



# Dealing with the Legacy of Land Contamination



## ***The Moray Council*** ***Contaminated Land Strategy***

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Environmental Health Section  
The Moray Council  
Council Offices  
High Street  
Moray  
IV30 1BX  
Tel: 01343 563345  
E-mail: [contaminated.land@moray.gov.uk](mailto:contaminated.land@moray.gov.uk)  
Website: [www.moray.gov.uk/ContaminatedLand](http://www.moray.gov.uk/ContaminatedLand)



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## 1 WHY DOES THE COUNCIL HAVE A CONTAMINATED LAND STRATEGY?

Moray has a legacy of land contamination arising primarily from former industrial use and historical waste disposal practices. Some of this land was redeveloped for more sensitive uses, e.g. housing, before the potential risks associated with such land were fully recognised. The risk or the perception of risk from land contamination can be a serious concern for people living on it or in its vicinity, due to the possible health effects but also through its effect on their ability to sell their property and on property value. Re-use of former industrial (often called “brownfield”) land is important for economic regeneration and for minimising the need for development on prime agricultural land and other undeveloped areas. However, it is important that potential risks to health and impacts on the environment from such land are investigated and contamination suitably dealt with prior to redevelopment.

The UK’s policy for addressing land contamination was set out in Part IIA of the Environmental Protection Act (1990), which was enacted in 1995 and came into force in 2000. The Act defines “contaminated land” 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 the water environment is being caused or there is a significant possibility of such pollution being caused.”**

The Act places statutory duties on local authorities to address contaminated land. The Scottish Government’s 2006 Statutory Guidance (Edition 2) on the Environmental Protection Act 1990: Part IIA (Scottish Executive Paper SE/2006/44) requires local authorities to establish and periodically review strategies for implementing Part IIA of the Act. This document represents The Moray Council’s strategy for implementing its statutory duties under the Act, and is an update from those produced in 2001 and 2007.

The planning process represents an important mechanism for addressing land contamination and The Moray Council has a duty to take account of land contamination as a material consideration in planning applications. Therefore, this document also sets out the procedures and policies related to land contamination with respect to development management and also building standards. In addition, it also sets out procedures for considering the sale of council land and property, and in responding to information and requests from the public.

## 2 POLICY OBJECTIVES

The Moray Council’s vision, as set out in the Corporate Improvement Plan 2011-12, is “to maintain an attractive, safe local environment, where everyone has the opportunity to benefit from an enhanced quality of life and a sense of wellbeing”. The policies and procedures set out in this strategy aim to achieve this by contributing to the Council’s key strategic outcomes:

- Our local people are healthier, more active and inequalities in health are reduced;
- Our local people live in an attractive natural and built environment that is sustainable



and enhanced for future generations

However, it is important that contaminated land policy pays heed to Strategic Outcome 1:

- Our economy is strong with a more competitive, more diverse business base.

The Scottish Government's objectives with respect to land contamination are to:

- identify and remove unacceptable risks to human health and the environment;
- seek to bring damaged land back into beneficial use;
- seek to ensure that the cost burdens faced by individuals, companies and society as a whole are proportionate, manageable and economically sustainable.

This is achieved through the "suitable for use" approach that ensures:

- land is suitable for its current use and any unacceptable risks to human health and the environment are addressed through remediation of land;
- land is made suitable for any new use by assessing the potential risks from contamination before planning permission is given for the development and, if necessary, ensuring remediation before the new use commences;
- requirements for remediation are limited to the work necessary to prevent unacceptable risks to human health or the environment in relation to the current or future use of the land for which planning permission is sought

Hence, a pragmatic strategy is required in the management of land contamination, which balances protection of the public and environmental improvement with sustainable development. This document sets out how the Council aims to achieve this balance.

### **3 MORAY'S ENVIRONMENT**

#### **3.1 Natural Resources**

The upland areas of Moray are dominated by metamorphic rocks (schists and gneisses) with granite intruding in places. These rocks are not porous, but they contain cracks and fissures which can locally be sufficient for extraction for private water supplies as well as providing baseflow to rivers. These areas support fine salmon rivers as well as water for the area's many distilleries. Along the coastal plain, the metamorphic rocks are overlain by Devonian and Triassic sandstones. The sandstones support high productivity aquifers, which are actively extracted for commercial uses. Major groundwater resources are also present in surficial sand and gravel aquifers that line the major river valleys and much of the coastal plain. Gravels in Spey valley are exploited for drinking water supply near Fochabers. The policy of the Scottish Environment Protection Agency (SEPA) is that all such groundwaters should be protected for their future resource potential.

