



Horsham
District
Council

Contaminated Land Strategy

January 2017

EXECUTIVE SUMMARY

Since April 2000 Part IIA of the Environmental Protection Act 1990 has required local authorities to produce a written inspection strategy to identify areas of contaminated land in their districts. Following consultation with key partners the strategy is to be adopted and published.

The presence of a contaminant on land does not always mean that the land will be identified as contaminated land. For land to be determined as 'contaminated land', all of the following elements have to be identified:-

Contaminant: a substance, which is in, on, or under the land, which has the potential to cause significant harm to a receptor;

Receptor: a target for the contaminant, these include people, animals, controlled waters, ecosystems and property; and

Pathway: one or more routes by which a receptor can become exposed to a contaminant.

The statutory guidance for the contaminated land regime requires that local authorities take a rational, ordered and efficient approach to inspecting their districts, which ensures that resources are concentrated where there is the greatest likelihood of identifying contaminated land.

This document details the general background to the contaminated land legislation and outlines the particular characteristics of Horsham District, the Council's priorities and how the regime is being implemented.

The Environmental Health and Licensing Department is responsible for implementing the Council's contaminated land inspection strategy and for undertaking its enforcement duties. The Council is the lead regulator on contaminated land but, whenever necessary, the Council will work in partnership with external agencies and other interested parties, particularly the Environment Agency, in dealing with the issues of identification and remediation of contaminated land.

The general steps of the contaminated land inspection strategy are:-

- (i) To identify areas of land within the District that may be contaminated by reviewing historic land use, undertaking site investigations, risk assessment, etc.;
- (ii) To formally designate contaminated land (and special sites where the Environment Agency is the enforcing authority);
- (iii) To bring about the remediation of land through voluntary agreement where possible, and, if not, by serving remediation notices;

- (iv) To maintain a public register recording certain information about any regulatory action;
- (v) To review the strategy from time to time in the light of new information, guidance, legislation, etc. and to commence a full review in April 2022;
- (vi) To provide the Environment Agency with local land contamination information.

Since the publication of the original inspection strategy in July 2007 there have been a number of revisions to the statutory guidance and government policy relating to contaminated land. The statutory guidance on contaminated land also requires that the strategy be revisited with regard to the changes that have been made to the guidance.

The planning system continues to play the dominant role in dealing with sites that are affected by contamination within the district

Effective communication remains a key element in the implementation of the strategy and the enforcement of this legislation. The Council will continue to ensure that all interested parties are kept informed throughout the implementation of this strategy and will seek voluntary action before taking enforcement action.

Consultation is an important component in both developing and implementing this strategy and the views of both the statutory consultees and other interested parties, have again been sought prior to the strategy being formally adopted by the Council.

Since the revision of the Councils contaminated land strategy in 2007 substantial progress has been made in meeting the targets identified. A summary of the key achievements is provided below:

- Landmark historic land use database data, historic land use data-sets, a mapping and historic aerial photography incorporated into the Councils' GIS system
- Over 500 sites reviewed, investigated and remediated through the Planning system
- Detailed inspection of 14 sites completed.
- 11 urgent inspections completed
- Review of Councils current and former landholdings completed
- 209 Environmental searches requested completed.

However, significant recent constraints have emerged which will change how HDC fulfils its statutory duties. These are the removal of government funding for investigation and remediation work, a reduction in the general support grant from central government with the consequent squeeze on the departmental budgets, together with the reduced support for local authorities from the Environment Agency.

Consultation

This document is the revised Horsham District Council Contaminated Land Strategy which has been finalised following consultation with statutory consultees as set out in Appendix 3. The strategy was approved by HDC Cabinet in January 2017 and the strategy document was subsequently made public on the HDC website.

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Foreword

By Councillor Philip Circus, Cabinet Member for Housing and Public Protection

Supporting our communities and managing the natural and built environment are corporate priorities for Horsham District Council

Ensuring that land is suitable for use and that public health and water resources are protected from significant risks makes a key contribution to meeting these goals.

Since 2007 Horsham District Council (HDC) has invested significant resources to review and inspect potentially contaminated land. This work has ensured the council can continue to administer land contamination issues effectively for the foreseeable future, both through the statutory contaminated land framework and the planning process.

This strategy update reflects the changes that have occurred to the regime since 2007.

A handwritten signature in black ink that reads "Philip Circus". The signature is written in a cursive style and is positioned above a horizontal line that extends across the width of the signature.

Horsham District Council

1. HDC's Aims and Objectives for dealing with land contamination:

Dealing with contaminated land is not straightforward and complex issues have to be addressed. Often very little information is available. Identifying the aims and objectives of the strategy will help to communicate what the Council is seeking to achieve.

1.1 Aims of the Strategy

- To identify actual and potentially contaminated sites within the District by rational, ordered and efficient investigation, to remove unacceptable risk to human health and the environment and prevent the creation of new contaminated sites;
- To reinforce a "suitable for use" approach enabling developers to design and implement appropriate and cost effective remediation schemes as part of their redevelopment project of contaminated sites to bring damaged land back into beneficial use;
- To identify sites which do not come under Environmental Protection Act 1990 (EPA) Part IIA but which could still be contaminated, to ensure that the land is suitable for its current use or can be made suitable for its intended future development use, if a receptor were introduced;
- To complete a risk assessment of such sites within twelve months of the site being identified.

1.2 Objectives of the Strategy

The main objective is to provide a system for the identification and remediation of land where contamination is causing unacceptable risks to human health and the wider environment. This is assessed in the context of the current use and circumstances of the land and to prevent the creation of new contaminated sites.

Horsham District Council's objectives are to:

- prioritise resources for the investigation of potentially contaminated sites by relating it to the potential risk to any receptor, with receptors normally being prioritised in the following order:
 - 1) Protection of human health
 - 2) Protection of controlled waters
 - 3) Protection of designated ecosystems
 - 4) Protection of property

- Determine whether the sites are contaminated sites under EPA Part IIA, by identifying all receptors and all controlled waters within the District, by means of local knowledge and plans and contact with other agencies such as the Environment Agency, DEFRA, Natural England, Historic England, and the relevant statutory undertakers such as Southern Water.
- Investigate sites not owned by the Council to establish who should bear responsibility for the remediation, and contact the owners/managers of the sites with information on the regime and what it means for them, also requesting additional information of the particular site.
- Complete an assessment of all actual and potentially contaminated land within the District where the Council has responsibilities by virtue of its current or former ownership or occupation, making use of historic records, local plans, etc.
- Consider all available evidence that significant harm or pollution of controlled waters is actually being caused, considering contaminant - pathway - receptor.
- Evaluate the information gathered from the assessment of actual and potentially contaminated sites and prioritise them in accordance with their individual risk.
- Justify inspection of particular areas established as contaminated sites under EPA Part IIA.
- To decide, after consultation with all interested parties, what remediation is required in relation to the site, either through agreement with the appropriate persons or by serving a remediation notice.
- Maintain a liaison with other authorities and agencies to exchange information, ensure consistency and best practice.
- Make information on all regulatory action taken by the Council on contaminated land available to the public by way of a public register. HDC seeks to implement the Part IIA regime and carry out its duties within the context and framework of the statutory guidance (DEFRA Contaminated Land Statutory Guidance (April 2012)).

The objectives under this Strategy are congruent with HDC's Corporate Plan 2015 – 2018 and its priority to manage the built and natural environments and support local communities.

2. Introduction

Development of brownfield land over previous years means that many development sites may have a legacy of pollution from a previous use.

Ensuring that land is suitable for use and that public health and water resources are protected from significant risks is a statutory function of local authorities.

Since the publication of the previous strategy the government has removed the grant which facilitated detailed inspection of sites. At the same time the reduction in funding to local authorities has served to further restrict resources available for this work.

Although the duty on councils to inspect their districts remains, the funding restrictions mean that proactive inspections will only be undertaken where there is deemed to be an imminent risk or other exceptional circumstances.

The planning system as set out in the National Planning Policy Framework and the Council's "Horsham District Planning Framework" (November 2015) are now the principal mechanisms through which the council ensures that land contamination is managed.

This involves a process of reviewing applications for development and subsequently agreeing the measures to ensure that sites are made suitable for their proposed use for their design life.

However, the legislation still allows for effective intervention should any site require an urgent detailed inspection.

HDC revised its Contaminated Land Strategy in 2007. Since that date the regime has undergone further changes and this document revises the Strategy to bring it in line with the recent amendments and HDC's current procedures.

The main changes to the regime are listed in Appendix 1. The terminology used in this strategy is consistent with the statutory guidance and a glossary of terms is provided in Annex 1.

