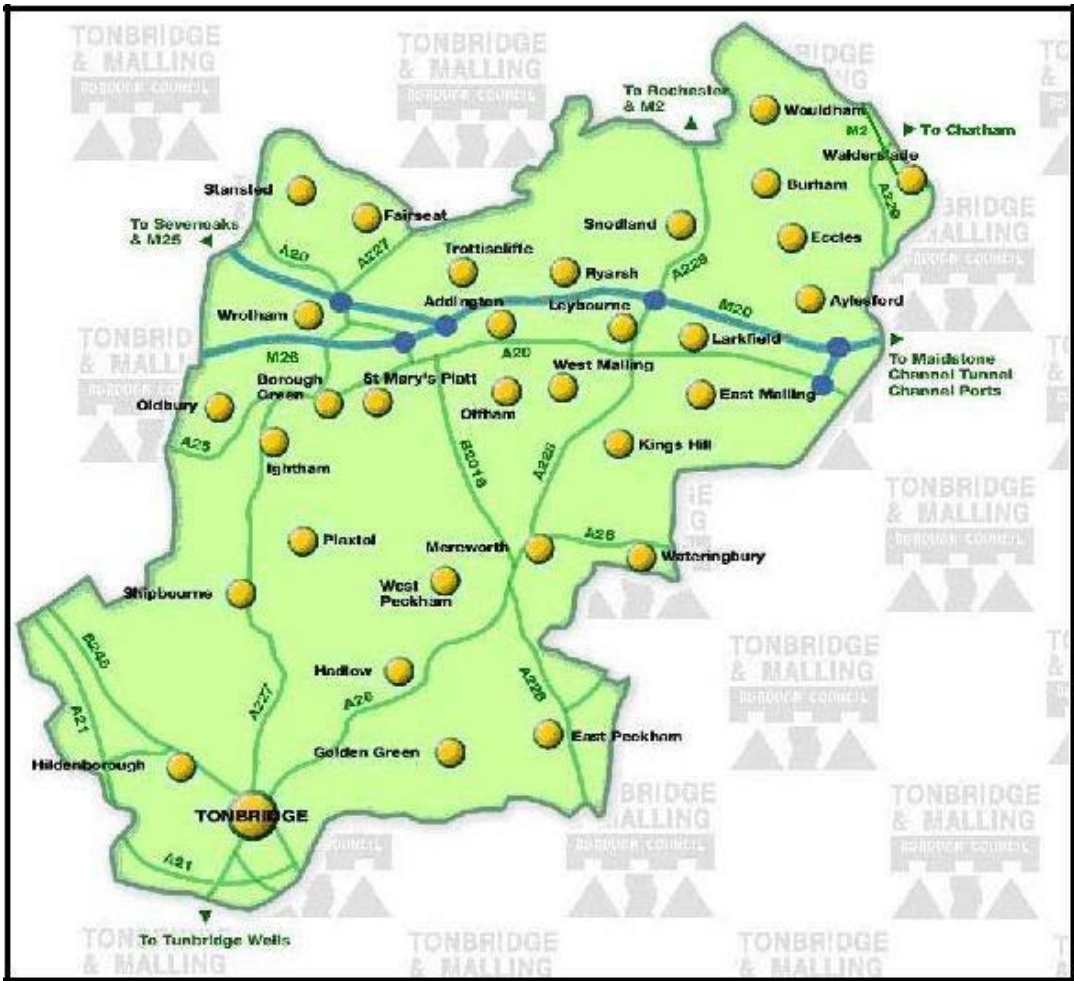
- to refine the risk index of sites through further risk prioritisation using newly available data and information from historic records, historic map data and walkover survey
- to assess sites of proposed development and secure remediation by developers and landowners if necessary, through the planning and development control process
- to update the database in relation to site investigation and remediation through the planning process.
- to carry out appropriate risk assessment to assess the presence of contaminants at sites, where there will be no development proposal in the foreseeable future.
- to liaise with other organisations such as the Environment Agency, Natural England, English Heritage, Kent Wildlife Trust, neighbouring local authorities, businesses, statutory undertakers, local groups and societies and internal TMBC Services to gain access to relevant information thus allowing effective identification of contaminated land within the Borough; and
- to maintain a Public Register of regulatory action that is easily accessible and updated on a regular basis.

3.0 Characteristics of the borough of Tonbridge and Malling

This section describes the main characteristics within the borough of Tonbridge and Malling. It aims to highlight various distinguishing features around the borough that will be used in the identification and assessment of potentially contaminated sites.

3.1 Geographical location

The borough of Tonbridge and Malling stretches from Snodland and Wouldham in the north to Tonbridge in the south; from Aylesford in the east to Borough Green and Ightham in the west (see Map below). The borough is strategically located within the regional communications network. It has an extensive road network crossing it – the A20, M20, M2 and M26 – which provides easy access to the M25 and London.



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3.2 Current land use characteristics

Tonbridge and Malling is a semi-rural borough which is scattered with villages and small towns.

The main land uses within the borough of Tonbridge and Malling, other than for residential purposes, is for agriculture, commercial use and quarrying. Historically, the land in the borough has been exploited for its minerals and there are several active quarries around the Borough, such as Aylesford, Borough Green and Wrotham sandpits.

The traditional industrial and employment areas are focused in the 'Medway Gap' around Aylesford, Snodland, Ditton and at Tonbridge. Over the past few years, the borough has become an attractive area for office location. An example is at Kings Hill, West Malling, which combines both residential and commercial properties as well as accommodating a variety of high-tech businesses such as pharmaceutical and information technology companies.

