

**Exeter**  
City Council

**Environmental Health and Community Safety**

**Contaminated Land Strategy**

**2022 – 2027**

# 1. Introduction

- 1.1 Section 57 of the Environment Act 1995 created Part 2A of the Environmental Protection Act 1990 (“Part 2A”) which establishes a legal framework for dealing with contaminated land in England. Part 2A defines “contaminated land” as follows:

“contaminated land” 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) significant harm is being caused or there is a significant possibility of such harm being caused; or
- (b) significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused. (Section 78A(2))

“Harm” means 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. (Section 78A(4))

- 1.2 Under Part 2A the Secretary of State issues Statutory Guidance on how local authorities should determine which land is contaminated land and which is not. Land which has been determined can be further designated as a Special Site, from which point regulation becomes the responsibility of the Environment Agency. (A Special Site is defined in The Contaminated Land (England) Regulations 2006 as one which is affecting controlled waters in certain specific circumstances, or where a particular range of activities have caused the contamination).
- 1.3 The Statutory Guidance also provides further information on the duty of local authorities to inspect their areas with a view to identifying contaminated land. It describes two broad types of “inspection”:
- (a) strategic inspection, for example collecting information to make a broad assessment of land within an authority’s area and then identifying priority land for more detailed consideration; and
  - (b) carrying out the detailed inspection of particular land to obtain information on ground conditions and carrying out the risk assessments which support decisions under the Part 2A regime relevant to that land.
- 1.4 Exeter City Council (the Council) first published a Contaminated Land Strategy in 2001. This document has been revised and updated twice since then to reflect the current guidance and context. In it, the Council sets out:
- Its aims, objectives and priorities, taking into account the characteristics of its area;
  - The relevant aspects of the Exeter area;
  - Its approach to strategic inspection, the prioritisation of detailed inspection and remediation activity;

- How Part 2A fits with its broader approach to dealing with land contamination, using other legislation, voluntary remediation or as part of wider regeneration work; and
- How in its approach to Part 2A and land contamination, the Council will seek to minimise unnecessary burdens on the taxpayer, businesses and individuals, where it is reasonable and practicable to do so.

1.5 In producing a final version of this strategy, the Council consulted with the following bodies:

- Environment Agency;
- Teignbridge District Council;
- East Devon District Council;
- Mid Devon District Council;
- Natural England;
- Devon County Council; and
- Public Health England.

The strategy will be reviewed again following any significant changes to legislation or guidance, or five years after adoption, whichever is the sooner.

## 2. Terminology

Some general aspects of terminology used in this Strategy are:

**“contaminated land”** is used to mean land which meets the Part 2A definition of contaminated land. Other terms, such as “land affected by contamination” or “land contamination”, are used to describe the much broader categories of land where contaminants are present but usually not at a sufficient level of risk to be contaminated land.

**“Part 2A”** means Part 2A of the Environmental Protection Act 1990 (as amended).

The terms **“contaminant”**, **“pollutant”** and **“substance”** as used in this Strategy have the same meaning – i.e. they all mean a substance relevant to the Part 2A regime 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.

**“unacceptable risk”** means a risk of such a nature that it would give grounds for land to be considered contaminated land under Part 2A.

**“the Council”** means Exeter City Council.

**“leaching”** is the process by which contaminants are released from the soil into groundwater or water in soil pores. How much contamination is released will depend on a variety of factors such as soil type, type of contaminant, soil conditions etc.

**“source”** is used to mean land contamination that may be present on or under a site.

**“pathway”** is used to describe how contamination may reach a receptor from the source area, for example by ingestion of contaminated soil, or by leaching of contamination from the soil into groundwater.

A **“receptor”** is someone or something that may be adversely affected by contamination, for example site occupants, organisms living in a stream, historic monuments etc.

### **3. Exeter City Council's Aims, Objectives and Priorities**

#### **3.1 To identify and remove unacceptable risks to human health and the environment**

3.1.1 The Council's starting point will be that land is not contaminated land unless there is reason to consider otherwise. Only land where unacceptable risks are clearly identified, after a risk assessment has been undertaken in accordance with the Statutory Guidance, will be considered as meeting the Part 2A definition of contaminated land.

3.1.2 The Council may need to decide whether and how to act in situations where such decisions are not straightforward, and where there may be unavoidable uncertainty underlying some of the facts of each case. In so doing, the Council will use its judgement to strike a reasonable balance between:

(a) dealing with risks raised by contaminants in land and the benefits of remediating land to remove or reduce those risks; and

(b) the potential impacts of regulatory intervention including financial costs to whoever will pay for remediation (including the taxpayer where relevant), health and environmental impacts of taking action, property blight, and burdens on affected people.

#### **3.2 To seek to ensure that contaminated land is made suitable for its current use**

3.2.1 The Council will take a precautionary approach to the risks raised by contamination, whilst avoiding a disproportionate approach given the circumstances of each case. The aim will be to consider the various benefits and costs of taking action, with a view to ensuring that the intervention produces net benefits, taking account of local circumstances in each case.