The inspection of sites identified and prioritised for inspection has been completed in accordance with the previous version of the Strategy. No sites requiring determination were identified.

This document gives a strategic context to the issue of land contamination within the district and provides guidance where the Statutory Guidance allows for some local discretion. It should be read in conjunction with the Statutory Guidance and other relevant pieces of legislation and guidance.

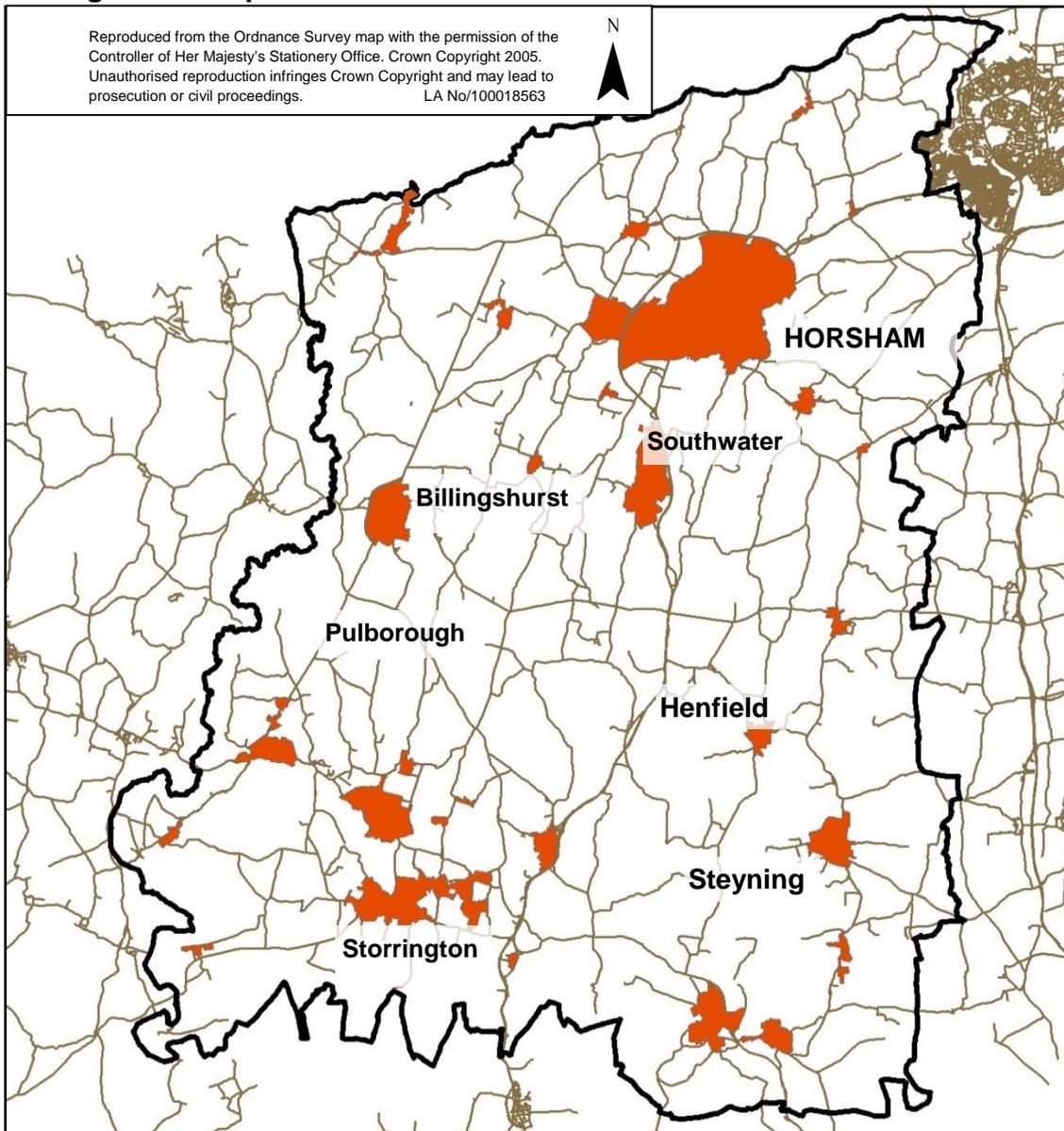
The legal framework is described in detail in Section 4.

3. Horsham District

3.1 Geographical Location

Horsham District Council is located in the centre of West Sussex, spanning an area from the Surrey border in the north to the South Downs in the south. The District is bounded by seven other local authorities: Waverley and Mole Valley to the north, Crawley and Mid Sussex to the east, Adur and Arun to the south and Chichester to the west.

Figure 1 - Map of Horsham District



Horsham District covers an area of 205 square miles.

The District Council was formed in 1974 from the former local authorities of Chanctonbury Rural District Council, Horsham Urban District Council and Horsham Rural District Council.

Horsham District is a predominantly rural area with many small villages. Horsham Town, in the north-east of the area, is the principal commercial and administrative centre. Much of the District is agricultural and farming and its related activities are important industries.

Sites of historic heavy industrial use are scattered throughout the District, as are some smaller scale sites typically where quarrying has taken place.

In 2011 the population of Horsham District was at 124,760, with around 36% (45,733) of the population living in Horsham and North Horsham. Other main areas of population are Billingshurst and Steyning.

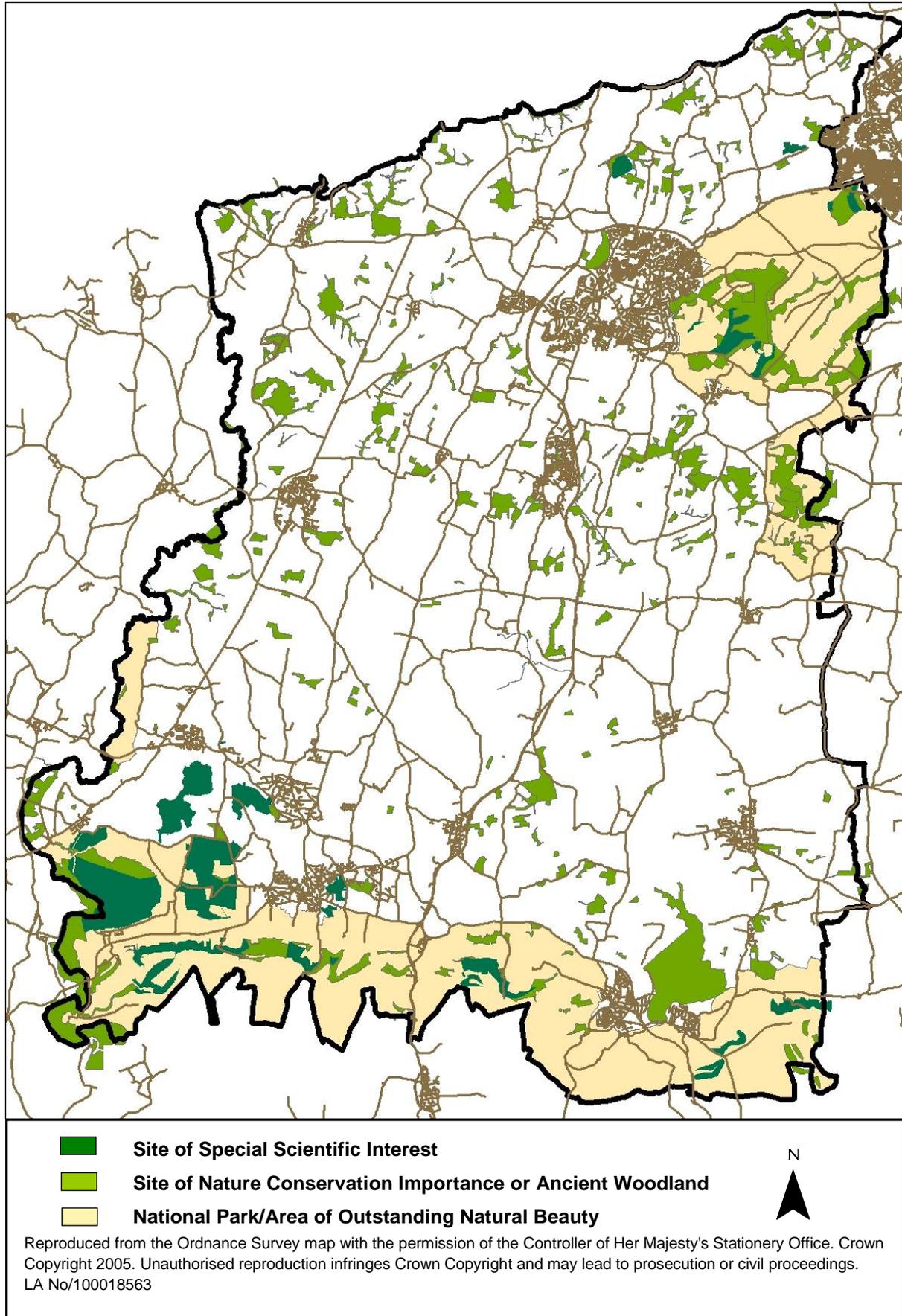
The remaining population lives in parishes with populations ranging from 303 to 5,849. The generally low population in the remaining parishes is indicative of the character of Horsham District, which is largely rural with many small villages.