3.3 Protected locations

There are sites/areas of land within the Borough which are afforded a specific designation for the protection of their unique features e.g. Sites of Specific Scientific Interest (SSSI) Areas of Outstanding Natural Beauty (ANOB.)

TMBC will take all appropriate measures to conserve wildlife and geology during the implementation of Part 2A, in line with its statutory responsibilities for nature conservation.

These areas are protected by the emerging Tonbridge & Malling Borough Local Plan and the adopted Local Development Framework (LDF).

'The Tonbridge and Malling LDF was one of the first in the country to be fully adopted following the publication of the Planning and Compulsory Purchase Act 2004, beginning with the Core Strategy in 2007. The Core Strategy sets out the Council's vision, aims and objectives to determine the future pattern of development in the Borough up to 2021. Following the publication of the NPPF in 2012 work has begun on a new Local Plan, which will eventually replace the LDF. This Plan will look to 2031.

3.3.2 Historic England, formerly English Heritage, recommend that one of the aims of the strategy should be to protect historic assets and the historic environment. Further guidance from Historic England in respect of addressing issues of contamination for these assets and sites is detailed in

3.4 Key water resource / protection issues

Various surface water features cross the borough, the most important of these being the River Bourne and River Medway. The River Medway flows in a north-easterly direction through the borough and is fed by a number of smaller rivers and streams. The borough is covered by a number of major aquifers especially to the north around Aylesford and

Snodland. These aquifers are highly productive and hence are used as important abstractions for public water supply.

The borough has over one hundred licensed abstraction points. Mid Kent Water and South East Water are the water companies who supply the majority of the Borough's drinking water. Some of this drinking water is abstracted from the ground and hence the Environment Agency has defined source protection zones around these areas to protect them. Source protection zones have been developed to support the Environment Agency's Groundwater Protection Policy which provides a risk-based approach to groundwater protection. The policy has been updated with the 2013 release of "Groundwater Protection: Policy and Practice (GP3)". Source protection zones are one of two tools which support the GP3. The other is the Groundwater Vulnerability Maps (GVM) which identifies the vulnerability of groundwater to contamination.

All these features will have to be carefully considered when identifying potential pollutant linkages. Where a potential pollution linkage includes a public water supply source as a receptor the responsible water company will be immediately notified.

3.5 Broad geological and hydrogeological characteristics

In assessing the hydro-geological characteristics of a given area, and the potential for groundwater contamination, attention should be paid to the local detail of the geological structure as well as the composition of the geological formations.

The geology around the Borough of Tonbridge and Malling varies dramatically. The Borough is entirely underlain by sedimentary rocks. Those forming the bedrock geology were formed during the Cretaceous Period (mainly chalk, clays and sands). The bedrock formations are each partly overlain by a variety of Superficial Deposits (drift deposits).

To the south of the Borough the bedrock formations (solid geology) consist mainly of the Ashdown Formation, the Tunbridge Wells Sand Formation and the Weald Clay Formation. The Ashdown Formation and Tunbridge Wells Sand Formation mainly consist of sandstone and siltstone and are both aquifers where springs occur locally at the junction with the Wadhurst Clay. The Weald Clay Formation is essentially impermeable, but the sandstones and limestones which occur within it have been developed for local water supplies.

Across the middle of the Borough, the bedrock consists of formations belonging to the Lower Greensand Group which comprises, in ascending order, the Atherfield Clay Formation, Hythe Beds Formation, Sandgate Beds Formation and Folkestone Beds Formation. The Atherfield Clay Formation is essentially impermeable. It occurs in a narrow outcrop across the centre of the Borough. The Formation consists of mudstones, some slightly sandy or silty. The Hythe Formation consists of calcareous sandstone, sandy limestone and sand. This Hythe Formation is an important aquifer where springs are common at its base (at the contact with the Atherfield Clay) and at the base of the overlying Sandgate Formation, where the water table is sufficiently high. The Sandgate Formation occurs mostly in a narrow outcrop extending east to west through the centre of the Borough. The Formation consists of clays and silts, some of which are sandy or clayey sand. The Sandgate Formation tends to restrict groundwater movement. However it could in places contain a sufficient concentration of sand to allow significant passage

of groundwater between the two adjacent sand-rich units. The Folkestone Formation, which is overlying the Sandgate Formation, consists of poorly consolidated white-yellow sands and sandstones with occasional sandy clays.

The north of the Borough, around Snodland, consists mainly of the Gault Formation and the Chalk Group. The Gault Formation consists of soft mudstones, all of which weather readily to clay. The Gault clay is generally impermeable, although in the past some of the more sandy or silty beds were used for domestic water supply. Overlying the Gault Formation is the Chalk Group, which is divided into three major units, the Lower Chalk, the Middle Chalk, and the Upper Chalk. The Chalk is a very important aquifer with springs occurring at the basal junction with the Gault, and possibly also at the thin limestone beds in the Lower Chalk.

Superficial deposits occur across the Borough and will have to be carefully considered along with the solid geology when identifying potential pathways for contaminants.

3.6 Current and Past Industrial History

The industrial history of Tonbridge & Malling centres on paper making, agricultural activities and mineral extraction which have been carried out in the area for many years and are still present today. Many of the excavations left behind from mineral extractions have been, or are currently being, used for landfill purposes.

Over time the industrial scene has diversified with an increase in middle-sized companies such as printing, paper and packaging, distribution, and e-commerce. In recent years the leisure and tourism industry has developed to become an important source of employment and income within the Borough. Places such as the Larkfield and Tonbridge Leisure Centres, Tonbridge Castle Gate House, The Friars at Aylesford and the Hop Farm Country Park at Beltring have become popular with a wide range of residents and visitors.

