Contaminated Land Strategy

2022 – 2027

Borough of Pendle

Executive Summary

Industrial changed and demographic shift during the 20th century resulted in the need for large scale re-organisation of our towns and cities. Industries moved out or disappeared altogether, leaving large brownfield gaps in our urban landscape and a legacy of contaminated land.

Pendle Borough Councils Contaminated Land Strategy 2022- 2027 has been developed to address this legacy and to meet the legal requirements of Part IIA of the Environmental Protection Act 1990. The purpose of the regime is for all local authorities to carry out periodic inspections of their area to identify sites that could be determined as contaminated land if they meet the criteria of the statutory definition and ensure appropriate action is taken to make the land suitable for use.

Alongside this primary piece of legislation, other secondary legislative regimes play an important role in ensuring that further contamination is minimised or prevented and that land remediation is secured through the planning process. This Strategy sets out how the Council proposes to implement its inspection duties over a period of five years and contribute towards the sustainable development of the Borough. Whilst protecting human health and property as well as the wider environment of controlled waters and ecosystems.

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1.0 INTRODUCTION & OVERVIEW

1.1 Background to the Legislation

Industrial change and demographic shift during the 20th century resulted in the need for large scale re-organisation of our towns and cities. Industries moved out or disappeared altogether, leaving large brownfield gaps in our urban landscape. At the same time changes in heating methods and the advent of the consumer society has had a significant effect on the type and volume of refuse it has been necessary to landfill. Inevitably, these changes have left behind a legacy of contaminated land that in some cases may be harmful.

The contaminated land regime places a duty on Local Authorities to inspect land within its area from 'time to time'. For the purpose of identifying land where contamination is causing unacceptable risks to human health and the wider environment, as a result of historic contamination. The regime also provides a system for securing adequate remediation of any contaminated land identified.

In accordance with the DEFRA Statutory Guidance, this document sets out Pendle Borough Council's strategic approach to inspection of its district. It serves to present the council's aims, objectives and priorities for inspection, as well as the detailed procedures it will follow to identify Contaminated Land in Pendle.

1.2 Relevant Legislation

Section 57 of the Environment Act 1995 amended the Environmental Protection Act 1990 by the introduction of a new Part IIA (known as Part 2A.) The regime came into force in April 2000 with the implementation of the Contaminated Land (England) Regulations 2000. Part 2A requires that the council acts in accordance with any statutory guidance issued by the Secretary of State.

In August 2006, The Contaminated Land (England) Regulations 2006 were introduced and these consolidated the provisions of the 2000 Regulations as well as the Contaminated Land (England) (Amendment) Regulations 2001 and included provisions for the regulation of land contaminated with radioactive substances. The 2006 regulations also altered the appeal process against remediation notices. The Contaminated Land (England) (Amendment) Regulations 2012 amend the 2006 regulations by altering the definition of contaminated land with respect to the pollution of controlled waters.

In April 2012 a revision to the Statutory Guidance by the Department of the Environment, Food and Rural Affairs (DEFRA) was published with the aim to clarify the approach for identifying and determining contaminated land.

1.3 Explanation of Terms

The legislation and guidance is very heavily punctuated with many complex and often unusual terms. To assist in the interpretation of these a glossary is included in Appendix 1.

1.4 National Objectives of the Regime

England has a considerable legacy of historical land contamination involving a very wide range of substances. On all land there are background levels of substances, including substances that are naturally present as a result of our varied and complex geology and substances resulting from diffuse human pollution. On some land there are greater concentrations of contaminants, often associated with industrial use and waste disposal. In a minority of cases there may be sufficient risk to health or the environment for such land to be considered contaminated land.

Part 2A provides a means of dealing with unacceptable risks posed by land contamination to human health and the environment, and enforcing authorities should seek to find and deal with such land. Under Part 2A the starting point should 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 Guidance, should it be considered as meeting the Part 2A definition of contaminated land.

The overarching objectives of the 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.

Under the Part 2A regime the assessment and management of risks are considered only in relation to the current use of the land and underline the **'suitable for use'** approach, which consists of 3 elements:

• Ensuring that land is suitable for its current use (and all uses within that planning use class);

• Ensuring that land is made suitable for any new use, as official permission is given for that new use, and

• Limiting requirements for remediation to the work necessary to prevent unacceptable risks to human health or the environment, in relation to the current use, or officially permitted future use of the land.

The Government requires that a balance between precaution and over precaution be struck to ensure that any necessary Part 2A intervention is likely to achieve a net benefit.

1.5 General Policy of the Local Authority

1.5.1 Pendle Councils Strategic Plan 2020 – 2023

These priorities have been carried forward into Pendle Councils Strategic Plan 2020 – 2023. This identifies 5 main aims.

1) Working with partners and the community to sustain services of good value;
2) Helping to create and sustain jobs with strong economic and housing growth;
3) Helping to create and sustain resilient communities
4) Maintaining a sustainable, resilient and efficient organisation which is digital by default; and
5) Delivering our Covid19 response and recovery whilst working towards rebuilding, restoring and rehabilitating our communities.

This strategy will help to meet Council Objectives by:

- Assisting in the recycling of previously developed land;
- Encouraging the use of and cleaning up of contaminated land;
- Providing information on contaminated land;
- Encouraging sustainable remediation of land.
- Assisting in the regeneration of Pendle Brownfield sites by advising of potential issues relating to various sites across the borough.
- Use the Brownfield Development Fund to bring forward Brownfield developments which help to regenerate derelict sites and remediate land.

1.5.2 Local Planning policy

The National Planning Policy Framework (NPPF) updated in 2021, sets out national planning policy. With NPPF placing a high priority on the reuse of previously developed land. The Pendle Council Core Strategy 2011-2030 was adopted in 2015 and reviewed in February 2019, reflecting the NPPF. The Pendle Council Core Strategy sets out strategic planning policies covering:

- A settlement hierarchy showing how development should be distributed across Pendle.
- How many new homes should be built across different parts of Pendle.
- How much employment land should be developed.
- A broad framework for the protection and enhancement of our natural and historic environments.

It is important for therefore to be up to date, accurate information regarding areas of potential contamination in the Borough, in order to inform decisions about potential re development sites, through planning.

1.6 Roles and Responsibilities

The primary regulators in respect of the contaminated land regime are the Local Authority and the Environment Agency. In the Borough of Pendle the strategy will be under the control of the Housing Health and Engineering Services Manager and the Council's Policy & Resources Committee.

This is a significant responsibility that reflects existing local authority duties under the statutory nuisance regime and compliments its role as a planning authority. The role in broad terms includes:

- Prepare and publish an Inspection Strategy; setting out how the council intends to inspect its area for the purpose of identifying contaminated land (or identify land for which there are reasonable grounds, for land contaminated by radioactive substances).
- To cause the area to be inspected to identify potentially contaminated sites.
- To determine whether any particular site is contaminated (by definition).
- To determine whether any such land should be designated a 'special site'.
- To act as enforcing authority for contaminated land not designated as a 'special site'.

Where the presence of contaminated land has been confirmed the enforcing authority must:

- Establish who should bear responsibility for remediation.

- Decide after consultation what must be done in the form of remediation and ensure it is effectively carried out.
- Determine liability for the costs of the remedial works.
- Maintain a public register of regulatory action in relation to contaminated Land in accordance with the Contaminated Land (England) Regulations 2006.

1.7 The Regulatory Role of the Environment Agency

The Environment Agency has four main roles:
To assist local authorities in identifying contaminated land particularly where water pollution is suspected or apparent and to provide advice on identifying and dealing with pollution of controlled waters

- To provide site specific guidance to local authorities on contaminated land where requested

- To act as enforcing authority for contaminated land designated a 'special site' or where the site is contaminated by Radioactivity.

- To maintain a public register on regulatory action for Special Sites; to publish a national report on contaminated land and to continue to carry out technical research in conjunction with DEFRA and publish scientific and technical advice.

1.8 Development of the Strategy

The Council first adopted a Contaminated Land Strategy in 2001. This has been updated periodically to reflect new Guidance. This strategy will replace previous versions and reflects the 2012 Statutory Guidance.

Part 2A requires that local authorities cause their areas to be inspected with a view to identifying contaminated land.

