

## **Chapter 3 – The Council’s Strategy: Overall Aims**

“Chapter 1 – Introduction” identified the Council’s seven Key Priorities. They are:

- Raising Pride in the Borough
- Better Education and Learning For All
- Regenerating the Local Economy
- Promoting Equal Opportunities and Celebrating Diversity
- Making Barking and Dagenham Cleaner, Greener and Safer
- Improving Health, Housing and Social Care
- Developing Rights and Responsibilities with the Local Community.

The issue of contaminated land and how it could impact on the community of Barking and Dagenham will fall within several of the above Priorities. It is therefore vital that any Contaminated Land Strategy takes into account other Council Strategies and initiatives both current and planned so that all issues are covered.

### **3.1 – The Council’s Aims, Objectives and Targets**

The issue of contaminated land in the Borough will have an impact on several key Council Strategies. These include the following:

- Heart of the Thames Gateway – including the regeneration of Dagenham Dock and the MasterPlan review of Barking Reach.
- East Thames Side Partnership
- The UDP Review
- The Housing Strategy
- The Councils Asset Management Plan
- The Regeneration Strategy for Barking and Dagenham.

The above issues are discussed in more detail below:

#### **3.1.1 - Heart of the Thames Gateway**

##### **Barking Reach**

Barking Reach is within the Thames Gateway as defined by Regional Policy Guidance (RPG) 9a - The Thames Gateway Planning Framework. Draft RPG9 - Planning Guidance for the Southeast, identifies the Thames Gateway as a regional and national priority for regeneration and growth. RPG9a seeks a new standard of development for the Thames Gateway Area. It sets out a range of Planning Framework Principles that should be applied in this area, this includes creating vibrant and sustainable communities, relating transport with land-use, bringing life back to the river and adhering to a new environmental standard. Specifically for Barking reach it recommends the promotion of walking and cycling and improvements to public transport and for the provision of employment opportunities to keep pace with building of homes.

In recent years that has been a range of new planning guidance - including the Urban Task Force report "Towards an Urban Renaissance" and the revised version of PPG3 - Housing. They state the government's new objectives that "new housing and residential environments should be well designed and should make a significant contribution to promoting urban renaissance and improving the quality of life." This has implications for the development of Barking Reach with particular focus on the recently reviewed PPG3.

The strong focus on using design and layout to achieve an urban renaissance does argue against inflexible planning and highway standards. Whilst the guidance encourages flexibility in terms of layout, density and parking standards it does not seek to do so at the cost of residential amenity. The guidance also recognises that flexibility is required more in areas with good public transport and where certain categories of people live.

In terms of housing mix the guidance strongly backs decisions being made on the basis of local needs assessments and encourages mixed or balanced communities. It also seeks mixed-uses to add vitality to an area and reduce the need to travel.

The guidance gives strong backing to the provision of public transport, pedestrian and cyclist routes, local services and facilities, "green" residential environments and high quality design. It also gives strong support for the development of brownfield sites. All these factors are crucial issues in the MasterPlan revision process giving Barking Reach the opportunity to create an environment strongly in tune with planning policy and best practice guidance.

Recent planning policy guidance gives the Council strong backing in the MasterPlan revision process with the majority of the Council's objectives being encouraged in the guidance. Similarly the wide range of recent good practice guidance gives the Council lots and suggestions to input into the MasterPlan process.

In summary recent planning policy gives a strong steer to the development of Barking Reach with a strong emphasis on the creation of a well designed attractive residential environment with good accessibility for non-car transport modes and local services and facilities.

## **Dagenham Dock**

Dagenham Dock is an under-utilised industrial area of approximately 133.2 hectares. Dagenham Dock is bounded to the south by the River Thames and to the north by the London Tilbury Southend railway line. To the west lies the Barking Reach Residential development site. To the east of Dagenham Dock is the Ford Motor Company, which is the largest single private employer in the Borough.

Historically the majority of the site was used as dock hinterland. In the early 1980's the sites wharf facilities were sold, mainly to aggregate companies. Much of the remaining dock hinterland was sold and such subsequently changed hands several times. Apart from the aggregate operators and several large companies, the site remains a much under-used and under-developed industrial area with poor internal

infrastructure. The area currently has a poor image that deters quality investment by both existing users and potential developers.