3.7 Known Information on Contamination

Previous desk-based inspections have identified over 600 sites of current or former industrial, commercial or other use which have the potential to be contaminated. The majority of these sites were based around the main industrial areas of Tonbridge, Snodland and Aylesford. Over the years new sites have been identified either through the planning process or through the continuing evaluation of historic map data.

This prior knowledge about historical and current land use type within the Borough will form the basis for further investigations at a particular site.

Further information on known contamination may be obtained through the Environment Agency which holds details of known or suspected water pollution, including pollution incidents and also by interrogating Landmark Historical Map Data.

4.0 Procedures

This section outlines TMBC's procedures for dealing with contaminated land issues. It describes how TMBC will collate and evaluate information on contaminated land as well as acting on information received from members of the public and other relevant bodies.

4.1 Internal management arrangements for inspection and identification

The Planning Housing and Environmental Health Service are responsible for the implementation of Part 2 A of the Environmental Protection Act 1990. The Environmental Protection Team, in particular the designated Scientific Officer (Contaminated Land) will be responsible for the day-to-day implementation of the Strategy.

4.2 Considering local authority interests in land

As discussed earlier in section 3.4, TMBC has in recent years sold its housing stock and now only holds a limited number of properties and areas of land. The limited amount of land owned by TMBC will be dealt with alongside all other sites within the borough.

4.3 Information collection

The collection of relevant information will be vital in the process of identifying potentially contaminated sites. A major source of information will be from the extensive desk-based inspection of the borough, undertaken in 1999, to identify areas of current or former industrial, commercial or other use which have the potential to be contaminated. This inspection was undertaken using information obtained from a variety of sources such as historical maps, business directories and various other local publications. Each identified site is not, at present, classified as contaminated but has the potential to be contaminated due to previous use. The results of this inspection have been used as a basis for identifying and prioritising contaminated land within the borough.

For assessing and prioritising potentially contaminated sites TMBC refers to a number of data sets, including:

- Historical maps
- Environmentally sensitive areas e.g. SSSI's
- Sites of Nature Conservation Interest
- Areas of Outstanding Natural Beauty
- Specific Conservation Areas
- Historic parks and gardens
- Radioactive substance permissions
- Location of consented discharges into controlled waters
- Local water abstraction points
- Current/former landfill sites in Kent

- Waste Management Licences
- Wastewater treatment works
- Industrial processes authorised under Environmental Permitting Regulations
- Ancient monuments
- Geological data
- Groundwater vulnerability maps
- Environment Agency Indicative Floodplain Maps
- Source Protection Zones
- Aerial photography
- Tonbridge & Malling Business Directories
- Kelly's Directories

TMBC will continually update these data sets when new information becomes available and add any data sets in order to assess potentially contaminated sites.

4.4 Information management

Given the large quantity of essential spatial data needed to identify potential pollutant linkages, TMBC has recently invested in new site prioritisation software for use as the primary tool to help collate, view, explore, query, analyse and evaluate the various data sets.

4.4.1 Information

With the identification and remediation of contaminated land being an ongoing process it is foreseeable that information and representations will be received from other statutory bodies, members of the public, businesses and voluntary organisations. The procedure that TMBC will adopt is outlined below:

- All information or representations received by TMBC are logged and recorded in the GeoEnviron database;
- The person or organization making submissions will be contacted by an officer within five working days of receipt and will be kept informed of the progress to resolve issues raised.

The handling of representations will be conducted in accordance with the provisions of the Environment Information Regulations and the Data Protection Act.

4.5 Detailed land inspections

TMBC will carry out detailed inspections at sites where pollutant linkages are present, or thought to be present, to identify land that has a significant pollutant linkage present. The confirmation of a significant pollutant linkage will form the basis for the determination that the land is contaminated. If at any stage a significant pollutant linkage is identified then the site can be determined as contaminated land. It may not be necessary to complete all phases or stages of the inspections.

So, a tiered approach as delineated in the “Model Procedure for the Management of Land Contamination” will be followed, such as:

Stage 1: preliminary risk assessment

The purpose of which is to develop a conceptual site model to determine whether or not a potential risk exists. This is normally completed by means of a desk based review and site reconnaissance.

Stage 2: generic quantitative risk assessment

Where a risk has been identified, an intrusive investigation would be undertaken during which sampling of soils and/or groundwater would take place. The laboratory results would be compared to generic assessment criteria, if appropriate, to determine whether a risk exists. It would also determine whether a more detailed assessment is required.

Stage 3: detailed quantitative risk assessment

If generic assessment criteria are either not appropriate or too conservative for a site, detailed site-specific criteria would need to be developed.

The quantitative risk assessment will flow from the preliminary risk assessment and preliminary risk assessment will flow from the prioritisation exercise.

In general terms, each tier of risk assessment follows the basic steps; hazard identification, hazard assessment, risk estimation and risk evaluation.

4.5.1 Funding.

As previously stated there is limited and diminishing central Government funding available to the Council for site investigation and remediation work. Consequently where officers identify a site through the site prioritisation exercise which potentially poses an urgent health risk and an initial site investigation is required, officers will need to request funding from the Council to undertake the necessary work. It is anticipated that this need will arise infrequently.

4.6 Implementation of risk assessment

TMBC will assess the risks at a site from each pollutant linkage based on the most relevant and appropriate guidance. Under section 108 of the Environment Act 1995 local authorities have the power to carry out detailed inspection using statutory powers of entry.

