

Cabinet Member for a Safer Powys



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24 January 2024

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NOTICE OF INTENDED PORTFOLIO HOLDER DELEGATED DECISION

The Portfolio Holder has received the following report for a decision to be taken under delegated authority. The decision will be taken on **30 January 2024** (i.e. 3 clear days after the date of this note). The decision will be published on the Council's website but will not be implemented until 5 clear days after the date of publication of the decision) to comply with the call-in process set out in Rule 7.35 of the Constitution.

1.	REVISED CONTAMINATED LAND STRATEGY
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CYNGOR SIR POWYS COUNTY COUNCIL

CABINET MEMBER DELEGATED DECISION
by
COUNTY COUNCILLOR RICHARD CHURCH
CABINET MEMBER FOR A SAFER POWYS
Date: 23rd January 2024

REPORT AUTHOR: Professional Lead Environmental Health (Environmental Protection), Community Safety and Emergency Planning

REPORT TITLE: Revised Contaminated Land Strategy

REPORT FOR: Decision

1. Purpose

- 1.1 In 2001, the Contaminated Land (Wales) Regulations 2001 were introduced which enacted section 57 of the Environmental Protection Act. The Act established a legal framework for dealing with contaminated land known as "Part 2A".
- 1.2 The Act required local authorities to inspect their areas to identify contaminated land in a strategic manner and to set out their approach in a strategy which is formally adopted.
- 1.3 In 2002, the Council published its first Contaminated Land Strategy to meet its statutory requirements and had the simple aim of outlining the new legislation and setting out proposals for future implementation. In 2006, the Strategy was revised to refine the Council's aims priorities and to report on progress with implementation.
- 1.4 In 2016 a third edition was published to reflect changes in legislation and administrative arrangements for the management of closed landfills within the Council.
- 1.5 The purpose of this report is to seek approval for the fourth edition of the Strategy (see Appendix 1) which has been amended to reflect revised policies and provides an update on progress made against the implementation of the strategy.

2. **Background**

- 2.1 Part 2A introduced the legal framework for dealing with contaminated land.

Contaminated Land is defined as:

“Any land which appears to the Local Authority in whose area it is situated to be in such condition, by reasons of the substances in or under the land that:

- a) Significant harm is being caused, or there is a significant possibility of such harm being caused; or
- b) Pollution of controlled waters is being or is likely to be caused”.

- 2.2 To assist local authorities in implementing the legislation Welsh Government produced guidance, the most current version being Contaminated Land Statutory Guidance-2012 (Statutory Guidance).

- 2.3 The guidance states that the overarching objectives of Welsh Government’s policy on contaminated land and the Part 2A regime are:

(a) To identify and remove unacceptable risks to human health and the environment.

(b) To seek to ensure that contaminated land is made suitable for its current use.

(c) To ensure that the burdens faced by individuals, companies and society as a whole are proportionate, manageable and compatible with the principles of sustainable development.

- 2.4 Part 2A requires local authorities to inspect their areas with a view to identifying contaminated land. In doing so they should adopt a structured approach which is rational, ordered and efficient and reflects local circumstances. The Council should set out their approach in a strategy which is formally adopted.

- 2.5 The local authority should include in its strategy:

(a) Its aims, objectives and priorities, taking into account the characteristics of its area.

(b) A description of relevant aspects of its area.

(c) Its approach to strategic inspection of its area or parts of it.

(d) Its approach to the prioritisation of detailed inspection and remediation activity.

(e) How its approach under Part 2A fits with its broader approach to dealing with land contamination.

(f) Broadly, how the authority will seek to minimise unnecessary burdens on the taxpayer, businesses and individuals.

- 2.6 The guidance requires that local authorities keep the strategy under review to ensure that it remains fit for purpose.

The first edition of the Council's Contaminated Land Strategy was published to meet its statutory requirements and had the simple aim of outlining the new legislation and setting out proposals for future implementation.

- 2.7 The second edition was published in order to refine the Council's aims and objectives and to detail the Council's approach with regard to contaminated land. This included reference to historical mapping and a dedicated software system that had enabled some 10,000 potentially contaminated sites being prioritised according to risk.

- 2.8 In 2016 a third edition was published to reflect changes in legislation and guidance namely:

- a) Contaminated Land (Wales) Regulations 2006
- b) Contaminated Land (Wales) (Amendment) Regulations 2012
- c) Welsh Government Contaminated Land Statutory Guidance 2012

- 2.9 This version also referenced the fact that the Environmental Protection Service which is responsible for contaminated land took over the management of closed landfills.