Relevant sections of the Act include:

(a) Section 78B(1): Every local authority shall cause its area to be inspected from time to time for the purpose – (a) of identifying contaminated land; and (b) of enabling the authority to decide whether any such land is land which is required to be designated as a special site.

(b) Section 78B(2): In performing [these] functions… a local authority shall act in accordance with any guidance issued for the purpose by the Secretary of State.

There are two broad types of "inspection" likely to be carried out by local authorities:

(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.

2.0 Aims and Objectives of the Inspection Strategy

2.1 Strategy Aims

In order to develop the strategy to reflect the corporate objectives as detailed in 1.5 the strategy aims: -

STRATEGY AIMS:

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

2.2 Strategy Objectives

In order to meet these aims the strategy has the following objectives:

STRATEGY OBJECTIVES

- To detail the strategic approach to be followed for the inspection of land within the Borough of Pendle.
- To assess planning applications to ensure that contamination issues are addressed adequately by developers.
- To compare the database of potentially contaminated sites with those in council ownership to establish potential liabilities.
- To make information available to all relevant sections of the Council to enable consideration to be given about land contamination in policy making processes, and bringing sites forward for economic development.
- To avoid any unnecessary blight of land.
- To inspect urgent sites as they arise.
- To help and encourage the voluntary remediation of land by offering information and expertise where appropriate.

2.3 Strategy Priorities

The Council has the following priorities in order to meet the Aims and Objectives outlined above

STRATEGY PRIORITIES

• Reprioritise all identified potentially contaminated sites using the dedicated contaminated land GIS system.

Sites will be prioritised according to the receptors in the following priority order;

1. Human health is affected.
2. Controlled waters are affected.
3. Protected organisms or ecosystems are affected.
4. Buildings are affected.

• Add new sites to the prioritisation list as information becomes available, using the same prioritisation method as other sites.

• Update the dedicated GIS system to store site specific information.

• Identify and prioritise land in council ownership according to the risk posed along with all other sites within the district. The same procedures will be followed and detailed records etc. will be maintained in the same way as for privately owned sites in order to ensure transparency and consistency.

• Continue to ensure that potentially contaminated sites are dealt with effectively through the planning regime. This also includes updating the prioritised list of sites as sites are remediated through the process.

• Carry out detailed inspection of the areas of land identified in priority order as funding, resources and council priorities allow.

• Deal with urgent sites as a matter of priority as and when they arise.

3.0 CHARACTERISTICS OF THE BOROUGH OF PENDLE

3.1 Geographical Location

The Borough of Pendle is situated in North West England and North East Lancashire. It covers 169 square kilometers, has 20 wards and a population of 89,452.

The Borough comprises of 6 main towns these being Nelson, Colne, Brierfield, Barrowford Barnoldswick and Earby. There are however large areas of open moorland to the north and west of the district which contain a number of older and more rural hamlets and villages. Pendle Hill is a dominant local landmark that straddles the boundary between Pendle and the neighbouring district of Ribble Valley.

The Authority is bordered with Craven District Council to the north, Calderdale and Bradford Metropolitan Authorities to the east, Burnley Borough Council to the south and Ribble Valley Borough Council to the west.

3.2 Population

The 2011 census identified the population of Pendle as a total of 89,452, broken down as follows into various townships.

	1981	1991	2001	2011
Nelson	30,449	29,120	28,662	29,135
Colne	17,145	16,754	22,962	16,096
Barnoldswick	10,039	10,038	11,097	9,655
Brierfield	7,553	7,598	10,636	10,153
Barrowford	5,078	5,756	4,979	5,043
Earby	3,945	3,956	5,999	3,123
Rest of Borough	11,357	11,889	4,913	16,247
TOTAL	85,566	85,111	89,248	89,452

Nelson = Bradley, Clover Hill, Marsden, Southfield, Walverden, Whitefield Wards
Colne = Boulsworth, Foulridge, Horsfield, Vivary Bridge, Waterside
Barnoldswick = Coates and Craven Ward
Brierfield = Brierfield and Reedley Ward

3.3 Land Owned by Local Authority

The council owns a variety of different types of land and premises throughout the Borough, such as offices, industrial premises, car parks, cemeteries and other amenity land, which is managed by Liberata Property Services.

Pendle Council transferred ownership and management of its housing stock to Housing Pendle in October 2006.

Housing Pendle is now part of the Together Housing Group. It provides affordable housing and associated care and support services to customers throughout East Lancashire and beyond.

3.4 Industrial History

Although historically a textile area, a number of other industries have contributed to Pendle's general prosperity over the years. Industries such as quarrying, coal mining and leather tanning were carried out for centuries on a domestic scale and industrialisation encouraged their growth.

Cotton/weaving

The Pendle area developed as a specialised cotton-weaving district during the 19th century. The industry became the economic backbone to such areas as Colne, Foulridge, Earby and Barnoldswick and gave rise to the town of Nelson.

Textile Machinery/ mill accessories.

To supply the ever-increasing number of mills many businesses were developed to make looms and other mill accessories. Foundries were built which provided castings for the machines and the industry thrived in the 19th and early 20th century.

Quarrying

As timber became exhausted by the end of the 16th century, stone became increasingly important. Millstone grit deposits in varying thickness exist throughout the district and many farms had their own small quarries. There were also larger quarries that provided stone for the building of some mills, churches and the canal. The best known quarries being Winewall Quarry, Low Hill Quarry in Colne, Upperhill Quarry in Barnoldswick and Noyna Quarry in Foulridge. There was also a large sand quarry off Knotts Lane in Colne.

Coal mining

There are records of coal mining operations in Pendle dating back to the 13th century. Most mines were drift mines but in later years coal was removed using the pillar and stall method. The majority of the coal that fuelled the massive expansion of the mills in the 19th century came from Fox Clough and Lark Hill Pits; the latter closed in 1890.

Leather Industry

There is reference to the leather trade in Colne dating back to the Middle Ages where a number of tanners were named in the Clitheroe Court Roll. The operation of tanning, fellmongering and skin washing took place throughout the Pendle area.

Wallpaper manufacture

Up to 2000, there were two large wallpaper manufacturers in the Borough. These companies had been operating within the borough for over 40 years. One of the mill sites has been derelict for a number of years. There are now plans to bring it forward for development. Whilst, other, mills has been developed into residential use.