Dagenham Dock is situated within Thames Gateway. The Thames Gateway has been recognised since 1993 by central Government as representing London's main opportunity for growth. In the past, the area has suffered from dereliction and decline that has led to passive development expectations, low business confidence and poor quality investments.

The Thames Gateway Task force established in 1993, endeavours to co-ordinate Government Policy and local regeneration activities. As part of this initiative the Thames Gateway Planning Framework was published in June 1995. This forms a supplement to Strategic Planning Guidance for the Southeast. The main aims of this framework are:

- To improve economic performance
- To maximise the opportunities for new economic activity or jobs created by improving transport connections to Europe.
- To work with the market; building on existing economic and community strengths as well as attracting new investment and new residents.
- To encourage a sustainable pattern of development optimising use of existing and proposed infrastructure and of the many vacant, derelict and under-used sites.
- To protect and where necessary improve the environment, encouraging the highest quality design, layout and appearance of new developments.

In response to this framework, the Thames Gateway London Partnership was formed. This forum promotes action to drive forward the economic, social and environmental regeneration of the region. The redevelopment's of Barking Reach and Dagenham Dock are key development initiatives within the Thames Gateway area. Further, a joint investment strategy has been produced between the Council, the London Borough of Havering and the London Development Agency. The strategy sets a context for LDA funding, as it regards the riverside areas of Barking and Dagenham as important investment opportunities. The Dagenham Dock area is now ripe for investment and development.

Within this strategic framework, the London Borough of Barking and Dagenham as part of its regeneration initiatives, has striven to foster the regeneration of vacant and underused land to the south of the A13. Activity here has been directed at three key areas. The first is the development of Barking Reach, which is located to the west of Dagenham Dock. Barking Reach is a Flagship Project within the Thames Gateway that aims to transform 312.4 hectares of under-utilised and derelict land on the Thames river front into a thriving residential, business and leisure environment. It anticipates the creation of around 4500 residential units for approximately 12,000 – 15,000 people within the next 15 years. The second area of activity is the regeneration of DD, to instigate redevelopment and provide high quality employment opportunities. The third is the A13 Artscape Project, which is a public art programme designed to transform the A13 and its immediate environment and to raise the profile of the arts in the Borough.

In 1992, an Environmental Assessment was prepared by Environmental Resources Limited on the nature of ground contamination in Barking Reach. Dagenham Dock was included in the study area. The results identified areas of unspecified fill and pockets of exposed waste throughout the Dagenham Dock site. These areas related to the sites former uses as sewage works, coal and oil storage and metal processing. The report also indicated that vacant areas in Dagenham Dock have been extensively fly tipped with demolition, construction, industrial and commercial wastes. As a result, the surface layers of the site are of inconsistent quality throughout the area. The land will require remediation depending on proposed end uses.

### **3.1.2 - The East Thames Side Partnership**

In order to redevelop Dagenham Dock and meet the aims of similar projects in the area in a manner that is complementary to the Thames Gateway Planning Framework, the East Thames Side Partnership was formed. The Partnership acts as a local strategic co-ordinating group to secure the economic and environmental transformation of this critical part of the Thames Gateway.

The East Thames Side area comprises the extensive commercial and industrial area along the north bank of the Thames, between Docklands and the Greater London boundary south of the A13. The Partnership consists of the three local authorities, (Newham, Barking and Dagenham and Havering), major private sector interests in the area, the voluntary sector and other agencies including the London East Training and Enterprise Council. The overall aim of the Partnership is to advance the development and regeneration of East Thames Side in a way which is imaginative, coherent and sustainable, and which fulfils its strategic role in the economy of London and the Thames Gateway. Funding was sought for various projects under the auspices of this Partnership, which culminated in a successful bid for £13.5m of funds from Round One of the Single Regeneration Budget Challenge Fund (SRB) in 1995.

£4.65m of SRB funding was allocated to the Dagenham Dock area as part of the £13.5m SRB Round One Bid. This is currently being used to improve infrastructure and instigate development. The lifetime of this SRB project is 1995 – 2001. It is expected that the development potential of the areas will be fully realised when the new link road called Choats Manor Way, from Dagenham Dock to the realigned A13 is completed, as advance works to the construction of the Channel Tunnel Rail Link (CTRL). The implementation of this link road ahead of the CTRL construction now looks very positive following negotiations with appropriate agencies. It is anticipated that construction will start in July 2000 and the road will be completed by December 2001. Other projects within the area are aimed at securing new job opportunities for Borough residents and general environmental improvements. It is expected that the Dagenham Dock Industrial Area will become a major recipient of inward investment and employment for the Borough.