- 2.10 The third edition also set out revised aims and objectives as set out below:

Aim 1 -To fulfil the Council's responsibilities with respect to implementing the Inspection Strategy and environmental legislation

Aim 2 - Reduce environmental liability caused by Council owned land

Aim 3 - Encourage regeneration and redevelopment of contaminated sites

Aim 4 -To achieve environmental improvement with priority on human health

Aim 5 - To raise awareness and promote understanding of land contamination issues.

- 2.11 The Strategy also outlined the Council's approach in dealing with contaminated land going forward.

- 2.12 This the fourth edition of the strategy provides an update on relevant policies and progress made in the implementation of the strategy. The main changes are:

- Referencing a change to the Council’s Corporate strategy “Stronger, Fairer Greener”. (Section 2.2)
- Update on the formally determined Contaminated Land site at Penygarneidd and the publication of a Remediation Declaration. (Section 4.1)
- Referencing to the Powys County Council v Price & Anor [2017] EWCA Civ 1133 case which found that the Council does not have responsibility for any landfills operated prior to the formation of Powys County Council that are in private ownership. (Section 6.4)
- Update on Part 2A inspections carried out on Council owned land. (Section 6.4)

3. Advice

- 3.1 It is recommended that the revised strategy be adopted in order to outline the Council’s approach to contaminated land and to ensure that it complies with current statutory guidance.

4. Resource Implications

- 4.1 There are no additional budget implications to adopting the revised contaminated land strategy.
- 4.2 The Head of Finance (Section 151 Officer) notes the report and can support the recommendation.

5. Legal implications

- 5.1 Legal – The recommendations can be supported from a legal point of view.
- 5.2 The Head of Legal Services and the Monitoring Officer has commented as follows: I note the legal comment and support the recommendation.

6. Climate Change & Nature Implications

- 6.1 The Council’s Corporate strategy ‘Stronger, Fairer Greener’, set out the council’s objective of being carbon neutral by 2030 and enhancing the county’s biodiversity. The management of contaminated land contributes to the council’s corporate objectives by seeking to ensure contamination is managed, contained and where possible remediated to ensure that land can be put to uses which contribute to the county’s economic and environmental sustainability’.

7. Data Protection

7.1 N/A

8. Comment from local member(s)

8.1 N/A

9. Impact Assessment

9.1 The Council's Corporate strategy 'Stronger, Fairer Greener', set out the council's objective of being carbon neutral by 2030 and enhancing the county's biodiversity. The management of contaminated land contributes to the council's corporate objectives by seeking to ensure contamination is managed, contained and where possible remediated to ensure that land can be put to uses which contribute to the county's economic and environmental sustainability'.

10. Recommendation

10.1 It is recommended that the revised strategy in Appendix 1 to the report be adopted in order to outline the Council's approach to contaminated land.

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**Contaminated Land Inspection Strategy
Implementation of Part 2A of the
Environmental Protection Act 1990**

POWYS COUNTY COUNCIL



Revised December 2023

Executive Summary

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

This document represents the fourth edition of Powys County Council's Contaminated Land Strategy, replacing the third edition which was approved in July 2016. It is intended to reflect revisions to the statutory regime introduced in 2012 and to report progress made in the implementation of the Strategy.

The contaminated land regime addresses the legacy of contamination resulting from past mining, industrial, and waste disposal activities. It requires a rational, ordered, and efficient approach to inspecting land with regard to historical and current land use, facilitating the remediation of any sites found to be contaminated to an unacceptable level.

The Strategy defines how Powys County Council (PCC) intends to carry out its duties and what progress it has made to date.

The Council's overarching aims in implementing the Strategy are:

- Aim 1 - To fulfil the Council's responsibilities with respect to implementing the Inspection Strategy and environmental legislation**
- Aim 2 - Reduce environmental liability caused by Council owned land**
- Aim 3 - Encourage regeneration and redevelopment of contaminated sites**
- Aim 4 - To achieve environmental improvement with priority on human health**
- Aim 5 - To raise awareness and promote understanding of land contamination issues**

Since the publication of the original Strategy in 2002, the Council has been engaged in fulfilling its statutory duties in respect of the inspection of potentially contaminated land. Several sites have undergone detailed inspection following funding by Welsh Government, whilst others have been funded by internal resources or through voluntary action. One site has been formally determined as Contaminated Land.

Powys County Council

Contaminated Land Strategy

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Contaminated Land Strategy

Chapter 1 Background and Regulatory Context

The regulatory regime for contaminated land was created in 2001 through implementation of Section 57 of the Environment Act 1995 created Part 2A of the Environmental Protection Act 1990 (known as “Part 2A”) which established a legal framework for dealing with contaminated land. The National Assembly for Wales published the Contaminated Land (Wales) Regulations 2001 and accompanying guidance which has subsequently been amended. The intention of the regime is the identification and remediation of contaminated land, where the contamination is causing unacceptable risk to human health or the wider environment.

