



Folkestone & Hythe District Council

Contaminated Land Strategy

as defined under Part 2A of the

Environmental Protection Act 1990

2021 - 2026

CONTENTS

| | |
|---|-----------|
| 1 INTRODUCTION | 4 |
| 1.1 Background | 4 |
| 1.2 Defining contaminated land | 5 |
| 1.3 Regulatory Context | 6 |
| 1.4 Development of the Strategy | 7 |
| 1.4.1 <i>The roles of the District Council and the Environment Agency</i> | 7 |
| 1.4.2 <i>Dealing with contaminated land</i> | 8 |
| 1.4.3 <i>Contaminant linkages and risk assessment</i> | 8 |
| | |
| 2 CHARACTERISTICS OF THE FOLKESTONE & HYTHE DISTRICT | 10 |
| 2.1 Geographical Location | 10 |
| 2.2 Brief Description / History | 11 |
| 2.3 Size | 11 |
| 2.4 Population Distribution | 11 |
| 2.5 Land Owned by the District Council | 13 |
| 2.6 Current Land Use Characteristics | 13 |
| 2.7 Protected Locations | 13 |
| 2.8 Key Property Types | 14 |
| 2.9 Key Water Resource / Protection Issues | 14 |
| 2.10 Known Information on Contamination | 15 |
| 2.11 Current and Past Industrial History | 15 |
| 2.11.1 <i>Mineral extraction</i> | 15 |
| 2.11.2 <i>Stone and lime</i> | 15 |
| 2.11.3 <i>Other potentially contaminative industries</i> | 15 |
| 2.11.4 <i>Ministry of Defence land (MOD)</i> | 16 |
| 2.12 Broad Geological Characteristics | 17 |
| 2.13 Broad Hydrogeological Characteristics | 17 |
| 2.14 Areas of Naturally Occurring Metal Enriched Soils | 19 |
| | |
| 3 THE FOLKESTONE & HYTHE STRATEGY: OVERALL AIMS | 20 |
| 3.1 Previous identification of sites and remediation | 20 |
| 3.2 Ongoing work | 21 |
| | |
| 4 PROCEDURES | 23 |
| 4.1 Internal Management Arrangements for Inspection and Identification | 23 |
| 4.2 Considering Local Authority Interests in Land | 23 |
| 4.3 Information Collection | 23 |
| 4.4 Information Management | 24 |
| 4.5 Complaints and Voluntary Informative Provision | 25 |
| 4.5.1 <i>Complaints and enquiries</i> | 25 |
| 4.5.2 <i>Confidentiality</i> | 25 |
| 4.5.3 <i>Voluntary Provision of Information</i> | 25 |
| 4.5.4 <i>Anecdotal evidence</i> | 25 |
| 4.6 Risk Assessment | 25 |
| 4.7 Interaction with other Regulatory Regimes | 26 |
| 4.7.1 <i>Planning</i> | 26 |
| 4.7.2 <i>Water pollution</i> | 26 |

| | |
|---|-----------|
| 4.7.3 Environmental permitting | 26 |
| 5 LIASON, ENFORCEMENT AND RISK COMMUNICATION | 28 |
| 5.1 Communicating with Owners, Occupiers and other Interested Parties | 28 |
| 5.2 Powers of Entry | 28 |
| 5.3 Enforcement Action | 28 |
| 5.4 Risk Communication | 29 |
| 5.5 Provision of Information to the Environment Agency | 29 |
| 5.6 Public Register | 30 |
| 5.7 Request for Information | 30 |
| 5.8 Complaints | 31 |
| | |
| 6 REVIEW MECHANISMS | 32 |
| 6.1 Triggers for Undertaking Investigation | 32 |
| 6.2 Triggers for Reviewing Inspection Decisions | 32 |
| 6.3 Reviewing the Strategy | 32 |
| | |
| GLOSSARY | 33 |
| | |
| Appendix A: Details of those consulted Statutory Consultees | |
| | |
| Appendix B: References | |
| | |
| Appendix C: Folkestone and Hythe District Council Corporate Aims | |

Chapter 1

INTRODUCTION

1.1 Background

Since April 2000, local authorities have had a duty to manage contaminated land within their areas. The duty was conferred by Part 2A of the Environmental Protection Act 1990 (“the Act”) and associated Statutory Guidance. The Act gives local authorities the lead role in dealing with contaminated land and requires each authority to publish a written strategy setting out how it will carry out its duties.

This strategy describes how Folkestone & Hythe District Council fulfil their responsibilities under Part 2A of the Environmental Protection Act, taking account of the statutory guidance.

This strategy relates specifically to the identification and management of “*Contaminated Land*” in the context of Part 2A of the EPA. It is acknowledged that there is a broader category of “*land affected by contamination*” which may not meet the definition of Part 2A contaminated land. For the broader issue of “*land affected by contamination*” other regimes are relevant, particularly the planning regime (for new development on previously used land). Further information on other regimes is presented in Section 4.7 of this document.

The Council’s Contaminated Land Strategy is reviewed regularly and was last updated in 2017. This latest strategy update explains how the Council will implement the contaminated land regime from 2021 onwards, taking account of the latest guidance, progress to date on the implementation of the strategy and the resources available to the Council.

Folkestone & Hythe District Council recognises that decisions about contaminated land are not made on a purely technical basis. There will be a variety of regulatory, commercial, financial, legal and societal factors, which also affect how particular contaminated land issues should be addressed. The Council also recognises that decisions about contaminated land need to be scientifically robust, proportionate and transparent.

The specific objectives of this strategy with regard to the implementation of Part 2A of the Environmental Protection Act are as follows:

- (a) *To identify and remove unacceptable risks to human health and the environment.*
- (b) *To seek to ensure that contaminated land is made suitable for its current use.*
- (c) *To ensure that the burdens faced by individuals, companies and society as a whole are proportionate, manageable and compatible with the principles of sustainable development.*

This strategy takes a risk-based approach to land contamination assessment in the context of the current use of a site.

