

**Contaminated Land Supplementary Planning Document  
 Consultation Response Report  
 Consultation period: 16 May to 27 June 2016**

Comment Number	Name/Organisation	Response	TWBC Response	TWBC Recommendation
CL_1	Speldhurst Parish Council	Speldhurst Parish Council has no comment.	Noted.	No change.
CL_2	Mr Roger FitzPatrick	All: The absence of any reference, positive or negative, to liabilities or the funding of costs incurred in consequence of the impositions specified.	The cost of both the investigative work and the remedial work falls to the developer.	Amend paragraph 2.1  After: The developer is thus responsible for determining whether land is suitable for a particular development or can be made so by remedial action [insert] <u>“and any costs associated with investigative and remedial works”</u> .
CL_3	Mr M Coggles The Access Group	<p>The members of our Planning Team considered overall the document to be excellent.</p> <p>1. However, they have instructed me to make the following suggestion in respect of Section 2 - The Role of the Developer, para2.2.</p> <p>In the case where land is cleared of known contamination or made safe from subsidence, in the current economic climate, some developers go bankrupt or cease to trade, for that reason my members have suggested that the developer be required to post a bond (like the NHBRC), so that in the event of an unexpected find of contaminated material or subsidence, the cost could be met, rather than falling on the owner or the local council to make safe the property or land at a later date.</p>	<p>There is no legal mechanism to require a bond from the developer.</p> <p>The purpose of the SPD is to avoid contaminated land as a legacy.</p> <p>Sink holes are outside the scope of this document.</p>	No change.

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		<p>1.1 The example given in para 7.4 is a case in point. There have been cases where land has been deemed "contaminated" or has subsided due to ancient or historic mining, or 40 years after its change of use, has been found to be contaminated. The recent cases of sink holes is another good example, proving the cause, or liability can be difficult and the onus then fall on council's or the current owner.</p> <p>We appreciate that it may add to the cost, but we felt that it was in this day and age prudent.</p>		
CL_4	Lamberhurst Parish Council	No comments.	Noted.	No change.
CL_5	Natural England	<p>Thank you for your consultation on the above dated 13 May 2016, which was received by Natural England on the same date.</p> <p>Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.</p> <p>Our remit includes protected sites and landscapes, biodiversity, geodiversity, soils, protected species, landscape character, green infrastructure and access to and enjoyment of nature.</p> <p><b>Whilst we welcome this opportunity to give our views, the topic of the Supplementary Planning Document does not</b></p>	Noted.	No change.

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		<p><b>appear to relate to our interests to any significant extent. We therefore do not wish to comment.</b></p> <p>Should the plan be amended in a way which significantly affects its impact on the natural environment, then, please consult Natural England again.</p> <p><b>Strategic Environmental Assessment/Habitats Regulations Assessment</b></p> <p>A SPD requires a Strategic Environmental Assessment only in exceptional circumstances as set out in the Planning Practice Guidance here. While SPDs are unlikely to give rise to likely significant effects on European Sites, they should be considered as a plan under the Habitats Regulations in the same way as any other plan or project. If your SPD requires a Strategic Environmental Assessment or Habitats Regulation Assessment, you are required to consult us at certain stages as set out in the Planning Practice Guidance.</p>		
CL_6	Southborough Town Council	The Planning & Transportation Committee at Southborough Town Council are very supportive of this consultation.	Duplicate comment (see CL_7)	
CL_7	Southborough Town Council	The Planning and Transportation Committee at Southborough Town Council is very supportive of this consultation.	Support noted.	No change.
CL_8	Cllr Francis Rook, Vice Chair, Cranbrook & Sissinghurst Parish Council	<p>Section 2</p> <p>I am particularly concerned about paragraph 2.1</p> <p>I feel that it is wide open to abuse and that my following</p>	Whilst the making a national register is outside the scope of this document, the local authority keeps	<p>Paragraph 2.1 (after third bullet point) insert:</p> <p>“Tunbridge Wells Borough Council supports the National</p>