#### **3.3 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**

3.3.1 The Council will take a strategic approach to carrying out its inspection duty. This approach will be rational, ordered and efficient, and it will reflect local circumstances in Exeter. It is set out in this Strategy, which has been formally adopted and published. The Strategy will be kept under periodic review to ensure it remains up to date, especially in the event of changes to the Statutory Guidance. The Council will aim to review the Strategy at least every five years.

3.3.2 The Council will seek to minimise unnecessary burdens on the taxpayer, businesses and individuals; for example by encouraging voluntary action to

deal with land contamination issues as far as it considers reasonable and practicable. This will involve taking a broader approach to dealing with land contamination including through the planning system. The Council will seek to use Part 2A only where no appropriate alternative solution exists.

## **4. A Description of Relevant Aspects of Exeter City Council's Area**

4.1 Exeter is a compact city of 4774 hectares largely constrained by hills. The topography of the city and surrounding countryside form three distinct zones. There are ridges of high ground in the north with steep-sided river valleys, then a central zone of gentle south and east-facing slopes and thirdly the flood plain of the River Exe which forms a level tract across the district from the west, towards the estuary in the south east. Specific characteristics of the city will be discussed below under the headings of Sources, Pathways and Receptors.

### **4.2 Contamination Sources**

4.2.1 The first recognised settlement at Exeter was a fortress housing the 2<sup>nd</sup> Augusta Legion constructed in c. 50 A.D. on a spur overlooking the river. From that start, Exeter has grown into the regional capital, expanding to include surrounding villages and farmsteads.

4.2.2 At first, industrial activity consisted mainly of small-scale cottage or "back yard" establishments serving local needs but the growth of the Devon woollen industry meant that by the 17<sup>th</sup> and 18<sup>th</sup> centuries Exeter's commerce and industry was of national prominence. The city's early industrial heritage from this time includes the quay area, mills and Exeter Ship Canal.

4.2.3 Into the 19<sup>th</sup> century, Exeter maintained an industrial base fit to serve its population and its large, mainly agricultural, hinterland. Development focussed around the expansion of the canal and the coming of the railways with the growth of industrial areas to the west of the river, near the canal basin and railway. However Exeter did not develop into a significant industrial base during the Industrial Revolution

4.2.4 During the Second World War around 38 acres of developed land was damaged by bombs. After the war, planned major reconstruction included the relocation of employment uses to the Marsh Barton, Sowton and Pinhoe industrial estates on the periphery of the City and the construction of the Western Way inner bypass. Subsequent development has been focussed on commercial investment with the construction of shopping centres, offices and warehouse buildings rather than large-scale industry.

4.2.5 Construction materials have been extracted and produced in Exeter throughout its history, including quarrying of volcanic stone at Rougemont and red breccia from eastern Heavitree. Local clays and brickearth have been quarried for brick and tile production, pottery and to make clay moulds and vessels for use in local industrial processes. With the building boom of the 18<sup>th</sup> and 19<sup>th</sup> Centuries, large clay pits and brickworks opened to the

east of the City. Many of these former pits were subsequently filled, either with brickworks waste or refuse.

- 4.2.6 Small and medium scale industry has therefore been present since the Roman period. Known former land uses that have the potential to cause contamination include; gasworks, slaughterhouses, brickworks, foundries, railway land, landfill sites, tanneries, Ministry of Defence land, sewage treatment plants, petrol filling stations and timber treatment yards.

### **4.3 'Background' and 'Normal' Levels of Contamination**

- 4.3.1 Natural geology and common, widespread human activities have resulted in levels of contamination which can be considered as 'normal' or 'background' for a certain area. The British Geological Survey's project on Normal Background Concentrations of Contaminants includes central Exeter within the urban domains for background levels of Benzo a Pyrene, Mercury, Cadmium, Copper and Lead. Areas of mineralisation domains are located within the city boundary for nickel, copper and arsenic.

### **4.4 Pathways**

- 4.4.1 Contamination pathways, or routes by which contamination can move in the subsurface are affected by the underlying soils, geology and hydro-geology. In Exeter, the oldest solid formations are located in the north, with younger units overlying towards the south and east. Figure 1 summarises the main units.
- 4.4.2 The oldest rocks are Late Carboniferous folded shales and subordinate thin beds of hard sandstone which form part of the Culm Measures and are known locally as the Crackington Formation. Overlying these in the central and southern parts of the City area are Late Permian New Red Sandstones. The lowest beds are the fine clayey sands of the Whipton Formation which are succeeded by the Alphington and Heavitree breccias. These breccias consist of gravel fragments of a variety of rock types including sandstone, slate, vein quartz and igneous debris in a matrix of red, silty or clayey sand. A small area of Dawlish Sandstone is included within the east of the city.
- 4.4.3 In three places along the boundary between the Crackington Formation and Whipton Formation are small outcrops of volcanic lava known as "Exeter Traps" or in more recent terminology as the Exeter Volcanic Rocks. One such outcrop forms the high ground on which Rougemont Castle stands.
- 4.4.4 Groundwater flow within the Crackington Formation and the Breccias is mainly fissure and fracture-borne. The Dawlish Sandstone flow mechanisms are intergranular and fracture flow and they tend to be highly permeable.
- 4.4.5 Soils developed on the Crackington Formation are mostly of clay with a variable proportion of fragments of hard sandstone. In many places the bedrock is covered by up to 2m or more of Head, which is weathered rock debris, including clay, silt sand and fragments of shale and sandstone. Soils