Wherever possible, these objectives will be achieved through voluntary remediation and / or the redevelopment or regeneration of sites. This approach aims to minimise burdens on individuals, business and the wider community while ensuring that unacceptable risks are dealt with effectively.

The Council aims to work with local people, local business and with other agencies to build a community in which all can take part and all can take pride. Land contamination has the potential to result in significant impacts to both the environment and the economy. These objectives were therefore key considerations in developing this strategy.

This document aims to address individual sites in an open and informative manner. The original strategy was first presented as a consultation draft and made available to all interested sections of the community, businesses and developers. Comments received were ~~considered~~ before the strategy was finalised and submitted to the Department for Environment, Food and Rural Affairs (DEFRA). The revised strategy does not require consultation as it only includes updated legislation, guidance and work undertaken since the original.

The Strategy supports the Council's Corporate Plan's long-term vision for improving the health and wellbeing for all of those who live and work in the district whilst protecting the environment. The Council's corporate ambitions are shown at Appendix D of this strategy.

1.2 Defining contaminated land

The definition of contaminated land is given in Section 78A (2) of Part 2A of the Environmental Protection Act 1990.

Contaminated land is *any land which appears to the local authority in whose area it is situated to be in such condition, by reason of substances in, on or under the land, where:*

- (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.*

Section 78A(5) requires the regulatory authority to act in accordance with statutory guidance issued by the Secretary of State in 2012 in determining what "harm" is to be regarded as "significant".

Where radioactivity is a contaminant affecting human health the definition for contaminated land has been modified as follows:

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

- (a) *harm is being caused, or*
- (b) *there is a significant possibility of such harm being caused.*

The regime only applies in circumstances where the radioactivity is the result of past practice or work activity, or the after-effects of a radiological emergency. The regime does not apply to: radioactivity on land causing significant harm to the wider environment or the pollution of controlled waters; naturally occurring radon gas; risks arising from the changes in the way land contaminated by radioactivity is used; or radioactivity on land within the boundary of a nuclear licenced site.

1.3 Regulatory Context

Legislation

Contaminated land regulations have been under development since the early 1990's. Following consultation on a 1993 White Paper entitled "Paying for our Past", The Environment Act 1995 inserted a new section (Part 2A) into The Environmental Protection Act 1990 (EPA). Another period of detailed consultation followed this enabling legislation and the regulations and statutory guidance finally came into force in April 2000. It is the introduction of this regulatory regime, generally referred to as the Part 2A regime, which prompted the production of the original strategy document.

In addition, radioactivity regulations came into force on the 4th August 2006 and were extended in December 2007 to cover the regulatory requirements of Local Authorities and the Environment Agency (EA) for radioactive contamination including radioactivity originating from nuclear licensed sites.

Statutory Guidance

In 2012, statutory guidance was issued to explain how local authorities should implement the Contaminated Land regime, including how they should go about deciding whether land is contaminated in the legal sense of the term.

The statutory guidance recognises that there are two broad types of "inspection" likely to be carried out by local authorities:

- **strategic inspection:** for example, collecting information to make a broad assessment of land within an authority's area and then identifying priority land for more detailed consideration; and
- **detailed inspection:** carrying out the detailed inspection of particular land to obtain information on ground conditions and carrying out the risk assessments which support decisions under the Part 2A regime relevant to that land.

The 2012 statutory guidance sets out four risk categories: *Category 1* being those that are clearly contaminated and *Category 4* being those that are not contaminated. *Categories 2* and *3* lie somewhere in between. In assessing risk, "normal" ground contamination is to be ignored.

Category 2 land is defined as that which gives concern that it poses a significant risk or significant possibility of significant risk of harm and whilst there is little or no direct evidence that similar land, situations or levels of exposure have caused harm before, on the basis of the available evidence (including expert opinion), the local authority believes that there is a strong case for taking action to remediate the land under Part 2A.

In contrast, *Category 3* land is unlikely to require remediation because the relevant authority has concluded that there is no significant possibility of significant harm. This includes situations where the authority considers that regulatory intervention under Part 2A is not warranted.

The distinction between *Category 2* and *Category 3* land is not always clear and local authorities are, therefore, advised that if a decision cannot be made on the basis of risk of harm, then any indirect effects and results of a cost benefit analysis should be considered. This involves a "precautionary approach" to likely harm set against an appropriate balancing of the

costs and net gains of remediation. Thus, if the costs of carrying out remediation are likely to be high and the net benefits very low, then the land should be classed as *Category 3*. Similarly, if having carried out all of the above exercises, the local authority can still not make a decision using these tests, then the land should be classed as *Category 3*.

Just because land has been classed as *Category 3* does not mean that remediation may not be required in the future if redevelopment takes place; a *Category 3* designation instead means that immediate remediation under Part 2A is not required.

Non-Statutory Guidance

Land Contamination Risk Management (LCRM) guidance (authored by the Environment Agency) was published on gov.uk in April 2021. LCRM is designed to be used in a range of regulatory contexts including under the Part 2A contaminated land regime. LCRM guidance is intended to be used to:

- *identify and assess if there is an unacceptable risk;*
- *assess what remediation options are suitable to manage the risk;*
- *plan and carry out remediation; and*
- *verify that remediation has worked.*

1.4 Development of the Strategy

The Council originally carried out an initial strategic inspection of land in its area for contamination in 2002 / 2003 using an approach which was in line with guidance applicable at that time ("*Contaminated Land Inspection Strategies - Technical Advice for Local Authorities*" issued by the Department of the Environment, Transport and the Regions (DETR), now Department for the Environment, Food and Rural Affairs (DEFRA). The approach required assessment to:

- Be rational, ordered and efficient
- Be proportionate to the seriousness of any actual or potential risk
- Seek to ensure the most pressing and serious problems are located first
- Ensure that resources are concentrated on investigating areas where the authority is most likely to identify contaminated land
- Ensure that the local authority efficiently identifies requirements for the detailed inspection of particular areas of land

The strategic inspection was developed to meet these requirements. The strategy was prepared in a number of stages as detailed in Chapter 3 (including formal consultation on previous versions) and was reported in 2011.