3.2 Protected Locations

The biodiversity of the Horsham District is one of its major natural assets and it has many sites affording differing degrees of protection.

- The South Downs National Park and the High Weald Area of Outstanding Natural Beauty (AONB).
- There are twenty sites of Special Scientific Interest, one of which, the Arun Valley, is designated as a Special Protection Area (SPA), Special Area of Conservation (SAC) and a Ramsar site due to its international importance.
- Forty-three Sites of Nature Conservation Importance (SNCI), are located throughout the District.
- Warnham Pond is a Local Nature Reserve (LNR).

Figure 2 Areas of Ecological and Landscape Importance in Horsham District



3.3 Key Property Types

As well as its rich natural environment, Horsham has an important historic built environment, with over 1860 Listed Buildings, 77 Ancient Monuments and 39 designated Conservation Areas. There are also 252 sites of archaeological interest and four historic parks and gardens - Leonardslee Gardens, Parham House, St Mary's House and Horsham Park.

3.4 Water Resource and Protection Issues

Two rivers flow through Horsham District. The Adur in the south-east skirts Henfield and then passes between Bramber and Upper Beeding. The Arun, which rises in St Leonard's Forest, forms much of the western boundary of the Horsham District and passes through Amberley. There are also many natural and man-made ponds and lakes throughout the District. The protection of the surface water quality is an important issue as contamination of these waters has implications on water abstraction, the conservation of existing ecosystems and their amenity value.

The water companies, Southern Water and Thames Water, supply the majority of the District's drinking water, although only Southern Water abstracts water from within the Horsham District. Where a potential pollution linkage includes a public water supply source as a receptor, the responsible water company will be immediately notified.

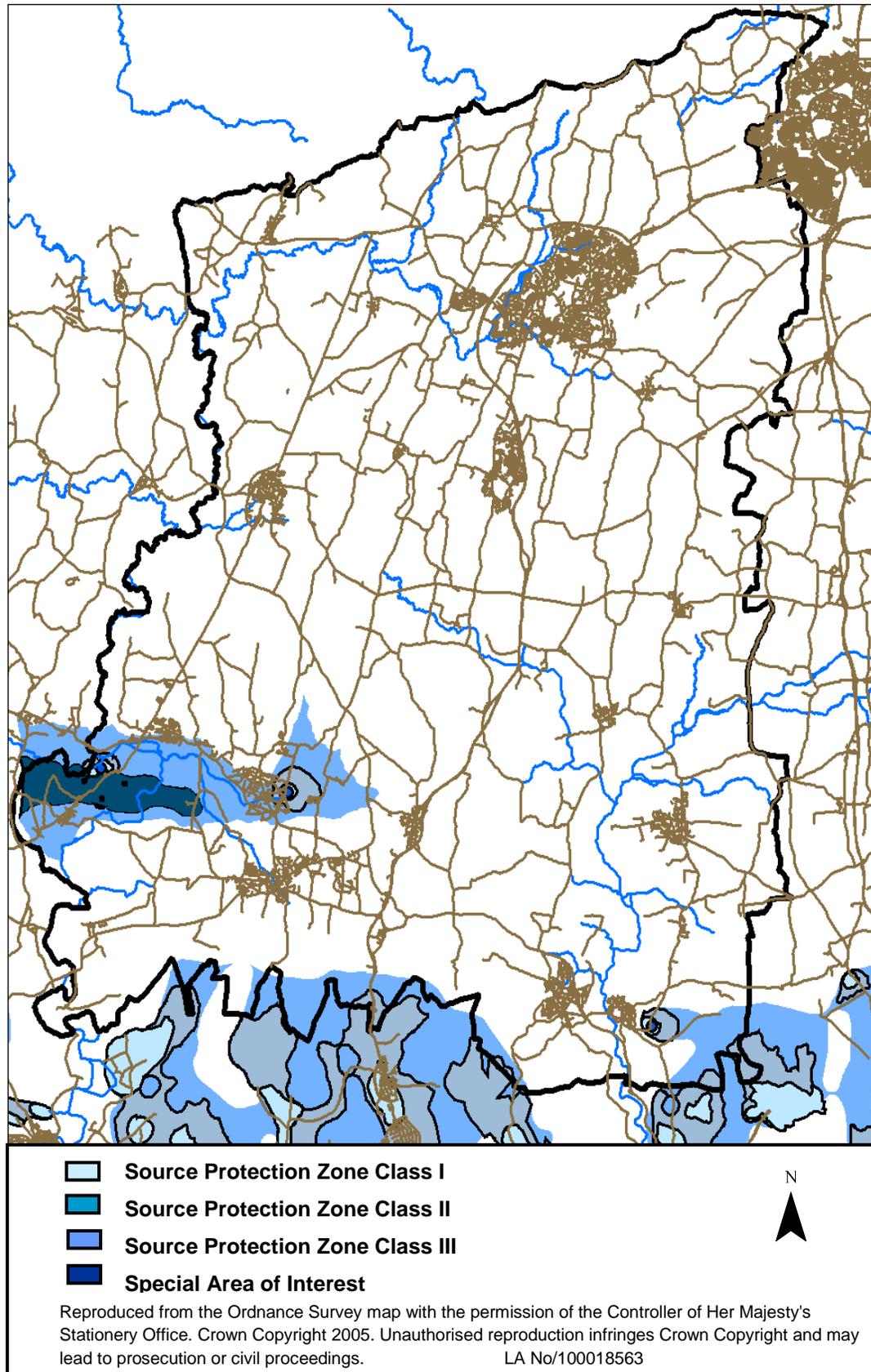
Groundwater is found in significant quantities in certain types of rock, which hold and release water, known as aquifers. Principal aquifers are defined as highly permeable strata capable of storing large volumes of water. The southern area of the District is located over a principal aquifer and parts of the rest of the District are underlain by secondary aquifers.

The Environment Agency has defined Source Protection Zones (SPZ), around the four public water supply abstraction areas, to provide protection to the parts of the aquifers which form the catchments to the public water supplies.

The Environmental Health and Licensing Department regulate the quality of twenty-two private drinking water supplies throughout the Horsham District. These are boreholes or wells which are privately owned.

Groundwater is vulnerable to both point and diffuse sources of contamination and should an aquifer become polluted, it is extremely difficult and costly to clean up, and is not always possible. The importance of protecting water resources is reflected in the priority afforded to controlled waters in the aims of this strategy, being second only to direct threats to human health. There will be occasions where water pollution does pose a direct threat to human health, not least where contamination of drinking water supplies is occurring.