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

1.1 What is ‘Contaminated Land’?

Part 2A describes Contaminated Land as being:

‘Any land which appears to the Local Authority in whose area it is situated to be in such condition, by reason of substances in or under the land that:

- a) Significant harm is being caused, or there is a significant possibility of such harm being caused; or
- b) Pollution of controlled waters is being or is likely to be caused.

This definition reflects the 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.

The phrase ‘Contaminated Land’ therefore only refers to land that has a defined pollutant linkage i.e., a source, pathway and receptor and significant harm is being caused or there is the possibility of significant harm being caused. There may be land where the presence of contamination has been identified, but does not contain a pathway and receptor linkage, so is consequently not designated as Contaminated Land.

1.2 The Driving Force: Welsh Government’s Objectives

The overarching objectives of the Welsh Government’s policy are set out in Contaminated Land Statutory Guidance-2012 (“Statutory guidance) are:

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

It is clear that Part 2A is intended to be used only where there are no alternative solutions. For example, land contamination can be addressed when it is developed under the planning regime, or the building control process or independently by the landowner. Other legislative regimes may also provide a means to deal with contamination, such as the regimes for waste, environmental permitting, and the Environmental Damage (Prevention and Remediation) Regulations 2009.

1.3 Regulatory Context

Powys County Council has a duty to inspect from time-to-time land in its geographical area to identify land considered to be contaminated as defined by the Act. A strategic approach to the identification of contaminated land is required to ensure that the most pressing and serious problems are located first and that actions are proportionate to the seriousness of any actual or potential risk. The local authority has the lead responsibility for determining whether any land appears to be contaminated land based on a site-specific risk assessment except in the case of 'Special Sites' which are determined by Natural Resources Wales (NRW).

The aim of the regime is to enable the identification and remediation of land on which contamination is causing unacceptable risks to human health or the wider environment. It does not necessarily include all land where contamination is present, even though such contamination may be relevant in the context of other regimes.

Part 2A creates a particular category of contaminated land called "special sites" which have been used for industrial activities that pose special remediation problems. A site that has been designated as contaminated land by the local authority may further be designated as a special site if it falls within the scope of Regulations 2 and 3 of the Contaminated Land (Wales) Regulations 2001 (as amended). NRW will be the enforcing authority for any contaminated land deemed to be a special site.

Industrial processes that may give rise to a special site include:

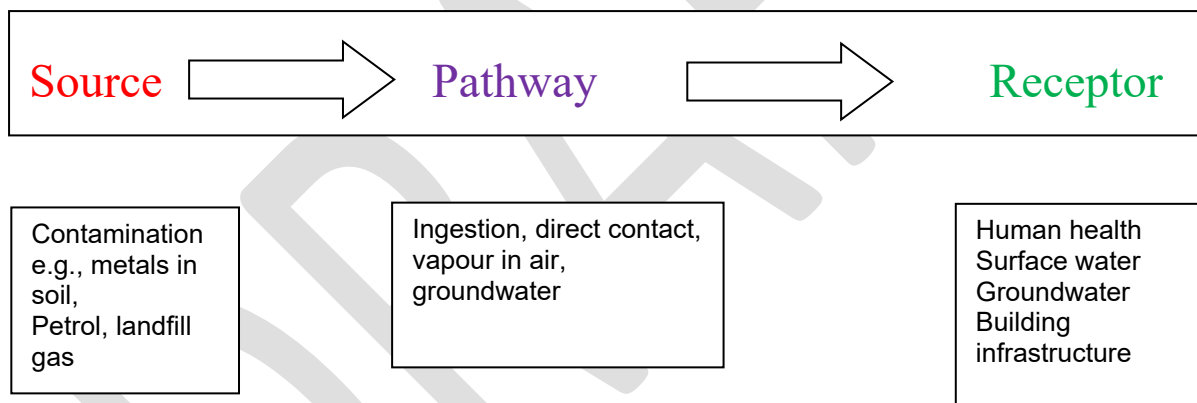
- Waste acid tar lagoons
- Oil refining
- The manufacture or processing of explosives
- IPC (Integrated Pollution Control) sites
- Nuclear sites
- Radioactively contaminated sites

Any land owned or being used for military purposes if determined as contaminated will be designated as a special site.

In July 2005 the contaminated land regime was extended to include radioactive contamination. This was enabled by the the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006. The main objective for extending the Part 2A regime to include radioactivity is to provide a systematic way to identify and remediate land where contamination is causing a lasting exposure of humans to radiation. Any land determined as contaminated land by virtue of radioactivity will be dealt with by NRW under the designation as a special site.