The strategy was updated in 2017 to take account of the new statutory guidance and progress with the implementation of the strategy. In 2017, the shortlist of sites (identified by strategic inspection) that warrant detailed inspection was refined.

This revised Strategy explains how the Council will implement the contaminated land regime from 2021 onwards and takes account of the latest guidance, progress with the strategy, experience and the resources available to the Council at the current time.

This current updated strategy has been prepared by Folkestone & Hythe District Council and IDOM Merebrook and does not require consultation as the document is not fundamentally changed in approach or methodology. This document has been updated with reference to current legislation / guidance and works undertaken to date (September 2021).

1.4.1 The roles of the District Council and the Environment Agency

Local authorities have been given the primary regulatory role under the Part 2A regime as local authorities have historically had responsibility for dealing with any Statutory Nuisance caused by land contamination and are also the lead authorities on land use planning.

The local authority has the following duties:

- To inspect areas of potentially contaminated land;
- To determine whether any sites within the district meet the statutory definition of contaminated land; and
- To act as the enforcing authority for all contaminated land determined under Part 2A of the EPA, unless the site meets the definition of a “special site” (in which case the EA will act as the enforcing authority).

The EA has a role in providing the Council with a range of environmental information and in providing site-specific local guidance, particularly in relation to the pollution of controlled waters. The EA will be the regulatory authority for “special sites”, *i.e.* those sites determined as contaminated land that fall into one or more of the categories described in the regulations. Special sites include sites where controlled waters are being affected, where certain industrial activities have given rise to contamination or where contaminated land involves the Ministry of Defence (MOD) estate and land that is contaminated by radioactive substances where the substances are causing harm or where there is a significant possibility of such harm being caused.

1.4.2 Dealing with contaminated land

If an area of contaminated land or potentially contaminated land has been identified, the approach for dealing with it will be the same regardless of whether the local authority or the EA is the regulator. There are four main stages to this approach:

- To establish who is the “appropriate person” to bear responsibility for the remediation (or “clean-up”) of the land.
- To decide what remediation is required and to ensure that this occurs, through:
 - Reaching a voluntary agreement or
 - Serving a remediation notice, if agreement cannot be reached and
 - In certain circumstances the Council carrying out work
- To determine, according to national guidance, whom should bear what proportion of the liability for meeting the costs of the work
- To record certain information about regulatory action on a public register.

1.4.3 Contaminant linkages and risk assessment

For a site to meet the definition of contaminated land, a contaminant linkage must be established. A contaminant linkage consists of three parts:

- A **contaminant** is a substance which is in, on or under the land and which has the potential to cause significant harm to a relevant receptor, or to cause significant pollution of controlled waters. Examples of common contaminants include heavy metals (such as

arsenic, lead), hydrocarbons and asbestos.

- ii. A **receptor** is something that could be adversely affected by a contaminant, for example a person, an organism, an ecosystem, property, or controlled waters (*i.e.* groundwater or surface waters).
- iii. A **pathway** is a route by which a receptor is or might be affected by a contaminant. Examples of pathways affecting health include inhalation, ingestion and dermal contact. Pathways affecting controlled waters might include leaching of contamination from the soil into the underlying groundwater or run-off of contaminated soils into an adjacent surface water stream or river.

The term “contaminant linkage” means the relationship between a contaminant, a pathway and a receptor. All three elements of a contamination linkage must exist in relation to particular land before the land can be considered potentially to be contaminated under Part 2A, including evidence of the actual presence of contaminants.

The term “significant contaminant linkage”, as used in the statutory guidance, means a contaminant linkage which gives rise to a level of risk sufficient to justify a piece of land being determined as contaminated land. The term “significant contaminant” means the contaminant which forms part of a significant contaminant linkage.

All these factors are defined and explained in statutory guidance.

The Public Register

The Council must maintain a public register containing certain information about the sites it has dealt with under the Part IIA regime. Sites are only included on the register once a determination has been made.

Chapter 2 CHARACTERISTICS OF FOLKESTONE & HYTHE DISTRICT

This chapter gives the background to the Folkestone and Hythe district and an explanation of how this influences the Council's approach to inspection for contaminated land. It will also enable fair comparison with other authorities.

2.1 Geographical Location

Folkestone and Hythe district is situated on the Channel coast about 75 miles from London in an important strategic position in Europe occupying a key communications position.



Source: Contains Ordnance Survey data © Crown copyright and database rights (2014). Licence number 100030994.

2.2 Brief Description / History

The character of the Folkestone and Hythe district is linked to the character of its land. The district is a predominantly rural area with two main towns (Folkestone and Hythe).

2.3 Size

The district covers an area of 140 square miles or 35,700 hectares and its natural environment is generally of high quality, comprising a number of distinct landscapes: -

- a). **The North Downs** with attractive villages and hamlets is identified as being a nationally important Area of Outstanding Natural Beauty.
- b). **The Clay Vale** at the foot of the North Downs carries the main transportation corridor between London and the Channel Ports. This is also the location of a new garden settlement, Otterpool Park.
- c). **The Coast** is a significant environmental asset stretching from Romney Marsh in the west to Folkestone in the East, with broad sandy beaches, narrow shingle beaches and sandstone and chalk cliffs.
- d). **Romney Marsh** possesses a unique landscape, bordered by the Saxon shoreline. It includes the ancient Towns of Lydd and New Romney, the coastal resorts of Dymchurch and St Mary's Bay and a number of small inland villages.
- e). **Folkestone** contains about half the population of the district. The town is well situated in terms of communication corridors with a strong orientation of transport routes towards the Channel Ports.
- f). **Hythe** – The ancient town of Hythe is an attractive residential area with a small but busy centre.
- g). **Otterpool Park** is a proposed new garden town comprising a residential-led mixed use development planned to accommodate up to 5,600 new homes up to 2037 with a total of 8,000 to 10,000 beyond that period.