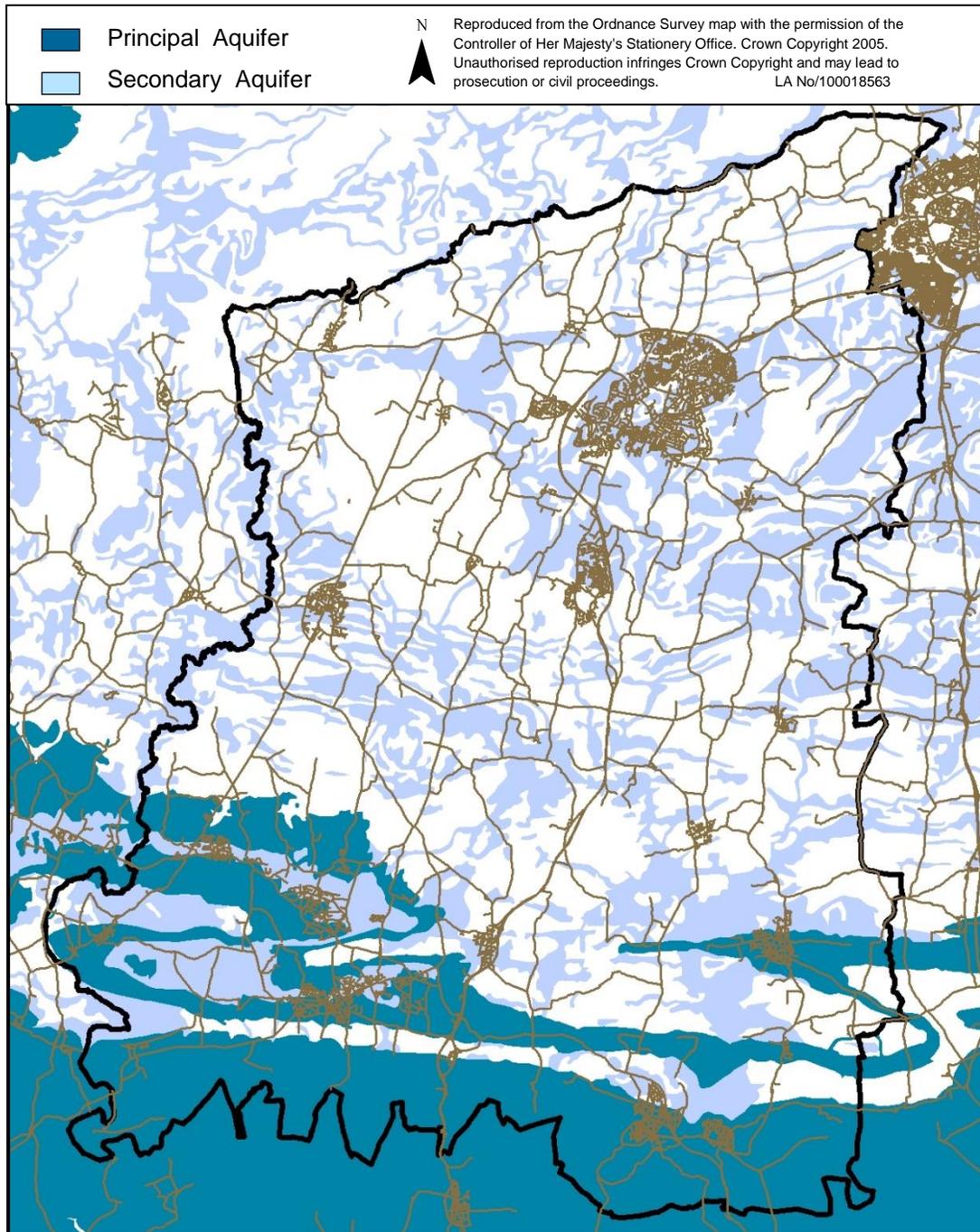
Figure 3 - Ground Water Protection Zones in Horsham District



Broad Geological/Hydrogeological Characteristics

The British Geological Survey map indicates the geology of Horsham District as having a widespread occurrence of weald clay, interspersed with subsidiary sandstone. In the south of the District the predominant strata is Cretaceous Chalk underlain by Gault Clay. The chalk acts as a natural reservoir or aquifer, and holds large volumes of water.

Figure 4 *Aquifers in Horsham District*



3.5 Current Land Use

The main use of land in the District, other than for residential use, is agricultural. Current industrial activity is generally restricted to a number of small-medium size business and industrial parks, with only a handful of large manufacturing operations.

Landfill Sites –

There are currently 10 licensed landfill sites operating in the District.

Waste Sites –

There are eight registered waste sites: including metal recycling sites; composting facility; civic amenity sites; mechanical and biological treatment facilities.

Sewage Works –

There is one large sewage treatment works located in Horsham and numerous small treatment works located throughout the District.

Part A Permits and installations –

There is one Environment Agency regulated installation - Storrington oilfield
There are 2 brickworks which require Part A2 permits regulated by HDC

Part B Permits and installations –

34 installations are operated throughout the District (other than petrol service stations). Processes under these licences include: bulk cement batching plants; vehicle paint spraying plants; timber manufacturers; animal carcass incinerator; dry cleaners and mobile concrete crushers.

Petrol Stations –

Horsham District Council has 16 petrol stations within its boundary which are authorised for the recovery of petrol vapour. There are also a number of other petrol stations within the District, which are not authorised as they sell insufficient fuel quantities.

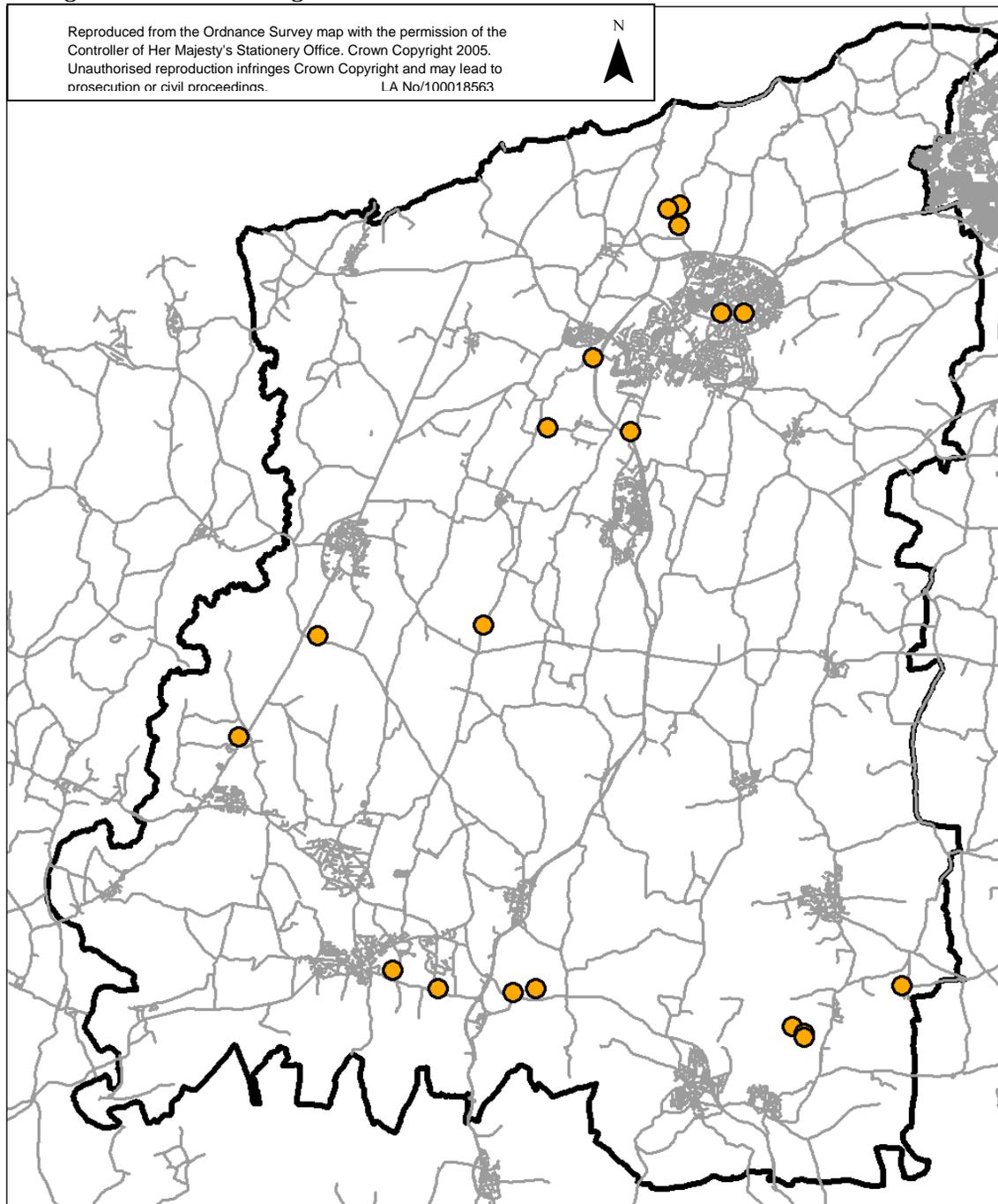
Radioactive Substance Sites –

There are 7 companies who use radioactive sources or are registered for the accumulation or disposal of radioactive waste. These sites are registered by the Environment Agency.

Industrial Estate and Business Parks

–There are twenty-four major industrial estates/business parks within Horsham District, containing offices, warehousing and industrial units.

Figure 5 Waste Management Sites



3.6 Current and Past Industrial use

The Horsham District has a unique industrial history, with many of the towns and villages resulting out of industries that have exploited the land resources. The past one

hundred years has seen a decline in the traditional heavy manufacturing industries replaced by smaller-scale light industry and service industries.

Iron Founding –

Early basic iron production followed the Weald clays, where ore was dug and where soil favoured managed woodlands rather than agriculture, and was, therefore, found throughout Sussex and within the Horsham District. By the 19th century basic iron production had ceased in Sussex but foundries, casting both iron and brass, were to be found in many Sussex towns. Horsham had two foundries in 1882 and another was located at Hardham.