For a site to meet the definition of contaminated land, a **Significant Pollutant Linkage** must be established. All elements of the linkage must be present but only one linkage is necessary to be considered contaminated land. The linkage comprises three elements (as shown in the diagram below), a **source** of contamination (such as a toxic or harmful substance in the ground), a **pathway** to enable transmission/exposure to the contamination (such as direct skin contact or ingestion of vegetables grown in contaminated soil), and a **receptor** that is affected by the contaminant (such as a person whose health could be affected)

Figure 1: example of pollutant linkage



Where these circumstances exist the pollutant linkage has to be significant to take action under Part 2A. Under the radioactive contaminated land regime, a receptor is limited to human beings alone.

Deciding whether a site is Contaminated Land requires that a linkage is significant, meaning that it must be demonstrated that it:

- Significant harm is being caused there is a significant possibility of such harm for being caused.; or
- Is resulting in or is likely to result in the pollution of the controlled waters which constitute the receptor.

The terms 'significant harm', 'harm' and 'pollution of controlled waters' are all defined in the statutory guidance.

Chapter 2 Existing Council Policies

The implementation of the Contaminated Land Strategy is not in isolation from other Council functions and policies. Moreover, the Strategy is intended to integrate with the Council's aims and objectives in respect of environmental improvement, regeneration and in achieving sustainable development.

2.1 Planning Policy

Securing remediation through the planning regime as land is brought forward through redevelopment proposals, offers an effective and sustainable method of securing remediation of land and securing environmental standards fit for end use. The interface with the planning regime, local, regional, and national policy are key mechanisms in protecting new development from previous contamination and securing remediation to acceptable standards.

Planning Policy Wales (PPW) sets out the land use planning policies of the Welsh Government. It is supplemented by a series of Technical Advice Notes (TAN's). PPW makes it clear that the purpose of the planning system is to manage the development and use of land in the public interest, contributing to the achievement of sustainable development. It states that the system should reconcile the needs of development and conservation, securing economy, efficiency, and amenity in the use of land, and protect natural resources and the historic environment. These principles are embedded in the Council's Local Development Plan (LDP) 2011-2026.

2.2 Corporate Policy

The Council's Corporate strategy 'Stronger, Fairer Greener', sets out the council's objective of being carbon neutral by 2030 and enhancing the county's biodiversity. The management of contaminated land contributes to the council's corporate objectives by seeking to ensure contamination is managed, contained and where possible remediated to ensure that land can be put to uses which contribute to the county's economic and environmental sustainability'.

Chapter 3 Characteristics of the Powys Area

3.1 Geographical Location

Powys County Council is a large unitary authority in East Wales with a lengthy border with England. It borders 13 other Local Authorities, namely,

Denbighshire County Council
Wrexham Borough Council
Shropshire District Council,
Herefordshire County Council,
Gwynedd County Council
Ceredigion County Council
Monmouth County Borough Council
Blaenau Gwent County Borough Council
Merthyr Tydfil County Borough Council
Rhondda Cynon Taff County Borough Council
Carmarthenshire County Council
Neath and Port Talbot County Borough Council; and
Brecon Beacons National Park Authority

The County covers an area of approximately 2000 square miles with a population around 133,000. The County is essentially rural in nature with a low population density which equates to 2 persons in every 10 acres of land. The principal towns are Welshpool, Newtown, Llandrindod Wells, Brecon, Builth Wells and Ystradgynlais. Only Newtown has a population exceeding 10,000.

Much of the landscape is upland in nature and is dominated by hill farms and forestry. Most of the County lies above 500 ft. traversed by numerous rivers and their tributaries, notably the Severn, the Wye and the Usk. The South of the County contains most of the Brecon Beacons National Park which covers 16% of Powys.

3.2 Habitats

Powys contains a wide variety of landscapes, which support a rich diversity of habitats and species. The area has received a wide range of designations both statutory and advisory in recognition of the high quality and diversity of its landscape and ecology. There is a need to preserve and enhance the environmental qualities of the area.

Natural Resources Wales has notified 259 sites under the Wildlife & Countryside Act 1981 as Sites of Special Scientific Interest that are in Powys. This includes sites that also fall into neighboring authorities. These range from small ponds in urban areas through to large areas of moorland away from centers of population. The entire length of the Montgomery Canal is classed as a SSSI due to the wetland habitats it provides.

The Council will regularly liaise with Natural Resources Wales on SSSI's, CSAC's and other environmentally sensitive and important ecological receptors within Powys.

3.3 Industry and Commerce

The County is largely rural in character with little heavy industry. Early industries were associated with primary activities such as farming and mineral extraction. Historically the Plynlimon area Northwest of Llanlidloes has been an important source of metal ores, chiefly lead but also copper. There is a long history of mining at Van, Dylife and Llangynog which peaked in the 19th century. In the early 19th Century, a flannel weaving industry utilising local wool developed in Newtown and to a lesser extent in Llanlidloes.