Before carrying out an inspection using statutory powers of entry, TMBC will be satisfied that there is a reasonable possibility that a pollutant linkage exists on the land and all interested parties are identified and contacted to establish whether any party has any pertinent information they could provide and whether they would carry out the inspection themselves. In the case of intrusive investigation, TMBC will also

be satisfied that it is likely that the contaminant is actually present and the receptor is actually present or is likely to be present.

Once the need for detailed inspection has been realised, TMBC will seek to determine the “suitable person” for carrying out such investigation.

For every site TMBC will produce a SHE (safety, health and environment) plan before carrying out any detailed inspection and will also follow relevant analytical standards such as MCERTS.

4.6.1 Risk assessment of soil contamination

TMBC accepts the use of appropriate generic soil guideline values or site specific soil guideline values to assess soil quality and any proposed remediation measures required at a site. The appropriateness of any screening value must be explained.

In assessing the risks to ecological systems and to buildings, building materials and services TMBC will take appropriate guidance into consideration for these particular receptors.

In assessing land contaminated by radioactivity, TMBC’s duty to inspect only arises if there are “reasonable grounds” for believing particular land to be contaminated by virtue of radioactivity (see DECC Radioactive Contaminated Land Statutory Guidance 2012). After identification of any such land TMBC will seek advice from the Environment Agency as any such site, if determined, would be a ‘special site’. However, in its identification process, TMBC will follow the relevant guidance documents such as “Detailed inspection of radioactive contaminated land under Part 2A EPA 1990”: Guidance for local authorities.”

4.6.2 Risk assessment of controlled waters

The regulatory control of water is achieved through numerous EC Directives and legislation, a selection of these include:

Environmental Protection Act 1990

Water Resources Act 1991

Water Industry Act 1999

Town and Country Planning Act 1990/The Planning and Compensation Act 1991

Environment Act 1995

Water Act 2014

The Surface Water (Abstraction for Drinking Water)(Classifications) Regulations 1996

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003.

Groundwater protection: Policy and practice (GP3) 2013

EC Water Framework Directive (2000/60/EC)

“Controlled water” embraces territorial and coastal waters, inland fresh waters and ground waters. Section 78A(9) has been amended by section 86 of the Water Act

2003 so that for Part 2 A purposes “ground waters” does not include waters contained in underground strata but above the saturation zone (see para 2.9, Annex 2, Defra Circular 01/2006).

TMBC will take necessary steps by following the advice as set out in the 2012 Statutory Guidance for determining the fact that “pollution of controlled waters is being caused” or “likely to be caused”. In the case of radioactive contamination “Controlled Water” has been excluded from the extended regime at this point in time.

In 2006, Environment Agency published a document entitled “Remedial Targets Methodology 2006”. This document is based on a tiered assessment to determine whether the contaminant source would result in the target concentration being exceeded. TMBC encourages the use of this document in assessing risk to groundwater resources as it is, at present, the best practice methodology for deriving remedial targets for groundwater.

TMBC will encourage the appropriate use of Consim model, which is designed to provide those concerned with the management of contaminated land with a means of assessing the risk which is posed to groundwater by leaching contaminants.

4.7 Special Sites

The contaminated land regulations create a particular category of contaminated land called ‘special sites’. This category also includes radioactive contaminated land. If during the implementation of this strategy TMBC determine, using strict criteria as defined by Part 2A of the Environmental Protection Act 1990, that a piece of land has the potential for designation as a special site they will consult with the Environment Agency. After consulting with the Environment Agency, TMBC must decide whether or not the land is required to be designated. As the Environment Agency is the enforcing authority for such land, TMBC will encourage the Agency to have a formal role at the inspection stage.

If TMBC decide that the land is required to be designated as a special site, it will notify the Environment Agency, owners and occupiers of the land and any persons who appear to be appropriate persons. If the Environment Agency does not agree with the decision it must provide a statement to TMBC of its reasons for disagreeing within twenty one days. It also needs to copy the notification and statement to the Secretary of State for determination. TMBC must then refer its decision to the Secretary of State. If the Environment Agency agrees with the decision, or it fails to notify its disagreement within twenty-one days, the contaminated land is designated as a special site. For these sites the enforcement becomes the responsibility of the Environment Agency.

If TMBC has information to suggest that land would require designation of a special site, should a significant pollutant linkage be found, it will contact the Environment Agency to arrange for the Agency to carry out an inspection of the land. Where the Environment Agency is to carry out an inspection on behalf of

TMBC, TMBC will where necessary, authorise a suitable person nominated by the Agency to carry out the work.

4.8 Contaminated land determination

If TMBC has carried out appropriate scientific and technical assessment of the circumstances of land and is satisfied that any of the following six possible grounds exist, then the land will be formally determined as contaminated:

- (a) significant harm is being caused;
- (b) there is a significant possibility of significant harm being caused;
- (c) pollution of controlled waters is being caused;
- (d) pollution of controlled waters is likely to be caused;
- (e) harm so far as attributable to radioactivity is being caused; and
- (f) there is a significant possibility of harm so far as attributable to radioactivity being caused.

Once a determination has been made all appropriate persons will be notified of the situation. The notification will state that the site has been identified as being contaminated, supply details of all other potential appropriate persons and provide the recipient with an opportunity to respond. The identification of appropriate person(s) will be vital in the event that remedial action needs to be taken. There are two types of appropriate person –

Class A – Any person, or persons, that have caused or knowingly permitted a pollutant to be in, or under the contaminated land.

Class B – The owner(s) or occupier(s) of the land.

Primary responsibility for the remediation of contaminated land rests with the Class A appropriate persons. If after reasonable enquiries have been made it is not possible to find a Class A person then responsibility will rest with the owner or occupier of the land (i.e. the Class B person). Where there is more than one appropriate person identified it may be necessary to apportion liability between all appropriate persons.

