



Policy and Resources Committee

Contaminated Land Cost Recovery and Hardship Policy

Purpose of report

This report is for a proposed new policy that has been developed in conjunction with all councils in the county to provide a clear and reasonable approach for dealing with contaminated land following reductions in central government funding for investigating and remediating contaminated land whilst aiming to meet our statutory requirements.

Attachment:

Appendix A: Contaminated Land Cost Recovery and Hardship Policy

Appendix B: Equalities Impact Assessment

1.0 Background

- 1.1 The Council is the enforcing authority for the purpose of Part IIA of the Environmental Protection Act 1990 and has a statutory duty to undertake inspections of the land within the district, including any necessary intrusive tests required to determine if the land is contaminated, and to have in place an inspection strategy for identifying contaminated land.
- 1.2 When contaminated land is identified, the council must establish who is responsible for the remediation of the land. Under the 'polluter pays principle' this would be the person(s) responsible for the contamination being present or, in their absence, the owner. The Council must determine what remediation is required and that must then be undertaken either through voluntary remediation or via a remediation notice. Where a notice is served and the council undertakes the works itself, it must apportion the costs in line with the regulations and statutory guidance, taking into account hardship. The council shall also maintain a public register.

2.0 Cost Recovery and Hardship Policy

- 2.1 Due to a significant reduction in government funding for investigating and remediating contaminated land, the representative officers from each council in the county have developed the draft policy in Appendix A to meet our statutory requirements, taking into account statutory guidance issued by the government and national best practice policies from around the country.
- 2.2 We are required to consider hardship when recovering any costs associated with contaminated land remediation. Whilst the fundamental principle is that the 'polluter pays', this is not always possible. The vast majority of contaminated land remediation occurs through the planning process where the cost is born by the developer. Land identified as potentially contaminated which undergoes a change in use will often have a contaminated land assessment, and suitable works will be required to ensure that any contamination does not affect the new proposed use. For example, the old laundry site at Irthlingborough was investigated and a remedial scheme agreed with the council to protect the future uses of the site from harm.
- 2.3 Where sites are contaminated and they are not likely to result in remediation through the planning system, action may still be required if they pose a significant risk. Where appropriate, the Council might be eligible for financial assistance from Department of Environment, Food and Rural Affairs (DEFRA). However, if the council carries out the remediation it has a duty to seek cost recovery, and the regulations and statutory

guidance require the Council to have in place a transparent policy for determining financial hardship.

- 2.4 The policy provided in Appendix A is intended to meet the requirements of the regulations and statutory guidance.
- 2.5 This policy has been drafted by the Northamptonshire Contaminated Land Group, which is made up of officers from each district and borough. The attached policy is the final version agreed by the group, which aims to have it approved by each council to provide consistency of approach across the county.
- 2.6 The Costs Recovery and Hardship Policy states that the Council will normally seek to recover its costs in full from either Class A (those who caused or knowingly permitted the contamination) or Class B persons (being current owners or occupiers of the site). However, there are provisions included, which mirror the statutory guidance to allow cost recovery to be fully or partially waived if the Council is satisfied that such recovery would cause undue hardship. It is proposed that decisions on the determination of hardship are delegated to the Chief Executive in consultation with the Chief Finance Officer, the Head of Environmental Services and appropriate legal advisors.
- 2.7 Where it has been determined by the Executive Director and Head of Environmental Services that the cost of remediation may cause hardship to the appropriate person(s) through financial hardship and/or including other criteria such as their personal health and wellbeing circumstances, a remediation notice will still be served. The council will undertake the remediation and seek central government funding to cover the costs in the first instance. The matter of hardship will be considered as part of any bid made to Defra and may impact on the success of the bid.

3.0 Important issues to consider

- 3.1 At this time no funding is being requested for any such remediation schemes. Where sites are identified that may require remediation and costs will be borne by the council, further reports would be submitted for consideration to this committee. Having such a policy in place will allow for any assessment of costs to be more clearly understood.

4.0 Equality and Diversity Implications

- 4.1 An initial Equalities Impact Assessment has been undertaken and is provided in Appendix B. Whilst there was considered to be a negative impact for those with financial or health and wellbeing issues with regards to the remediation requirements, this policy mitigates those risks by setting out how cost recovery and hardship would be considered.