The development of Dagenham Dock will be influenced by existing and future regeneration projects in the wider area. In particular, at the time of writing, announcements are imminent on a number of bids made under SRB Round 5. Of particular note is a bid centred on the Ford Motor Company. This is aimed at providing a major boost to manufacturing industry to East London, with the creation of large manufacturing and training facilities. In addition, announcements are

expected shortly on revised boundaries for ERDF Objective two status and Assisted Areas status under Regional Selective assistance. Each will have major development and funding implications for DD. The Council will work closely with any local, regional and international agencies that are committed to the future of the area.

### **3.1.3 - Unitary Development Plan (UDP) Review**

From deciding whether a house extension can go ahead to the best location for a new residential development the Council deals with a wide range of planning issues. To decide on these issues fairly, taking into account all the views expressed by individual as well as Statutory Consultees the Council has agreed decision making policies laid down in its Unitary Development Plan (UDP). The UDP was agreed in 1995 and sets out how the council wants the areas in the Borough to look in the future, including policies for deciding planning applications and earmarking sites for development. Because things change so fast the UDP is currently being reviewed.

Environmental protection and the issue of contaminated land is already highlighted in the UDP. Existing Policy G28 already covers issues relating to contaminated land, but this needs to be changed in light of the new requirements under Part IIA of the Environmental Protection Act.

Planning and contaminated land issues go hand in hand and this Strategy reflects this. Regeneration and the remediation of contaminated land are key strategic objectives for the Council. The UDP review will link all this together into a cohesive, robust planning framework for the Borough.

### **3.1.4 - Housing Strategy**

The Housing Strategy is a key corporate policy document, setting out the objectives and targets for housing within the Borough. It is designed to cover a 3-5 year period, and incorporates policies for meeting housing need, improving the condition of existing housing and increasing the availability and choice of housing as well as the delivery of housing services. Future housing needs will almost certainly require the utilisation of remediated land. It is obvious, therefore, that any Contaminated Land Strategy should fit in with the Council's Housing Strategy.

### **3.1.5 - Asset Management Plan**

The Asset Management Plan is a platform, which all future planning, provision, maintenance and management of Council owned assets will be based. It takes the form of a database and it is noted that the DETR is keen to encourage integrated data management for the efficient recording of all Council owned assets. A full Asset Management Plan is required to be submitted to the DETR in the Summer of 2001. It involves the development of a systematic approach to the management of assets to ensure that their utilisation is optimised in terms of service benefit and financial return.

It is anticipated that the corporate GIS will act as the hub for all future needs. The DETR also wants all local authorities to use a Unique Property Reference Number (UPRN) for each property in the country.

Information sharing on Council owned land that may have been subject to past contaminative uses should be undertaken and documented on both the AMP and Contaminated Land databases.

### **3.1.6 - The Regeneration Strategy for Barking and Dagenham**

The primary objective of the Strategy is to improve the wealth and prosperity of residents in the borough while promoting social cohesion and making Barking and Dagenham a more pleasant place to live and work.

The Strategy aims to:

- Develop a strong and diverse local economy, which benefits local people and which is a major driving force in the regeneration of the Thames Gateway.
- To improve access to employment and training for Barking and Dagenham's residents to enable them to access better jobs within the borough and in the wider London area.
- To create a physical, social and cultural environment where people want to live, work and visit which will retain and attract aspiring residents.
- To improve the physical environment and quality of life for residents and moving towards a more environmentally sustainable future for Barking and Dagenham.

### **3.2 – Contaminated Land Strategy - Overall Aims, Objectives and Targets**

The investigation of contaminated land is a complex issue, often involving costly site investigations, remediation and Officer time. Each site must be assessed on its own merit, as each site is "unique" in terms of its industrial use, topography, hydrogeology etc.

In order to assess Contaminated land the Council has set out seven priorities for dealing with it. They are as follows:

- To protect human health
- To protect controlled waters
- To protect ecosystems
- To protect property
- To prevent any further contamination of land
- To encourage voluntary remediation
- To encourage the remediation of brownfield land both with landowners and external agencies/bodies.