4.9 Orphan sites

Where TMBC is unable to identify an appropriate person(s) (i.e. Class A or Class B persons) at a site which has been determined as contaminated, it may declare the site an orphan site or an orphan linkage. At contaminated sites where it is considered that to require the appropriate persons to carry out any remedial action would cause hardship, then TMBC may declare the site an orphan site or an orphan linkage.

Once a site is declared an orphan site or an orphan linkage TMBC is required to decide the most appropriate course of action for the site. TMBC will then be responsible for any remediation and associated costs. In this case, TMBC may place a charge on the land to enable it to recoup the cost of carrying out its inspection,

assessment and remediation. In all instances, TMBC will take all available measures, as set out in the Statutory Guidance, to recover any costs it incurs.

4.10 Remediation

Remediation is defined in the Statutory Guidance as:

- (a) The doing of anything for the purpose of assessing the condition of –
- (i) the contaminated land in question; or
 - (ii) any controlled waters affected by that land; or
 - (iii) any land adjoining or adjacent to that land;
- (b) The doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land for the purpose –
- (i) of preventing or minimising, or remedying or mitigating the effects of, by reason of which the contaminated land is such land; or
 - (ii) of restoring the land or waters to their former state; or
- (c) The making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters.’

In cases of radioactive contamination, controlled water is excluded. But for the purpose of (b) above “the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land” shall include ensuring that-

- (i) any such area is demarcated;
- (ii) arrangements are made for monitoring of harm;
- (iii) any appropriate intervention is implemented; and
- (iv) access to or use of land or buildings situated in the demarcated area is regulated.

After all appropriate persons have been notified a three-month consultation period will commence when they will be able to put forward a remediation statement. It is the aim of TMBC to support and encourage voluntary remediation at sites determined as ‘contaminated’. Wherever possible it is TMBC’s intention for remediation to occur without issuing a remediation notice. This may be the case if:

- the appropriate person, or some other person, already plans, or undertakes during the consultation process, to carry out particular remedial actions.
- remediation with an equivalent effect is taking, or will take place, as a result of enforcement action under other powers.

The remediation works at each site will need to be agreed by TMBC who will encourage

'best practice' throughout the site remediation process. To ensure remediation is satisfactory the works must have broken one or more of the significant pollutant linkages. This could be achieved by removing/treating one or more of the pollutants, breaking/removing the pathways or protecting/removing the receptor. If after the three month consultation period TMBC is satisfied that it has made reasonable endeavours to consult with the appropriate persons and considers that remediation actions are not being, or will not be, carried out then it will issue a remediation notice on the appropriate person(s). The remediation notice will specify, amongst other things, what remedial actions they are required to carry out and the allotted period within which they are required to do them. Any person who receives a remediation notice has twenty-one days within which they can appeal against the notice to the Secretary of State. Any appeals against a remediation notice must be made on one or more of the grounds which are set out in the remediation notice. If an appeal is made, the remediation notice will be suspended until final determination or abandonment of the appeal.

4.11 Urgent remedial action

Where it appears that there is an imminent danger of serious harm or serious pollution of controlled waters is being caused as a result of the identification of ground(s) as mentioned in para 5.8, TMBC may need to carry out urgent remedial action. TMBC will continually assess whether this is necessary as new information on the condition of the contaminated land becomes available.

If TMBC decides that urgent remedial action is required it will serve a remediation notice on the appropriate person(s) on an urgent basis i.e. without necessarily consulting or waiting for the end of the three month consultation period (see section 5.10). If TMBC cannot readily identify any appropriate person(s) TMBC can carry out any urgent remediation itself. In this case, TMBC may place a charge on the land to enable it to recoup the cost of carrying out its inspection, assessment and remediation of the land. In all instances, TMBC will take all available measures, as set out in the Statutory Guidance, to recover any costs it incurs.

4.11.1 Appointment of External Consultants

External consultants and contractors may be employed to carry out any risk assessment and site investigations where it becomes necessary for the Council to undertake this work. Where it is necessary to employ contractors, arrangements will be put in place to ensure investigations are carried out in accordance with relevant British Standards.

The Scientific Officer (Contaminated Land) will be responsible for overseeing site investigations and risk assessment or any remedial measure to ensure the contractors fulfil the requirements of their brief, and to ensure the investigations themselves do not cause harm to the surrounding environment.

Where it becomes necessary to make external appointments of consultants, the Borough Council's procedures relating to procurement will be followed.

4.12 Interaction with other regulatory regimes

There are a number of other regimes which may deal with land contamination, or which overlap with Part 2A. The Planning, building regulation, water pollution, waste management and [environmental permitting regulation] are considered as the most important and are addressed below.

Any land contamination issues that may have previously been dealt with under the statutory nuisance regime will now be dealt with through the Part 2A regime.

4.12.1 Planning

At TMBC the majority of contaminated land concerns are addressed through the land-use planning regime, hence the Environmental Protection Team (EPT) work closely with Planning Services. .

Planning Services and the EPT will work with developers to find acceptable ways forward if there are concerns about land contamination, on a site

These stages provide the framework for assessing the extent of contamination on a site and the steps needed to remediate the contamination, to ensure that the land is suitable for its permitted end use:

- site characterisation
- submission of the remediation scheme;
- implementation of the approved remediation scheme – notification to the local planning authority of when the works will start, validation that the works have been carried out and reporting of unexpected contamination; and
- monitoring and maintenance – what is required and for how long.

Responsibility for securing a safe development rests with the developer and/or landowner.