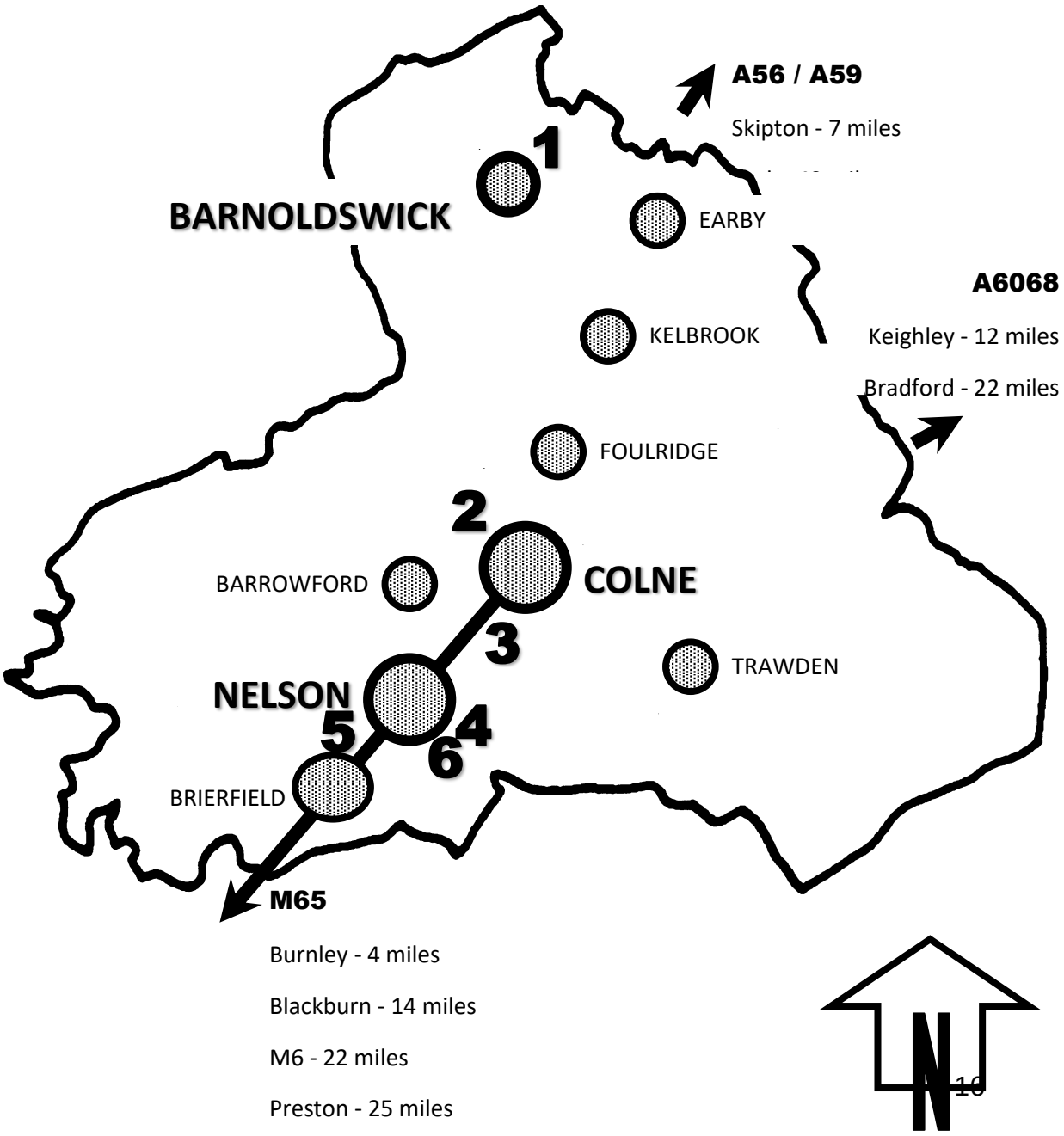
Gas works

To support the growing communities and the increased popularity of the use of gas both in domestic properties and also as a form of energy for use in industry, a number of gas works throughout the area were developed in the late 19th century. These were all decommissioned following the introduction of natural gas in the 1970's.

3.5 Current Land Use Characteristics.

The principal land use within the borough other than for residential purposes is for agricultural purposes. In terms of industrial activity this is generally concentrated in established industrial areas within and around the 5 main settlement areas. The areas of North Valley Road in Colne, is now predominately a retail area

3.6 Concentrations of Industry.



1 Crow Nest Industrial Estate, Barnoldswick.

Including Silent Night and Rolls Royce

2 White Walls Industrial Estate, Colne.

3 Hallam Road Business District, Nelson.

4 Southfield Business District, Nelson, including

Valley Mills and Brook Street.

5 Lomeshaye Industrial Estate, Nelson.

6 Throstle Nest Mill, Nelson

7

3.7 Current Industrial Climate

In Pendle as in most places, the manufacturing sector has shed jobs over the years whilst the service sector has grown as a source of employee jobs. However there still continues to be a bias towards a larger proportion of employees in the manufacturing sector, and in particular the aerospace manufacturing sub-sector.

Despite its growth over the years, in comparison to its established strengths in manufacturing, the authority, like much of East Lancashire has only limited strengths in the service sector.

At the end of the M65, and with good road links in to north Manchester and Yorkshire, the business location of the authority has improved dramatically over a generation. Lomeshaye and Whitewalls industrial estates are the major business sites. The Heritage Trust North West is actively involved in projects in the authority that preserve the area's heritage, including the Lomeshaye and Higherford Mill sites that provide workspace units. Riverside Business Park is partially developed and aims to provide high quality office accommodation.

In 2012 Pendle Borough Council bought the historic Brierfield Mill site with grant funding from the Government's Homes and Communities Agency and has subsequently transferred it to PEARL (Brierfield Mill) Ltd, a Joint Venture partnership with the Pendle based Barnfield Investment Properties. This huge complex of buildings on a seven acre site is Pendle's flagship economic regeneration project.

In 2013, there were 2,760 active enterprises in Pendle district. The fact that the North West Aerospace Alliance (a highly successful business led support agency) is based in Nelson epitomises the importance of the aerospace sector to the area. Rolls Royce with a site in Barnoldswick is a huge part of this. The aero-engine plant, where

Whittle's first jet engines were developed and produced, has for many years led the development and manufacture of the wide chord fan blade for engines such as the RB211 and Trent. Euravia is based in a rural part of Pendle district and is a prime example of an aviation company offering repair and overhaul services.

Silentnight also has a site in Barnoldswick and is a local bed springs manufacturer. A number of old established local companies help to give a sense of place to the area including the Briggs & Duxbury, EA Foulds Ltd, Mitchell Interflex Ltd and Kirk Environmental.

The most recent companies in Pendle to win a Queen's Award for Enterprise are ACDC LED Ltd in 2012, and Carradice of Nelson Limited in 2014.

3.8 Protected Areas and Buildings

The Borough of Pendle has 23 designated conservation areas, groups of buildings and features that have special architectural or historical interest. These areas are quite diverse and include Lomeshaye Industrial Hamlet, Barrowford Village Centre, Albert Road in Colne and several residential and shopping streets in Barnoldswick.

Pendle has 315 listed buildings. Many of these are agricultural barns and attached buildings, several are industrial, Brierfield Mill and Higherford Mill and chimney being examples. All listed buildings are graded I, II* and II in terms of their features and importance. In Pendle

- Grade I Buildings = 3
- Grade II* Buildings = 21
- Grade II Buildings = 291

<u>Special Protection Areas</u>
Boulsworth Hill is a Special Protection Area. This is a European designation that protects the area from development, reflecting the international importance of the moorland habitat to migrating birds.

<u>Area of Outstanding Natural Beauty (AONB)</u>
The Forest of Bowland lies to the Northwest of Pendle, part of the AONB crosses into Pendle around Pendle Hill.

<u>Site of Specific Scientific Interest (SSSI)</u>
Crow Hill, Dove Stone Moor, Combe Hill, Emmott Moor and Boulsworth Hill are designated as part of the South Pennine Moor SSSI. This is a national designation by English Nature and means that the site(s) have special planning status. SSSI's can be of both biological and geological importance.

<u>Scheduled Ancient Monuments</u>

There are 11 such monuments in the district and include Higherford Old Bridge, 2 cairns at Bleara Lowe Earby, Castercliff Hillfort, the stock and the Bomber Camp Romano British farmstead at Bracewell and Brogden, The Hall Bridge, Bank House Bridge, Wycoller Hall, Wycoller Packhorse Bridge all at Wycoller and finally the Hanging Stones in Trawden Forest.

Biological Heritage Sites

These are also sometimes referred to as 'Important Wildlife Sites'. This is a local designation carried out by the County Ecologist. In Pendle there are 61 such sites in the borough, equating to 7.6% of the district and totalling 1289 hectares. These vary in size and character including stretches of the Leeds and Liverpool Canal, farmland, churchyards, pasture, reservoirs, ancient woodland, upland cloughs, moorland and marsh.

3.9 Key Water Resource/ Protection Issues

Yorkshire Water PLC provides drinking water to the settlements in the far north of the district. United Utilities PLC provide drinking water to the rest of the Borough. There are over 240 known private water supplies within the area serving over 500 properties which the Borough of Pendle monitor and keep a public register of.

United Utilities PLC is the key sewerage undertaker. Where main drainage is not available septic tanks and other small scale sewage treatment facilities are in operation.

The Environment Agency regulates licensed surface water and groundwater abstractions within the Borough of Pendle and they keep a register of these assets.

3.10 Broad Hydrogeological / Geological Characteristics

There are no major aquifers within the Borough. All groundwater resources are located within minor aquifer rocks and sediments.

The Environment Agency uses the Biological Quality Elements to monitor the river quality in Pendle. The highest quality stretch of water is Trawden Brook, graded A (very good quality suitable for fish). Other highest achieving waterbodies in Pendle are Wanless Water, Pendle Water (headwaters to Colne Water) and Wycoller Beck which all achieved good status in 2019.

The poorest stretches of water are the River Calder downstream from Pendle Water and Walverden Water from Marsden Brook to Pendle Water. Both are graded E in 2019 (poor quality, likely to limit coarse fish population), which reflects discharges from sewage treatment works and combined storm water overflows.