5.0 Legal Implications

- 5.1 The implementation of this policy is in line with legislative requirements under Part 2A of the Environmental Protection Act 1990 and with the Statutory Guidance relating to contaminated land.

6.0 Risk Management

- 6.1 Environmental Services has records of potentially contaminated land within the district. Whilst we have not determined any land as contaminated as defined by the regulations, we monitor and evaluate land when a change of use is proposed or when additional information comes to light.
- 6.2 Whilst the need to undertake remediation on land is unlikely based on the sites that we have identified, should we be in a position where the council must act, a policy such as this should be in place to determine the costs recovery and hardship of those affected in order for the council to seek funding from central government to recover the

costs. Not to have a policy in place would leave the council open to the financial liability without a mechanism for reclaiming costs.

6.3 It is not possible for the policy to include financial limits as the statutory guidance is clear that each site is different and therefore setting limits would not be possible as this would restrict action from being taken on some sites. However, the statutory guidance does give advice on cost recovery in relation to land values

6.4 The government is promoting remediation of contaminated land through re-development, especially with targets for regeneration of brownfield land, and considerable progress has been made in remediating land affected by contamination in the district. We have a prioritised list of potentially contaminated sites in place with the majority of the sites that pose the highest risk having been remediated through Planning already. To date 255 sites in the list have been investigated and/or remediated, mainly through Development Management.

6.5 The highest priority sites such as gas works, tanneries, petrol stations, etc., tend to be in towns or villages and may have been vacant for many years, hence posing a significant risk to human health and the environment. They have subsequently been developed, mainly for residential use, thereby mitigating the risks they posed. We have historical information on areas within the district and we will know where the most high risk sites are and what they were previously used for, including airfields and industrial sites.

7.0 Resource and Financial Implications

7.1 At this time the report is not requesting the provision of funds for any contaminated land work. Where land requires remediation and the Executive Director and Head of Environmental Services are satisfied that requiring the person responsible to pay will put them into 'hardship' as defined by the policy, a report on the likely costs and how we may be able to seek those costs from Defra will be submitted to this committee for consideration.

8.0 Constitutional Implications

8.1 There are no constitutional implications arising from this report.

9.0 Customer Service Implications

9.1 There are no customer service implications arising from this report.

10.0 Corporate Outcomes

10.1 The Corporate Outcomes are:

- Good Value for Money – This policy sets out how costs for dealing with contaminated land in the district will be dealt with
- Effective Management – The implementation of this policy will assist in continuing to effectively manage and improve contaminated land within the district.

11.0 Recommendation

11.1 The Committee is recommended to:

1. Consider the Equality Implications relating to this report (see section 4 of the report and Appendix B).
2. Approve the Contaminated Land Cost Recovery and Hardship Policy (*Reason – To accord with legislation*)

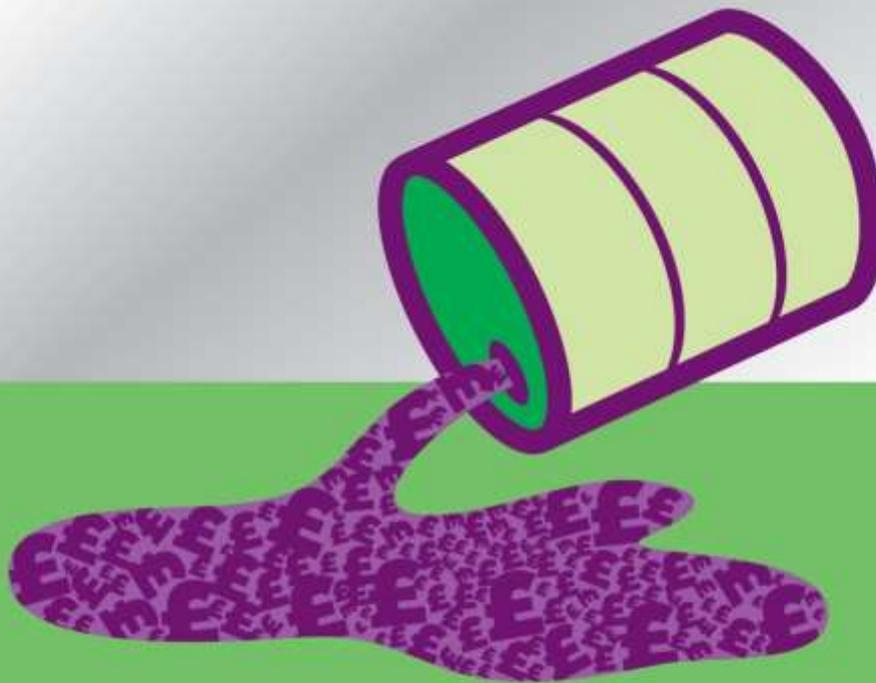
3. Delegate decisions on hardship as stated within the policy to the Executive Director and Head of Environmental Services (Reason – To enable prompt decision-making at an appropriate level)