This strategy should be read in conjunction with the NPPF and associated guidance within the PPG

Any remediation required under a planning condition for a development will continue to be dealt with through the present planning controls and not through Part 2A. it will be necessary to ensure that any remediation measure required are sufficient to prevent the land being determined as contaminated land in the future under Part 2A.

4.12.2 Building Control

All applications for new buildings and those subject to material change of use are assessed in terms of contaminated land risk. Where this is identified Building Control will follow national technical guidance (Approved Document C: Site Preparation and resilience to contaminants) to ensure that appropriate remedial measures for biological, chemical and physical treatment processes are incorporated within the design.

4.12.3 Water pollution

The Water Resources Act 1991 gives the Environment Agency powers to take action to prevent or remedy the pollution of controlled waters caused by contaminated land. The Part 2A legislation does not revoke these powers and, prior to any determination being made, TMBC will consult with the Environment Agency to determine the best route of control.

4.12.4 Waste management and industrial processes

The Environmental Permitting Regulations came into force on 6 April 2008. They combined the pollution, prevention, control permits (PPC) and waste management licensing (WML) regimes. Any existing PPC permit or WML has automatically become an environmental permit.

Powers are available for dealing with contamination that result from a breach of a site operating licence. The regulation requires site operators to undertake a site condition report prior to receiving a permit to operate. If the site condition report indicates that areas meet the definition of contaminated land then action may be taken under Part 2 A.

5.0 General Liaison and Communication Strategies

During the implementation of this strategy, consultation with other statutory bodies, land owners and occupiers will be paramount to ensure all parties are informed on any relevant contamination issues. This section identifies how TMBC will liaise with all other relevant parties.

5.1 Consultation with other statutory bodies and internal liaison

Throughout the development of this inspection strategy TMBC has consulted with the following statutory authorities:

- Natural England;
- Environment Agency;
- English Heritage;
- Kent Wildlife Trust;
- Kent County Council;
- South East England Development Agency;
- Department for Environment, Food and Rural Affairs (DEFRA); and
- Other neighbouring local authorities.

Internal consultation has been undertaken with Planning Services, Legal Services and Property Services.

TMBC will continue to consult with these organisations throughout the implementation of this strategy. Contact between these organisations and TMBC will be through the Scientific Officer (Contaminated Land.)

Under Section 78V of Part 2A (Environmental Protection Act 1990), TMBC will have regard to any site-specific guidance, issued by the appropriate agency, with respect to land identified as contaminated land.

5.2 Consultation with land owners, occupiers and other interested parties

To ensure successful implementation of this strategy TMBC recognises that there needs to be effective communication with land owners, occupiers and other interested parties. As with the statutory organisations, the central point of contact for all parties will be the Scientific Officer (Contaminated Land.)

5.3 Public register

Under the regulations, TMBC is required to maintain a public register. The register will include details of:

- Remediation notices served by the enforcing authority;
- Remediation statements and declarations;
- Appeals against remediation and charging notices served by the enforcing authority;
- Notices for designation of land as special sites;
- Notices terminating the designation of land as special sites;
- Details of notifications stating what has been done on land by way of remediation by a person served with a remediation notice or who is required to publish a remediation statement;
- Details of notifications given to the local authority by owners or occupiers of land stating what has been done on land by way of remediation; and
- Convictions for prescribed offences.

The enforcing authority can exclude any information from the register on grounds of national security or commercial confidentiality. If such information is excluded, the authority will place a statement on the register indicating the existence of such information.

The register will be updated as relevant information becomes available. The status of the register is available on the council website.

5.4 Provision of information to the Environment Agency

As part of the new contaminated land regime the Environment Agency is required to publish a report on the state of contaminated land in England and Wales. The aim of the report is to compile information on the nature, extent and distribution of contaminated land, the level of remediation undertaken and regulatory activity. With local authorities being the primary regulatory body for Part 2A the Environment Agency will rely on information provided by these authorities. Therefore, TMBC will notify the Environment Agency of any sites within the Borough that are determined as contaminated and will keep them informed of any remediation carried out at each site. This information will be provided using the standard forms supplied by the Environment Agency.

5.5 Trans-boundary Pollutant Linkages

It is possible that a pollutant linkage may occur across TMBC's administrative boundaries. Where this situation arises, TMBC will notify the appropriate Authority within ten working days and will subsequently work with the neighbouring Authority to agree a mutually acceptable method of assessing and, if necessary, remediating the site. The Authorities will agree an action plan identifying each of their roles in determining the status of the site and associated issues. Should TMBC consider that urgent action may be required then this notification will take place without undue delay. The enforcing Authority will be the Authority in whose area the contamination source is situated.

All parties accept that the above agreement is without prejudice to the statutory guidance and legislation and any legal advice received. The Secretary of State will be asked to determine any disputes.

6.0 Review Mechanisms

This strategy details the strategic approach that TMBC will take in inspecting its area for contaminated land. This section outlines circumstances that will cause TMBC to review its inspection strategy outside of this general strategic framework. Regular reviews are essential to ensure that the key priorities outlined in the strategy are on schedule and to ascertain how effective the implemented measures are at identifying and remediating contaminated land.

6.1 Triggers for undertaking non-routine inspection

TMBC recognises that the identification and remediation of contaminated land is an ongoing process. This may mean that inspections have to be undertaken outside of the general strategic framework.

Factors that may cause TMBC to undertake non-routine inspection include:

- an unplanned event where new information arises regarding the contamination of a site which is threatening the local environment;

- TMBC having to respond to the provision of information from statutory bodies, owners or occupiers of land or other interested parties;
- planned or unplanned changes in the use of land, therefore changing the original identified contaminants, pathways or receptors; and
- the discovery of localised health effects that appear to relate to a specific area of land.