Carboniferous coal measures (Westphalian) strata underlie Brierfield, Nelson and the area to the south of Colne. They comprise alternating shale/mudstones, siltstone, sandstones and coal seams, which have been folded and faulted. The sandstones tend to act as individual minor aquifer units separated by lower permeability shale/mudstones. Groundwater movement is generally by fissure flow. However, a major influence on groundwater movement is likely to be the presence of old coal workings within the coal measures of the Borough. These can give rise to a complex and rapid groundwater flow.

The Millstone Grit Series strata occupy a northwest / southeast trend tract running through the central part of the Borough. They comprise of alternating shale/mudstones and sandstones. The sequence is dominated by thick sandstone / grit stone units, principally the Pendle Grit to the Northwest of Brierfield, Nelson and Colne which, being resistant to erosion, form marked upland features surrounding the lower lying coal measures. The sandstones tend to act as individual aquifer units separated by lower permeability shale/mudstones. Groundwater movement is generally by fissure flow, although inter-granular flow can be significant in the more porous Pendle and Kinderscout Grits. These sandstones with their extensive outcrops represent important resources containing high quality groundwater. The absence of protective low permeability drift cover on the higher ground makes the sandstone units particularly vulnerable to physical disturbance and polluting activities.

Carboniferous Limestone Series (Visean) strata underlie the northern part of the borough around Barnoldswick and the area to the Northeast of Pendle Hill. They comprise alternating shale/mudstones, sandstones and limestone, which have been folded and faulted. The sandstones and limestone's tend to act as individual minor aquifer units separated by lower permeability shale/mudstones. Groundwater movement is generally by fissure flow. Complex and rapid groundwater flow can occur, particularly in limestone. Groundwater associated with Limestone Series tends to be of relatively high quality, although it may be in a reduced (deoxygenated) condition where drift cover is present. Drift deposits will afford some degree of protection over the Limestone Series. However, these tend to be variable in type and thickness and so groundwater vulnerability tends to be site specific.

In the low-lying areas of the Borough, drift (superficial) deposits cover the carboniferous bedrock. The published geological maps suggest this drift cover is predominantly Glacial Till (Boulder Clay), which would give some protection to the underlying solid aquifer units from potentially polluting surface activities. These drift deposits tend to be variable and may be thin and / or permeable and contain groundwater in its own right e.g. glacial sands and gravels, alluvium etc.

3.10 Known Information on Contamination

Housing, Health and Engineering Services has developed a list of potentially contaminated land sites using various sources of historical information and holds information on land contamination and potentially contaminated sites. This

information is derived from a number of sources, including historic maps and plans, licensing data for former landfill sites, industrial permit registers and local knowledge. This information has been inputted onto a dedicated contaminated land mapping database

Also included in the database are details of planning requirements for sites, including site reports and validation for sites remediated through the planning process. The information held on the database is not exhaustive, but provides a basis for risk rating and further investigation.

4.0 Contaminated Land in Pendle

4.1 Potentially Contaminated Sites in Pendle

The process of site investigation began in July 2001 using a set of historic ordnance survey maps, planning information, licensing information and local knowledge in preparing a Geographical Information System (GIS) Mapping Database.

This historic land use database has been used to identify areas of potentially contaminated land from analysis of historic ordnance survey maps, following governmental advice on the identification and classification of potentially contaminative land uses. It should be emphasised that only a small proportion of sites subject to potentially contaminated land use will meet the strict definition of contaminated land. Due to the past uses of the land, many of these sites will contain substances in, on, or under the ground, which have the potential to cause harm. However, in order to be designated as contaminated land these sites must have both a pathway by which significant harm may be caused and a receptor on which significant harm can be inflicted. If either the pathway or the receptor is missing from the pollutant linkage, the site may be land in a contaminative state but cannot be designated as contaminated land.

Over 1000 potentially contaminated sites were identified based on historical use only. The process of risk assessing these is under way, based on current use and possible receptors. The sites have been put into 'Bands', with category 'A' sites being the highest risk and category 'D' the lowest. This process is a long, ongoing one, as more information becomes available and is inputted into the dedicated database.

It should be noted at this stage, that the identification, investigation and remediation of potentially contaminated land sites is a hugely expensive and time consuming process. The majority of sites therefore, are dealt with through the Development Control process. Sites that are to be developed on potentially contaminated sites are conditioned through the planning process and are subsequently investigated and remediated in order that they are suitable for use. This information is then added to the contaminated land database and the sites are re classified according to risk.

4.2 Data Management

In 2012, a dedicated data management and risk assessment database for contaminated land sites was purchased and the task of risk rating sites due to receptors and current land use is ongoing. This is an ongoing task as sites are identified, investigated, remediated or queries resolved.

4.3 Sites on the Contaminated Land Public Register

There is only 1 site in Pendle that has been designated as Contaminated Land under Environmental Protection Act 1990 Part 11A. This is known as:

Site Location	Owner	Grid Reference
Green Works, Knotts Lane Colne	Mohammed Mazar 10 Harold St Colne	E388, 347 N439, 586

5.0 CONTAMINATED LAND REGIME (PART 2A)

5.1 Definition of Contaminated Land

A legal definition of Contaminated Land is given in Section 82A(2) of Part llA of the Environmental Protection Act 1990. The Council will also have regard to the Contaminated Land Statutory Guidance 2012 which sets out how Part 2A should be implemented and the legal tests for when land is considered to be 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 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.'***

The definition of contaminated land by virtue of pollution of controlled waters has been amended by section 86 of the Water Act 2003 and is in line with the Water Framework Directive and the Groundwater Daughter Directive and came into force in April 2012. In line with land, there must be ***significant pollution of controlled waters*** *or the* ***significant possibility of such pollution*** *being caused*.

Radioactive contaminated land is defined as:

'any land which appears to the Local Authority in whose area it is situated to be in such a condition, by reason of **SUBSTANCES** *in, on or under the land that:*

(a) ***harm*** *is being caused or;*

(b) there is a ***significant possibility of such harm*** *being caused;*

5.2 Principles of a Contaminant Linkage

Under Part 2A, for a relevant risk to exist there needs to be one or more contaminant – pathway - receptor linkages – "contaminant linkage" – by which a relevant receptor might be affected by the contaminants in question. In other words, for a risk to exist there must be contaminants present in, on or under the land in a form and quantity that poses a hazard, and one or more pathways by which they might significantly harm people, the environment, or property; or significantly pollute controlled waters. For the purposes of this strategy and in accordance with the Guidance;

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

(b) A "receptor" is something that could be adversely affected by a contaminant, for example a person, an organism, an ecosystem, property, or controlled waters. The various types of receptors that are relevant are described in Appendix 2.

(c) A "pathway" is a route by which a receptor is or might be affected by a contaminant.

The term "contaminant linkage" means the relationship between a contaminant, a pathway and a receptor. All three elements of a contaminant linkage must exist in relation to particular land before the land can be considered potentially to be contaminated land under Part2A, including evidence of the actual presence of contaminants. The term "significant contaminant linkage", as used in the Statutory Guidance, means a contaminant linkage which gives rise to a level of risk sufficient to justify a piece of land being determined as contaminated land. The term "significant contaminant" means the contaminant which forms part of a significant contaminant linkage.

5.3 Significant Harm or Significant Possibility of Harm

The Statutory Guidance states that the following should always be considered to constitute significant harm to human health: death; life threatening diseases (e.g.

cancers); other diseases likely to have serious impacts on health; serious injury; birth defects; and impairment of reproductive functions. Other health effects may also be considered to constitute significant harm to human health by the council. In deciding whether there is actual significant harm to human health occurring, advice will be sought from Public Health England.

5.4 Significant Possibility of Significant Harm to Human Health (SPOSH)

Where the council is not yet convinced that significant harm is occurring, it may still determine land to be contaminated land on the basis that a significant possibility exists of such harm occurring at some point in the future.

5.5 Outline of Statutory Procedures

Local authorities must search their Districts for land that has both sensitive receptors and sources of potential contamination. Where they have good reason to believe these both exist, they must undertake a formal risk assessment in accordance with established scientific principles in order to establish whether there is the potential for them coming together and causing harm or pollution as described. This is known as a pollutant linkage.

Where they are satisfied that significant harm is occurring, or there is a significant possibility of such harm or pollution of controlled waters, they must declare that a significant pollutant linkage exists and that the land is therefore contaminated land by definition. In every case where the land does not fall within the category of a special site, they must commence regulatory action.