Legal	Power: Environmental Protection Act 1990				
	Other considerations: Contaminated Land Statutory Guidance				
Background Papers:					
Person Originating Report: Jenny Walker, Environmental Protection Manager ☎ 01832 74(2209) ✉ jwalker@east-northamptonshire.gov.uk					
Date: 28/03/2017					
CFO		MO		CX	



East
Northamptonshire
Council

Contaminated Land Cost Recovery and Hardship Policy



2017

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Document Version Control

Author (Post holder title)	Environmental Protection Manager
Type of document	Strategy / policy/ plan /action plan / procedure / guidelines / protocol / statement * delete as appropriate
Version Number	0.1
Document File Name	Contaminated Land Costs Recovery and Hardship Policy
Issue date	April 2017
Approval date and by who (SMT / committee)	
Document held by (name/section)	Environmental Protection
For internal publication only or external also?	Internal only / internal and external * delete as appropriate
Document stored on Council website or Eunice?	Eunice / Website * delete as appropriate
Next review date	

Change History

Issue	Date	Comments
0.1	20/3/2017	Draft policy following development and consultation with Northamptonshire Contaminated Land Group

NB: Draft versions 0.1 - final published versions 1.0

Consultees

Internal	External
e.g. Individual(s) / Group / Section	e.g. Stakeholders / Partners /Organisation(s)

Distribution List

Internal	External
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Links to other documents

Document	Link

Additional Comments to note

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1.0 Introduction

- 1.1 This statement of policy sets out East Northamptonshire Council's (the Council) position in regard to cost recovery for the costs of remediation of land determined as Contaminated Land under Part 2A of the Environmental Protection Act (EPA) 1990. This policy relates specifically to persons who currently own or occupy residential dwellings or associated land but were not responsible for the contamination being present. The policy does not relate to owners of other types of property such as commercial premises.
- 1.2 Under Part 2A, the appropriate person to pay for remediation is determined with reference to the primary legislation and statutory guidance. It is based on the polluter pays principle. In that those persons who caused or knowingly permitted a pollutant to be in, on or under the land will be the appropriate person to receive a remediation notice to ensure the work is carried out. Therefore, responsibility for the cost of the remediation rests with the person who caused or knowingly permitted the contamination.
- 1.3 If the above appropriate person cannot be found, the owner or occupiers of the land may be the appropriate person to receive a remediation notice.
- 1.4 When no liable parties can be found the site is deemed to be an orphan site and the responsibility then rests with the Council or the Environment Agency, if a special site, to fund remediation.

2.0 Scope

- 2.1 The purpose of this policy is to ensure a consistent and transparent approach when seeking to recover costs for remediation of Contaminated Land determined under Part 2A.

3.0 Policy outcomes

- 3.1 The outcomes to be delivered by this policy are:

Contaminated Land Cost Recovery and Hardship Policy outcomes	Links to corporate outcomes (delete as appropriate)
<ul style="list-style-type: none">• Detail the process to determine if cost recovery is appropriate• Outline how cost recovery will work• Detail various options by which costs can be recovered from landowners	<ul style="list-style-type: none">• Good quality of life: cleaner• Good quality of life: safer• Good quality of life: sustainable• Council services which provide good value for money

4.0 Definition of Contaminated Land

- 4.1 In general terms, contaminated land usually means land where industrial or other human activities have resulted in the presence of substances in the ground with potential to cause harm to human health, controlled waters, structures, or the environment.
- 4.2 The definition of Contaminated Land from the EPA 1990, Part IIA, Section 78A (2) is:

“any land which appears to the Local Authority in whose area it is situated to be in such a condition, by reason of substances in, on, or under the land, that –

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

(b) pollution of controlled waters is being, or is likely to be, caused.”