Agriculture is a central component underpinning the commercial and social viability of rural communities, farms are generally small in scale.

Tourism is a significant activity in the county with the attractions of the natural environment for recreation being supplemented by manmade attractions such as the Centre for Alternative Technology.

In the north of Powys manufacturing is a significant employer, with activity being concentrated on the eastern side of the County with relatively good road access via the A483 and A458 to Shrewsbury and the motorway network.

Much of the current industry is located on the periphery of towns such as Newtown and Welshpool on relatively modern industrial estates.

In the south of Powys there is a significant industrial legacy in the upper Swansea valley. Between the 17th and 19th centuries metal and tin works were located around Ystradgynlais together with coal mines, washeries and processing plants. Historically, iron smelting, charcoal burning, and limestone quarrying were found around Llangattock and Brecon.

During the 20th century light industries in south Powys included clothing manufacture and steel fabrication in Brecon; light engineering at Hay on Wye; motor engineering and pottery at Rhayader; production of agricultural equipment at Knighton; metal casting at Presteigne and the production of woollen yarn at Llandrindod Wells. More recently, light engineering has been established in the upper Swansea valley replacing the more traditional industries of coal and steel.

3.4 Geology

Much of Powys is upland, with most of the rocks in the northern and central parts of the County being primarily Ordovician and Silurian shales and mudstones.

In the extreme north of the County limestone outcrops at Llanymynech have historically been extensively quarried for use as agricultural lime. Slate has also been worked at a number of sites including Llangynog.

South of Builth the land rises in a series of mountain ranges formed from thick bands of Old Red Sandstone of the Devonian era. In the southernmost parts of the County are Carboniferous limestones and millstone grits which forms the northern edge of the basin containing the South Wales coalfield.

3.5 Key Water Resource/protection Issues

Much of the County receives high rainfall, annual values ranging from typically 900mm in the east of the County, to in excess of 1500mm in the higher areas in the west

Severn Trent supplies mains water to North of the County from 3 boreholes in river valleys where water is extracted from alluvial silts and gravels. The main borehole for the North of the County is at Llandinam in the Severn valley, the area around Machynlleth is supplied from the Llanwrin borehole on the Dovey, and Northeast Powys is supplied from the Kinnerly borehole in Shropshire (River Severn).

There is a major aquifer along the Southern edge of Powys formed by Carboniferous Limestone outcrops which supply water to Blaenau Gwent and Caerphilly. A number of source protection zones (SPZ's) extend into Powys. For example, the SPZ that serves the Karstic spring source at Ffynnon Gisaen in Blaenau Gwent at Brynmamr.

Ground water vulnerability is often minimised by the geology of drift deposits especially low permeability deposits such as glacially derived boulder clay. The ground water vulnerability of specific locations can be established by reference to groundwater vulnerability maps published by the Environment Agency (sheet index 21 and 28 covers the county).

Reservoirs in the County are used to supply the large English cities. Most notably Liverpool is supplied from Lake Vrynwy and Birmingham from the Elan Valley. Reservoirs in the Brecon Becons serve the urban area of South Wales.

As a consequence of the rural nature of the County and the sparse population many properties away from the towns and larger villages have their own private water supply. There are approximately 6,000 properties that have their own private water supply in the County.

Chapter 4 Progress with the Strategy to Date

4.1 Progress to date

The first Contaminated Land Strategy was published in 2002 to meet the requirements of the Part 2A legislation introduced approximately one year earlier. That document whilst meeting statutory requirements had the relatively simple aim of outlining the new legislation and setting out proposals for future implementation.

In the period from 2002 to 2006, the Council populated and produced a dataset using the Geoenvirom software. This enabled the identification of approximately 10,000 potentially contaminated land sites ranging from unknown filled ground (ponds and quarries etc.) to gas works and landfills. In the first phase of work, officers used the software to undertake an initial risk assessment which produced a risk priority list from the lowest to highest risk sites.

This list was intended to establish the order in which sites would be investigated. Welsh Government funding was obtained for five sites, and these were formally inspected between 2008 and 2011. Of these, only one was formally determined as Contaminated Land, and this was a former lead mine in Penygarnedd.

In 2018, a review of the site in Penygarnedd was undertaken to consider its current use and change in ownership. As a result, a Remediation Declaration was made and added to the Public Register.

Chapter 5 Aims, Objectives, and Priorities

5.1 Aims, objectives and priorities

Aim 1 To fulfil the Council’s responsibilities with respect to implementing the Inspection Strategy and environmental legislation

Objectives

- Ensure the strategy and implementation meet the requirements of Part 2A

Priorities

- Adopt a rational, ordered, and efficient approach to inspection.
- Focus on identifying sites that represent the most serious or pressing problems first.
- Provision of a revised Contaminated Land Strategy 2023.
- Contribute towards the Council achieving its environmental objectives.