2.4 Population Distribution

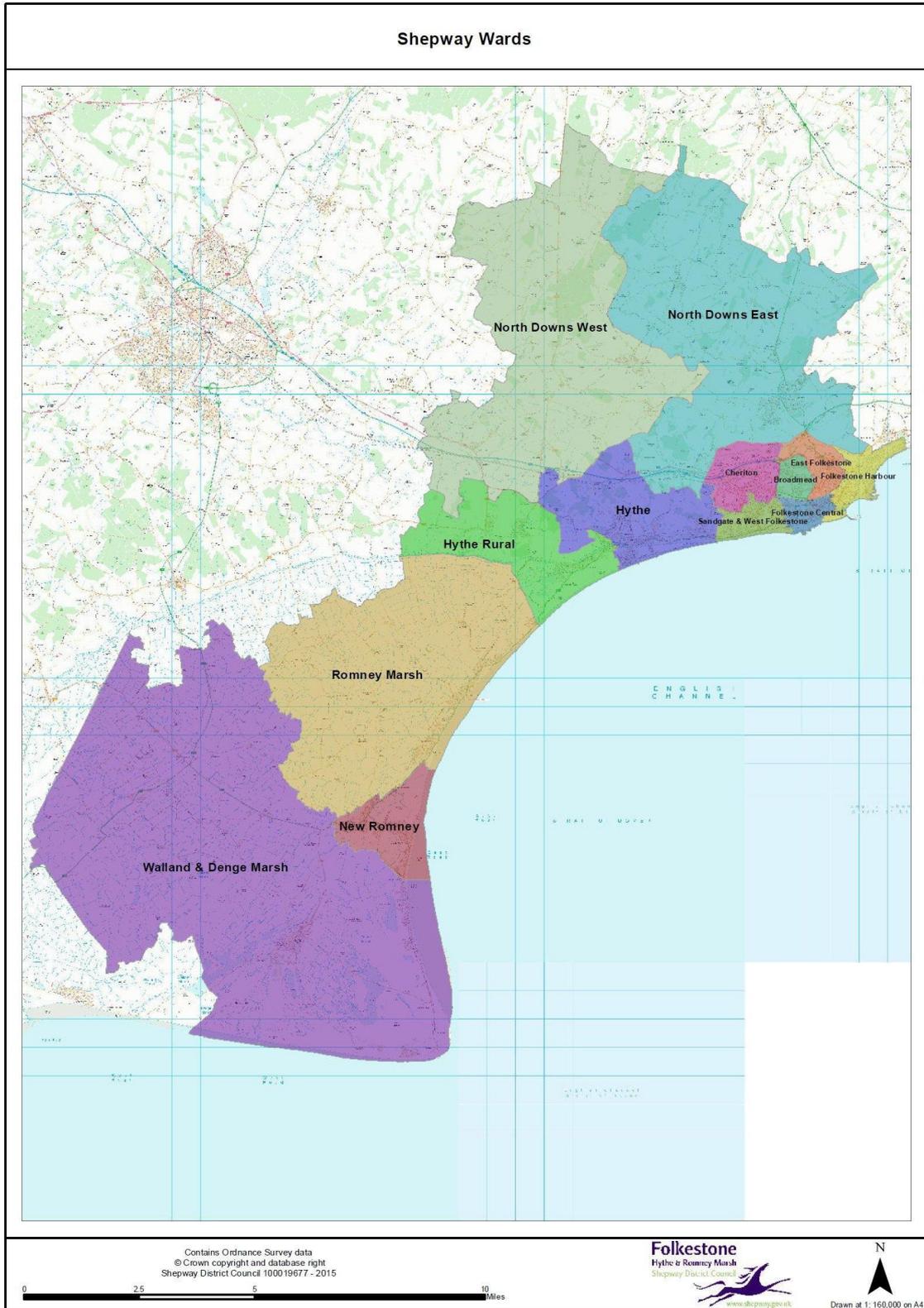
The District has a population of around 113,320 (National Statistics 2020 mid-year estimate).

Most of the population live in the coastal towns of Folkestone and Hythe. Villages interspersed with woodland along parts of the North Downs are in the north along with the small town Hawkinge to the north east. In the south is a coastal expanse of lower lying, periodically reclaimed villages over the centuries in less forested Romney Marsh which has a number of communities extensively built in the medieval period and 17th century as centres of the Romney Marsh wool trade.

The District Council split into 13 wards:

- Folkestone: six wards (Broadmead; Cheriton; East Folkestone; Folkestone Central; Folkestone Harbour; Sandgate and West Folkestone)
- Hythe
- Hythe Rural

- New Romney
- North Downs East
- North Downs West
- Romney Marsh
- Walland and Denge Marsh



2.5 Land Owned by the District Council

Folkestone & Hythe District Council has a variety of land holdings in the district, including public open space of parks, gardens, sports grounds and allotments that total about 270 acres and 26 miles of coastline, which it manages. There are also two areas designated as Country Parks that are around 390 acres in size and the Council maintains another 50 acres for Town and Parish Councils.

The Council's Housing Revenue Account (HRA) has a property portfolio of 3,397 council homes (including 14 shared ownership homes), 211 leasehold homes, together with 6 commercial properties. In 2020, the Council brought its housing stock back in house, having previously been managed by East Kent Housing (EKH) ALMO since 2010.

There are a number of commercial properties owned by the Council including the offices and workshops at the Civic Centre and Ross Depot.

A separate inspection strategy was undertaken by the Council. Under this inspection strategy, Council owned land was prioritised, in accordance with government guidance (DEFRA Circular 01/2006 Contaminated Land) as best practice and to lead a good example to other land owners.

2.6 Current Land Use Characteristics

The main use of land in the district, other than for residential use, is for agriculture. Current industrial activity is generally restricted to a number of small to medium size industrial estates. Sand and gravel is extracted on Romney Marsh.