over the New Red Sandstone units are mostly sandy or gravel rich loams and commonly red-brown in colour. Again, up to 2m or more of Head can cover the bedrock. The modern channel of the River Exe is surrounded by deposits of alluvium, commonly silt, clay and sand with some peat in places, and resting on coarse gravel. Eight elevated gravel river terrace deposits have been identified.

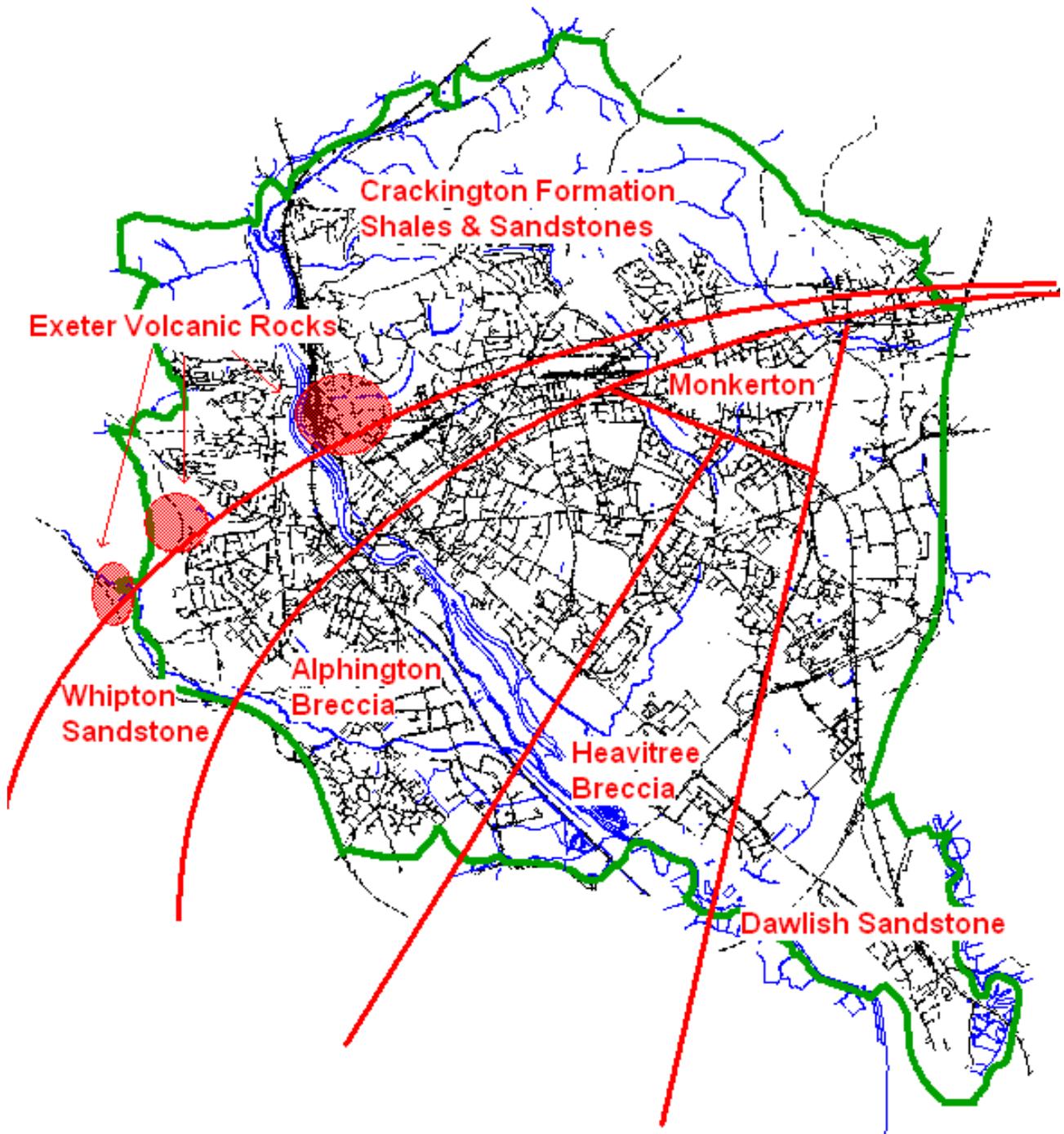
- 4.4.6 The risks of pollution from a given activity vary from place to place as they depend on the physical, chemical and biological properties of the underlying soil and rocks. These make the groundwater in different areas more or less vulnerable to pollution. The Environment Agency has produced 'Groundwater Vulnerability' maps. Groundwater vulnerability depends on factors such as: infiltration through the soil zone, soil leaching class, drift cover and unsaturated zone thickness. The Groundwater Vulnerability maps classify the majority of the geological formations underlying Exeter as being of high vulnerability.
- 4.4.7 The Dawlish Sandstone is the only 'Principal Aquifer' underlying Exeter. It is mainly overlain by well drained sandy and coarse loamy soils. These afford little protection to the sandstone aquifer, and thus contribute to its 'high' vulnerability class.