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		<p>statement illustrates that pollution can be caused by practices that no one of employable age would have no firsthand knowledge and is an argument for a national register of past industrial use of land and all implications associated with its usage and that the reliance on the developer to identify this, even with the use of an 'expert' I feel is totally inadequate as who is inspecting the inspector? And the use of the NPPF's definition is, I feel, inadequate.</p> <p>To prove my point:</p> <p>I feel I should add this bit of background about pollution on old gasworks sites so that the authors of this policy have a deeper understanding of the problems with these sites.</p> <p>I write with first-hand knowledge of what went on in small gas works as I was brought up within the confines of one before and after nationalisation in 1953 and its subsequent closure after the implementation of North Sea Gas.</p> <p>There are several areas of concern during the process of making gas from coal.</p> <p>1 there were huge piles of coal on the bare earth/tarmac</p> <p>2 there were huge piles of coke on the bare earth/tarmac</p> <p>3 there was the ash from the furnaces that heated the</p>	<p>a list of potentially contaminated land sites, as required under Part IIA of the Environmental Protection Act 1990.</p> <p>This document and guidance contained in it needs to be in accordance with the National Planning Policy Framework.</p> <p>People employed have to be suitably qualified. What they do is audited by the Council to ensure the scope of any investigation is suitable and any results suitable. Any remediation is signed off by a suitably qualified person.</p> <p>Any sites the Council are</p>	<p>Quality Mark Scheme for Land Affected by Contamination as a desirable component of any work undertaken to deal with land contamination.”</p> <p>No further changes.</p>

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		<p>ovens/retorts</p> <p>4 there were the deposits in the chimneys of the furnaces</p> <p>5 there were the deposits in the chimneys of the retorts</p> <p>6 there were the impurities in the iron oxide which was stored on the bare earth/tarmac</p> <p>7 there was the toxicity of the gas itself.</p> <p>The basic process was to get the raw coal from the mines, cook it without oxygen for about eight hours and extract the gasses which were pumped through tanks of iron oxide to remove impurities, such as Cadmium, Selenium, Arsenic etc. and then into gas holders which stored and pressurised it for distribution.</p> <p>There were four of these tanks of iron oxide and they were rotated as each one got saturated with the impurities. When this happened they were opened up and a crane lifted off the 20 foot square lid and the saturated iron oxide was lifted out and spread on the ground for the gasses to vent into the atmosphere.</p> <p>Believe it or not it was then made available to families for their children to come and play in the deposits as a cure for skin and repository complaints.</p>	<p>particularly concerned about are added to a database and further site investigation is added to the risk assessment of said site.</p> <p>Regarding verification of remediation the Council is supporting the voluntary National Quality Mark Scheme, identifying those registered on it as competent and qualified.</p> <p>With reference to Paragraph 5.2 there is no mention of natural radiation as there are not any high radon areas within Tunbridge Wells borough.</p>	

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		<p>Another by-product was tar which was used in the manufacture of soap and perfume plus many other chemical processes not to mention the coke that was the spent coal which had grown to about five times its original size.</p> <p>In spite of all this toxicity both my father and mother lived to ripe old ages and I am just 68 with no ill effects from this pollution.</p> <p>However my point is that on a industrial site such as a Gas Works the ground pollution can be completely different in different areas and when assessing such a site a plan of the former construction would be extremely useful in identifying areas of concern.</p> <p>A register of such sites would be extremely useful for a developer so that past industrial practices such as gasworks can be logged for future generations and planners whose knowledge of such industrial practices will be long forgotten or unknown.</p> <p>Paragraph 5.2 makes no mention of natural radiation from igneous rocks with a steady background radiation as occurs in Cornwall and its continuous emission of radio active particles and their long term effect on a population that has an increasingly long lifespan.</p> <p>In all I feel that the main onus for determining the pollutant levels on land is with the developer and that equally if not more knowledge should be in the hands of the local authority</p>		