This involves a series of complex procedures that must include:

- A formal written record of the determination
- Formal notification of all interested parties
- Determination of the physical extent of the land
- The extent and seriousness of the risks (need for urgent action)
- The number and type of pollutant linkages
- The effect each significant pollutant may have on controlled waters (if any)
- The most appropriate and cost effective remedial scheme for each significant pollutant linkage
- Identification of liability groups and, appropriate persons, for each pollutant linkage
- Assessment of hardship in the case of each appropriate person
- Effective remediation of the site and recovery of costs where appropriate

A series of consultations must also be carried out at each stage with the ultimate aim of securing voluntary remediation (without the need for enforcement action). Where

the land does fall within the definition of a special site the Environment Agency become the enforcing authority. In these cases, however, the local authority must still make the determination and formally notify the interested parties.

In certain circumstances the local authority may carry out the remedial works. In general terms it has this power where:

- Urgent action is necessary
- There is no appropriate person
- The authority is precluded from taking enforcement action (specified reasons)
- The authority agrees to carry out the works on behalf of an appropriate person
- A remediation notice has not been complied with

In non-urgent cases where a remediation notice is necessary and all the required consultations have been completed, the notice must be served on the appropriate person(s) no sooner than three months after the contaminated land has been identified or declared a special site. The notice itself may require further investigation of the site and as a result more pollutant linkages may be identified. Where that is the case the enforcing authority must go through the same processes again to identify appropriate persons and remedial actions.

The enforcing authority must at all times consider the potential for hardship and undertake cost benefit analysis in respect of all remedial actions. Where remedial actions are undertaken in default of a notice the enforcing authority has the power to recover costs in certain circumstances.

5.6 CATEGORISATION OF CONTAMINATED LAND

The council will follow the system of categorisation in the statutory guidance when considering whether a significant possibility of significant harm exists on an area of land.

For each type of receptor the guidance details four Categories of site, Categories 1 and 2 sites being capable of being determined as contaminated land with Categories 3 and 4 not being capable of being determined as contaminated land on such grounds. A similar categorisation system exists for determining whether significant pollution of controlled water exists and reference should be made to chapter 4 of the statutory guidance for more details.

5.6.1 Categories for Human Health

As the council’s highest priority receptor is human health the first sites to be considered will be with respect to human health:

Category 1 Sites: Land which is clearly contaminated will be a category 1 site. If the council has robust scientific evidence that significant harm would occur, then it should consider that a significant possibility of significant harm exists (SPOSH). These would include the worst sites and examples would be where similar contaminant levels are known or strongly suspected to have resulted in significant harm elsewhere.

Category 2 Sites: This would include land where there is little or no direct evidence that similar contaminant levels have resulted in significant harm elsewhere but where the council considers there is a strong case for considering the risks from the site are of sufficient concern to warrant action under Part 2A.

Category 3 Sites: This would include land where there still may be risks posed by contaminants, but a strong case as described for the previous categories does not exist, and where a positive legal test of SPOSH cannot be met. If the council is unable to consider on the basis of estimates whether SPOSH exists, it will take account of a number of other factors when considering its decision:

1. The likely direct and indirect health consequences of determination, such as the benefits of reducing contaminant exposures during remediation, but also the possibility of increased exposures during remediation and the stress caused by disruption.
2. The council will also consider an initial estimate of the duration and cost of remediation and the extent of the benefit that would occur.

Category 4 Sites: Land which is clearly not contaminated will be in category 4. This would include land where no relevant contaminant linkage exists, or that only 'normal' levels of contaminants are present, or that generic guidance criteria are not exceeded, or where land based exposures form only a small proportion of what a receptor would be exposed to. In such cases the council would consider that SPOSH does not exist.

If the council is unable to place the site being assessed into category 1 or 4, then it must consider whether to consider it within Category 2 if it is considered that SPOSH exists, or within Category 3 if it is considered that SPOSH does not exist. In considering these two factors, the council is not required to undertake a detailed quantified assessment.

5.6.2 Category 4 Screening levels

Category 4 Screening Levels published in 2014 by DEFRA have been developed to help decide when land is suitable for use and definitely not contaminated land. Current Soil Guideline Values (SGV's) and other Generic Assessment Criteria (GAC's) are well within category 4 and represent minimal risk. The C4SL's are set at the top of category 4 and although they would still be precautionary, their purpose is to speed

up the decision making process for regulators. They are also very likely to act as a suitable remediation target for the development of brownfield land.

5.7 Significant harm and significant possibility of such harm (non-human receptors)

In considering non-human receptors, the council should only regard receptors described in Appendix 2. Similarly, in considering whether significant harm is being caused or there is a significant possibility of such harm, the authority should only regard the forms of harm described in Appendix 3.

In considering “ecological system effects” the council should consult Natural England and have regard to its comments before deciding whether or not to make a determination.

5.8 OTHER PRINCIPLES OF PART 2A

5.8.1 Risk Assessment

Part 2A takes a risk-based approach to defining contaminated land. For the purposes of this strategy in accordance with the Guidance, “risk” means 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.

All soils contain substances that could be harmful to human or environmental receptors, although in the very large majority of cases the level of risk is likely to be very low. In conducting risk assessment under the Part 2A regime, the Council will aim to focus on land which might pose an unacceptable risk.

Risk assessments will be 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.

5.8.2 Current use

Under Part 2A, risks will be considered only in relation to the current use of the land “current use” means:

(a) The use which is being made of the land currently.

(b) Reasonable likely future uses of the land that would not require a new or amended grant of planning permission.

(c) Any temporary use to which the land is put, or is likely to be put, from time to time within the bounds of current planning permission.

(d) Likely informal use of the land, for example children playing on the land, whether authorised by the owners or occupiers, or not.

(e) In the case of agricultural land, the current agricultural use should not be taken to extend beyond the growing or rearing of the crops or animals which are habitually grown or reared on the land.

In assessing risks the Council will disregard any receptors which are not likely to be present given the current use of the land or other land which might be affected. When considering risks in relation to any future use or development which falls within the description of a “current use”, the local authority should assume that the future use or development would be carried out in accordance with any existing planning permission. In particular, the authority should assume:

(a) That any remediation which is the subject of a condition attached to that planning permission, or is the subject of any planning obligation, will be carried out in accordance with that permission or obligation.

(b) Where a planning permission has been given subject to conditions which require steps to be taken to prevent problems which might be caused by contamination, and those steps are to be approved by the local planning authority, that the local planning authority will ensure that those steps include adequate remediation.

5.8.3 The process of risk assessment

The process of risk assessment involves understanding the risks presented by land, and the associated uncertainties. In practice, this understanding is usually developed and communicated in the form of a “conceptual model”. The understanding of the risks is developed through a staged approach to risk assessment, often involving a preliminary risk assessment informed by desk-based study; a site visit and walkover; a generic quantitative risk assessment; and various stages of more detailed quantitative risk assessment. The process will normally continue until it is possible for the local authority to decide: (a) that there is insufficient evidence that the land might be contaminated land to justify further inspection and assessment; and/or (b) whether or not the land is contaminated land.

For land to proceed to the next stage of risk assessment there will be evidence that an unacceptable risk could reasonably exist. If the Council considers there is little reason to consider that the land might pose an unacceptable risk, inspection activities will stop.

It may become apparent during the course of detailed inspection of land that the assumptions that led to the prioritisation of the land prove to be incorrect, and that the risks posed by the land are lower than expected. In such cases the Council will consider whether to proceed with inspection, having regard to the need to prioritise inspection activities. There may be good reason to continue until a decision can be taken on whether or not the land is contaminated land. However, as soon as it becomes clear that the land is unlikely to be contaminated land, it will bring inspection and risk assessment to an end, and redirect efforts to the inspection of other land in line with our approach to prioritisation.

As a general rule, inspections will be conducted as quickly, and with as little disruption, as reasonably possible whilst ensuring that a sufficiently robust assessment is carried out. The Council will seek to avoid or minimise the impacts of long inspections on

affected persons, in particular significant disruption and stress to directly affected members of the public in the case of inspections involving residential land.

Pendle Borough Council's strategic approach to dealing with potential contamination involved the following stages as detailed below-

Stage 1: Identification of potential sites;

Stage 2: Collection of all known site information;

Stage 3: Collation of information in database format;

Stage 4: Assessment of risk posed by sites which are then given a numerical value;

Stage 5: Categorise and prioritise sites in order of risk importance;

Stage 6: Review and refine further site information; and

Stage 7: Take appropriate and important action.