## **4.5 Receptors**

- 4.5.1 The urban area of Exeter originally consisted of the land within the old city walls, where most properties represented both trade and residential uses. From the 19<sup>th</sup> Century the city began to develop residential quarters, for example, at Newtown, Mount Pleasant, St Thomas and lower Pennsylvania. This accelerated in the twentieth Century, particularly between the wars, with demand growing for improved housing with larger gardens along the radial routes into the City. At this time many of the City's slum dwellers were rehoused in newly built council housing estates on the edge of the city at Stoke Hill, Countess Wear, Whipton Barton and Redhills. However, in the 1990s and 2000s greater emphasis was placed upon reusing 'brownfield land' rather than new Greenfield development. This returned residential receptors to areas of close proximity to potential contamination sources.
- 4.5.2 Approximately 1735 hectares of land, 36.8% of the City's area, is designated as 'Green Areas.' This includes designated Valley Parks, with open public access, which make up 4% of the city area, approximately 40 hectares of allotment sites, and over 100 hectares of parks and play areas.
- 4.5.3 Exeter contains a rich variety of wildlife habitats. This is due to a combination of geology/topography and geography. The Exe Estuary is designated as an internationally important wetland area under the RAMSAR Convention on Wetlands and also as a Special Protection Area under the E.C. Birds Directive. There are three SSSIs in Exeter, the Exe Estuary, Stoke Woods and Bonhay Road and a proliferation of SNCIs which have nature conservation value at a regional/county and City level and SLINCS which are important at the City level.

- 4.5.4 Exeter contains 20 Scheduled Monuments (SMs) designated under the Ancient Monuments and Archaeological Areas Act 1979 and the central area of the City is designated as an Area of Archaeological Importance (AAI).
- 4.5.5 The Environment Agency's aquifer designation of the rocks beneath the city is shown in Table 1.
- 4.5.6 The water supply for the City is taken from the River Exe but this is at a point outside the Council boundary, and there is no public groundwater extraction for drinking water supplies. There are two private water supplies in the City used for drinking water. These are both for commercial premises and are regulated and maintained in accordance with the Private Water Supply Regulations 2009.

Figure 1 Exeter's Solid Geology



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Table 1 Aquifer Designation

Unit	Classification	Description
Culm Measures (Crackington Formation)	Secondary A bedrock aquifer	Permeable layers capable of supporting water supplies at a local rather than strategic scale, and in some cases forming an important source of base flow to rivers.
Lower Permian Basal Breccias, Conglomerates and Sandstones	Secondary A bedrock aquifer and named in Schedule 2, Regulation 3(c) of the Contaminated Land Regulations 2000.	Permeable layers capable of supporting water supplies at a local rather than strategic scale, and in some cases forming an important source of base flow to rivers. And Sites underlain by these strata may, depending on the nature of the contamination present, be classified as Special Sites.
Lower Permian Basal Breccias, Conglomerates and Sandstones	Lower Permian Basal Breccias, Conglomerates and Sandstones (Dawlish Sandstone), Principal Bedrock Aquifer and named in Schedule 2, Regulation 3(c) of the Contaminated Land Regulations 2000.	These are layers of rock deposits that have high intergranular and/or fracture permeability, meaning they usually provide a high level of water storage. They may support water supply and/or river base flow on a strategic scale. And, sites underlain by these strata may, depending on the nature of the contamination present, be classified as Special Sites.
Alluvium and head deposits	Secondary A superficial aquifer	Permeable layers capable of supporting water supplies at a local rather than strategic scale, and in some cases forming an important source of base flow to rivers.
Estuary tidal flats	Undifferentiated secondary superficial aquifer	This classification is assigned in cases where it has not been possible to attribute either category A or B to a rock type.

## 4.6 Land ownership

4.6.1 The Council owns between 15 and 20% of the land area of the City. Most of the valley parks and playing fields are in Council ownership, including some that were formerly landfill sites. The majority of these are now managed operated on a day to day basis by Devon Wildlife Trust. The Council also holds the freeholds for much of the city centre which was damaged as a result of the blitz and significant parts of the Marsh Barton and Exhibition Way Trading Estates. This means that the Council is the owner of some of the potentially contaminated sites in the city. The Council has also retained its own housing stock and so is a significant land owner in some residential areas of the city.

4.6.2 Devon County Council owns a number of educational sites in the city and the University of Exeter and Royal Devon and Exeter Healthcare Trust are also significant land owners.