Aim 2 Reduce environmental liability caused by Council owned land

Objectives

- Manage and/or reduce the Council’s liabilities as a landowner or occupier with regards to contaminated land issues

Priorities

- Assess Council owned closed landfills with the intention of establishing risk status, remediating where necessary and bringing back into beneficial use where possible.
- Assess Council occupied closed landfills with the intention of returning liability to the landowner where appropriate.
- Identify Council owned/occupied contaminated sites which should be prioritised for remediation as part of the Council’s Strategic Asset Management Plan
- Carry out investigation of land that is identified for disposal in Council ownership to ensure contamination issues are addressed appropriately.
- Work closely within internal departments to ensure contamination issues are considered early in design/engineering projects.
- Ensure that due consideration is given to contamination issues when acquiring future holdings and leasing land
- Ensure a coordinated approach to contaminated land within the Council to ensure compliance with, and enforcement of the relevant contaminated land regulations

Aim 3 Encourage regeneration and redevelopment of contaminated sites

Objectives

- Identify contaminated sites where regeneration and redevelopment could facilitate remediation.
- Enable informed decisions by other departments regarding future land use

Priorities

- Adopt a fair, equitable and pragmatic process for dealing with planning applications.
- Provide information to enable the Council to act in accordance with government planning policy and guidance.
- Review planning procedures regularly in accordance with Welsh Planning Policy and the LDP.
- Encourage discussions with applicants prior to the submission of formal planning applications to inform them of contaminated land requirements and provide guidance for developers.
- Work closely with Welsh National and Regional Contaminated Land Groups to develop and promote best practice documents and guidance across Wales.

Aim 4 To achieve environmental improvement with priority on human health

Objectives

- To identify areas of land where an unacceptable level of risk is being caused to human health and the environment and ensure successful remediation of such sites.

Priorities

- Prioritise sites for inspection on the basis of environmental risk.
- Prioritise risk to human health above all others.
- Prioritise sites for detailed inspection based on risk.

Aim 5 To raise awareness and promote understanding of land contamination issues.

Objectives

- Encourage a proactive approach amongst landowners and polluters towards investigation of contamination and remediation where required.

Priorities

- Adopt a transparent approach to implementing the Strategy.
- Ensure Contaminated Land Strategy is widely distributed and publicised.
- Work closely with landowners to advise and assist voluntary remediation schemes to avoid unnecessary action under Part 2A.
- Ensure effective procedures for communication, liaison and information exchange within the Council and with third parties.
- Ensure Public register is available for viewing and is up to date.
- Ensure effective risk communication processes are in place when dealing with contaminated sites.
- Provide information on the land and homeowner benefits of investigations.
- Ensure the contaminated land section of the Council website is up to date with current guidance and legislation.

Chapter 6 Strategic Plan and Way Forward

The Council will continue to identify potentially contaminated sites in the County and ensure robust risk assessment is carried out to ensure action is taken on the most pressing and serious sites first.

6.1 Risk Priority

The Council's database categorizes sites in order of the risk each site represents i.e., from the highest to lowest risk. To date, the highest risk sites have been targeted as a priority for inspection as far as funding has permitted.