Based upon Pendle Borough Council's database we have 1073 sites which are considered to be potentially contaminated. Which are prioritised into Band A to Band D:

Band	Number of Sites in Pendle
A	15
B	170
C	507
D	381

Any current and future inspection, identification and remediation of land to a suitable use is presently undertaken via the planning development control process. It is recognised that this the most appropriate and efficient way to address the issues associated with contamination is through the planning process. With the onus on the developer/applicant to provide a sufficient detailed assessment produced by competent consultants.

5.8.4 Using external expertise during risk assessment

In most cases, the Councils contaminated land officer will provide the expertise in assessing the risks posed by sites. There may be occasions whereby it is necessary to use external consultants in order to understand the risks of complex sites.

External experts may advise on regulatory decisions under the Part 2A regime, but the decisions themselves remain the sole responsibility of the local authority.

5.8.5 Generic Assessment Criteria

To complement the risk based approach of the contaminated land regime the Environment Agency developed a methodology for estimating risks to people from contaminants in soil, known as the Contaminated Land Exposure Assessment (CLEA) tool.

This software was used to derive Soil Guideline Values (SGV's) which can be used as minimal risk screening values to compare with concentrations of contaminants in soil. These guideline values are precautionary, being used to indicate when land is very unlikely to pose a significant possibility of SPOSH. They are accompanied by a number of technical guidance documents in the form of The Contaminated Land Report (CLR) series of guidance documents. These are intended to "provide regulators, developers, landowners and other interested parties with relevant, appropriate and scientifically based information and advice on the assessment of risks arising from the presence of contamination in soil".

To date, only a limited number of contaminants have had their SGVs calculated and published by DEFRA and the Environment Agency. Other GAC, derived by reputable organisations and competent practitioners in the land contamination sector are available for the most commonly occurring contaminants in soil. As with any generic assessment tool, the limitations and assumptions must be clearly understood before they are used in the risk assessment process.

5.8.6 Normal Levels of Contamination

It is recognised that there are background levels of substances on all land as a result of our varied and complex geology. These background levels may be as a result of low levels of diffuse pollution and common human activities such as the historic use of leaded petrol or the spreading of ash in domestic gardens. Therefore if it is established that land is at or close to normal levels of contamination, it should not be considered further within Part 2A. Normal levels of contamination in soils should not be considered to cause land to qualify as contaminated land, unless there is particular reason to consider otherwise. The Statutory Guidance describes further what may be considered 'normal' in this context, and the BGS has developed technical guidance on what constitutes normal background concentration for certain contaminants in soil, in accordance with Statutory Guidance.

5.8.7 The ‘Polluter Pays’ Principle

An important task for the council under Part 2A is to establish who should bear the responsibility of remediating a site where there are unacceptable risks from land contamination. In general this will follow the ‘polluter pays’ principle where the person who caused or knowingly permitted the contamination will be the appropriate person to cover the cost of remediation. However if such a person cannot be found the Statutory Guidance states that the costs will fall on the owners or occupiers of the land at that time. The council will then decide what remediation is necessary either through voluntary agreement or by the service of a remediation notice.

5.8.8 Radioactivity

Prior to regulation in 1960, activities such as the use and disposal of radioactive substances, e.g. isotope based paint use, could lead to radioactive contamination, as a result of spills or poor disposal methods and records. The Part 2A regime was extended in 2006 to include contamination of land by radioactivity but only where harm is caused to human health receptors. The radioactive contaminated land regime only covers contamination which has resulted from the after-effects of a radiological emergency or a past practice or past work activity. It does not apply to current practices and natural background radiation.

In April 2012 new statutory guidance with respect to radioactive contaminated land was issued by the Department of Energy and Climate Change (DECC) such that radioactive contamination is dealt with separately from non-radioactive contamination. Such sites fall under the definition of a Special Site, where the Environment Agency is the enforcing authority.

If the council has reasonable grounds for believing that land may be contaminated land by virtue of radioactivity, it will consult with the Environment Agency for detailed advice and guidance. This could well involve the council asking the Environment Agency to carry out an intrusive inspection on their behalf.

As with non-radioactive contaminated land, there has to be a significant contaminant linkage before considering the land to be contaminated land in terms of Part 2A. Although the Environment Agency becomes the enforcing authority, the council has the sole responsibility for determining a site to be radioactively contaminated land. At all times the council will have regard to the statutory guidance with respect to radioactive contaminated land.

5.9 Overlaps with other Regulatory Regimes

The Part 2A regime primarily addresses historic land contamination. There are other Regulatory regimes that are more appropriate for dealing with the prevention of further contamination of land.

The statutory guidance states that enforcing authorities should seek to use Part 2A only where no appropriate alternative solution exists. Therefore, Part 2A should not be used where existing legislation may be enforced or where contamination has arisen due to a breach of an existing licence or permit or overlaps with;.

- Planning
- Water Pollution
- Waste Management
- Integrated Pollution Prevention Control legislation.

5.9.1 Planning and Development Control

Land contamination, or the possibility of it, is a material consideration for the purposes of town and country planning. This requires the council to consider the potential implications of contamination both when it is plan-making and when it is considering individual applications for planning permission.

The National Planning Policy Framework makes it clear that it is the responsibility of the developer to ensure that a site can and will be made suitable for its proposed future use and that there are no unacceptable risks to human health, the environment, property and/or controlled waters.

Adequate site investigation by a competent person is required to show that land is suitable for its proposed use. As a minimum, land should not be capable of being determined as contaminated land under Part 2A, after it has been remediated through the planning process.

Remediation agreed as a planning or building control condition will be enforced through planning controls and not Part 2A. In addition to the planning regime, building regulations require developers to take measures to protect new buildings and their future residents from the effects of contamination. An example of this would be the installation of gas protection measures into properties

The vast majority of contaminated land issues in Pendle are currently dealt with through the planning regime.

5.9.2 Integrated Pollution Prevention Control

The regime introduced by the Pollution Prevention Act 1999 and the Environmental Permitting (England and Wales) Regulations 2016, controls certain industrial activities prescribed under the regulations with the aim of preventing pollution arising from these industrial activities, including pollution to land. This regime is enforced by the Environment Agency (Part A activities) and by the Local Authority (Part A2 and Part B, LA-IPPC) and any pollution resulting from such an activity, occurring as a result of the breach of PPC controls, including pollution to land will be dealt with by the enforcement of PPC controls.

For new permit applications, site operators are required to undertake a site condition survey prior to being authorised to operate. If the site condition is such that areas of land meet the definition of contaminated land then submission of a site survey may trigger action under Part 2A.

On completion of operation on such a site there is a requirement to submit a further land condition survey. Should the survey reveal that areas of land meet the definition of contaminated land such land contamination would be dealt with by PPC enforcement action and not Part 2A. The General Guidance Document available from DEFRA for Local Authorities contains a section on contaminated land including site assessment and restoration in relation to LA-IPPC. The Environment Agency has similar guidance. A PPC permit application site report should also highlight historic contamination which may be controlled by the Part 2A regime.

5.9.3 Waste Management Licensing

All waste disposal and processing sites (including scrap yards) should be subject to licensing under Part 2 of the Environmental Protection Act 1990 (as amended by the Environmental Permitting (England and Wales) Regulations 2016 - the waste management licensing/permitting system). Contamination causing significant harm or pollution of controlled waters should be dealt with as a breach of a condition of the licence or permit rather than through Part 2A.

Where a waste site is unlicensed or where the waste licence has been surrendered under the Control of Pollution Act 1974 regime, potentially these sites could be contaminated land and would be dealt with under the Part 2A regime as Contaminated Land.

5.9.4 Pollution of Controlled Waters

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

In cases of contaminated land affecting controlled waters the Council will:

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

6.0 Determination of Contaminated Land

6.1 Deciding that land is not contaminated land

When the Council carries out an investigation of a site in order to implement Part 2A and comes to the conclusion that it is NOT contaminated, a written statement will be issued to that effect (rather than coming to no formal conclusion) to minimise unwarranted blight. The statement will make clear that on the basis of its assessment, the authority has concluded that the land does not meet the definition of contaminated land under Part 2A. A record will be kept of the reasons for deciding that land is not contaminated land.