## **4.7 Future Developments, Planning Context and Sustainable Development**

- 4.7.1 Exeter is currently growing rapidly, with significant urban extensions being built to the east and south-east of the city, including formal and informal public open space, play areas, allotments and schools as well as some commercial development. Most of this growth is on greenfield land, with only agricultural former uses (although these can represent potential contamination sources). Additional windfall sites which come forward are more likely to be on previously developed land.
- 4.7.2 In 2019 the Council published a vision document called Liveable Exeter. This outlines the potential for delivering a transformational housing programme of circa 12,000 homes in Exeter from 2020 to 2040. This development is all on previously developed land, where some level of contamination is to be expected. For the Greater Exeter area, there is a target of 53,200 new homes over the same period (this includes the 12,000 in Exeter).
- 4.7.3 Development Management decisions on all sites (including issues related to land contamination) will be made in accordance with the principles of sustainable development, the adopted Core Strategy, the National Planning Policy Framework and any Master Plan for the area. These will, as a minimum, ensure that developed land cannot be determined as contaminated land under Part 2A.
- 4.7.4 The Local Development Framework is not currently expected to include any specific planning documents relating to contaminated land. Instead, the Core Strategy DPD which was adopted in 2012 contains policies which aim to:
- Provide everyone in the community with the opportunity of living in a decent warm home of a suitable type, size and tenure for their needs, supported by the local community facilities they require, by making full and efficient use of previously developed land and delivering sustainable urban extensions to the east and southwest in co-operation with adjoining authorities.
  - Promote development that contributes to a healthy population - by implementing the Green Infrastructure Strategy and ensuring that environmental quality and air quality is protected and enhanced.

## **4.8 Health and Economic Status**

- 4.8.1 Exeter is a relatively prosperous and economically attractive city. The economy supports around 86,000 jobs and 4,500 businesses and has out-performed much of the rest of the south-west region in recent years. There are however pockets of deprivation, with small parts of the city being in the 10% most deprived areas of the country. Overall Exeter is also a healthy city, but people living in its more disadvantaged areas have comparatively poor health, as indicated by incidence of chronic illness and lower life

expectancy. No specific health impacts associated with land quality have been identified.

## 5. Strategic Inspection

- 5.1 Strategic inspection involves collecting information to make a broad assessment of land within an authority's area and then identifying priority land for more detailed consideration. The Council will prioritise land which it considers most likely to pose the greatest risk to human health or the environment, recognising that all soils contain substances which could be harmful to such receptors, but in the very large majority of cases the level of risk is likely to be very low. For this purpose, "risk" will be taken to mean the combination of:
- (a) the likelihood that harm, or pollution of water, will occur as a result of contaminants in, on or under the land; and
  - (b) the scale and seriousness of such harm or pollution if it did occur.
- 5.2 If the Council identifies land where it considers there is a reasonable possibility of unacceptable risk it will undertake detailed inspection of the land to obtain sufficient information to decide whether it is contaminated land, subject to the Council's prioritisation of sites for detailed inspection.
- 5.3 If at any stage the Council considers, on the basis of information obtained from inspection activities, that there is no longer a reasonable possibility that a significant contaminant linkage exists on the land, it will not carry out any further inspection in relation to that linkage. In some cases the process of strategic inspection, including prioritisation of detailed inspection activities, may give rise to property blight issues. The Council will seek to minimise or reduce such potential blight as far as it considers reasonable. Notwithstanding the above, strategic inspection of sites will be reviewed where appropriate in the event of significant changes to legislation or guidance, or relevant new information becoming available.
- 5.4 When undertaking strategic inspection, the Council will consider potential sources, pathways and receptors in a rational, ordered and efficient manner. A repeatable, transparent, and risk-based methodology will be used, based upon any identified pollution linkages and having regard to good practice guidance. Strategic Inspection will form part of a robust decision-making process which complies with Part 2A and the Statutory Guidance. IT and GIS systems will be used to undertake and document the process.
- 5.5 However the Council will not investigate potentially contaminated land solely using Part IIA. It is envisaged that the planning and building control systems will be used in the majority of occasions to ensure land is made suitable for use when it is redeveloped, and/or to encourage land owners to deal with problematic land as part of wider regeneration work. This broader approach may include encouraging polluters/owners of land affected by contamination to deal with problems without the need for Part 2A to be used directly. Other approaches used may also include the regimes for waste, water, and

environmental permitting; and the Environmental Damage (Prevention and Remediation) Regulations 2009.

## **5.6 Progress with Strategic Inspection since Publication of the 2001 Strategy**

- 5.6.1 Since 2001, the Council has identified over 1300 sites where there may be contamination sources, with initial information on potential pathways and receptors for all of these. The Council has detailed information on potential pollutant linkages for some of these sites, either where strategic inspection has progressed as a result of sites being higher up the prioritisation list, or where information has come forward as part of the planning process.

## **5.7 Strategic Inspection 2022 - 2027**

- 5.7.1 There is a continued need to seek further information on potential pollutant linkages, in order to refine the prioritisation of sites for detailed inspection, until the point where it becomes clear that land is not contaminated. The Council will progress this work, in accordance with the principles outlined above, during the next five years.