The Objectives and Targets to meet the above are shown below:

Objectives	Targets
<ul style="list-style-type: none"> <li>Set up a Steering Group and Working party to prepare and implement the Strategy and to identify resources required.</li> </ul>	September 2000.
<ul style="list-style-type: none"> <li>Consult with Statutory and non –Statutory bodies as well as internal consultation. (Draft Consultation.)</li> </ul>	February – May 2001.
<ul style="list-style-type: none"> <li>Publish a Contaminated land Strategy.</li> </ul>	July 2001.

### 3.3 – Work programme.

Section 3.2 sets out some very specific Aims, Objectives and Targets. In order to meet these a planned/staged programme of work is required; which is set out below:

Work required	Target
<ul style="list-style-type: none"> <li>Review and document all current and historical information held within the Council for the identification of contaminated land.</li> </ul>	Started December 2000 for collation into one central location by September 2001.
<ul style="list-style-type: none"> <li>Identify land that could be contaminated by means of a DeskTop Study.</li> </ul>	Start September 2001 – until March 2002.
<ul style="list-style-type: none"> <li>Prioritise those sites thought to be posing a risk to human health, water, the environment and structures by carrying out Risk Assessments and Site investigations utilising the “suitable for use approach”. Liaison with EA with regards to the above and for any sites designated as “Special.”</li> </ul>	Start prioritisation by April 2002. To be completed by December 2006.
<ul style="list-style-type: none"> <li>Inspect land thought to be Statutorily contaminated.</li> </ul>	Ongoing as part of the Planning Process or by using powers contained in Part IIA.
<ul style="list-style-type: none"> <li>Ensure that a consistent approach is implemented which reflects the Councils role both as a regulator and a holder of land.</li> </ul>	Ongoing through Property Services and the Steering Group and Working Party. Review and document all Council owned land during the DeskTop Study.
<ul style="list-style-type: none"> <li>Set up a Corporate database to record all data on contaminated land and to set up a “Register” of contaminated land.</li> </ul>	Purchase GIS ArcView and NetCen applications for the management of contaminated land data. GIS application to be in place by June/July 2001.
<ul style="list-style-type: none"> <li>To secure with others the remediation of contaminated to bring it back into appropriate use without recourse to legal action, and also to prevent the future contamination of land.</li> </ul>	Ongoing – as part of the Planning Process. Establish “Best practice” for remediation techniques through the implementation of a Working Party by October 2001.
<ul style="list-style-type: none"> <li>Set up procedures for the implementation of Legal Notices for liability and remediation of Contaminated Land.</li> </ul>	Draft Notices completed by December 2000. Liability issues to be in place by March 2001.

The above tables describe a series on Objectives, Milestones and Priorities. These are discussed in detail below:

- **Set up Steering Group and Working Party to prepare Contaminated Land Strategy. (September 2000.)**

In order to prepare the Contaminated Land Strategy a Steering Group and Working Party have been set up to fully evaluate the requirements for dealing with contaminated land. They consist of Officers from the following Departments:

- Housing and Health Department – Both Environmental Protection and Housing Officers.
- Leisure and Environment Services – Planners, Building Control, and Engineers.
- Chief Executives Department – Legal and Property Services.
- Finance Department.

Each Department has provided information and advice on the formulation of the Contaminated Land Strategy. Their detailed involvement is documented in Chapter 4 - Procedures

- **Publish a Draft Consultation Strategy. (February – May 2001.)**

A Draft Consultation Strategy has been drawn up in accordance with DETR technical guidance. This Strategy will be communicated to all Chief Officers in the Council, elected Members, the Environment Agency and Statutory and non-Statutory bodies.

Consultation plays a vital role in any Strategy. It should identify any omissions in the Strategy as well as providing vital information on contaminated land that may be missed during any theoretical search. Anecdotal evidence can play a vital role in the identification of contaminated land. A Communication Strategy has been developed which is detailed in Chapter 5.

- **Publish a Final Contaminated Land Strategy. (July 2001.)**

Following on from the consultation mechanism the Strategy will be amended to take into account any views/objections/observations etc. The final document will be submitted to the DETR and copied to the Environment Agency by July 2001.