Dungeness Nuclear Power station is the only very large industrial site in the district. *Dungeness A* (operated by Magnox Ltd and owned by the Nuclear Decommissioning Authority) ceased production in 2006 and the site is undergoing decommissioning and delicensing under the regulation of the Office for Nuclear Regulation. *Dungeness B* is an active advanced gas-cooled station operated by EDF Energy. In June 2021, EDF announced that it would begin defueling Dungeness B with immediate effect.

Military training also has an impact on land use in the district. There are two large, secure training grounds with firing ranges, an army camp and a number of training areas on farmland and in woodland.

Transport links have a major impact in the area with the M20 motorway as a major route from London to the Channel ports. There is also the Channel Tunnel terminal with its links to the M20 and to the Channel Tunnel Rail Link (High Speed 1).

2.7 Protected Locations

The District's landscape and biodiversity quality is a major natural asset. Landscape and habitats range from rolling chalk downland, low lying Marsh, shingle and dune areas and rich woodlands and include the Royal Society for the Protection of Birds (RSPB) Reserve at Dungeness. Sand dune and shingle habitats are particularly important. This includes the UK BAP priority habitats of Coastal vegetated shingle, 93.8% of Kent's resource, and Coastal sand dunes, which is 16.5% of the County resource. The district also has a significant proportion of the county's grassland resource with over 20% of Kent's calcareous grassland, a fifth of Kent's acid grassland, and 8.2% of the county's neutral grassland.

Key assets include:

- Much of the north of the district lies within the Kent Downs Area of Outstanding Natural Beauty (AONB)
- The coastline at Folkestone's East Cliff and Warren which is part of the Folkestone to Dover Heritage Coast
- Local Landscape Areas covering Romney Marsh and areas within and around Folkestone & Hythe
- Three Special Areas of Conservation (SACs) designated under the EC Directive on the Conservation of Natural Habitats and of Wild Fauna – Dungeness, Folkestone to Etchingill Escarpment, Park Gate Down
- One Special Protection Area (SPA) designated under the EC Directive on the Conservation of Wild Birds – Dungeness, Romney Marsh and Rye Bay covering 4,010 ha
- A Ramsar site (wetland of international importance) at Dungeness, Romney Marsh and Rye Bay covering 6,377 ha.
- A 1,030 hectare National Nature Reserve (NNR) declared in July 2011 at Dungeness
- 12 Sites of Special Scientific Interest (SSSIs)
- 40 Local Wildlife Sites (LWS)
- 2 Local Nature Reserves within the district – Folkestone Warren (LNR) and Romney Warren (LNR)
- Extensive areas of ancient woodlands, principally located in the north of the district and particularly in the North Downs.

2.8 Key Property Types

The district has 918 buildings and structures listed as being of special architectural or historic interest, 64 Ancient monuments, 21 designated Conservation Areas and 2 historic parks registered as of national importance.

2.9 Key Water Resource / Protection Issues

Folkestone & Hythe District Council have considered water resources in the district in a holistic manner in their 2018 Water Cycle Study. The Water Cycle Study focuses chiefly on plan making and sustainable development, however information on the nature and importance of controlled water receptors is included, which is relevant to this strategy.

Affinity Water supplies the majority of the District's drinking water. These supplies are obtained from licensed abstraction sources in the district. The very north and southwest of the district are supplied by South East Water. In addition, there are a number of private abstraction sources from the Chalk aquifer that are licensed.

The Council regularly inspects the quality of the private water supplies at known sites within the district under the terms of the *Private Water Supplies (England) Regulations 2016*. These supplies are mainly from ground water sources such as springs, wells and boreholes.

Wastewater services are provided by Southern Water plc who are responsible for several major treatment plants in the district discharging effluent into the sea and a number of small package plants which discharge into local dykes and ditches. There are also a significant number of cesspools and septic tanks in less populated areas.

The Environment Agency has powers to take action to prevent or remedy pollution to controlled waters. The Environment Agency is also the key consultee in the planning system with regard to the protection of controlled waters. It will be necessary to have regard to the Environment

Agency's "Groundwater protection" guidance when considering groundwater protection issues in more detail.

It may also be necessary to seek advice from Natural England in relation to any impacts on the River Stour catchment area in the North Downs. New development has the potential to increase nutrient flows into the River Stour, flowing into the Stodmarsh system of European designated sites north east of Canterbury. The issues is dealt with in Policy CSD5 in the emerging Core Strategy Review.

2.10 Known Information on Contamination

The Council holds information on contaminated sites in the district as a result of previous exercises set out within the inspection strategy and as part of the development control process. This process initially identified ten potential sites of contamination, four of which are either on-going or require further information.

If development is proposed on an area of land where past use may have resulted in contamination or where a sensitive use is proposed, the applicant will be required to carry out a site assessment and submit a report of the findings in order to establish the nature and extent of the contamination as part of a planning condition. If development proceeds on these sites, remedial works will often have been carried out to improve the site conditions if analysis shows this is necessary. This process is set out in Policy NE7 of the Places and Policies Local Plan (2020). Planning records therefore form a valuable resource during the investigation process.

The Planning Department consult with Environmental Protection where sensitive end uses are proposed, where extensions and incidental buildings are proposed in areas shown on GIS as potentially contaminated and where the proposed development site is a brown field site. Where appropriate a standard planning condition is applied. For sites where contamination is suspected due to known previous uses, the standard planning condition is applied to all permissions. The standard planning condition requires a Desk Study, followed by a Phase II Site Investigation, Remediation and Verification Report as appropriate.

2.11 Current and Past Industrial History

The Folkestone & Hythe district does not have an extensive industrial past. Historic land use has included activities such as petroleum storage, engineering works and landfill. The only significant uses have related to mineral extraction on the Marsh, a limited amount of quarrying for stone and the manufacture of bricks for local use. Some producer gas works are known to have existed and presently there are two nuclear power plants, one of which is currently being decommissioned (see 2.11.3 below).