5.0 Legal Background

- 5.1 Section 78P(2) of the EPA 1990 and the Contaminated Land Statutory Guidance, April 2012 (the statutory guidance) gives guidance on remediation and cost recovery.
- 5.2 Wherever possible, voluntary remediation of Contaminated Land should be encouraged. However, where this cannot be achieved the Council has the ability to serve a remediation notice specifying what needs to be done. Alternatively the Council can carry out the work to complete the remediation and recover any reasonable cost incurred in doing so from the appropriate person under section 78N(1) and 78P(1) of the EPA 1990.
- 5.3 Section 78F(2) of the EPA 1990 states that any person or persons who caused or knowingly permitted land to be contaminated is an ‘appropriate person’ in relation to any remediation which is required. This follows the Polluter Pays principle and such persons are known as “Class A persons”
- 5.4 Section 78F(4) goes on to say that if after reasonable enquiry no Class A persons can be found then the owner or occupier of the Contaminated Land in question is an appropriate person. In this case the owner or occupier is known as a Class B person.
- 5.5 Class B persons are only liable for remediation of contamination within the boundaries of their property and cannot be held liable for any pollution of controlled waters (underlying groundwater or surface water features including rivers, lakes and streams).
- 5.6 Section 78P(2) of the EPA 1990 and the statutory guidance offers some advice on cost recovery and hardship. Section 8.6 of the statutory guidance advises the Council may waiver or reduce the recovery of costs to the extent that it considers this appropriate and reasonable to avoid any undue hardship which the recovery may cause to the appropriate person.

6.0 General Considerations

- 6.1 In general terms, the Council will seek to recover in full its reasonable costs incurred when performing its statutory duties in relation to the remediation of contaminated land.
- 6.2 Wherever possible, apply the ‘polluter pays’ principle, whereby the costs of remediating contamination are borne by the polluter.
- 6.3 The Council will apply for central government funding under the Contaminated Land Capital Projects Programme where available to carry out remediation. When such applications are successful, there will be no need for the Council to undertake works in default and seek cost recovery.

6.4 If external funding is not available, any non-recovered costs become the responsibility of the Council. Before making a decision to waive or reduce any costs the Council will consider the burden to local taxpayers such a waiver will create. In reaching such a decision the Council will have due consideration to the prevailing public sector financial climate at the time of the assessment, and the consequential budgetary position of the Council.

7.0 Specific Considerations Applying to Class B Persons

7.1 Any such waiver or reduction will be to the extent needed to ensure that the Class B person in question bears no more of the cost of remediation than it appears reasonable to impose, having regard to their income, capital and outgoings.

7.2 Inherited property will be treated as though the property was purchased.

7.3 In some cases the cost of remediation may exceed the value of the land in its current use after the required remediation has been carried out. In such circumstances, the Council will consider waiving or reducing its costs recovery from a Class B person if that person demonstrates to the Council that the cost of remediation is likely to exceed the value of the land. In this context, the 'value' should be taken to be the value that the remediated land would have on the open market, at the time the cost recovery decision is made, disregarding any possible blight arising from contamination.

7.4 In general, the extent of the waiver or reduction in costs recovery will be sufficient to ensure that the costs of remediation borne by the Class B person do not exceed the value of the land. However, the Council will seek to recover more of its costs to the extent that the remediation would result in an increase in the value of any other land from which the Class B person would benefit.

7.5 For Class B persons, the Council will consider waiving or reducing its costs recovery where that person satisfies the Council that, at the time the person purchased the dwelling, they did not know, and could not reasonably have been expected to have known, that the land was adversely affected by the presence of contamination.

7.6 In judging the extent of a waiver or reduction in costs recovery from a Class B person, the Council will apply an approach similar to that used for applications for housing renovation grant (HRG). These grants are assessed on a means-tested basis, as presently set out in the housing Renewal Grants Regulations 1996 (SI 1996/2890, as amended). The HRG test determines how much a person will contribute towards the cost of necessary renovation work for which they are responsible, taking into account income, capital and outgoings, including allowances for those with particular special needs. For this purpose, any upper limits for grants payable under HRG will be ignored.