6.2 Determining that land is contaminated land

There are four possible grounds for the determination of land as contaminated land (with regard to non-radioactive contamination):

Grounds for determination:

(a) Significant harm is being caused to a human, or relevant non-human, receptor.

(b) There is a significant possibility of significant harm being caused to a human, or relevant non-human, receptor.

(c) Significant pollution of controlled waters is being caused.

(d) There is a significant possibility of significant pollution of controlled waters being caused.31

Before making any determination, the Council will have identified one or more significant contaminant linkage(s), and carried out a robust, appropriate, scientific and technical assessment of all the relevant and available evidence.

In the case of any land which, following determination as contaminated land, would be likely to meet one or more of the descriptions of a “Special Site” set out in the Contaminated Land Regulations 2006, the local authority will consult the Environment

Agency before deciding whether or not to determine the land, providing the Agency with a draft record of the determination.

6.3 Informing interested parties

Before making a determination, the Council will inform the owners and occupiers of the land and any other person who appears to the authority to be liable to pay for remediation of its intention to determine the land.

If the local authority determines land as contaminated land, it shall give notice of that fact to (a) the Environment Agency; (b) the owner of the land; (c) any person who appears to the authority to be in occupation of the whole or any part of the land; and (d) each person who appears to the authority to be an appropriate person.

6.4 Postponing determination

The Council may postpone the determination of contaminated land if:

a) It feels that the land will be adequately remediated without the need to do so.

b) If a significant contaminant linkage would only exist if the circumstances of the land were to change in the future within the bounds of the current use of the land (e.g. if a more sensitive receptor were to move onto the land or a temporarily interrupted pathway were to be reactivated).

6.5 Record of the determination

When there is a determination of contaminated land it will be placed on the public register and will include;

- Location
- Boundary, including os references
- Details of why the determination was made
- A summary of why the authority considers that the requirements of relevant sections of the Statutory Guidance have been satisfied

6.6 Liability

Land may be declared contaminated upon the identification of only one significant pollutant linkage. Full liability cannot therefore be determined until all significant pollutant linkages on the 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:

i) Identifying potential appropriate persons and liability groups
ii) Characterising remediation actions
iii) Attributing responsibility to liability groups

iv) Excluding members of liability groups
v) Apportioning liability between members of a liability group

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 included are persons who, "knowingly permit". This includes developers who leave contamination on a site that subsequently results in the land being declared contaminated.

APPROPRIATE PERSONS - Class 'B' - Where no class 'A' person can be found liability reverts to the owner or the occupier. These are known as class 'B' persons.

The Council will endeavour to identify class A persons before making class B persons liable for remediation.

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

6.7 Apportion of Costs

There are three basic principles that apply to exclusion and apportionment tests:

i) Section78(p)(2)(a) of the Environmental Protection Act states that the enforcing authority shall have regard to any hardship that the recovery may cause the person from whom the cost is recoverable

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 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 agreements.

6.9 The Enforcement Process

Before remediation notices are served the extensive consultation process will be completed and ample encouragement given to arrive at an informal solution. The Council will do all in its power to consult the appropriate person(s), owners, occupier's etc. about their views on the state of the land. This could be a difficult and most protracted process and cause delay. Where a housing estate is affected for example, it would be reasonable to expect house owners, land owners, developers, lenders, insurers, surveyors, geotechnical engineers, residents groups, etc. all to have differing views according to their position.

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 considered where two tests are satisfied:

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

If these are met the Council will serve a remediation notice on each appropriate person. It cannot be served less than three months after formal notification that the land is contaminated unless the urgent action is deemed necessary (where there is imminent risk of serious harm).

6.9 Remediation by the Local Authority

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

- Where urgent action
- Where no appropriate person can be found
- Where one or more appropriate persons are excluded (on grounds of hardship)
- Where the local authority has made an agreement with the appropriate person(s) that it should carry out the remediation
- In default of a remediation notice

6.10 Urgent Action

Urgent action must be initiated 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.

The terms “imminent” and “serious” are unfortunately not defined, local authorities are advised to use the normal meaning of the words. There is, however, guidance on what may constitute “seriousness” when assessing the reasonableness of remediation.

The Council will seek to undertake the remediation in urgent cases where it is the enforcing authority if it is of the opinion that the risk would not be mitigated by enforcement action. In the case of a special site the Council will declare the land contaminated land in accordance with the statutory procedure, and then notify the Environment Agency who will then be responsible for the remediation.

Whenever possible the Council will seek to recover costs of remediation works it has completed.

7.0 INFORMATION MANAGEMENT

7.1 Data Handling and Access to Information

The Council was required by Statute to produce a contaminated land strategy and formally publish it by the end of June 2001. This document is the fifth edition of that Strategy. Subsequently it must maintain a register of regulatory action taken under Part IIA, which must be made available for public inspection at all reasonable times. The Public Register for Contaminated Land is held by Environmental Health Services, at their office.

7.2 The Environmental Information Regulations 1992

Implementation of the strategy will, however, also result in significant volumes of data that will be held on computer databases and geographical information systems, as well as in paper form. There is no statutory obligation to disclose this information therefore the Council must comply with the requirements of the Environmental Information Regulations when dealing with requests for disclosure.

These Regulations require local authorities to make any environmental information they hold available upon request, subject to certain exemptions. These are complex but it would be likely that the Council will have to respond to requests for information on land it has identified as part of, for example, the inspection of the District or on complaints about information held.

Below are broadly the exemptions to the right of environmental information. In all circumstances where there is doubt, the Council’s solicitor will be consulted.

- Where held for judicial purposes.
- Where disclosure would affect legal proceedings.

- Where disclosure would affect international relations, national defence or public security.
- Where disclosure would affect the confidentiality of deliberations by a relevant person, or the confidentiality of commercially sensitive matters.
- Where it would involve the supply of a document or record which is still in the course of completion.
- Where the information is not accessible.

"Information", for the purposes of the Regulations includes records, registers, reports, returns, and information on computers.

It has been suggested that information held as a result of the Council's initial inspection of the District and subsequent prioritisation for further investigation, could be classified as, 'a record which is in the course of completion', for the purposes of the regulations, and therefore not be disclosed. Whilst this is one interpretation of the regulations, it should be understood that sites should not be so identified unless there are sound reasons, based on scientific judgement, that a pollutant linkage may exist. Also once the preliminary inspection of the District has commenced, each assessment about each and every site, could constitute a, 'record', in itself. More significantly, however, should a third party purchase land following a refusal on the part of this Authority to supply information requested on its condition, and the Authority had identified it at that stage as potentially contaminated land, that party may wish to seek a remedy against the Council should the site be subsequently declared contaminated land and will result in a loss of value.

Requests for information will therefore be dealt with according to the current response target of 10 working days after they are made. A charge will be made for the supply of information in accordance with the Regulations. Where the Council must refuse a request for any of the reasons stated in the Regulations it would provide details of the reasons in writing at no cost to the applicant.

Where a request to the Council relates to information, which may not be in the "ownership" of the Council, such requests shall be clarified with the Council's solicitor before being processed.

7.3 The General Data Protection Regulations 2016 (GPDR)

The GPDR applies to all personal data that is processed automatically and includes written records. The Act seeks to give some protection to persons (known as data subjects) in respect of three potential dangers:

- The use of personal information that is inaccurate, incomplete or irrelevant
- The possibility of access to personal information by unauthorised persons
- The use of personal information in a context or for a purpose other than that for which the information was collected

Personal data is defined as data consisting of information that relates to a data subject who can be identified from the information, or from that and other information in the possession of the data user (the Council). Every individual member of the public can be considered a data subject; there is no age limit.

It should be noted that just about all information held on computers is considered as being, 'processed automatically', for the purposes of the Act. Therefore should the Council be unsure as to the legality of maintaining data on a computer it will keep a paper record only.

The implications of holding information relating to the condition of potentially polluted property and the persons associated with that property and pollution could be significant. The matter will therefore be considered in detail with the Council's Data Protection Administrator where appropriate.

7.4 Contaminated Land Register

The only information required to be stored on a formal register is that relating to regulatory action and remediation. The contents are specified at length in schedule 3 of the Contaminated Land (England) Regulations 2000. This formal contaminated land register will be maintained at Environmental Health Services offices. Members of the public will be able to view the register free of charge during normal office hours. Requests for copies of documents must be made to the Council and will be charged at the appropriate fee.