6.2 Triggers for reviewing inspection decisions

A variety of factors may cause TMBC to review the findings of previous inspection decisions. This may be due to:

- new legislation being introduced with amended priorities;
- changes in case law or other precedent; and
- revision of guideline values for exposure assessment.

6.3 Review of strategy document

Once TMBC have begun implementing the strategy it may be necessary to change certain priorities to reflect changing conditions, such as the implementation of new legislation. Therefore, upon publication of new guidance or legislation, TMBC will review the current strategy and make alterations where required. Any amendments to the strategy will be documented with all appropriate parties being notified of such changes.

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Appendix A: Sources of further information

Contact addresses:

British Geological Society

National Geoscience Data Centre

Keyworth
Nottingham
NG12 5GG
www.bgs.ac.uk

Tel: 0115 9363100

Natural England

Government Team-Eastern Area
International House
Dover Place
Ashford
Kent TN23 1HU
Tel: 0845 6003078
e.mail:
enquiries@naturalengland.org.uk
<http://www.naturalengland.org.uk>

Environment Agency

Groundwater & Contaminated Land Team
Orchard House
Endeavour Park
London Road
Addington
Kent ME19 5SH
www.environment-agency.gov.uk
Tel: 08708506506

Kent County Council

Waste Management Department
Block H, Forstal
Beddow Way
Aylesford
ME20 7BT
Tel: 01622 671411
<http://www.kent.gov.uk>

Historic England

Eastgate Court
South East Region
195-205 High Street
Guildford
Surrey GU1 3EH
www.historicengland.org.uk
Tel: 01483 252000

Department for Environment, Food and Rural Affairs (DEFRA)

Contaminated Land Branch
ELEQ Division
Zone 4/D11, Ashdown House
123 Victoria Street
London SW1E 6DE
www.defra.gov.uk
Tel: 08459 33 55 77

Food Standards Agency

Contaminants Division
7th Floor Aviation House
125 Kingsway
London, GU1 1YA
www.foodstandards.gov.uk
Tel: 020 7238 5751

South East England Partnership Board

Berkeley House
Cross Lanes
Guildford
Surrey, GU1 1UN
Tel: 01483 555234
Fax: 01483 555250
www.se-partnershipboard.org.uk

Health and Safety Executive

International House
Dover Place
Ashford
Kent TN23 1HU
www.hse.gov.uk

01233 624658

Kent Wildlife Trust

Conservation and Policy Section
Tyland Barn
Sandling
Maidstone
ME14 3BD
e.mail: info@kentwildlife.org.uk
www.kentwildlifetrust.org.uk
01622 662012

NEIGHBOURING LOCAL AUTHORITIES**Gravesham Borough Council**

Regulatory Services

Civic Centre
Windmill Street
Gravesend
Kent DA12 1AU
www.gravesham.gov.uk
Tel: 01474 337426

Maidstone Borough Council

Maidstone House
King Street
Maidstone
Kent ME15 6JQ
www.maidstone.gov.uk
Tel: 01622 602202

Medway Council

Environmental Protection Section
Gun Wharf
Dock Road
Chatham
Kent
ME4 4TR
www.medway.gov.uk
Tel: 01634 333333

Sevenoaks District Council

Environmental Health Section
Argyle Road
Sevenoaks
Kent
TN13 1HG
www.sevenoaks.gov.uk
Tel: 01732 227000

Tunbridge Wells Borough Council.

Environmental Protection Team
Town Hall, Civic Way
Royal Tunbridge Wells
Kent
TN1 1RS
www.tunbridgewells.gov.uk
Tel: 01892 526121

Appendix B: Historic England Considerations

Historic England considerations

One of the aims of the document should be to protect historic assets and the historic environment.

At the very least it should protect 'designated historic assets' which will include scheduled monuments, listed buildings, registered parks and gardens, historic battlefields and conservation areas. Historic England considers that there will be other sites, not designated at the present, time that should also be afforded protection. Early identification of such constraints will minimise the danger of conflict later in the process. A discussion with the Council's Planning Department or Conservation Officer should help to identify such sites.

Scheduled Ancient Monuments

Within the categories of significant harm the CLG Circular 2/2000 identifies Scheduled Monuments as one of receptors that could be subject to harm. In the case of Scheduled Monuments, substantial damage (i.e. harm) is regarded as any damage that significantly impairs the historic, architectural, traditional, artistic, or archaeological interest by reason of which the monument was scheduled. Scheduled Monuments should be noted within the Strategy even it is not anticipated that contamination affects the sites.

Archaeologically sensitive sites

You should be aware that the sites of some former industrial activities are of archaeological significance, and at these locations any contaminants present may constitute an important element of the archaeological interest. This aspect would need to be considered when drawing up a remedial strategy for such a site.

Scheduled Monuments constitute a relatively small proportion of the total archaeological resource. We would expect that when significant contamination is identified on or in an unscheduled archaeological site, and remediation is necessary, full discussion with the Kent County Council Archaeology Service would take place at an early stage to agree an appropriate mitigation strategy. In the preparation of your inspection strategy we recommend that you consult the County Historic Environment Record (HER). This held by the Kent County Council. The HER is a record of all known archaeological sites, including Scheduled Monuments.

Other potentially sensitive receptors

Although not included in the CLG guidance, it is important to remember that listed buildings, world heritage sites, historic parks and gardens, historic battlefields and conservation areas will on occasions also be sensitive receptors. All these are designations, some of them statutory, that local authorities are required to take into account when considering planning applications and related matters. For example a significant number of industrial buildings are listed and some conservation areas may include, or may even have been designated principally because of, industrial sites.