The area's major rivers, the Findhorn, Lossie, Spey and Isla, and the coastline are major natural assets supporting sensitive ecosystems as well as being an important factor in the tourist economy. While the quality of all rivers is monitored by SEPA, Findhorn Bay and the lower River Spey also have protected area designations.



### 3.2 Land Use and Industrial Development

Over 70% of Moray is open countryside. Roughly half of this is used for arable crops and livestock with the remainder being mountain, moorland, peat bog, wetland and salt marsh. Around 25% of the area is forested. Developed land represents only around 2% of the total land area.

Despite the rural and upland character of much of the area, the Moray environment has fostered a range of industries that can give rise to land contamination. These have largely been centred on the main towns of Buckie, Elgin, Forres, Keith and Lossiemouth and to a lesser extent, Aberlour, Dufftown, Fochabers, Rothes and the smaller ports. Much of the industrial development was related to the primary activities in the area: agriculture, fishing and forestry. Potentially contaminative industries associated with these local activities that are common across Moray include textile manufacture (woollen mills), tanneries and animal products processing, fertiliser manufacture, fish processing, boat building and maintenance, saw mills and timber treatment. Later developments included agricultural engineering works and centralised grain storage facilities. The grain supply and abundance of high quality water sources favoured the development of a widespread and world-renowned whisky distilling industry, with its associated industries such as copperworking. In addition, the area's geological resources have been a nationally important source of sandstone, as well as sand, gravel and, in places, limestone, which has left a legacy of numerous quarries and pits, many of which were used by later generations for disposal of waste.

Alongside these industries were others associated with more general industrialisation including gasworks and other utilities, railways, fuel distribution, laundries and some limited general manufacturing works. From the 1930s onwards, the area also became a focus of military activity. In addition to the well-known post war airfields at Kinloss (now used as an Army barracks) and Lossiemouth, there were four other wartime airfields covering large tracts of land with a total area of approximately 17km<sup>2</sup> (six square miles). These operations required substantial supporting infrastructure including fuel storage and distribution, maintenance facilities, ordnance storage and ancillary activities such as motor vehicle maintenance and waste disposal.

Like many areas, the decline of long-established traditional industries in the second half of the twentieth century resulted in a period of significant land use change when many former industrial sites were redeveloped before the full impact of these former industries on land and water resources was known or fully appreciated.

## 4 THE COUNCIL'S LAND CONTAMINATION DUTIES AND FUNCTIONS

### 4.1 Implementing Statutory Duties: Environmental Protection Act

#### *Statutory Duty*

The Environmental Protection Act 1990, Part IIA Contaminated Land, and The Contaminated Land (Scotland) Regulations 2000 (as amended) place duties upon the Council:

- **to identify contaminated land in its area; and**
- **to ensure appropriate remediation.**



The Statutory Guidance provides guidance on interpretation of this legislation.

### *Part IIA Strategy and Procedures*

The Council's strategy and procedures for delivering the statutory duties under Part IIA of the Environmental Protection Act 1990 are detailed in Appendix A. The Council will follow the stipulated process for identification and remediation of contaminated land as well as using the enforcement powers, including determining appropriate remediation, finding the appropriate liable persons and apportioning costs where necessary. A phased approach to inspection and investigation will be used allowing the risk from the site to be re-evaluated at the end of each phase. Initial desk study investigations will be carried out in-house by Council staff. Field-based intrusive investigations, including design, implementation and interpretation will be carried out in-house wherever staff resources allows. For larger investigations and more complex issues (e.g. quantitative risk assessment for human health), specialist external services will be used, following a procurement process that complies fully with the Council's policy.

Once sufficient investigation works have been undertaken to provide a satisfactory assessment, a decision will be made as to the significance of the contamination and whether the site, therefore, meets the Part IIA definition of contaminated land. If the land meets the definition of contaminated land, it will be noted on the public register, which The Moray Council is required to maintain under the 1990 Act.