2.11.1 Mineral extraction

The extraction of sands and gravel on the Romney Marsh has taken place for many years. The material comes from sea deposition that has built up the landform over time. Some brickworks are known to have existed in the Folkestone area with the materials being quarried nearby. These seem to have been for small-scale local use only.

2.11.2 Stone and lime

A small amount of stone extraction occurred at the base of the North Downs and some very small-scale lime pits were constructed.

2.11.3 Other potentially contaminative industries

CHARCOAL BURNING has occurred throughout the District at various times.

RAILWAYS once extended over several parts of the district. All the branch lines have been removed except for one link to Dungeness power station. In recent years, however, the Channel Tunnel Rail Link and the Channel Tunnel has been developed with the freight yard at Dollands Moor.

POWER GENERATION from historic gas works is known to have existed in Folkestone, Hythe, New Romney and Lydd. Most of the works were very small, although one of the plants at Folkestone was a reasonable size and only ceased production in the 1960's.

NUCLEAR POWER PLANTS In the 1950's work began on a nuclear power plant at Dungeness. The two Magnox power plants at *Dungeness A* (operated by Magnox Ltd and owned by the Nuclear Decommissioning Authority) ceased production in 2006 and the site is undergoing decommissioning and delicensing under regulation from the *Office for Nuclear Regulation*. *Dungeness B* is an active twin reactor advanced gas-cooled station operated by EDF Energy. In June 2021, EDF announced that it would begin defueling Dungeness B with immediate effect. .

Dungeness A and B remain Nuclear Licensed Sites and one of the conditions of de-licensing is that all significant radioactivity has been dealt with. It will be many years before delicensing and the *Office of Nuclear Regulation* will regulate the control of any residual radioactivity or radioactive waste in consultation with the Environment Agency and other relevant stakeholders as part of that process. Folkestone & Hythe District Council has several members on the formally constituted stakeholder group. The Council therefore have access to information on the decommissioning process and any associated issues. Also, the Council was a statutory consultee for the *Environmental Impact Assessment* on the decommissioning for *Dungeness A* and will be consulted again in due course for *Dungeness B*.

As the decommissioning is being dealt with under other regimes and in consultation with the Council, it is not appropriate to consider it under the Contaminated Land regime - and indeed radioactivity issues within the boundary of the nuclear licenced sites are expressly excluded from the Contaminated Land regime.

The Council will continue to engage with the Dungeness stakeholder group for the decommissioning.

It is noted in the *Kent Minerals and Waste Local Plan 2013 – 2030* that Dungeness A and B lie in an environmentally sensitive area adjacent to sites of international and national importance for their geology and biodiversity interests. The document notes the potential for Dungeness C to be built in future and the associated requirement for storage facilities for radioactive waste. The document includes a policy CWS17 (formulated following a public referendum) which states that *facilities for the storage and / or management of radioactive waste will be acceptable within the Nuclear Licenced Area at Dungeness where i) this is consistent with the national strategy for managing radioactive waste and discharges; ii) the outcome of environmental assessments justify it being managed on site*. The policy precludes the management of waste from anywhere other than the nuclear power stations at this location and would preclude the development of a geological disposal facility at Dungeness.

2.11.4 Ministry of Defence land (MOD)

The Army has had training grounds in the area for many years. If land that involves the MOD estate is determined by the Council to be contaminated land, it will be designated as a "special site" and the Environment Agency will become the enforcing authority for that land, provided the Agency agrees with the Council's designation. The Royal Airforce also had facilities in the

district including an aerodrome at Hawkinge.

Several former MOD sites in the district (at Shorncliffe and Hawkinge) have been put forward for redevelopment and are progressing through the planning system whereby planning controls (in the form of land contamination planning conditions) ensure that the site is safe and suitable for its intended use in the context of the *National Planning Policy Framework* and associated *Planning Practice Guidance* on land affected by contamination.

2.12 Broad Geological Characteristics

Geologically, the district can be divided into two areas, with the North Downs to the north of the District and the Romney Marsh in the south.

The sequence of strata in the north of the district comprises:

| | Stratum | Lithology |
|--|------------------------|---|
| Youngest  Oldest | Middle Chalk | chalk |
| | Lower Chalk | chalk |
| | Gault Clay | a clay of high plasticity |
| | Folkestone Beds | well compacted sand, sometimes with clay lenses |
| | Sandgate Beds | clays and sands |
| | Hythe Beds | sands, sandstones and limestone |
| | Atherfield Clay | clay, sometimes with beds of silt & ironstone |

These strata belong to the Cretaceous geological era.

Romney Marsh and the adjacent Walland Marsh are reclaimed areas and consist of Marine Alluvial Clays and Sands, which are from the Pleistocene Era. The promontory of Dungeness is a ~~cut~~ prograding shoreline formed from shingle, which comprises flint pebbles. This area of shingle extends along the coastline and for several miles inland.

An area liable to landslip runs approximately west to east across the district. To the east of Folkestone, the slip mechanism is essentially chalk slipping over the Gault Clay but further west the Hythe Beds, forming the lower stratum of the old sea cliffs, form a slip plane with the Atherfield Clay beneath.