Appendix C Glossary.

Defra Circular 01/2006 Environmental Protection Act 1990: Part 2A, Annex 6 contains a detailed glossary of terms that provides legal definitions of terms that may be used in this strategy. This glossary provides some of those definitions and also an interpretation of terms used in the strategy.

AONB	Area of Outstanding Natural Beauty.
Appropriate person	Any person who is an appropriate person, determined in accordance with section 78F of Environmental Protection Act 1990 Part 2A, to bear responsibility for anything which is to be done by way of remediation in any particular case.
CLEA	Contaminated Land Exposure Assessment, a risk assessment model for assessing the risk to human health.
Contaminant	A substance which is in, on or under the land and which has the potential to cause harm or to cause pollution of controlled waters.
Contaminated land	<p>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, or under the land, that</p> <p>(a) significant harm is being caused, or there is a significant possibility of such harm being caused;</p> <p>or</p> <p>(b) pollution of controlled water is being caused or is likely to be caused.</p> <p>Or with respect to active contamination as</p> <p>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, or under the land, that:</p> <p>(a) harm is being caused, or</p> <p>(b) there is a significant possibility of such harm being caused.</p>
Controlled Waters	<p>These include:</p> <ul style="list-style-type: none">• Inland waters (rivers, streams, underground streams, canals, lakes and reservoirs)• Groundwater (exclude waters contained in underground strata but above the saturation zone)• Territorial and Coastal Waters

Enforcing Authority	In relation to a special site, the Environment Agency. In relation to contaminated land other than a special site, the local authority in whose area the land is situated.
GIS	Geographical Information System.
Harm	Harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property. With respect to radioactive contamination harm is defined as lasting exposure to any person being resulting from the after effects of a radiological emergency, past practice or past work activity.
MCERTS	MCERTS is a performance standard for laboratories undertaking chemical testing of soils.
Orphan sites	Land which is determined as contaminated through the identification of a significant pollutant linkage, but where no appropriate person can be found or where those responsible are not liable for the remediation.
Pathway	One or more routes or means by, or through, which a receptor: (a) is being exposed to, or affected by, a contaminant, or (b) could be so exposed or affected.
Pollutant	A contaminant which forms part of a pollutant linkage.
Pollutant Linkage	The relationship between a contaminant, a pathway and a receptor.
Receptor	The entity (e.g. humans, animals, water, buildings, vegetation etc) which is vulnerable to the adverse effects of a contaminant such as a hazardous substance or agent.
Register	The public register maintained by the enforcing authority relating to contaminated land.
Remediation	The process of assessing the condition of land or waters to determine the extent of any contamination. With regard to this specific legislation it encompasses the

process of carrying out works to minimise, remediate or mitigate the effects of contamination to land or waters and the subsequent monitoring to review the condition of the land or waters.

Remediation Notice	A notice specifying what an appropriate person is to do by way of remediation and the periods within which he is required to do each of the things so specified.
Remediation Statement	A statement prepared and published by the responsible person detailing the remediation actions which are being, have been, or are expected to be, done as well as the periods within which these things are being done.
Risk Assessment	The process of assessing the hazards and risks associated with a site.
Saturated zone	The zone in which the voids of the rock or soil are filled with water at a pressure equal to or greater than atmospheric. The water table is the top of the saturated zone in an in confined aquifer.
Significant Harm	Any harm that is determined to be significant in line with the statutory guidance.
Significant Pollutant Linkage	A pollutant linkage which forms the basis for a determination that a piece of land is contaminated land.
SNCI	Site of Nature Conservation Interest.
Source Protection Zone	An area designated around a groundwater source, the maximum extent of which is the catchment area for the source and within which certain activities and processes are strictly regulated.
Special Site	Contaminated land is designated as a special site where one or more of the following conditions are met: <ul style="list-style-type: none">• Any of the following activities have been carried out at any time:<ul style="list-style-type: none">- disposal of waste acid tars in a retention basin;- purification of crude petroleum or oil;- manufacture or processing of explosives;- the manufacture, production or disposal of:<ul style="list-style-type: none">- chemical weapons;

- biological agents or weapons; - an authorized prescribed process.

- The land is any of the following:
 - used for naval, military or air forces purposes
 - an atomic weapons establishment
 - within a nuclear licensed site
 - subject to Section 30 of the Armed Forces Act 1996
- The land appears to be contaminated as a result of the escape of substances from land meeting any of the above description
- Land which is wholly or partly contaminated land by virtue of radioactivity.
- Land which is affecting any controlled waters that:
 - are used for drinking water supply, and are likely to require treatment in order to be fit for human consumption, or
 - are not likely to meet the requirements for water quality specified in regulations made under the Water Resources Act 1991, or
 - are contaminated within one or more defined aquifers and where pollution relates to one or more defined substances.

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

Suitable Person

A person suitably qualified and experienced to carry out a specific task, as assessed by the relevant authority.

SSSI

Site of Special Scientific Interest.

TOX

TOX reports are the collation of toxicological data to support the derivation of soil contaminant intakes that are protective of human health.

If you are having difficulty reading this report and would like the information in another format, please contact

Tonbridge & Malling Borough Council Environmental Health & Housing
Services Gibson Building

Gibson Drive

Kings Hill

West Malling

Kent

ME19 4LZ

Tel: 01732 876074

Fax: 01732 841421

E-mail: environmental.protection@tmbc.gov.uk www.tmbc.gov.uk