## **6. Detailed Inspection and Remediation Activity**

6.1 The Council will undertake detailed inspection of land to obtain information on ground conditions and to carry out risk assessments to support decisions under the Part 2A regime. As with strategic inspection, the Council will focus on land which might pose an unacceptable risk and consider risk as the combination of:

(a) the likelihood that harm, or pollution of water, will occur as a result of contaminants in, on or under the land; and

(b) the scale and seriousness of such harm or pollution if it did occur.

6.2 The Council will use risk assessment to make robust decisions, having regard to good practice guidance and based on information which is:

(a) scientifically-based;

(b) authoritative;

(c) relevant to the assessment of risks arising from the presence of contaminants in soil; and

(d) appropriate to inform regulatory decisions in accordance with Part 2A, the Statutory Guidance and local circumstances.

6.3 The timing of detailed inspection will be subject to the Council's prioritisation following strategic inspection. If at any stage the Council considers, on the basis of information obtained from inspections, that there is no longer a reasonable possibility that a significant contaminant linkage exists on the land, it will not carry out any further inspection in relation to that linkage.

6.4 Where the Council carries out any intrusive investigation, it will do so in accordance with appropriate good practice technical procedures for such investigations.

6.5 When deciding whether a site meets the definition of Contaminated Land, the Council will also have regard to the financial costs to whoever will pay for remediation (including the taxpayer where relevant), health and environmental impacts of taking action, property blight, and burdens on affected people. All decisions made will be rational, ordered, efficient and fully documented.

### **6.6 Liaison with Landowners and Powers of Entry**

6.6.1 The Council will consult the landowner before inspecting the land unless there is a particular reason why this is not possible, for example because it has not been possible to identify or locate the landowner. The Council will

be open to moves by the landowner (or some other interested party) to help resolve the status of the land themselves. For example, the Council may decide that the land is, or is not, contaminated land on the basis of information provided by the land owner or other interested party, provided the Council is satisfied with the robustness of the information.

- 6.6.2 Where the owner refuses access, or the landowner cannot be found, the authority will consider using statutory powers of entry. Before doing so, the Council will first satisfy itself that there is a reasonable possibility that a significant contaminant linkage may exist on the land and will comply with the requirements of the legislation and the Statutory Guidance.

### **6.3 Special Sites and Detailed Inspection by the Environment Agency**

- 6.3.1 If the Council identifies land which it considers (if the land were to be determined as contaminated land) would be likely to be designated as a special site, it will consult the Environment Agency and, subject to the Agency's advice and agreement, arrange for the Agency to carry out any intrusive inspection of the land on its behalf. If necessary, the Council will authorise a person nominated by the Agency to exercise the powers of entry conferred by section 108 of the Environment Act 1995. The Agency will be expected to carry out any intrusive investigations in accordance with appropriate good practice technical procedures for such investigations.

- 6.3.2 It should be noted that where the Environment Agency carries out an inspection on behalf of the Council, the Council's regulatory functions under Part 2A and the Statutory Guidance remain the Council's sole responsibility. The Agency should advise the Council of its findings in order to enable the Council to carry out these responsibilities.

### **6.4 Using External Expertise during Detailed Inspection**

- 6.4.1 The process of detailed inspection and risk assessment in complex cases may raise issues which are beyond the expertise of any one person. There may be little need to consult others in cases where risks are clearly high or low or where the authority has sufficient internal expertise, but in more complex cases the Council will consider whether to bring in external expertise. The person(s) consulted will depend on the circumstances of the land, and the expertise required and could include other relevant experienced practitioners from Local Authorities or specialist consultants. When choosing to consult, the Council will strive as far as possible to ensure that the person consulted is appropriately qualified and competent to undertake the work.
- 6.4.2 The Council will be mindful that although external experts may advise on regulatory decisions under the Part 2A regime, the decisions themselves remain the Council's sole responsibility.

## **6.5 Normal Levels of Contamination**

6.5.1 The Statutory Guidance is clear that normal levels of contaminants in soil should not be considered to cause land to qualify as contaminated land, unless there is a particular reason to consider otherwise. Therefore, if it is established that land is at or close to normal levels of particular contaminants, it should usually not be considered further in relation to the Part 2A regime. The Council will have regard to the relevant paragraphs of the Statutory Guidance when considering normal levels of contamination and local circumstances.

## **6.6 Recognising and Handling Uncertainty**

6.6.1 The Council understands that all risk assessments of potentially contaminated land will involve uncertainty, for example scientific uncertainty over the effects of substances, or assumptions about exposure to substances. When undertaking detailed inspection, the Council will recognise uncertainty and seek to minimise it as far as is relevant, reasonable and practical. Despite this, uncertainty is likely to remain and the Council will be aware of the assumptions and estimates that underlie the risk assessment, and the effect of these on its conclusions.