### *Part IIA Progress and Future Priorities*

Initial work for Part IIA involved collation of information into a database. Once this was completed, early progress dealt with significant obstacles to the Elgin flood alleviation scheme, which involved obtaining substantial Scottish Government funding and managing the delivery of several large remediation schemes. Two of these sites were placed on the Council's register, along with a third site identified through the planning process. These three sites are among 13 designated sites in Scotland as listed in SEPA's State of Contaminated Land report in 2011 [Six more have been placed on local authority registers since then - none of these is in Moray]. The primary objective since then has been to investigate and where necessary address *acute* risks to health as soon as they are identified. Such sites include areas of known landfilling and sites with significant risk to the public from explosive ordnance. Such risks are re-assessed as additional sources of information, particularly historical aerial photography, becomes available. Since 2011, the Council has started to assess sites representing a possible chronic risk to human health as a result of substances present in soil, with priority given to assessing sites with multiple unit residential developments, ie. where a large number of people could be affected. This will continue to be the case going forward but, given the Council's economic development priorities, non-residential sites with potential human health or environmental risk that also have an economic development dimension will be considered for prioritisation.

To date, the Council has addressed the foremost Category A (i.e. highest ranked) sites at which there is now a more sensitive use. Category A sites with continuing industrial use will not be considered a priority unless there is evidence of impact on neighbours or evident pollution of the wider environment. There are over 200 sites falling within Category B. Approximately 10 per cent of these sites have now been assessed. It is likely that, based on current resources and budget, only two or three sites requiring intrusive investigations can be progressed per year through the Council's Part IIA inspection programme, although



many others will be assessed based on desk based study research. Others will be addressed through planning conditions and voluntary remediation by landowners.

## 4.2 Consultee to Development Management and Building Standards

### *Planning Applications*

Every planning authority has a duty to consider the potential for contamination as a material consideration when dealing with planning applications. In The Moray Council, this duty is undertaken by specialist Contaminated Land staff in the Environmental Health Section, which is a consultee in the development management process.

Planning Advice Note (PAN) 33, Development of Contaminated Land, states that “the planning system has a key part to play in addressing the problem of historical contamination” and even heavily contaminated former industrial land can be suitable for development. It is in The Moray Council’s interest that such land is developed. However, it is important that redevelopment of such land is undertaken in such a way that future stakeholders, e.g. homeowners, site users, and neighbours, can have confidence that there is no risk to their health or the environment. The role of The Moray Council’s Contaminated Land staff is to assist developers, and their agents and consultants, to fulfil their responsibilities for safe and sustainable development.

Any proposed development subject to a planning application must be suitable for its intended use. A guiding principle for the Council is that any site granted planning permission for a new use will not need to be re-assessed using Council resources through the Contaminated Land Part IIA inspection strategy.

The procedure for assessing planning applications is described in Appendix B. Contaminated Land staff will seek to process planning applications as quickly as possible to assist the Development Management Section in meeting its timescales for processing planning applications. Additional information, e.g. a land contamination site investigation report, will only be requested where there are strong reasons to suspect that a site may have been impacted by former uses. Where the risk from contamination to the proposed development is less clear, an informative note will be recommended for inclusion on the planning consent. In all cases, safe development of a site is the responsibility of the developer. Applicants are encouraged to discuss potential issues with the Council’s Contaminated Land staff so that the appropriate information can be submitted with the planning application to minimise subsequent delays.

Where necessary, Contaminated Land staff will recommend that relevant conditions be attached to a planning consent to require remediation of a site. The developer will be required to demonstrate that remediation has made the site suitable for use before the condition can be discharged.

### *Building Standards*

The Council has a responsibility through the Building (Scotland) Regulations 2004 (as amended) to ensure that every building is designed and constructed in such a way as to prevent threat to the building and the health of its occupants from harmful or dangerous substances in or around that building. In practice the majority of developments subject to building warrants are also subject to planning applications and will already have been



scrutinised. The Council's Contaminated Land staff check all building warrants on behalf of the Building Standards Section and advise of any planning conditions or contamination issues affecting the building warrant. In some circumstances, additional information, e.g. a site investigation, will be needed from the developer in support of a building warrant application, although this would be an unusual situation. The procedure is described in Appendix C.

### **4.3 Advising the Council as Landowner**

#### *The Moray Council Estate*

The Moray Council owns a varied estate, which inevitably includes potentially contaminated sites. Some of these sites may have been affected by the Council's own activities. Others have a known or potential legacy of contamination from prior uses, for which the Council may be liable for any contamination.