Tanning –

Leather tanning producing shoes, gloves, harnesses and saddles, was located both in Storrington and Steyning during the 19th century.

Candle and Soap Manufacture –

Another product of the agricultural sector was tallow, from which candles and soap were manufactured and during the 19th century factories were located in Horsham

Brick Manufacture –

By the 18th century, brick had become established as the principal building material and due to the clay deposits within the Horsham District, a large brick-making industry developed. By the mid-19th century there was at least one brickyard in every parish. Improvement in technology began to make small country brickyards redundant and, therefore, although the volume of brick production went on increasing into the 20th century, the number of brickyards rapidly dwindled, being replaced by large-scale brickworks such as the one which grew up at Warnham Station, north of Horsham. The importance of brick manufacture to contaminated land is not the processes that were undertaken in the manufacture of bricks, but the holes left following the extraction of clay which are likely to have been filled with waste materials and may represent historic landfill sites. There are still brickworks at Warnham Station and Thakeham.

Lime, Cement, and Plaster

The chalk from the South Downs contains limestone which is used to produce lime, and Amberley to the south of the District had numerous limeworks. Portland cement, which is manufactured from limestone and clay, replaced the use of lime, and like limeworks, cement kilns in Sussex were located in the South Downs but only the one at Upper Beeding is still in existence, although no longer in production.

Mineral Extraction Industries –

Sussex has been the source of a whole variety of materials extracted for use, mainly in the building industry. Flint, gravel, marl and chalk pits are located throughout the

District, many not recorded. Sand was, and is, excavated in large pits in the Washington area and there were sand mines in Pulborough. Clay and brick earth was dug wherever brick and pottery making took place. Stone slabs used for roofing have been obtained in the Horsham and Pulborough areas.

3.7 Known Information on Contamination

The Council holds some information on contamination in the District, primarily submitted as part of the development control process. If development is proposed on an area of land where past use may have resulted in contamination, the Council request a site investigation as part of planning conditions and any necessary works undertaken. Planning records will, therefore, be a vital tool during any investigation.

A contaminated land register has been kept since April 2000 and is available for inspection at the Environmental Health Department, Parkside, Chart Way, Horsham. There are currently no entries in the register.

Due to the history of quarrying throughout Horsham District there are 63 closed landfill sites. In addition, there are 2 closed sewage works. There were town gas holdings located across the district, including Horsham, Christs Hospital, Storrington and Steyning.

4. The Contaminated Land Regime

4.1. Legislative Background

The Environmental Protection Act 1990 Part IIA introduced new duties to Local Authorities. It required that they publish an inspection strategy for their District (this document), keep a register of 'Contaminated Land' and inspect their area in a rational and ordered fashion for the purpose of identifying 'Contaminated Land'. The term 'Contaminated Land' is defined in statute as is the process for formally determining land as Contaminated Land.

Contaminated Land definition:

“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 significant possibility of such harm being caused; or (b) significant pollution of controlled waters is being caused, or there is significant possibility of such pollution being caused.”

The supporting guidance, for Part IIA details the inspection process including determining liability amongst specific groups or 'appropriate persons' previously associated with the land. Appropriate persons include previous land owners or occupiers and any person carrying out activities on the land, including current occupiers.

The production of a contaminated land strategy has meant that authorities collated data on previous land-uses that may have given rise to contamination in, on or under the land.

The statutory guidance was updated in April 2012 and suggests that local authority strategies should be updated to reflect the changes to the guidance.

4.2. Significant pollutant linkage

For land to be determined as contaminated land, there must be a significant 'pollutant linkage' present. A pollutant linkage is where a contaminant is linked by a pathway to a receptor so as to give rise to harm. There may be multiple pollutant linkages on a site.

4.3 Determining that “There is Significant Possibility of Significant Harm Being Caused”

The Council will determine land is contaminated on the basis that there is a significant possibility of significant harm being caused as discussed in Section 4.1, where:-

- (a) It has carried out scientific and technical assessment of risks arising from the pollutant linkage, according to relevant, appropriate, authoritative and scientifically based guidance on such risk assessments; and
- (b) That the assessment carried out shows that there is significant possibility of significant harm being caused; and
- (c) There are not suitable and sufficient risk management arrangements in place to prevent harm.

4.4 Risk Assessment

When deciding whether land contamination is sufficient to require action, concentration of contaminants in land and water will be evaluated against the following generally accepted guidelines.

CLEA Guidelines

Local Authorities are expected to assess sites in accordance with the guidance issued as part of the Contaminated Land Exposure Assessment (CLEA) protocol. These guidelines consist of a series of Toxicological Reports and Soil Guideline Value reports issued by the Environment Agency on behalf of the Department of Environment, Food and the Rural Affairs. These reports give details of the levels of contaminants that may pose a hazard to health. Where sites are subject to contamination by substances not subject to Soil Guideline Values the CLEA computer model is to be used to make a site specific assessment.

Other Guidance

In addition to the CLEA guidelines reference may also be made to other accepted sources, including:-

- British Standards
- S4ULs produced by the CIEH and others
- Occupational exposure levels issued by the Health and Safety Executive
- Environment Agency - site-specific pollution prevention guidelines from authoritative sources.
- Guidance issued by the Construction Industry Research and Information Association
- Guidelines adopted in other countries, e.g. Dutch guidelines are commonly referred to for organic contamination. When using guidelines adopted by other countries, it will be important to bear in mind the significant difference in remediation standards between the UK and these other countries.
- Other risk assessment tools including SNIFFER, RBCA, Risk Human, and locally developed protocols such as for the assessment of asbestos in garden soils.

Risk Assessment for Controlled Waters

Advice will be sought from the Environment Agency on risk assessment for controlled waters, such as rivers and underground resources (groundwater), where they are the receptors in a particular pollutant linkage. It is anticipated that risk assessments and remediation will be carried out in accordance with Environment Agency guidance.

4.5. Liability

Once one or more significant pollutant linkages have been confirmed the Statutory Guidance identifies two types of 'appropriate persons' that the enforcing authority needs to consider in relation to liability for remediation of the land. These are:

- Class A liability group: that is persons who knowingly permitted a significant pollutant linkage to be in, on or under the land.
- Class B liability group: owners or occupiers of the land.

Only where no Class A persons can be found will any Class B appropriate persons bear any liability for contamination. Once Class A appropriate persons are identified then liability for each significant pollutant linkage is identified. If the Class A person no longer exists in relation to a significant pollutant linkage then the liability will fall to Class B person (current owner or occupier).

There are six sequential tests to apply to each member of the Class A liability group:

Test 1 Excluded activities

Providing legal, financial, engineering, scientific or technical advice or services

Test 2 Payments made for remediation.

Adequate payments have made to other liable persons to fund remediation

Test 3 Sold with information.

The land was sold and the buyer was aware of the presence of the contaminant

Test 4 Changes to substances. –

Contamination occurred due to interaction with substances introduced by others

Test 5 Escaped substances.

The contamination was caused by escape of a substance from other land

Test 6 Introduction of pathways or receptors.

A relevant pathway or receptor introduced to the land by others

Once exclusions have been made then HDC will

- follow the general principal that liability should be apportioned to reflect the relative responsibility of each of those members for creating or continuing the risk now being caused by the significant linkage in question.
- ‘If appropriate information is not available to enable the enforcing authority to make such an assessment of relative responsibility then liability is apportioned equally amongst the liability group.

Where HDC carries out remediation and an appropriate person can be found then, within the framework of Section 8 of the Statutory Guidance, HDC will seek to recover the costs of the remediation from the appropriate person.

“Orphan” sites

Where no appropriate persons can be found, or after the six sequential tests there are no remaining liable persons, then the linkage is known as an ‘orphan linkage’.

With the removal of funding for Part IIA work the local authority bears the cost of any remediation that is carried out on an orphan site.

3.6. Strategic inspection and Detailed inspection

Part IIA requires that local authorities cause their areas to be inspected with a view to identifying contaminated land and to do this in accordance with the statutory guidance.

Two types of inspection are intended, they are:

- Strategic inspection; collecting information about previous land-uses and prioritising them for further detailed inspection and
- Detailed inspection; taking soil samples and carrying out risk assessments in order to make determinations about the sites in relation to contaminated land.

The detailed inspection of sites through intrusive investigation, analysis of samples (soil, water and gas), risk assessment and remediation is beyond the professional capabilities of Horsham District Council. Where required such work has previously been contracted out to consultants, Detailed investigation can be expensive and might commonly cost multiples of £10,000 depending on the size of the site and degree of risk assessment required.