6.6.2 The Statutory Guidance says that:  
‘the uncertainty underlying risk assessments means there is unlikely to be any single “correct” conclusion on precisely what is the level of risk posed by land, and it is possible that different suitably qualified people could come to different conclusions when presented with the same information. It is for the [Council] to use its judgement to form a reasonable view of what it considers the risks to be on the basis of a robust assessment of available evidence in line with this Statutory Guidance’.

## **6.7 Remediation Activity**

6.7.1 During detailed inspection, and when determining whether land meets the definition of “contaminated land”, the Council may consider the likely direct and indirect health benefits and impacts of remediation. This could include any risks from contaminants being mobilised during the works, stress-related health effects, and whether the benefits would outweigh the social, financial and economic costs. The Statutory Guidance explains that such an assessment does not need to be a quantified or detailed cost-benefit or sustainability analysis. Rather the Council should make a broad consideration of factors it considers relevant to achieving the aims of Part 2A, the Statutory Guidance and this Strategy.

6.7.2 Once land has been determined, the enforcing authority must consider how it should be remediated and, where appropriate, issue a remediation notice to require such remediation. (The enforcing authority for the purposes of remediation may be the Council, or the Environment Agency, if the land is deemed to be a “special site”).

6.7.3 The Council will have regard to the relevant provisions of Part 2A, the Statutory Guidance and its own aims and objectives within this Strategy when it is:

- (a) deciding what remediation action it should specify in a remediation notice;
- (b) satisfying itself that appropriate remediation is being, or will be, carried out without the service of a notice; or
- (c) deciding what remediation action it should carry out itself.

## **6.8 Progress with Detailed Inspection and Remediation since Publication of the 2001 Strategy**

6.8.1 Since 2001, the Council has undertaken detailed inspection of 13 sites within its ownership. This has not identified that any meet the Part 2A definition of “contaminated land”.

6.8.2 The Council has either been consulted about or is aware of voluntary detailed inspection by the owners of a small number of sites (less than 10).

6.8.3 The Council does not record the number of sites where detailed inspection has been conducted as part of the planning process, and whether these have required remediation. Consultation on such sites certainly makes up the significant majority of the contaminated land workload however.

## **6.9 Detailed Inspection and Remediation 2022 - 2027**

6.9.1 The Council currently has no plans to undertake detailed inspection at any sites although further investigation is anticipated of the Clifton Hill site to inform future development of this land. The Council will continue to review detailed assessment and remediation works undertaken voluntarily, or through the planning process.

6.9.2 Detailed Inspection of sites, if required, will be undertaken in accordance with the principles outlined above. If at any stage the Council considers, on the basis of information obtained from inspection activities, that there is no longer a reasonable possibility that a significant contaminant linkage exists on the land, it will not carry out any further inspection in relation to that linkage. Notwithstanding the above, detailed inspection of sites will be reviewed where appropriate in the event of significant changes to legislation or guidance, or relevant new information becoming available.

## **7. Risk Summaries, Communication and Documentation**

### **7.1 Part 2A Documentation**

- 7.1.1 Part 2A and the Statutory Guidance require local authorities to produce a range of notices, documents and information at various stages in the process of dealing with land contamination. The Council will comply with these requirements when taking any action under Part 2A, and will seek advice from the Council's legal team where appropriate.
- 7.1.2 The most common piece of documentation, which was introduced by the 2012 revision to the Statutory Guidance, will be the Risk Summary. This must be produced for any land which, on the basis of a risk assessment, the authority may be likely to determine. Risk Summaries are not required for land which will not be determined as contaminated land or land which has been prioritised for detailed inspection but which has not yet been subject to risk assessment. Notwithstanding this, the Council will seek to ensure that all decisions made on land contamination are accurately recorded and described.
- 7.1.3 The Statutory Guidance sets out what must be included in a Risk Summary, and makes it clear that the document must describe the risks identified, and set the risks in context, for example by describing the risk from land contamination relative to other risks that receptors might be expected to be exposed to in any case. It should include a discussion of the uncertainties involved and be understandable to the layperson.

### **7.2 Consultation with Landowners**

- 7.2.1 The Council will consult the landowner before inspecting any land unless there is a particular reason why this is not possible. In accordance with the aims of this Strategy, the Council will seek to ensure that Risk Summaries and all other information is produced in a timely fashion, and bearing in mind the potential impacts of regulatory involvement including health impacts, property blight, and burdens on affected people. Specialist advice will be sought where necessary on the communication of risks and detailed technical information to the public.

### **7.3 Complaints and Notifications by Third Parties**

- 7.3.1 The Council may also receive information about sites from interested parties other than the land owner, for example by complaints from neighbours etc. Complaints will be dealt with following the procedures adopted by the Council for dealing with public health nuisances. It is normal Council policy that anonymous complaints will not be investigated. However, in the case of contaminated land any information received will be recorded and evaluated

by Environmental Health and Community Safety to determine the need for further investigation. Complaints may also take the form of anecdotal rather than factual information. In these cases the information will be recorded and evaluated. The information provider will not automatically be kept informed of action taken by the Council as a result of the receipt of this information.