2.13 Broad Hydrogeological Characteristics

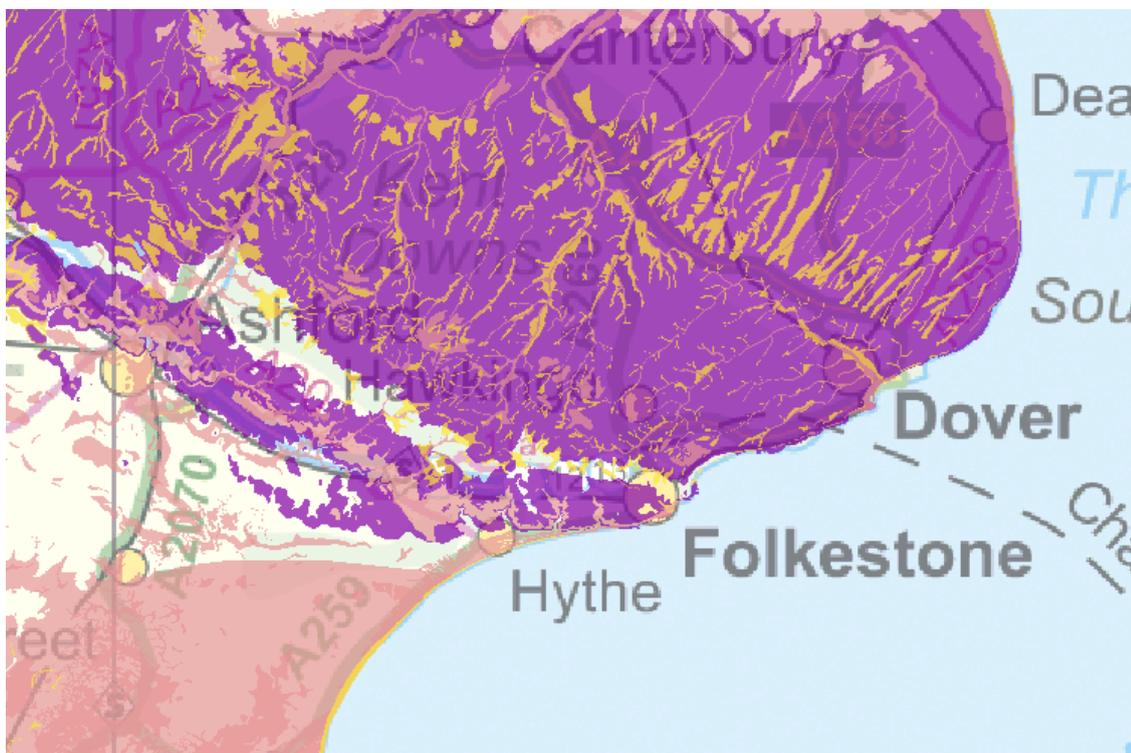
The Folkestone & Hythe district contains several rivers and streams that rise in the area. The East Stour is the largest and flows out of the district in a north-easterly direction into the Ashford Borough Council area. The Nailbourne flows in a northerly direction into the Canterbury District Council area. A number of smaller streams rise along the base of the Downs and travel east to join together to form the Pent that flows through Folkestone and enters the sea in the harbour. A number of other small streams flow south from the Downs into the Hythe Royal Military canal.

Protection of water quality from contamination is a major objective of this strategy. The EA has a Groundwater Vulnerability Map (see figure 2) that provides information on the

water beneath the land in the District. This indicates that there are Principal aquifers of high vulnerability in the District and some Secondary aquifers. These are largely in the area of the North Downs with one small aquifer on Dungeness. The remainder of the District is classified as Unproductive strata.

The EA provided data on abstractions; discharge consents and impoundments (water storage, e.g. reservoir) and details of the hydrology of the area were available from the Institute of hydrology. Further information was collated on areas of protected groundwater where important abstractions occur. The EA term such areas “source protection zones” and a number of these are present within the District boundaries.

Figure 2: Groundwater Vulnerability Map of the Folkestone & Hythe District



Key:

 *Principal Aquifers*

These are layers of rock or drift deposits that have high intergranular and/or fracture permeability - meaning they usually provide a high level of water storage. They may support water supply and/or river base flow on a strategic scale. In most cases, principal aquifers are aquifers previously designated as major aquifer.

Secondary Aquifers

These include a wide range of rock layers or drift deposits with an equally wide range of water permeability and storage. Secondary aquifers are subdivided into two types:

 *Secondary A* - permeable layers capable of supporting water supplies at a local rather than strategic scale, and in some cases forming an important source of base flow to rivers. These

are generally aquifers formerly classified as minor aquifers;

- *Secondary B* - predominantly lower permeability layers which may store and yield limited amounts of groundwater due to localised features such as fissures, thin permeable horizons and weathering. These are generally the water-bearing parts of the former non-aquifers.
- *Secondary Undifferentiated* - has been assigned in cases where it has not been possible to attribute either category A or B to a rock type. In most cases, this means that the layer in question has previously been designated as both minor and non-aquifer in different locations due to the variable characteristics of the rock type.

Unproductive Strata - These are rock layers or drift deposits with low permeability that have negligible significance for water supply or river base flow.

2.14 Areas of Naturally Occurring Metal Enriched Soils

The Soil Survey and Land Research Centre based at Cranfield University have undertaken a national soil survey. The dataset relating to the Folkestone & Hythe district was examined and it was determined that there were no areas of naturally metal-enriched soils.

Chapter 3

THE FOLKESTONE & HYTHE STRATEGY: OVERALL AIMS

The background to this strategy was described in Section 1.4. A detailed breakdown of how the Council will meet its objectives is given in this section.

Human Health

The Council's first priority in dealing with contaminated land is to protect human health and drinking water supplies as clearly stated in section 3.1. Land within the District was therefore inspected with population density in mind.

The largest towns will generally have the largest number of human receptors. These areas are also most likely to have had contaminant linkage (source, pathway, receptor) of an area of contaminated land, which could cause significant harm to human health.

Inspections were prioritised on the basis of population the four largest towns in the District (Folkestone, Hythe, New Romney and Lydd) were initially inspected, followed by the District's many villages and smaller settlements.

Threats to Controlled waters, protected areas of the environment and property

The investigation of towns and villages can identify information that may reveal any imminent threats to controlled waters or protected areas of the environment posed by contaminated land. If evidence of sites are brought to light and demonstrate a need for urgent action, this will be taken as soon as practicable.

3.1 Previous identification of sites and remediation

The Regulations require that the assessment of contaminated land sites is prioritised.

The Council undertook a desk-based review of the district during 2002 and 2003, for the purpose of identifying all potentially contaminated land sites as defined under Part 2A of the EPA 1990. This work involved an extensive review of the council area history and environmental setting.