4.7 Changes to resourcing of contaminated land functions

Local authorities cannot recover the costs incurred through site inspections.

Site investigations undertaken to date by HDC have been self-funded primarily through a budget commitment. Additional support funding in excess of £100,000 was secured from DEFRA to fund the investigation of Storrington gasworks.

Until 2012 Central Government offered financial support to local authorities in regard of their duties under Part IIA. However the grant was effectively stopped other than for 'absolute emergency cases' by Lord De Mauley's letter (DEFRA December 2013) and will in any case cease to exist in any form after 2017.

Local authorities' statutory duties remain but central government financial support has been removed. HDC has registered dealing with contamination at an orphan site as a corporate risk on the Council's "Corporate Risk Register".

Given the withdrawal of funding and the detailed inspections completed to date HDC is not currently undertaking further strategic site inspections beyond the Desk Top (Phase 1) Stage.

Intrusive sampling (soil, water or gas), risk assessments or remediation exercises will not be undertaken unless the need for inspection is considered to be urgent.

4.8 Urgent site inspections

The need for urgent detailed inspection may arise in a situation where HDC becomes aware that contamination is causing significant harm. Incidents such as fires or fuel or chemical releases also have potential to cause significant harm. These circumstances are rare and most recent cases have involved the accidental releases of domestic heating oil.

HDC has a duty under the legislation to inspect any such site. This duty needs to be balanced against other calls on HDC's resources. As such under those circumstances HDC would:

- identify the liable persons for the site and whether they still exist,
- apply tests from the guidance to establish which liable parties might drop-out of the liability group,
- apportion liability between the remaining liability groups,
- establish if the site is an orphan site,
- seek voluntary inspection by the site owner and/or occupier,
- enter into discussions with regulatory partners and adjoining occupiers.
- seek to recover any costs from liable persons and registering a local land charge.

4.9 Triggers for Undertaking Inspections and Reviewing Inspection Decisions

As noted above there may be occasions where inspections may have to be carried out outside of the general inspection framework. Triggers for undertaking non-routine inspections will include:

- Unplanned events - e.g. if an incident such as localised flooding causing contaminants to be mobilised or a spillage has occurred where the circumstances cannot be addressed through other relevant environmental protection legislation.
- Introduction of new receptors - e.g. unauthorised use of land, the designation of a new protected ecosystem.
- Supporting voluntary remediation - e.g. a potentially liable party wishing to undertake clean-up before their land has been inspected by the Council.
- Identification of localised health effect which appear to relate to a particular area of land
- Responding to information from other statutory bodies, owners, occupiers, or other interested parties.
- Introduction of new pathways, e.g. roads, pipelines across landfill sites, etc.

There may be occasions when previous inspection decisions should be reviewed, examples of when this may be necessary include:

- Significant changes in legislation
- Changes in statutory guidance issued by the Secretary of State
- Changes in site investigation guidance
- Revision of guideline values for exposure assessment
- Establishment of significant Case Law or other precedent.

5. Working with the Environment Agency

The Water Resources Act 1991 gives the Environment Agency powers to deal with harm to controlled waters being caused by contaminated land and the Environment

Agency would normally employ powers under the Water Resources Act and in response to water pollution incidents. Part IIA legislation does not revoke these powers, but does allow for such incidents to be dealt with under the new contaminated land regime and, therefore, the Council and the Environment Agency would seek to agree which legislation will take priority on each individual case. The following steps will be taken where the Council proposes to address water pollution incidents under Part IIA.

- The Council will consult with the Environment Agency before designating any contaminated land as a result of risk to controlled waters, and will take into account any comments made with respect to remediation.
- It is understood that if the Agency identifies a risk to controlled waters from contaminated land, the Council will be notified to enable designation of the land and remediation action will be taken under Part IIA.

Section 161 of the Water Resources Act 1991 empowers the Environment Agency (EA) to serve a “works notice” on any person who has “caused or knowingly permitted “a pollutant to enter controlled waters, including from contaminated land, requiring them to deal with the problem. In urgent cases then the EA is empowered to deal with the problem and recover the costs from the person responsible for the pollution.

Guidance from the EA (Policy and Guidance on the use of Anti-Pollution Works Notices) suggests that in most cases of actual or potential pollution of controlled waters as a result of contamination, the problem will usually be dealt with under the contaminated land Part IIA provisions of the EPA 1990.

The Council and the Environment Agency each have areas of particular expertise and experience which may be of benefit to each other. Good communication exists and mutual support has been offered. Requests for advice or assistance will generally be made on an informal basis in the first instance to minimise the administrative burden. Formal requests will more often be made to support documentation of decisions that are likely to affect the status of any land under Part IIA.

5.1 Dealing with Special Sites

The Council has a duty to determine Contaminated Land as ‘Special Sites’ under certain circumstances, generally where the Environment Agency has particular expertise, or it is already regulating the site, or where there are issues of national security. The effect of designating a Special Site is that it then falls to the Environment Agency as the enforcing authority for Part IIA. The Council’s role will then be to provide all reasonable advice and assistance, and it will expect to be kept informed of relevant actions and progress by the Environment Agency.

Special sites are defined by the Regulations and generally they include:

- prescribed industrial processes already regulated primarily by the Environment Agency for Integrated Pollution Prevention and Control (IPPC).

- certain other specified industrial processes (such as small petrochemical plants and explosives manufacturers).
- land used currently by the Ministry of Defence (MoD), or at any time for manufacturing, processing or disposing of chemical or biological weapons, or for nuclear activities.
- places where drinking water is abstracted and action is required due to Contaminated Land affecting supplies.
- controlled waters where water quality is seriously affected by Contaminated Land.
- controlled waters that are either (a) affected by certain hazardous or polluting chemicals or (b) contained in certain types of vulnerable rock formations.
- land which is contaminated land wholly or partly by virtue of any radioactivity possessed by any substance in, on or under that land;

The Council recognises the need to receive and evaluate new information when changing circumstances of land over time could have “Special Site” implications.

Good communications and liaison have already been established between the Council and the Environment Agency. The Council will continue to work with the Environment Agency and other organisations to gather relevant new information and respond efficiently to incidents.

If newly available information indicates that any land may be Contaminated Land for the purposes of Part IIA and may also be a special site, then the Environment Agency will be supplied with copies of that information without delay and will be asked to carry out any further inspection and investigation.

5.2 Changes to resourcing of Environment Agency contaminated land functions

In common with local authorities the Environment Agency has faced significant reductions in funding. The EA has made a number of key changes to how it implements its contaminated land functions.

- The EA will no longer provide advice on groundwater contamination issues unless within a Source Protection Zone 1.
- Staff numbers in the EA Groundwater and Contaminated Land Team for Sussex have been reduced.
- The EA now charges for providing pre- application advice for planning and other functions.

Previously local authorities have relied on specialist advice of the EA officers on groundwater issues. As this work has not formed part of the remit of local authorities HDC officers may not have all the required competencies to fulfil this role.

The reduction in staffing may lead to delays and lack of response where the council is

required to liaise with EA or in situations where specialist advice is needed such as identification of a special site.

Charging for pre-application advice may deter developers and others from seeking advice. This may lead to the submission of supporting documentation for proposed developments which is inappropriate or insufficiently protective of the receptors listed in the Statutory Guidance. Resolving these issues retrospectively may incur additional costs and require additional resources.

6. Radioactive contamination of land

The revised Statutory Guidance does not apply to radioactive contamination of land. The responsibility for these sites now lies with the Department for Business, Energy & Industrial Strategy. HDC will refer any such issues to Department for Business, Energy & Industrial Strategy.

7. Planning and Development Management

Most land affected by contamination is dealt with through the Development Management system.

Contamination in, on or under land can present risks to human health and the wider environment. This can adversely affect or restrict the beneficial use of land and often development presents the best opportunity to successfully deal with these risks.

The planning system therefore has a key role to play in facilitating the development of land affected by contamination. The broad approach, concepts and principles behind land contamination management adopted by the Part IIA regime should be applied to the determination of planning applications.

After remediating through the Development Management process, as a minimum standard, land should not be capable of being determined as contaminated land under Part IIA of the EPA 90.

HDC, developers, and other statutory bodies should work together at every stage in the planning process to ensure that land contamination issues are properly addressed in a timely and appropriate manner.

7.1. The Developer's Role

The developer is responsible for ensuring that a development is safe and that the land is suitable for the use intended, or can be made so through remediation.

The right information is crucial to good decision making and HDC recommends that developers discuss what is required with HDC planners, the CLO and statutory consultees before submitting planning applications. Failure to provide the right information can lead to delays and/or refusal of planning permission.