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		in order that it is not mislead either wilfully or innocently by the developer's 'expert'.		
CL_9	Historic England	<p>Thank you for consulting Historic England on the above SPD. Much of the content goes beyond the remit of Historic England, but I set out a number of generic comments which you may like to consider in preparing the final document.</p> <p>Overall aims of Contaminated Land SPD: One of the aims of the document should be to protect historic sites and the historic environment. At the very least it should protect 'designated historic sites' which will include scheduled ancient monuments, listed buildings, registered parks and gardens, historic battlefields and conservation areas. Historic England considers that there will be other sites, not designated at the present time, that should also be afforded protection. Early identification of such constraints will minimise the danger of conflict later in the process. A discussion with the Council's Planning Department or Conservation Officer should help to identify such sites.</p> <p>Scheduled Ancient Monuments: Within the categories of significant harm the CLG Circular 2/2000 identifies Scheduled Ancient Monuments (SAMs) as one of receptors that could be subject to harm. In the case of SAMs, substantial damage (i.e. harm) is regarded as any damage that significantly impairs the historic, architectural, traditional, artistic, or archaeological interest by reason of which the monument was scheduled. SAMs should be noted within the SPD even it is not anticipated that contamination affects the sites.</p>	<p>This is a document focusing on contaminated land rather than wider planning concerns. Consideration of heritage assets is given as part of the usual process of determining planning applications. To clarify the need to take account of the protection of heritage assets in preparing remediation schemes a new paragraph will be inserted.</p>	<p>(Insert new paragraph 1.5 and renumber subsequent paragraphs)</p> <p>1.5 <u>Where a specific remediation scheme is being proposed to address contamination of a site it is expected the scheme will have due regard to the protection of heritage assets which might be present, adjacent or near to the site.</u></p>

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		<p>Archaeologically sensitive sites: You should be aware that the sites of some former industrial activities are of archaeological significance, and at these locations any contaminants present may constitute an important element of the archaeological interest.</p> <p>This aspect would need to be considered when drawing up a remedial strategy for such a site.</p> <p>SAMs constitute a relatively small proportion of the total archaeological resource. We would expect that when significant contamination is identified on or in an unscheduled archaeological site, and remediation is necessary, full discussion with the Kent County Council Archaeology Service would take place at an early stage to agree an appropriate mitigation strategy. In the preparation of the SPD we recommend that you consult the County Historic Environment Record (HER), held by Kent County Council, if you have not already done so. The HER is a record of all known archaeological sites, including Scheduled Ancient Monuments.</p> <p>Other potentially sensitive receptors: Although not included in the CLG guidance, it is important to remember that listed buildings, world heritage sites, historic parks and gardens, historic battlefields and conservation areas will on occasions also be sensitive receptors. All these are designations, some of them statutory, that local authorities are required to take into account when considering planning applications and</p>		

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		<p>related matters.</p> <p>For example a significant number of industrial buildings are listed and some conservation areas may include, or may even have been designated principally because of, industrial sites.</p> <p>The South East Region office of Historic England is keen to provide what assistance it can to deal with this important issue, however, it is limited in the amount of detailed input it is able to make in this highly specialized area. I envisage that your ongoing discussions with our archaeological team and planning and conservation staff at the Council will continue to provide the principal initial input on site specific issues.</p> <p>The HER will provide much of the baseline data you require. You should be aware that scheduled monument consent is dealt with by Historic England and it is therefore essential to make early contact with the Ancient Monuments Inspector to discuss suggested courses of action that affect such sites. Planning and conservation officers of your Council will normally deal with sites affected by other historic environment designations, although Historic England will be involved in certain circumstances by reference form the local planning authority.</p> <p>I hope the above is of assistance to you in taking the document forward. If there are any issues you wish to discuss in more detail, please do not hesitate to contact me.</p>		