- **Review of current and historical information. (December 2000 – September 2001.)**

The Council has built up a wealth of knowledge on contaminated land in the Borough, mainly through the Planning Process and major infrastructure and regeneration initiatives. This information is currently held in a variety of formats and in various locations/departments. In order to fully evaluate this information a scoping exercise has been done to assess what information is held and by whom.

As a result of this exercise it is planned to catalogue and hold all this information centrally until it can be incorporated onto a database.



- **Site prioritisation. (September 2001 – March 2002.)**

It is vital that a consistent approach is undertaken when prioritising land thought to be contaminated. Officers on the Working Party have drawn up a list of areas/sites potentially deemed to be the most contaminated by virtue of substances in, on or under the land. These sites will be assessed first, by undertaking a detailed DeskTop Study. This will then be expanded for the whole Borough.

- **Risk Assessments. (April 2002 – December 2006.)**

Once the DeskTop Study has been completed detailed Risk Assessments to determine whether the land is contaminated will need to be undertaken. This will take into account the “suitable for use” approach.

In order to undertake this work the Council will need to take into account current and soon to be published scientific data. This new set of guidelines – the Contaminated Land Exposure Assessment or CLEA guidelines are expected from the DETR shortly.

However until these are published reference will be made to existing data such as the DOE’s (now DETR) CLR Report No 6 – “Prioritisation and Categorisation Procedures for Sites which may be Contaminated.”

CLR 6 describes four Priority Categories (PC’s):

**Priority Category 1** – Site likely not to be suitable for present use and environmental setting. Contaminants probably or certainly present and very likely to have an unacceptable impact on key targets. Urgent assessment action needed in the short term.

**Priority Category 2** – Site may not be suitable for present use and environmental setting. Contaminants probably or certainly present and likely to have an unacceptable impact on key targets. Assessment action needed in the medium term.

**Priority Category 3** – Site considered suitable for present use and environmental setting. Contaminants may be present but unlikely to have an unacceptable impact on key targets. Assessment action unlikely to be needed whilst the site remains in present use or otherwise remains undisturbed.

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

The scoring process in CLR 6 will be used to complete a Contaminant – Receptor - Pathway (CRP) assessment to identify which Priority Category a site may fall into. Site information will reveal potential contaminants and/or sensitive receptors, but the CRP assessment will only take place where both contaminant and receptor are present.

To assist the prioritisation procedure a scoring system has been devised as follows:

- Likelihood of contaminants on the site:
  - 1 - most unlikely
  - 5 - good chance
  - 10 - known to be present.
- Existence of receptors within area of influence:
  - 1 - most unlikely
  - 5 - good chance
  - 10 - known to exist.
- Likelihood of impact of contaminants or receptors (pathway)
  - 1 - most unlikely
  - 5 - good chance
  - 10 - certain.

This preliminary process is known as a CRP (Contaminant – Receptor – Pathway) assessment. Initial trawls may identify sites where either particular contaminants are likely or known to exist, or sensitive receptors are known to exist. No assessment should be undertaken unless both are suspected or confirmed. The following table shows a scoring matrix showing the relationship between the CRP and Priority Category.

<b>CRP Score</b>	<b>PC</b>
<b>26 – 30</b>	<b>1</b>
<b>21 – 25</b>	<b>2</b>
<b>16 – 20</b>	<b>3</b>
<b>10 – 15</b>	<b>4</b>

In addition to CLR 6, other publications will be referred to in the evaluation of sites. These are:

- ICRL (Inter Departmental Committee on the Redevelopment of Contaminated Land) Guidelines,
- the Dutch Intervention Guidelines and other technical information.
- DETR CLR 11 – Handbook of model procedures for the management of contaminated land,
- Environment Agency – Methodology for the derivation of remedial targets for soil and groundwater to protect water resources,
- Environment Agency R&D Publication 66 – Guidance for the Safe Development of Housing on Land Affected by Contamination;
- Special Waste Guidelines (Special Waste regulation 1996)

(Also See Chapter 4 – Procedures.)

(See Appendix B for an example of a detailed Risk Assessment.)

- **Inspect land thought to be Statutorily contaminated. (Ongoing).**

The Council has proactively inspected and monitored contaminated land for many years in order to protect both human health, and the general environment. This has led to extensive remediation schemes throughout the Borough. However as a result of the works planned to identify contaminated land in the Borough other sites may come to light that could be contaminated.