The procedures to be followed by the Council when selling, leasing or purchasing land are described in Appendix D. When selling (or leasing) land, the Council has an opportunity to remove or limit its liability for historic contamination. The Environmental Protection Act 1990 and the Statutory Guidance state that providing "*sufficient information*" to the purchaser on the condition of the land at the time of sale/lease can remove the seller from future liability. In addition, the Council also wishes to be a responsible landowner and provide potential purchasers of its land with information to ensure they are sufficiently aware of any contamination that exists at the site, and the impact upon any plans they may have for the land. This approach has protected the Council in the past from substantial costs following legal action by a purchaser.

When purchasing land, the Council wishes to identify and manage potential future liabilities, in particular financial risk. Hence, the Council aims to carry out appropriate land contamination investigations prior to purchase.

Land contamination assessments related to sale and purchase of land, and also on Council developments, will be carried out using a phased approach and the cost of carrying out further stages will be balanced against the associated risk and a decision taken on a site-by-site basis as to the level of information to be provided. Where land contamination site investigations are necessary, these can be carried out, subject to available resources, by the in-house Contaminated Land staff, which can represent a substantial saving to the Council's Estates Section. In some cases, remediation may be necessary, although this may be carried out after the sale or purchase.





***Investigation of potential soil contamination to facilitate sale of unused Council land***

***Council House Sales***

Procedures in relation to Council house sales in response to requests from the Council's Legal Section are described in Appendix E. The process for attributing financial responsibility for the remediation and for "selling with information" is similar to that which applies to sale of land by the Estates Section of the Council. In addition, The Environmental Information (Scotland) Regulations 2004 (as amended) place a duty on the Council to make information available to purchasers regarding any possible contamination issues, which may affect the site. In general, only limited desk study information is initially provided along with the contaminated land risk ranking. Based on the results, more detailed information, e.g. a Land Use Report, may need to be provided.

**4.4 Responding to Requests and Information from the Public**

***Information Requests***

The Council receives requests for information from the public on potential land contamination. These enquiries primarily relate to property transactions. The Environmental Information (Scotland) Regulations 2004 (as amended) place a duty on the Council to take reasonable steps to organise and keep updated certain categories of environmental information that it holds, and which are relevant to its functions, with a view to actively and systematically providing that information to the public. The Council is committed to being open and transparent with the environmental information it holds, whilst also taking due consideration of the confidentiality and the sensitivity of such information. The Council's procedure for dealing with information requests is described in Appendix F.

The Council provides land contamination information in a number of ways. The most common is through Property Enquiry Certificates requested from the Council, which provide land contamination information in relation to a specific property or area of land as part of a general Council response. The information aims to provide answers, as far as possible, to the Council of Mortgage Lenders Questions on potential sources of contamination. More detailed information is given in Contamination Enquiry Reports and Land Use Reports, which outline the potential sources of contamination and other pertinent information relating to a site and its surrounding area. In recent years, environmental searches have become a routine part of the conveyancing process and the number of direct enquiries to the Council



from solicitors has decreased as a result. However, the Council is still frequently contacted where searches reveal that the land/ property concerned had a potentially contaminative former use and additional information is sought to resolve difficulties with the transaction.

### *Complaints/Notifications*

The Environmental Protection Act 1990 places a duty on the local authority to investigate complaints received regarding contamination, or the potential for contamination, of the soil and/or the water environment and to address them under Part IIA legislation. The Council's procedure for dealing with complaints and notifications from the public is described in Appendix G.

When a complaint is first received it is assessed to determine whether it is appropriate to address it under Part IIA of the Act or under other legislation. If it is more relevant to other legislation it will be passed to the appropriate department and the complainant duly informed. For example, in the case of the illegal deposit of waste, complaints will be passed to SEPA. Where the complaint is relevant to Contaminated Land duties, a site visit will be conducted to gather further information and consideration will be given as to whether the potential for significant harm to any statutory receptors exist. Where deemed necessary, further action will be taken in accordance with the Council's 'Contaminated Land Part IIA Inspection Strategy' (see Appendix A). Wherever possible the Council will try to ensure any remediation required is carried out voluntarily, rather than under enforcement action.