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CL_10	National Farmers Union	<p>Thank you for requesting comment on this document. The NFU is an industry representative organisation, which aims to safeguard the farming and growing business interests of our members and to promote conditions for the wider industry to retain a secure and competitive foothold in the UK economy.</p> <p>Our main query relates specifically to how this SPD will apply to prior approval notifications, particularly those relating to Class Q conversions of redundant farm buildings to residential.</p> <p>As you are aware, before conversion, an individual needs to apply to the local planning authority for a determination as to whether the prior approval of the local planning authority is necessary for the change of use in respect of (amongst other things) the contamination risks on the site. In practice this means that Class Q prior approval notifications often require a "Part 2A" contaminated land risk assessment before they are accepted by the local authority.</p> <p>Reference to 1.11 of the SPD states "for high risk sites the minimum requirement prior to approval will be the submission of a preliminary risk assessment and site investigation." Our concern is that under this process all Class Q prior approval notifications are essentially treated as high risk sites due to the limitations on setting planning conditions for permitted developments. This seems a heavy handed approach as those buildings would usually have been in position for many decades, during which time the main uses of the building would be well known (i.e. mainly comprising agricultural</p>	<p>Prior notifications are looked at holistically and will have the same approach regarding contaminated land as those which require planning applications to be submitted.</p> <p>Class Q is likely to be relatively low risk and consequently will be dealt with by condition.</p>	No change.

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		<p>activity). In the vast majority of cases the landowner is likely to have selected the building for conversion due to their knowledge of the site and a calculation that the conversion could be achievable at relatively low cost and low risk. This combination of factors should therefore make Class Q conversions comparatively low risk compared to other types of new build development.</p> <p>The present draft of the SPD provides no explanation as to how it relates to prior approval notifications. We suggest that there is an opportunity here to clarify how Class Q notifications are dealt with. We therefore request that the SPD is reviewed and amended to include consideration of prior approvals and permitted development.</p>		
CL_11	Campbell Reith Hill LLP	<p>We are in general agreement with the SPD's content and believe it generally accords with current industry practice and other Local Authority SPDs already adopted. Our comments are as follows:</p> <p><b>Section 1: Introduction</b></p> <p>1.5 The purpose of this guidance is to ensure that any land that is developed, and that has a history of potentially contaminative use and/or has a sensitive end use, meets the requirement of being suitable for its '<b>proposed</b>' new use.</p>	Section 1 – Accept the suggested wording	Section 1 – Use suggested wording.



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		<p>identifies the sources, pathways and receptors (pollutant linkages). A phased or tiered approach is recommended in Model Procedures for the Management of Contamination (CLR11, DEFRA/Environment Agency, 2004) <b>and NHBC's R&amp;D66 Guidance for the Safe Development of Housing on Land Affected by Contamination. For site investigations, this guidance will extend to BS10175:2011+A1:2013 (Code of Practice for the Investigation of Potentially Contaminated Sites).</b></p> <p><b>Section 11: Granting Planning Permission</b></p> <p>Insert text in bold:-</p> <p>11.2 The LPA will refuse permission if it is not satisfied on the basis of the information provided by the applicant and that available from other sources, including the responses of those consulted, that the development would be appropriate. This could include cases in which:</p> <ul style="list-style-type: none"> <li>• the LPA considers that unacceptable risk exists and <b>there is no evidence to suggest that it can not</b> be dealt with adequately to deliver a development that is suitable for its intended use and which results in the removal of such risks.</li> </ul>	<p>quickly becomes out dated, consequently only a small amount of guidance is referenced.</p> <p>It is for the applicant to ensure they are following the most up-to-date guidance.</p> <p>Section 11 - Accept the suggested wording.</p>	<p>Section 11 – Use suggested wording.</p>
CL_12	Environment Agency	Thank you for consulting us on the above. This document is acceptable, we were consulted on early drafts by the EHO and it is part of a Kent wide initiative which some EHOs are	Support noted.	No change.

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		trying to get adopted as SPG, Duncan has led the way. One or two references may be a bit dated, but overall the document is sound.		