8.0 Decision making

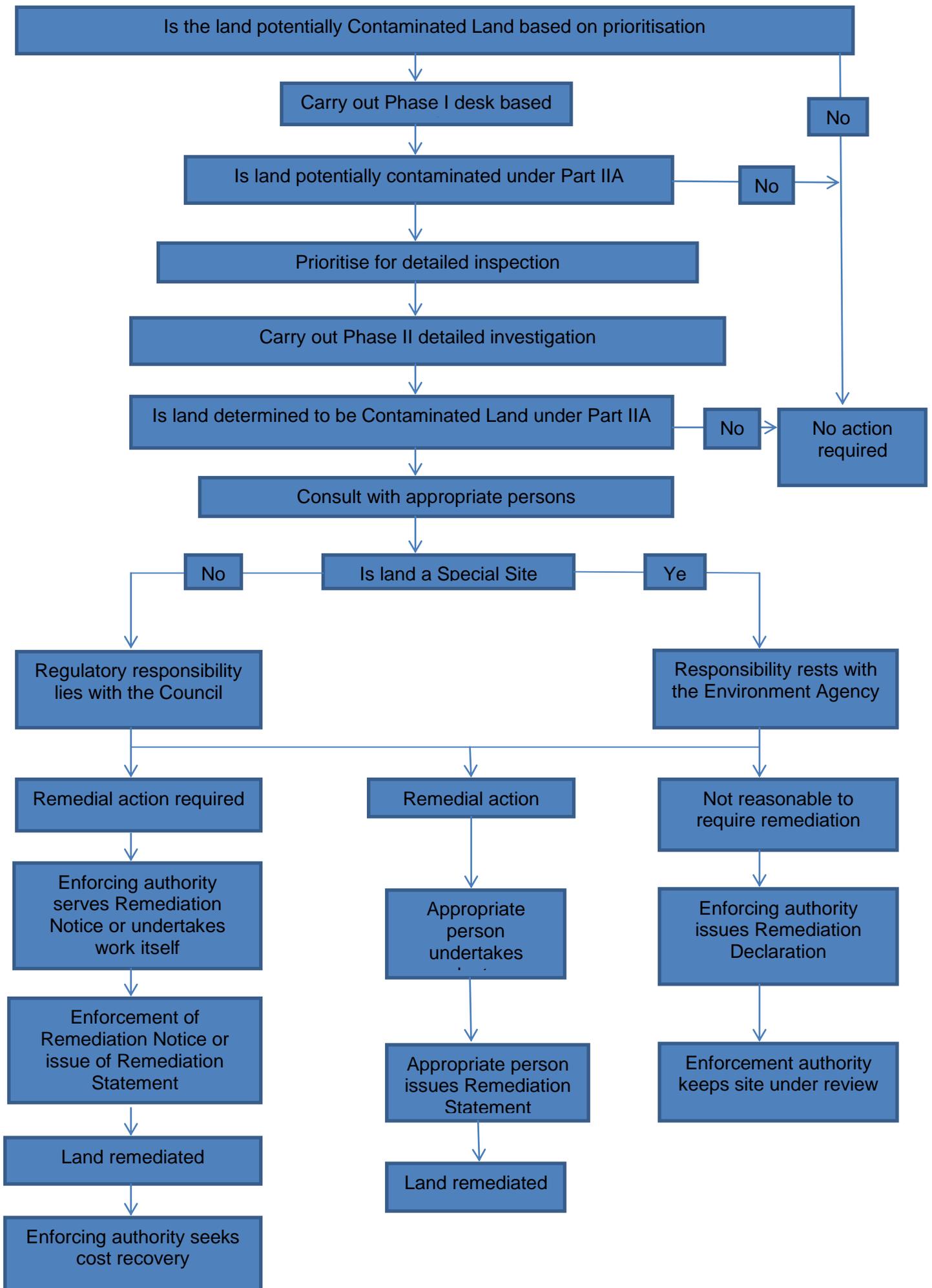
8.1 The Council will expect anyone seeking a waiver or reduction in the recovery of remediation costs to present any information needed to support such a request within a reasonable time period.