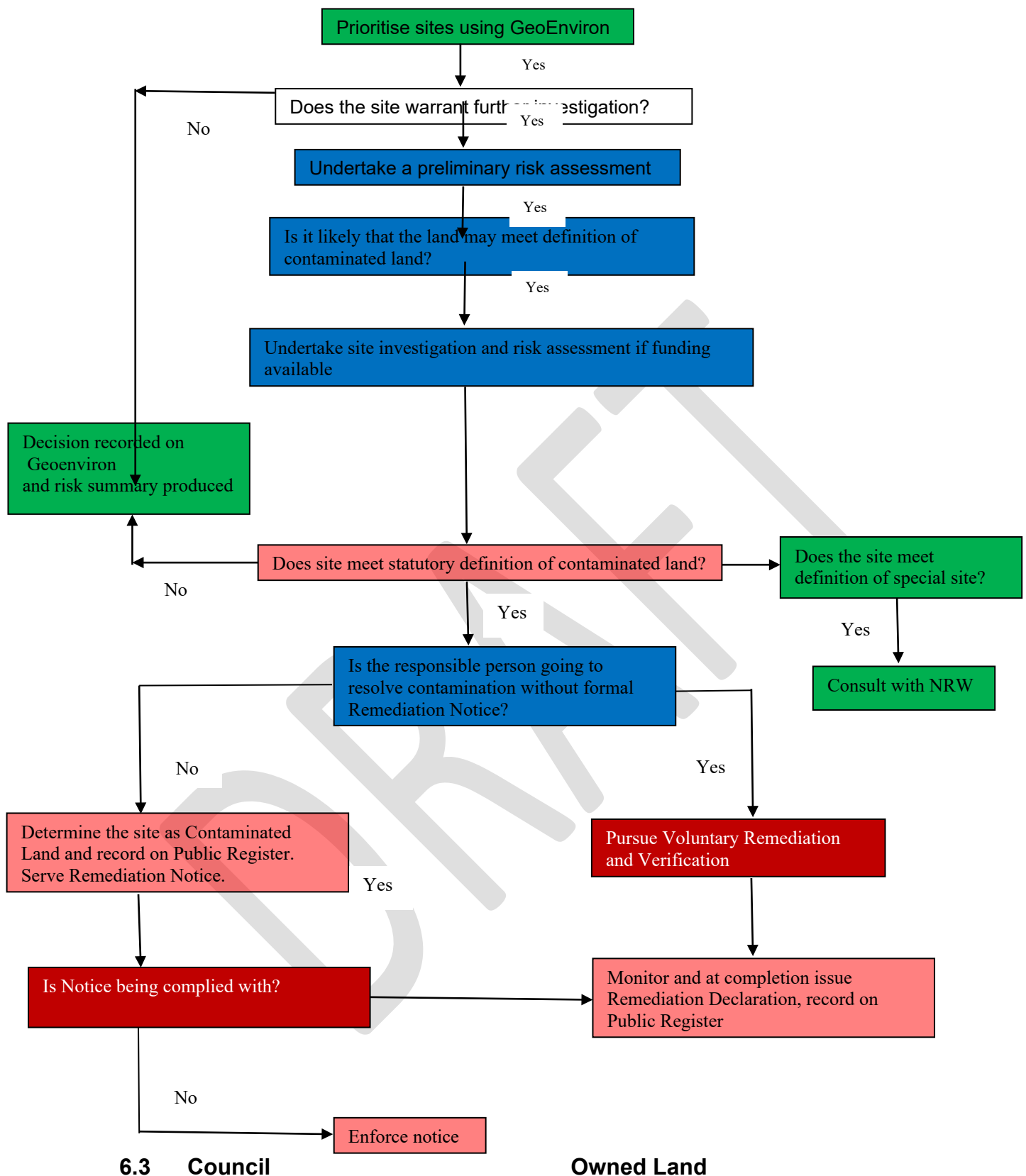
Prioritisation decisions are intended to take account of the following general principles:

- Sites where it is known or suspected that actual significant harm is being caused to receptors, or significant pollution of controlled waters is being caused will generally be the highest priority sites.
- The seriousness of harm or pollution will dictate the level of priority, however, where harm is being caused to human health these would be inspected first.
- If an appropriate person has volunteered to provide information about a particular site in line with the underlying principle of Part 2A of encouraging voluntary action, this site will be given a higher priority.
- If sites are only suspected that there is a significant possibility of significant harm, or where significant pollution of controlled waters is likely to be caused, the higher priority should be given to those sites where the concern is for human health rather than for other receptors.
- The likely nature and extent of the potential significant harm or significant pollution of controlled waters will influence the site priority.

6.2 How will sites be inspected?

The procedure shown in Figure 6 is the general approach described in the statutory guidance to be adopted to both prioritise and inspect sites. This procedure is intended to offer some flexibility in that the risk priority of sites will be constantly reviewed as and when information becomes available, for example, when a site is investigated through the planning regime or when new information becomes available. At each stage of the procedure, decisions will be made on the likelihood of achieving a determination as contaminated land or bringing the assessment to an end and re-prioritise the site as a lower ranked site.

Figure 6: general procedures for inspecting potential contaminated land in accordance with Statutory Guidance



Land owned by the local authority in Powys is extensive in its range and diversity and includes:

- Closed landfill waste sites
- Corporate Buildings

- Approximately 6000 houses located primarily in the main towns.
- Highways depots and associated land.
- Parks, public open space and play area.
- Light industrial units
- Farms and other land holdings
- Schools and playing fields.

6.4 Closed Landfills

Powys County Council had historically assumed responsibility for approximately 80 landfills which closed prior to 1994 when the waste management legislative framework was revised. Of this number, approximately half were privately owned and were sites whereby landowners entered into contracts with the previous district councils to fill their land with various waste streams. On most of the sites once the waste license ceased so did Powys County Council's active interest. However, there were 5 sites where leachate treatment plants (LTPs) were installed in the late 1990s or early 2000s to deal with perceived environmental issues. At these sites, significant costs have been incurred over the last 15 years in respect of environmental permits, chemical sampling, maintenance of the plant and a field crew to undertake the works.