In order to satisfy the planning authority that risks from contamination will be appropriately addressed through remediation; developers should ensure that they carry out adequate investigations and risk assessments to inform remediation strategies.

These should all be prepared by competent persons as defined in Annex 2 of the NPPF. Further guidance on good practice in the management of land contamination can be found in the related documents.

After remediation has been carried out, developers are responsible for showing the local planning authority (LPA) that they have been successful. This could involve the submission of verification reports and ongoing monitoring programmes.

7.2 Role of the Local Authority

HDC will:

- expect developers and their agents to voluntarily deal with land contamination issues in pre-planning application discussions and before determination of any relevant planning application,
- respond to planning consultations within HDC's internal agreed response times,
- ensure the protection of public health whilst not incurring excessive cost for the developer or public funds
- Have regard to the Statutory Guidance, National Planning Policy Framework, National Planning Policy Guidance and other relevant industry best practice documents.
- object to a planning application where it is likely that the implementation of any given permission would be technically unfeasible,
- recommend, where appropriate, that any consent be conditional of relevant planning conditions,
- keep a record of planning comments,
- liaise with the Sustainable Places team at the EA where appropriate
- audit all reports relating to land contamination and provide written commentary to the relevant parties including; the developer, the contaminated land consultant and the Development Management case officer,
- require that reports submitted for consideration are prepared by competent persons,
- agree the sign-off/discharge of relevant planning conditions when the work is completed and documented to a satisfactory standard,
- require ongoing reports beyond the time of the delivery of the site where monitoring and/or remediation is ongoing, and

In considering risks from land contamination in relation to any future use or development, HDC assumes that the development will be carried out in accordance with

any existing planning permissions. In particular HDC assumes that 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.

The responsibility for ensuring a development is safe and suitable for use rests with the developer.

7.3 The Environment Agency's Role

The Environment Agency (EA) is a statutory consultee for local plans, certain types of planning application and developments requiring an Environmental Impact Assessment (EIA). The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) sets out the developments for which the Environment Agency is a statutory consultee.

The EA has developed guidance for local planning authorities that sets out the types of planning consultations it wished to be consulted on.

As a statutory consultee the Environment Agency is expected to take a proactive approach, providing advice in a timely manner at all stages in the development process (NPPF Para 190).

The EA's stated main concern when land contamination is being managed under Planning, is to protect the water environment – local authorities deal with human health issues. By ensuring that developers reduce or remove the risk or consequences of pollution of surface waters and groundwater, the planning regime helps the EA achieve Water Framework Directive objectives.

The EA has issued general guidance to help developers and land owners understand their concerns and requirements. These 'Guiding Principles for Land Contamination' (GPLC) describe the approaches that they expect others to take, what they expect to see in reports they review and the key guidance that can be referred to.

In responding to consultations from LPAs the EA provides recommendations and technical advice on:

- the likely impacts that development on land affected by contamination will have on the immediate and wider water environment;
- the impacts that contaminated water may have on the development;
- proposals for, and the outcome of, investigations and remediation;
- implications of the development for Part IIA contaminated land where the EA is the enforcing authority (special sites).

The EA will assess the appropriateness and effectiveness of any measures put forward by developers to remediate contamination or any pollution linkage. Where there are

technical solutions to resolve issues that would otherwise prevent a grant of planning permission the EA will take a constructive approach and explain the steps required to overcome the problems.

An Environmental Permit may be needed to undertake certain required remediation activities. Where this occurs the EA should clearly explain to LPAs the issues that, as the regulator, they can control so as to avoid duplication the details or conditions in a planning permission.

7.4 Building Control

The Building Regulations now also incorporate requirements relating to land contamination and officers in the Environmental Health and Licensing Department also provide advice to the Building Control Officers in undertaking these functions.

Applications for modification, erection and demolition of buildings may be dealt with by one of a number of regulatory organisations including the local authority, the NHBC or Approved Building Inspectors.

8. Council owned land and property.

Council has extensive land holdings of around 1,020 acres (413 hectares), throughout the District, and this is generally freehold land owned by the Council. The Council's Property and Facilities Section is the lead department in managing the Council's property assets, although the day to day management of some land is the responsibility of the Community and Culture Section and the Housing Department.

The majority of the Council's land holdings comprise leisure amenity and recreation land, amounting to 950 acres (385 hectares). The Council also owns commercial land including industrial and retail interests which comprises some 34.6 acres (14 hectares) and 16 acres (6.5 hectares) of grazing land.

Some of the land held by the Council is known to have had previously potentially contaminative land uses, including landfill, gas works and sewage works. HDC has included its former and current land holdings in the strategic inspection of its area and considers that no detailed inspection of any site is required at the current time.

The triggers for reviewing inspection set out section 4.9 will be applied to property owned by HDC.

9. Communication and Information

HDC acts in accordance with the requirements of the following statutes and regulations in making environmental information available to the public:

- Local Government (Access to Information) Act 1985
- Data Protection Act 1998
- Human Rights Act 2000
- Freedom of Information Act 2000
- Environmental Information Regulations 2004
- Openness of Local Government Bodies Regulations 2014

We operate with a presumption in favour of disclosure subject to the relevant tests and exclusions of the above legislation.

HDC holds a public register for land remediated under the Part IIA regime. Currently there are no entries on the register.

9.1 The Environmental Information Regulations 2004

The Environmental Information Regulations facilitate the public's access to environmental information held by HDC.

Requests for environmental information are most commonly made by conveyancing solicitors and or companies evaluating property portfolios.

The Environmental Health and Licensing Department co-ordinates and responds to requests for information made to the Council in accordance with the Environmental Information Regulations 2004.

The Regulations state that requests must meet certain criteria and HDC can request a reasonable fee to cover administrative costs. The number of requests has increased significantly following the Law Society's recommendations in 2005 that such requests should form part of the searches performed on land transactions.

Although many private companies offer this information where potential risk is identified they will refer the enquirer conducting the search to the Environmental Health and Licensing Department for an opinion.

HDC charges a fee for the provision of information under the regulations. The price is updated annually and published on HDC's website and fees and charges register.

9.2 Risk Communication

Understanding the risks from contamination can be difficult for members of public. The Council recognises the barriers to effective risk communication are:

- familiarity - increased concern about unfamiliar issues;
- control - concern if the individual is unable to exert any control over events;
- proximity in space - increased concern about nearby events;

- proximity in time - increased concern about immediate consequences rather than long term effects.
- scale - particularly in terms of media coverage, where one large incident appears much worse than several small incidents;
- “dread factor” - lack of understanding can lead to stress and make further explanation more difficult.

The Council will treat any concerns raised by a member of the general public responsibly, recognising the importance of the issue to the individual.

It is a commonly held view that any material that is not naturally present in the ground should be removed, especially if it is in the vicinity of their home. The contaminated land legislation can only be used where there is a risk of significant harm or pollution.

9.3 Complaints

Complaints regarding contaminated land will be dealt with following the same procedure as currently used by the Environmental Health and Licensing Department to deal with statutory nuisance complaints.

9.4 Voluntary Provision of Information

If a person or organisation provides information relating to contaminated land that is not directly affecting their own health, the health of their families or their property, this will not be treated as a complaint. The information will be recorded and may be acted upon. There will, however, be no obligation for the Council to keep the person or organisation informed of progress towards resolution, although it may choose to do so as general good practice.

9.5 Anonymously Supplied Information

The Council does not normally undertake any investigation based on anonymously supplied information and this general policy will continue for contaminated land issues. This policy does not, however, preclude investigation of an anonymous complaint in exceptional circumstances.

9.6 Anecdotal Evidence

Any anecdotal evidence provided to the Council relating to contaminated land will be recorded. The Council will not undertake any detailed investigation without robust scientific evidence. In all cases the Contaminated Land Officer and Principal Environmental Health Officer will use knowledge and experience to decide what, if any, further investigations are required following a complaint or provision of information.

9.7 Communicating with Owners, Occupiers and Other Interested Parties

Horsham District Council's approach to its regulatory duties is to seek voluntary action before taking enforcement action. This approach will be adopted for issues of land contamination, recognising that in many cases more effective remediation can be achieved by agreement than by enforcement.

This approach will require effective communication with the owners, occupiers and other interested parties. The Principal Environmental Health Officer will be the central point for the authority on contaminated land issues and will ensure all parties are kept informed at each stage of an investigation, regardless of whether or not there is a formal designation of contaminated land.