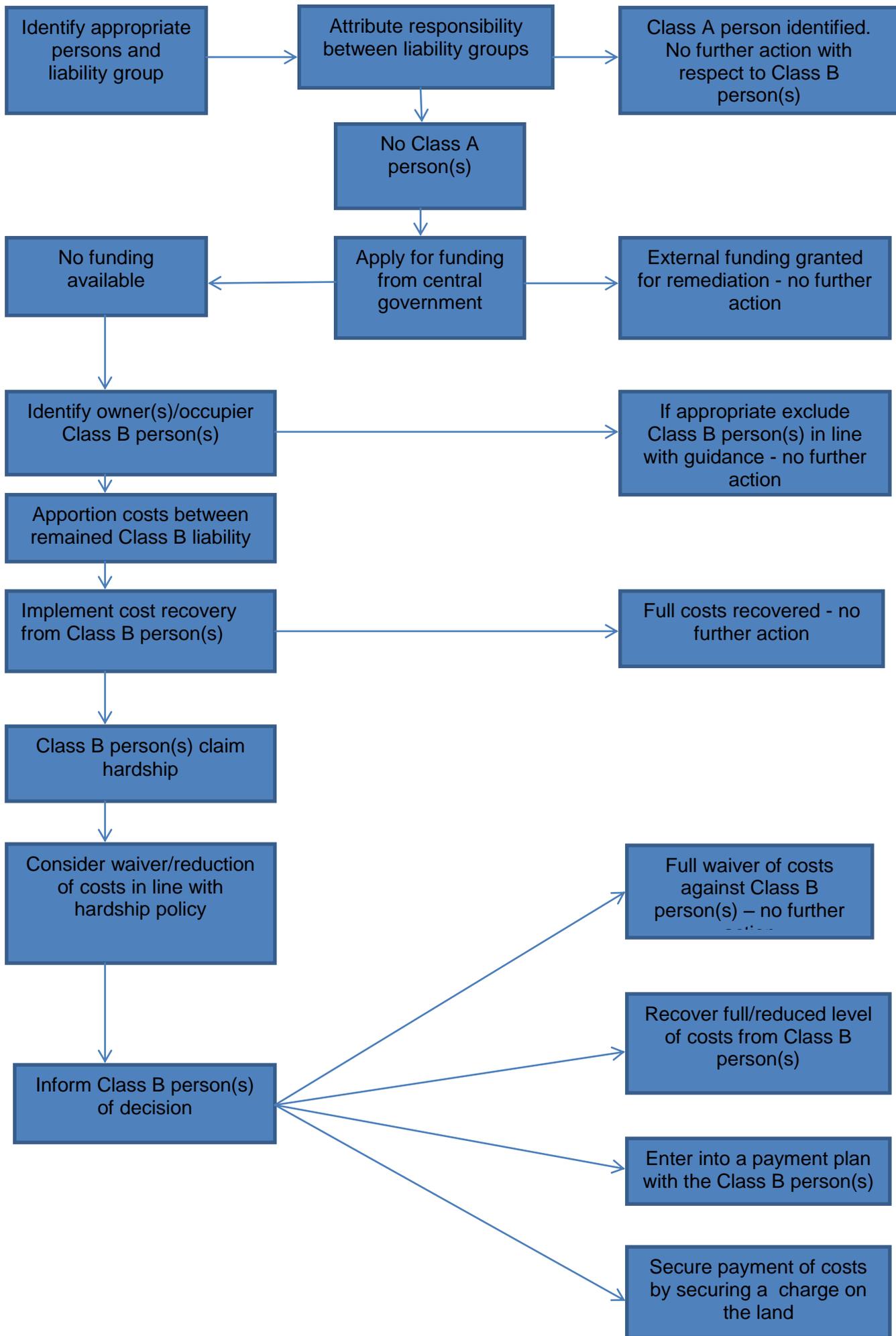
8.2 When making any cost recovery decision the Council will have regard to any hardship which may be caused to the person in question.

- 8.3 Any such waiver or reduction will be to the extent needed to ensure that the Class B person in question bears no more of the cost or remediation than it appears reasonable to impose, having regards to their income, capital and outgoings.
- 8.4 In making any cost recovery decision, the Council should consider any relevant information provided by the Class B person(s). The Council should also seek to obtain such information as is reasonable, having regard to:
- (i) accessibility of the information;
 - (ii) the cost, for any of the parties involved, of obtaining the information; and
 - (iii) the likely significance of the information for any decision.
- 8.5 The Council will also consider whether it could recover more of its costs by deferring recovery and securing them by a charge on the land in question under section 78P of the EPA 1990. Such deferral may lead to payment from the appropriate person either in instalments under section 78P(12) of the EPA 1990 or when the land is next sold. Furthermore, interest at a rate to be decided by the Council can be added to the sum charged.
- 8.6 The Council should, in all cases, inform the appropriate person of any cost recovery decisions taken, explaining the reasons for those decisions.