In 2013, Environmental Health took over the management of the landfills and engaged in a period of review adopting a risk-based approach using the Part 2A regime to consider whether the sites are causing an unacceptable risk. As part of this review the Council have considered what liability may rest with PCC under Part 2A.

Following a legal case Powys County Council established in the Court of Appeal that liability does not pass to successor authorities – (see *Powys County Council v Price & Anor* [2017] EWCA Civ 1133). In effect, this means that the Council does not have responsibility for any landfills operated prior to the formation of Powys County Council that are in private ownership.

As a consequence, Powys County Council has ended direct involvement in all of these sites and no longer routinely monitor the remaining sites in private ownership. However, Powys County Council has an active interest in approximately 20 sites that are in our ownership.

In accordance with the Strategy's aims and objectives, Part 2A inspections were undertaken for the following Council owned sites with no unacceptable risks identified.

Plantation Lane landfill Newtown (2016)
Goetre landfill Kerry, Newtown (2020)

6.5 Involvement in the Development Management (Planning) Process

The Part 2A regime mainly deals with the historical legacy of contaminated land, resulting primarily from former industrial activity. However, additional risks can result from the redevelopment of land, for example if housing replaces industrial use. Potential future risks arising because of a change of use are subject to controls

under the Planning and Building Control regimes, not Part 2A. There exists therefore, a close working relationship between the Environmental Health department and the Development Management department of the Council to ensure the safe development on brownfield land and prevent the need for future action under Part 2A.

The Environmental Health department undertakes, amongst other things, the following activities in relation to proposed development on land with the potential to be contaminated:

- Recommendation of conditions to be attached to planning permission decision notices, which may include imposing a restriction on development until the applicant has satisfactorily identified, quantified, and remedied any contamination which may have affected the land.
- Issuing the joint WLGA/EA guidance document “Land Contamination: A Guide for Developers”.
- Liaison with consultants and contractors, who have been employed by developers, in relation to the investigation and remediation of land contamination on development sites.
- Liaison with NRW to ensure the development site is not posing a risk of pollution to controlled waters.
- The critical assessment of reports, submitted by consultants or contractors on behalf of the developer, for the purpose of satisfying conditions relating to land contamination placed on the planning permission.
- Enforcement action, in conjunction with Planning Development Management, Building Control departments of the Council, against developers who have failed to comply with a planning condition relating to land contamination on the development site.
- Provide pre-planning advice to the planning department upon request.

Chapter 7 Information Management and Procedures

7.1 Who in Powys County Council provides information on contaminated land?

The Environmental Protection Service has the responsibility for the implementation of Part 2A Environmental Protection Act 1990. All queries in respect of contaminated land are processed by the Contaminated Land team.

7.2 Providing Information to Third Parties

The implementation of the Inspection Strategy has resulted in the collation of a large amount of information which may be useful to other parties and may be available upon request. In certain circumstances the Council charge for collating information for searches. Powys County Council acts in accordance with the requirements of the following statutes and regulations in making environmental information accessible to the public.

- Local Government Act 1985
- Data Protection Act 1998
- Human Rights Act 1998
- Freedom of Information Act 2000
- Environmental Information Regulations 2004

7.3 Contaminated Land Public Register

The Council has a statutory duty to record any enforcement action it has taken under the Part 2A regime. This information is available to view on request.

7.4 Pollution Incidents and Complaints

Any enquiry, complaint or other information relating to contaminated land from the public, the business community or any other organisation should in the first instance be directed to the Environmental Protection Service. Such information will be considered and evaluated on a site-specific basis to determine its seriousness and significance. This may cause a site to be re-prioritised for inspection or to be considered as an urgent site. It may also be essential in helping the Council to decide what level of risk the site represents. Alternatively, it may indicate that land contamination issues at a site should be best addressed through another regulatory regime.

An initial assessment will be undertaken to determine if the enquiry falls within the scope of the Contaminated Land Team or, if it impacts controlled waters, then Natural Resources Wales (NRW).

Where it appears that there is an imminent risk of harm to human health or pollution of controlled waters an initial visit would normally be made in accordance with the Service's internal protocol. An initial evaluation of the site will be completed, and an action plan drawn up by the lead regulator.

For serious incidents where there is an immediate risk the County Council's Major Incident Plan may be initiated. For many of the incidents that the Contaminated Land Team deal with it is more likely that the Minor Incidents plan will be implemented.

Enquiries made to the local authority and any information provided will be treated as confidential where possible. However, the Environmental Information Regulations 2004 require Local Authorities to disclose certain records and documents.

Anonymous enquiries and information will be accepted and acted upon wherever possible. However, these enquiries may be given lower priority and there may be difficulties in investigating the query due to a lack of information.

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