Where formal designation of contaminated land is required, the actions set out in Section 9.8 and 9.9 will be undertaken:

9.8 Designating an Area of Contaminated Land

The Council will:

- Inform, in writing, the owner and/or occupier of the land at least five working days prior to designation, explaining in summary the reason for the designation.
- Write to the owner and/or occupier explaining the land has been designated as contaminated land and seeking appropriate remediation without service of a Notice.
- If requested, despatch a copy of the written risk assessment to the owner and/or occupier of the land, within ten working days of receipt of the request.
- Write to the owner/occupier of neighbouring properties and/or the complainants, within five working days of designation.
- Place an entry in the contaminated land register.

9.9 Serving a Remediation Notice

The Council will:

- Provide a written Remediation Notice to the owner/occupier specifying the action required.
- Write to the owner/occupier of neighbouring properties and/or complainants within five working days of the Notice being served.
- Place an entry in the contaminated land register.

However, should an urgent designation of contaminated land be required, the above stages will be observed as far as practicable, although some deviation from the timescale specified may occur.

9.10 Completion of Remediation

When contaminated land has been remediated, the Council will enter details of the remediation into the public register as soon as reasonably practicable. Whilst Part IIA of the Environmental Protection Act 1990 does not provide a statutory “signing off” procedure, the Council will confirm its view as to whether there are any grounds for requiring any further remediation or taking any enforcement action. This confirmation, together with the details recorded in the public register, should enable commercial decisions to be made about the land with greater certainty.

There may be some circumstances where remediation of contaminated land is not required. This is most likely to arise when the cost of remediation would be very high when compared with the seriousness of the risk. In these cases, the Council will issue a remediation declaration containing details of why the land is considered contaminated land and the grounds for considering it unreasonable to serve a remediation notice. Details of remediation declarations will be entered on the public register.

9.11 Public Register

Information required to be displayed on the register in the event of any formal determination of land as contaminated land would include the following:-

- Remediation Notices
- details of site reports obtained by the authority relating to remediation notices
- remediation declarations, remediation statements and notifications of claimed remediation
- designation of sites as “special sites”
- any appeals lodged against remediation and charging notices
- convictions

The public register will not include details of historic land use and other records used in the investigation of potentially contaminated land. These are research documents and as such, will not be made available to the public.

10. Enforcement Action and Powers of Entry

The Council will act in accordance with its enforcement procedure and the Statutory Guidance to ensure consistent, fair and transparent practices are used when taking enforcement action.

The Council has been granted powers of entry to carry out intrusive investigations under Section 108(6) of the Environmental Protection Act 1990. At least seven days’ notice will be given of proposed entry to any premises, unless there is an immediate risk to human health or the environment.

11. Strategy Review

Progress to date

As part of HDC's statutory duties it is required to identify previously developed land where the development was on land with a previously potentially contaminative use.

The previous version of this strategy outlined the procedures and information used to identify sites where inspection may have been needed. These sites were identified from a variety of sources including; planning records historic maps, historic aerial photographs, officer knowledge, EA landfill licensing records, petroleum licensing records, pollution incident reports and other verified anecdotal information.

A number of sites considered to be at potentially significant risk have been visited to carry out a preliminary site walkover inspection and more proactive inspection has subsequently been carried out for sites for which HDC considered there was potential for significant possibility of significant harm (see Appendix 2 for details of these detailed inspections). These inspections have been undertaken by external consultants appointed by HDC.

No sites have been found which required remediation.

The investigation work completed under the previous strategy has helped to ensure the council can continue to administer land contamination issues effectively for the foreseeable future.

Future developments

This strategy outlines the general approach to be taken for inspecting land within the district for contamination and will be reviewed in 2022 or in the event of:

- New or significantly changed legislation
- Changes in statutory guidance issued by the Secretary of State
- Changes in site investigation guidance
- Revision of guideline values for exposure assessment
- Establishment of significant Case Law or other precedent.

Horsham District Council

Appendix 1:

The Contaminated Land Statutory Guidance was updated in April 2012

There are a number of aspects that are new in the revised Statutory Guidance. As well as being shorter and simpler to understand the new Statutory Guidance provides:

- A four category test to help decide when land is and is not contaminated.
- Clarification of the status of technical screening levels (SGVs and GACs) and how to use them
- Clarification that “normal” background levels of contamination would not be contaminated land.
- Clarification of what would constitute a “reasonable” level of remediation.
- Controlled waters are now part of Part IIA. The Government have introduced a requirement that when there is significant pollution of controlled waters or the significant possibility of significant pollution of controlled waters Part IIA can be used
- Radioactively contaminated land is removed from the Statutory Guidance and the Department of Energy and Climate Change (who are responsible for radioactively contaminated land) have issued separate statutory guidance for such land.
- There are updated rules on local authorities’ inspection duties and their strategies.
- Risk summaries will need to be produced prior to deciding that land is contaminated. These will need to be understandable to the non-expert and can be used in helping decision making by senior council officers and members. They will of course be available afterwards and will aid residents to understand decision making process.
- Local authorities, once taking a decision that land is contaminated, may reverse that decision.

The new four category test for land contamination can be described as follows:

Category 1 and 2 meet the test of Significant Possibility of Significant Harm ie contaminated land. Land with contamination concentrations in Category 3 and 4 cannot be contaminated land. New screening levels have been introduced (Category 4 Screening Levels) and further screening levels are being developed. Developers carrying out remediation pursuant to a planning permission should pay regard to.

As the main statute has not changed there are no rule changes in relation to the identification of appropriate persons, the exclusion test and apportionment of liability.

Horsham District Council

Appendix 2**Table 1: Part IIA Inspections carried out by HDC (since 2007)**

Site	Type of Inspection	Date completed	Historic land use	Remediation required
Hanover Walk Storrington	3	July 2010	Gas works and bulk fuel storage	No
Castlewood Southwater	2	June 2010	Cesspool Liquor disposal site	No
Water lane Storrington	2	June 2011	Landfill	No
Oak Tree Way Horsham	2	June 2011	Hospital	No
Tanyard Close Horsham	1	February 2012	Tannery, petrol filling station, infilled pond	No
Masons Way Pulborough	3	September 2015	Commercial Nursery	No
Dukes Row Steyning	1	March 2013	Timber yard builders merchants and depot	No
Shell garage Golden Square Henfield	3*	November 2013	Petrol Filing Station	No
Chapel Close Coldwaltham	1	March 2014	Petrol station and motor vehicle garage	No
Forge Cottage & Yew tree Cottages Barns Green	1	March 2014	Petrol station and motor vehicle garage	No
Blacksmiths Close Ashington	1	March 2014	Petrol station and motor vehicle garage	No
Cootham Green & Tritton Place Storrington	2	March 2015	Factory, petrol station and motor vehicle garage	No
Kingsfold Close Billingshurst	2	November 2015	Landfill	No
Granary Close Henderson Way Horsham	2	September 2016	Landfill	No

Type of inspection

- 1- Desk based assessment only**
- 2- Detailed site investigation with soil, gas and water sampling/monitoring**
- 3- Detailed site investigation and Detailed Quantitative Risk Assessment.**
- 3*- as for 3 but investigation led by EA as only controlled waters affected**

Appendix 3:

Consultees

Key partner organisations:

DEFRA

Historic England

Environment Agency

Food Standards Agency

Public Health England

Local government:

Arun District Council,

Adur District Council

Brighton and Hove City Council

Chichester District Council,

Mid Sussex District Council,

Waverley Borough Council,

Mole Valley District Council,

West Sussex County Council

Natural England

South Downs National Park Authority

Southern Water

Appendix 4: Glossary of terms:

ArcGIS	A proprietary digital mapping software
CL	Contaminated Land
Class A Person	A person who knowingly caused or permitted a pollutant linkage.
Class B Person	The owner or occupier of land on which a pollutant linkage exists.
CLO	Contaminated Land Officer.
DEFRA	Department of Food and Rural Affairs
DQRA	Detailed Quantitative Risk Assessment
EA	The Environment Agency
EPA 90	Environmental Protection Act 1990
HDC	Horsham District Council
LPA	Local Planning Authority
NPPF	National Planning Policy Framework
Orphan Site	A site where no Class A or Class B person can be found.
SDNP	South Downs National Park
Special Sites	defined in the guidance and legislation where the EA will be the lead agency and enforcing authority. Statutory Guidance Environmental Protection Act 1990 Part IIA, Contaminated Land Statutory Guidance (DEFRA, April 2012).
C4SL's	Category 4 Screening Levels. These are levels of contamination below which DEFRA considers land is not capable of being determined as contaminated land.
Strategic inspection	Collecting information to make a broad assessment of land within an authority's area and then identifying priority land for more detailed consideration and/or inspection.
Detailed inspection	Carrying out a detailed inspection of a particular piece of land to obtain information on ground conditions and carrying out the risk assessments which support decisions under the Part2A regime relevant to that land.