#### **7.4 Contaminated Land Register**

- 7.4.1 The Contaminated Land Public Register will be held by Environmental Health Services. The information placed on the register will be maintained in accordance with the legislation and the Statutory Guidance. This includes information which may be excluded on the grounds of national security or commercial confidentiality.

#### **7.5 Providing Information to Third Parties**

- 7.5.1 The City Council receives enquiries from third parties requesting information about individual sites, or sites within a small radius (<500m) of a certain address. The Council will respond to any such written enquiries with the information available in Council files and databases, and in accordance with the Freedom of Information Act (2000) and the Environmental Information Regulations (2004). The Council will charge for time spent in responding to these enquiries. The charge will be reviewed annually by the Environmental Health and Community Safety manager.
- 7.6 If enquiries are received requesting copies of the Council's entire database of sites, or wanting information about large areas of the city, then these will be considered on a case by case basis by the Environmental Health and Community Safety manager.

## **8. Procedures**

8.1 Some relevant procedural aspects of contaminated land work are discussed below. More detailed procedures will be maintained where appropriate by the Environmental Health and Community Safety manager.

### **8.2 Internal Management Arrangements for Inspection and Determination**

8.2.1 Implementation of Part 2A is the responsibility of the Environmental Health and Community Safety manager as the lead officer. The strategy will be implemented by the officers of this section. The Environmental Health and Community Safety manager has delegated powers to serve and sign Remediation Notices. The holder of this post may consult with the Legal team where appropriate. Members will be updated via the Scrutiny Committee. Where the Council is liable for remediation work a report will be presented to the Council's Executive prior to the commencement of any work.

### **8.3 Contaminated Land and Development Management**

8.3.1 Officers from Environmental Health and Community Safety screen all applications that are received and validated by City Development. Where an application relates to a site where contamination is known or suspected, or is for a sensitive end use, officers will make appropriate comments to the Planning Officer. This could include requesting additional information prior to determination, drafting a suitable condition for any planning consent, or commenting on any submitted report(s). In accordance with the NPPF, officers will ensure that the Development Management process delivers sites that are suitable for their new use. However responsibility for securing a safe development rests with the developer and/or landowner.

8.3.2 There are similar inter-department links between Environmental Health and Community Safety and the Building Control Officers of City Development. Where Building Control Officers are made aware of land contamination the views of Environmental Health and Community Safety officers are sought and acted upon.

### **8.4 Dealing with Urgent Sites**

8.4.1 During the work of Environmental Health and Community Safety, sites may come forward which require urgent remediation action, or where continued development may necessitate remedial action and it is not clear that the developer or land owner will achieve this.

8.4.2 In the case of Part 2A investigation, this will include sites where it appears that there is an imminent danger of serious harm or serious pollution of controlled waters being caused as a result of a significant pollutant linkage

which has been identified. In these cases the Council will expedite action as far as is possible and in accordance with the legislation and the Statutory Guidance. It may undertake remediation action itself, where consistent with the aims of this Strategy. Prior to undertaking any action, cases would be referred to the Environmental Health and Community Safety Manager and elected members if it is felt to be appropriate, or if authorisation is needed for any expenditure.

8.4.3 In the case of sites being remediated through development, planning enforcement procedures and notices will be used where necessary and as agreed with City Development to ensure that any planning conditions are complied with.

8.4.4 Notwithstanding the above, it will remain the Council's aim to encourage voluntary investigation and remediation of sites where possible.

## **8.5 Exeter City Council Interests in Land**

8.5.1 When dealing with Council owned land it is important that there is close liaison between all the relevant officers for example in Environmental Health, Estates, Legal and Planning and that land contamination issues are considered early in any acquisition, disposal or development process.

8.5.2 As discussed above, risk assessment work has been undertaken for a number of sites in Council ownership which has concluded that none of these sites meet the Part 2A definition of "contaminated land".

8.5.3 Prior to acquiring any new land, detailed investigations will be necessary to ensure that the Council is not inheriting a contamination liability. The Council will seek warranties where appropriate and following advice from Legal Services. When adopting public open space on development sites, the Council will use Section 106 Agreements and planning conditions to ensure that an appropriate level of site investigation and remediation has taken place prior to adoption.

8.5.4 The process of site investigation detailed above will enable the Council, as landowner, to make more informed decisions about its future land dealings and the steps it needs to take in either disposing of, or letting land in future. Individual negotiations that would take place on either disposal or letting would be a matter for the parties to discuss in each case and the outcome may be very different depending upon the particular circumstances.

## **9. Contaminated Land 2022-2027**

9.1 This strategy will be reviewed in 2027, or following a significant change to legislation or guidance (whichever is the sooner). In the next five year period, the Council will:

- Seek further information on potential pollutant linkages, in order to refine the priority of sites for detailed inspection, until the point where it becomes clear that land is not contaminated.
- Review strategic and detailed inspection information in the light of changes to legislation or guidance, as deemed necessary.
- Undertake its contaminated land functions in accordance with legislation, guidance and this Strategy, having particular regard to the overall aims and objectives of the Strategy.