If land is suspected of being a risk to human health, Controlled Waters or the general environment the Council will undertake all necessary works to ensure that the land does not pose a risk.

Where land is suspected of posing unacceptable risks to human health the Council will use the services of the Consultant in Communicable Disease Control (CCDC) part of Barking and Havering Health Authority for specific advice on toxicological issues. If necessary the Council will also use Environmental Consultants who specialise in toxicological Risk Assessments to provide advice.

- **Site Remediation**

Where it is established that a site is “statutorily contaminated” remediation action must be taken. This may first be through informal agreement with the land owner(s) or by way of service of Remediation Notices. In either case a Remediation Strategy must be agreed with the Council.

Action will be taken as soon as the Council is aware that a site is presenting a significant risk to a specified receptor. It is likely that enforcement action will occur at any stage of this process as it is unable to predict as and when such sites will become apparent. However, the early stages of the programme will identify the higher risk sites and thus it can be anticipated that the first stage of the programmed may result in more sites requiring statutory action. Site remediation may thus occur, either under the enforcement of the Strategy or through the redevelopment of land under the Town and country Planning Acts. In either case, remediation of the land will be dictated by a risk-based approach in accordance with current Government advice and scientific knowledge and advice from the Environment Agency.

- **Consistent approach to the identification of contaminated land.**

In carrying out its inspection duty under the new legislation, the Council will have to take a strategic approach to the identification of land which merits detailed individual inspection. This approach should:

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

This approach will apply to both Council owned (both current and previously owned) land. (See Chapter 4 – Procedures.)

- **Set up Corporate database. (April/May 2001 complete by December 2006.)**

The Council has over the years amassed a great deal of information on contaminated land in the Borough. Most of this information is held on paper. In order to ensure a consistent approach to data handling, it is proposed to incorporate all future, current and historical information into a database. This will be a Corporate database which can be accessed by all Departments who have any interest in contaminated land.

In January 2001 the Council approved a new Corporate GIS (Geographical Information System) ESRI ArcView. It is proposed to use this GIS to datacapture all information on contaminated land held within the Council.

Further information will have to be purchased in order to fully evaluate the land within the Borough. This will include historical OS maps, Landmark information, Hydrogeological and geological information.

As part of their Statutory function the EA must provide information to Local Authorities. This information has already started to be disseminated. It includes information on water quality, waste management licenses, Hydrogeological information. This data will be incorporated onto the GIS.

In order to produce accurate information on contaminated land it is proposed to purchase a contaminated land model. The preferred option is “GroundView”. This model has been developed to identify areas of land which could pose a threat to health and the environment because of contamination either from historical or current use. The model can then help prioritise these areas in order to plan further investigation and subsequent remediation in a systematic way. The methodology follows the *Source – Pathway – Target* approach recommended by the DETR.

All the above information and data/models can be incorporated onto a GIS as “layers”. This allows the database to be built to fully identify all potential sources of contamination and their risks to human health etc. Obviously, the more information the Council has, the better placed it will be to determine whether land in the Borough meets the Statutory definition of Contaminated land.

The EA in conjunction with the British Geological Survey (BGS) has produced detailed guidance on the use of digital environmental data which the Council will have regard to once the databases are formulated.

The database will incorporate the “Register” for contaminated land. (See Chapter 4 – Procedures.)

- **Remediation of contaminated land. (Ongoing.)**

Where land is found to be contaminated the legislation requires that the land be cleaned up or remediated. There are several categories of remediation specified. It includes “Urgent” remediation where there is an imminent danger of serious harm or serious pollution of controlled waters. The Council will need to keep this requirement under review when assessing land in the Borough.

The Council also has to consider “Appropriate Remediation”. This includes both Phased remediation and Agreed remediation. An example of phased remediation will be one where remediation of contaminated land would be done over a period of time. For example tackling an area of particular heavy contamination first on a large site. Agreed remediation is where remediation should proceed by voluntary agreement rather than using enforcement action.

Once detailed information is obtained for land in the Borough the Council will consider the appropriate level of remediation that will be required depending on the current and future use of the land.

It is proposed to establish “Best Practice” to ensure that remediation strategies are robust. An Officer working party – led by the Councils Civil Engineering Section – will establish good practice for remediation requirements. (October 2001.)