## **5 COMMUNICATION**

### *Other Organisations*

Although the Council is the primary regulator for land contamination, other organisations retain an interest in land contamination issues. Most notable is SEPA, which is the regulator in relation to pollution of the water environment, waste management and radioactive land contamination. The Council's Contaminated Land staff maintain links with the SEPA office in Elgin and work closely with regional and national specialists in soil and groundwater contamination. Other organisations may be contacted occasionally according to site-specific requirements such as Scottish Natural Heritage and Health Protection Scotland.

### *Landowners, Residents, and Council Service Users*

Where potentially contaminated land is to be inspected by the Council, engagement with the landowners, occupiers, and other relevant people is particularly important because land contamination, or potential contamination, can be a cause of anxiety. Establishing good communication links is also important when access to land is needed. The Moray Council's Contaminated Land staff aim, in so far as is practicable, to carry out communications face-to-face. To facilitate this, drop-in information sessions have been organised for larger site investigations. Where fewer people are involved this may be done by home visits. Local Ward Members, Community Councils and other community bodies are kept informed. For planning applications, the Council's Contaminated Land staff are committed to assisting applicants, agents and their environmental advisors by communicating clear instructions as to what is expected by the Council early on in the planning process and by responding promptly and clearly to all information submitted. In all cases, the Council will seek voluntary remediation rather than taking enforcement action, which will always be a last resort.



## 6 INFORMATION MANAGEMENT

Contaminated land information is held by the Council on a Geographical Information System and associated database. The Council also has a site prioritisation tool developed by the British Geological Society to assist in selection of sites for inspection as part of the Council's duties under the Environmental Protection Act 1990. The system uses the type and duration of previous land uses along with the likely susceptibility of human health, the water environment, ecosystems and property to give a broad grading for contamination sources. The grading system used (from A, the highest, to E) provides the basic systematic and defensible framework for the Council's prioritisation of Part IIA site inspections, but it does not give a definitive ranking. Professional judgement is required to interpret this further.

The Freedom of Information Act (Scotland) 2000, the Freedom of Information (Scotland) Act 2002 (as amended) and The Environmental Information (Scotland) Regulations 2004 place duties upon the Council as a holder of environmental information. The Acts require information to be provided on request, whereas the Regulations require environmental information to be actively and systematically disseminated by local authorities at all opportunities. This has implications for the Council in that information held by the Council on the condition of land requires to be provided within Property Enquiry Certificates and other information releases as well as in planning consents and building warrants approvals. Property Enquiry Certificates, Contamination Enquiry Reports and Land Use Reports include the risk grade from the Part IIA prioritisation tool, but the grade should only be considered as a guide to the possibility of contamination.

## 7 RESOURCES AND COMMITMENTS

The Moray Council allocates an annual budget of £48k for contaminated land which is used to fund inspections and site investigation works in support of Part IIA duties. This includes hiring of plant for intrusive works, laboratory analysis, and contracting of specialist services.

Staff resources for undertaking all contaminated land duties comprise one Contaminated Land Officer, one Technical Officer and one Support Officer. They will be responsible for: carrying out all desk study assessments; undertaking intrusive investigations; project management and procurement of specialist services for some projects; acting as consultee to Development Management and Building Standards; providing support to Estates; and responding to information requests and complaints.

In addition, the former Greenbrae landfill site at Cummington continues to require a commitment of staff time and periodic input from specialist contractors. A landfill gas migration control system was installed in 2005 following detection of the explosive gas, methane, in a nearby house. Migration is being successfully controlled, but this is dependent on continued operation of the system because high levels of methane persist in the ground. Ongoing monitoring of gas levels and routine servicing of the system is undertaken by Contaminated Land staff.



### ***Greenbrae Landfill***

***A gas management system was installed in 2005 to prevent further migration of methane towards the nearby residential properties. Monitoring of gas levels is ongoing.***

The Council also has a regulatory role for land contamination on Moray's flood alleviation schemes. Assessment work is largely complete. However, staff continue to work closely with the flood scheme consultants to ensure timely and cost-effective solutions for remediation of former industrial soils within the footprint of schemes, particularly the Elgin flood scheme.

The Contaminated Land staff will seek in their various functions to assist businesses, other Council departments and the public in understanding land contamination issues and to manage land in a way that is appropriate, but also reasonable and economic. However, the underlying principle is to ensure protection of the environment and, moreover, public health.