9.0 Data protection

- 9.1 Information regarding individual financial status will need to be gathered should any applications be made for hardship. All information gathered as part of applications for hardship will be treated in accordance with the Data Protection Act 1998 and will only be used for the sole purpose of assessing ability to pay.





Initial Equalities Impact Assessment

APPENDIX B

Title of proposal being assessed:	<i>Contaminated Land Cost Recovery and Hardship Policy</i>
What type of proposal is this an assessment of?	<i>Policy - New</i>
What are the aims and/or objectives of the proposal and the intended outcomes?	<i>This policy sets out how the council will determine whether a person(s) who are responsible for remediating contaminated land are able to do so in terms of financial hardship and wellbeing considerations in line with statutory guidance</i>
Who is intended to benefit from this proposal?	<i>Those who are liable for remediation will have a transparent policy in place that meets the statutory guidance and regulations</i>
Who are the main stakeholders in relation to the proposal?	<i>Those who own land that is contaminated within our district</i>
How is the success of the proposal to be measured?	<i>Remediation of contaminated land measures</i>
Name of person completing Initial Screening:	<i>Jenny Walker</i>
Job title / role of person completing Initial Screening:	<i>Environmental Protection Manager</i>
Date of Initial Assessment	<i>11/05/2017</i>

Instructions: For every category in column A, below, submit a positive, negative or neutral assessment by entering an x in the relevant cell. Add an explanation in the Reason box, where applicable, including a specification of any sub-group affected. There may be both a positive and negative impact for the same category (e.g. a policy may be positive for young children but negative for older people).

Equality Group	Positive Impact	Negative Impact	Neutral Impact	Explanation and Evidence (e.g. description of elements of the proposal, data held, consultation results, customer feedback)
Gender:				
Consider Women/Girls, Men/Boys, Transgender individuals.			x	
Sexual Orientation:				
Consider, for instance: Lesbians, gay men and bisexuals Any other sexual orientation			x	
Race/Ethnicity:				
Consider, for instance: • White British people, • White non-British people • Asian or Asian British people • Black or Black British people • Chinese people • People of mixed heritage • Travellers (Gypsy/Roma/Irish heritage) • People from any other ethnic groups • People who do not have English as their first language			x	
Disability:				
Physical impairment, e.g. mobility issues which mean using a wheelchair or crutches.	x			An individuals personal circumstances and wellbeing is considered as part of determining whether cost recovery will put them in financial or wellbeing hardship
Sensory impairment, e.g. blind/having a serious visual impairment, deaf/having a serious hearing impairment.	x			
Mental health condition, e.g. depression or schizophrenia	x			
Learning disability/difficulty, e.g. Down's syndrome or dyslexia, or cognitive impairment such as autistic spectrum disorder	x			
Long-standing illness or health condition, e.g. cancer, HIV. Diabetes, chronic heart disease or epilepsy Other health problems or impairments (please specify if appropriate)	x			
Marriage and Civil Partnership:				
People in a Marriage or Civil Partnership			x	
Pregnancy and Maternity:				
People who have just had a baby or who are pregnant.			x	
Age:				
Older People (60+)			x	
Children and Young People (see guidance for definition)			x	
Religion/Belief:				
Consider, for instance: • Christian • Hindu • Muslim • Sikh • Buddhist • any other religion or belief (including holding no belief)			x	
Other Potentially Affected Groups				
Rural Isolation - People who live in rural areas e.g. isolated geographically, lack of internet access			x	
Socio-economic Exclusion – e.g. people who are on benefits, have low educational attainment, single parents, people living in poor quality housing, people who have poor access to services, the unemployed or any combination of these and the other protected strands	x			An individuals personal circumstances and wellbeing is considered as part of determining whether cost recovery will put them in financial or wellbeing hardship
Any other potentially affected groups (please specify)				