It is acknowledged that the clean up of contaminated land is a timely and costly exercise. The Council is mindful of “hardship”, in that some owners of land within the Borough will not have the funds to pay for costly site investigations or remediation of their land. Each site will have to be assessed, as and when, detailed information comes to light.

- **Legal liability for contaminated land. (Ongoing.)**

Land may be declared “contaminated” if there is only one significant pollutant linkage. Full liability cannot therefore be determined until all significant pollutant linkages on a site have been identified. When all significant pollutant linkages have been identified the procedure relating to the apportionment of liability must commence. This has five distinct stages as follows:

- Identify potential appropriate persons and liability groups.
- Characterising remediation actions.
- Attributing responsibility to liability groups.
- Excluding members of liability groups.
- Apportioning liability between members of a liability group.

These procedures are complex and cumbersome. The process commences with the establishment of liability groups. All appropriate persons for any one linkage are a “liability group”. These may be Class “A” or Class “B” persons.

- Appropriate Persons – Class A – These are, generally speaking the polluters, but also include persons who “knowingly permit”. This

- includes developers who leave contamination on a site which subsequently results in the being land declared contaminated.
- Appropriate Persons – Class B – Where no Class A persons can be found liability reverts to the owner or occupier. These are Class B persons.

The Council will make all reasonable enquiries to identify Class A persons before liability reverts to owner-occupiers.

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

Generally speaking the members of a liability group will have the total costs falling on the group as a whole apportioned between them. It may also be necessary to apportion costs between liability groups. There are three basic principles which apply to exclusion and apportionment tests:

- i) The financial circumstances of those concerned have no relevance.
- ii) The Council must consult persons affected to obtain information (on a reasonable basis having regard to the cost). If someone is seeking to establish an exclusion, or influence an apportionment to their benefit, then the burden of providing the Council supporting information lies with them.
- iii) Where there are agreements between appropriate persons the local authority has to give effect to these arrangements.

There are six tests specified to identify Class A groups who should be excluded from liability. These will be applied in sequence and separately for each pollutant linkage. The exclusion of Class B persons is much less complex, the single test merely excludes those who do not have an interest in the capital value of the land. Tenants are therefore excluded.

Where the Council has apportioned the costs of each remediation action, and before serving a Remediation Notice, it will have to consider whether any of those liable may not be able to afford it. If, after taking into consideration the statutory guidance it decides that one or more of the parties could not, it will not serve a Remediation Notice on any of the parties. The Council will instead, consider carrying out the work itself and produce and publish a Remediation Statement.

Before Remediation Notices are served the extensive consultation process will be completed and ample encouragement given to arrive at an informal solution. Remediation Notices are served only as a last resort (not withstanding urgent cases), and then only after this lengthy consultation process has been exhausted. Notices will be authorised after two tests are satisfied:

- That the remediation actions will not be carried out otherwise.
- That the Council has no powers to carry out the works itself.

If these are met the Council will serve a Remediation Notice on each appropriate person. It cannot be served less than 3 months after formal notification that the land is contaminated unless urgent action is deemed necessary.

The Council will specify what remediation measures are required to be carried out in the Notice. These will be both appropriate and cost effective employing what the statutory guidance terms “best practicable techniques”. The aim of the remediation will be to ensure that the land is no longer contaminated, taking the shortest and lowest cost route. This means in most cases attention will be focussed on the Pathway, rather than the Contaminant or Receptor.

Before the council can serve a Remediation Notice it will first have to determine whether it has the power to carry out any of the remediation itself. There are five specified circumstances where this may be the case:

- i) Where URGENT action is required. (See below)
- ii) Where no appropriate person can be found.
- iii) Where one or more appropriate persons are excluded (on grounds of hardship.)
- iv) Where the council has made an agreement with the appropriate person(s) that it should carry out the remediation.
- v) In default of a Remediation Notice.

Urgent Action must be authorised where the Council is satisfied that there is imminent danger of serious harm or serious pollution of controlled waters being caused as a result of contaminated land. In such circumstances the procedures identified in the statutory guidance will be followed which may involve the forced entry into the premises. In appropriate cases the Council will seek to recover costs of remediation works it has completed.

It should be noted that there will be instances where the Local Authority has the power to carry out remediation itself where the Council is the Appropriate Person. Also the Environment Agency is the enforcing authority in the case of Special Sites.

A number of Notices and Contaminated Land Precedents have been produced which can be found in Appendix C.

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