8.0 IMPLEMENTING THE STRATEGY

The Council currently employs an Environmental Health Officer and a Technical Officer who spend part of their time dealing with matters relating to contaminated land. They will continue to:

- Identify new potentially contaminated sites
- Carry out risk assessment and data management of over 1000 sites
- Review the Contaminated Land Strategy on a periodic basis
- Liaise with Development Control in order to ensure new developments effectively deal with the issue of contamination
- Advise the Council on its liabilities relating to contaminated land on Council owned sites

The majority of contamination will continue to be dealt with through the private sector as part of the Development Control process when a site is redeveloped. This enables

the Council to deal with sites already identified and has proved successful over the past 10 years.

The Council has also set aside £1.5m in its Capital programme to bring forward brownfield sites for development, either those within its ownership or in private ownership. This fund will be used to remove barriers to development so can help to deal with contamination where that is required. Each site that is considered for this fund will be looked at on an individual basis.

Finally, there is a relatively small contaminated land budget that is primarily used to pay for relevant mapping and software licences. There may be, on occasion, enough resource available to use on investigating contaminated sites.

Appendix 1

GLOSSARY OF TERMS

"Appropriate person"	Defined in section 78A(9) as 'any person who is an appropriate person, determined in accordance with Section 78F Part IIA to bear responsibility for anything which is to be done in any particular case'. This principally would be the person who originally polluted the land (Class A appropriate person) but where that person cannot be found the owner/occupier becomes the appropriate person (Class B appropriate person).
Charging Notice	Defined in Section 78P(3) is where the enforcing authority does any particular thing by way of remediation, it shall be entitled subject to Sections 78J(7) and 78K(10) to recover the reasonable cost incurred in doing it from the appropriate person.
Contaminant	A substance which is in, on or under the land and which has the potential to cause harm or to cause pollution of controlled waters. Has the same meaning as 'pollutant'.
Contaminant linkage	the relationship between a contaminant, a pathway and a receptor
Controlled waters	Defined in section 78A(9) by reference to Part 3 (section 104) of the Water Resources Act 1991 and includes territorial and coastal waters, inland fresh waters and ground waters. Section 78A(9) was amended by section 86 of The Water Act 2003 so that for Part 2A purposes 'ground waters' does not include waters contained in underground strata but above the saturation zone
Current use	Any use which is currently being made, or is likely to be made, of the land and which is consistent with any planning permission (or is otherwise lawful under town and country planning legislation). This definition is subject to the following qualifications: (a) the current use should be taken to include any temporary use, permitted under

	town and country planning legislation, to which the land is, or is likely to be, put from time to time; (b) the current use includes future uses or developments which do not require a new, or amended, grant of planning permission; (c) the current use should, nevertheless, be taken to include any likely informal recreational use of the land; whether authorised by the owners or occupiers or not, (for example, children playing on the land); however, in assessing the likelihood of any such informal use, the local authority should give due attention to measures taken prevent or restrict access to the land; and (d) in the case of agricultural land, however, the current agricultural use should not be taken to extend beyond the growing or rearing of the crops or animals which are habitually grown or reared on the land.
Harm	With respect to is defined in Section 78A(4) as: 'harm to the health of living organisms other interference with the ecological systems of which they form part, and, in the case of man, includes harm to his property OR radioactive contamination defined in section 78A(4)(as modified) as: 'lasting exposure to any person/being resulting from the after effects of a radiological emergency, past practice or past work activity.'
Intervention	Is a type of remedial action and is defined in the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 as: " a human activity that prevents or decreases the exposure of individuals to radiation from sources which are not part of a practice or which are out of control, by acting on sources, transmission pathways and individuals themselves"

Intrusive investigation	An investigation of land (for example by exploratory excavations), which involves actions going beyond simple visual inspection of the land, limited sampling or assessment of documentary information.
Land	Not defined in Part IIA but in Schedule 1 Interpretation Act 1978 provides that land "... includes buildings and other structures, land covered with water and any estate, interest, easement servitude or right in or over land".
Owner	Owner
Part 2A	Part 11A of the Environmental Protection Act 1990
Pathway	One or more routes or means by, or through, which a receptor: (a) is being exposed to, or affected by, a contaminant, or (b) could be so exposed or affected.
Pollution of controlled waters	As defined in Section 78A(9) means the entry into controlled waters of any poisonous noxious or polluting matter or any solid waste.
Possibility of harm	Relates to radioactive contamination only and is a measure of the probability, or frequency, of the occurrence of circumstances which would lead to lasting exposure being caused.
Possibility of significant harm	What is to be regarded as 'significant' harm or whether the possibility of significant harm being caused is 'significant' shall be determined in accordance with statutory guidance DEFRA circular 2012.
Reasonable Grounds	Relates to radioactive contamination only and sets out the grounds required by a local authority before it can inspect land for the purpose of identifying whether it is contaminated land and whether it should be designated as a Special Site. Grounds are: (a) a former historical land use, past practice or radiological emergency, capable of causing lasting exposure giving rise to the radiation doses of the magnitudes stated; or (b) levels of contamination present on the land arising past practice or radiological emergency, capable of causing lasting

	exposure giving rise to the radiation doses of the magnitudes stated.
Receptor	Either: (a) a living organism, a group of living organisms, an ecological system or a piece of property which: (i) is in a category reference in the relevant statutory guidance (See Appendix E) as a type of receptor, and (ii) is being, or could be, harmed, by a contaminant; or (b) controlled waters which are being, or could be, polluted by a contaminant. or (b) controlled waters which are being, or could be, polluted by a contaminant.
Register	The public register maintained by the enforcing authority under the enforcing authority under section 78R of particulars relating to contaminated land.
Remediation notice	As defined by Section 78E(1) where a local authority has identified any contaminated land they shall serve on each person who is an appropriate person a notice specifying what the person is to do by way of remediation and the periods within which he is required to do each of the things specified.
Remediation Scheme	The complete set or sequence of remediation actions (referable to one or more significant pollutant linkages) to be carried out with respect to the relevant land or waters.
Remediation Statement	Is defined by Section 78H(7) and is a statement prepared and published by the responsible appropriate person detailing the remedial actions which are being, have been, or are expected to be done, together with the periods within which each of the things specified are being or will be done.
Remediation	As defined in Section 78(A)(7):- “(a) The doing of anything for the purpose of assessing the condition of:

	(i) the contaminated land in question (ii) any controlled waters affected by that land or (iii) any land adjoining or adjacent to that land. (b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose: (i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land or (ii) of restoring the land or waters to their former state. or c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters; and cognate expressions shall be construed accordingly. OR with respect to radioactive contamination defined in section78A(7)(as modified) as: ‘(a) the doing of anything for the purpose of assessing the condition of:- ‘ (i) the contaminated land in question, or ‘(iii) any land adjoining or adjacent to that land. ‘(b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land for the purpose- (i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land or (ii) of restoring the land to its former state: or ‘(c) The making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land.’

Risk	The combination of: (c) the probability, or frequency, of occurrence of a defined hazard (for example, exposure to a property of a substance with the potential to cause harm); and (d) the magnitude (including the seriousness) of the consequences

Appendix 2

RECEPTORS

Human beings occupying or using:	Residential land with gardens. Residential land without gardens. Allotments. Schools and nurseries. Recreational land (e.g. parks, playing field, open space). Commercial/industrial premises.
Controlled waters:	Surface water (e.g. rivers, streams, lakes, ponds) Ground waters (including information on groundwater vulnerability) Water abstractions (including major public and smaller private sources) Ground water Source Protection Zones Surface and groundwater quality data
Ecological sensitive areas:	Sites of Special Scientific Interest (SSSIs) National Nature Reserves (NNRs) Areas of special protection for birds European sites (i.e. Special Areas of Conservation (SACs) and Special Protection Areas (SPA)) Candidate SACs and SPAs Ramsar sites

	Nature Reserves
Property in the form of buildings:	Ancient Monuments Sites of archaeological importance Other buildings Listed buildings Historic parks and gardens, Registered Battlefields, World Heritage Sites and conservation areas
Other forms of property:	All Designated Heritage Assets Crops, including timber Produce grown domestically or on allotments for consumption Livestock Other owned or domesticated animals Wild animals subject to shooting or fishing rights