A total of 100 sites were identified as being potentially considered as 'contaminated land'. Each site was ranked according to the environmental sensitivity / setting of the site and the severity of the potential contamination present. The 100 identified sites were divided into the following categories:

Table 1: Potentially contaminated land sites identified within the district

| Rank of site | No. of sites identified |
|--------------|-------------------------|
| 8 | 6 |
| 7 | 47 |
| 6 | 28 |
| 5 | 13 |
| 4 | 5 |
| 3 | 1 |
| 2 | 0 |
| Total | 100 |

Rank 8 sites are considered to be the most potentially significant in terms of risk posed and Rank 2 the least significant.

Subsequently, four of the six Rank 8 sites were classed as emergency sites where urgent / immediate action was required.

Following the prioritisation of sites, a risk-based inspection programme was developed to ensure the effective remediation of land.

This was undertaken by designing conceptual site models (CSM) for each of the potentially contaminated land sites. Under the definition of Part 2A of the EPA 1990, for an environmental risk to exist there has to be a pollutant linkage. The potential sites previously identified were assessed within the source – pathway – receptor methodology as described above in the framework of a CSM.

A CSM is a representation of the understanding of the site and the surrounding environment including the geology, groundwater, surface water bodies, potential contamination, processes (e.g. volatilisation, leaching) acting on substances present and contaminant migration pathways. It describes all potential pollutant linkages at the site, taking into account the current and proposed uses of the site.

The CSM assigned either:

- A conclusion: i.e. no further work required due to no / low level of risk posed; or
- A risk management recommendation for the next phase of work required.

Risk management recommendations included:

- Site visit to determine the current use of the site;
- Intrusive investigation to determine the presence / level of contamination present;
- Consultation with developer / planners to determine whether any remedial measures have already been undertaken;
- Consultation with other regulatory bodies such as the EA to determine whether any remedial measures are underway or whether they are aware of any current issues; and
- Continued monitoring of landfill sites.

After the inspection programme was complete, ten sites were considered the Council's top priority potentially contaminated sites. After further investigation, three of these sites were deemed fit for purpose (*i.e.* the sites were judged suitable for their current use and do not represent a potential risk to controlled waters or human health. If redeveloped, further assessment against the proposed use will be required). One site was remediated, leaving six sites requiring further work.

3.2 Ongoing work

“Urgent sites” are considered to include sites that are causing actual significant harm to human health and/or pollution of controlled waters used for drinking water. “Urgent sites” may also include sites that would be designated as “special sites” if they were determined as contaminated land. The Council will seek to make arrangements with the EA for the EA to carry out the necessary inspections in this circumstance. Currently there are no sites considered to lie within the urgent category.

After the strategic inspections set out in Section 3.1 above, the majority of sites were removed from the original list of potentially contaminated sites. Whilst no further action is warranted under Part 2A, these sites will remain within the database held by Folkestone & Hythe District Council. This will enable the planning process to identify land potentially affected by contamination which might become relevant if a more sensitive end use is proposed in future (*for example* if a former factory is proposed to be redeveloped as residential housing with gardens). These sites would then be investigated through the planning regime (see Sections 2.10 and 4.7.1) to ensure they are safe and suitable for their future use.

At the date of the last Strategy update in 2017, six sites remained for detailed assessment. Since the last strategy update, the following progress with the strategy has been made:

- Following a detailed desk-based assessment, one site (a former laundry) has been subject to intrusive investigation, laboratory testing of soils and monitoring. Updated risk assessment allowed the site to be removed from the list of potentially contaminated land. No further action is required under Part 2A.
- Another site (a former garage) has been subject to further inspection and desk-based research including correspondence with the County Council Petroleum Officer. The recommendation following this detailed work is for an intrusive site investigation (or detailed inspection) to be carried out.
- Another site (another former garage) has also been subject to further inspection and desk-based research including correspondence with the County Council Petroleum Officer. Given the confirmation of the removal of former fuel tanks, the recommendation following this detailed work is for the site to be removed from the list of potentially contaminated land. No further action is required under Part 2A.

The remaining four “active” sites now form part of a work plan for the local Authority to commence from the publication of this Strategy.

Land specified in the Local Plan

National planning policy is expressed through the *National Planning Policy Framework* and its supporting *Planning Practice Guidance* and is delivered locally by the current local plan.

The *Shepway Core Strategy Local Plan* was adopted as part of the statutory development plan for the district on 18 September 2013. Planning applications have to be decided in line with the development plan, unless there is a very good reason not to do so. A review of the Core Strategy was submitted to the Secretary of State in 2020 for its Examination in Public.

The Core Strategy sets the course for the district, not the detail. It is not just focused on land-use and traditional development; it is about wider spatial planning. This is working together to shape all social, physical and economic aspects of local communities, environments and places, including service provision and infrastructure.

Folkestone & Hythe District Council’s *Places and Policies Local Plan* was adopted in 2020 and forms part of the development plan for the district. This includes policy NE7 which requires assessment of land suspected to be affected by contamination in cases where development is proposed.

Chapter 4 PROCEDURES

Procedures have been drawn up to describe how contaminated land issues will be handled within the Council. This chapter also details the level of service the business community and members of public can expect from the Council in dealing with these issues.

This document deals specifically with how “*Contaminated Land*”, as defined under Part 2A of the Environmental Protection Act, will be identified, assessed and managed.

There will be other “land affected by contamination” in the district which falls outside the Part 2A definition and will be dealt with by other statutory instruments (such as by the planning regime upon redevelopment) as appropriate. For sites under the planning regime, the *National Planning Policy Framework* and associated *Planning Practice Guidance* provide the requirements for the assessment of land affected by contamination. In addition, Environment Agency *Land Contamination Risk Management* published on gov.uk provides technical guidance relevant to both the Part 2A and planning regimes.

4.1 Internal Management Arrangements for Inspection and Identification

Within the Council, the responsibility for the implementation of Part 2A Environmental Protection Act 1990 rests within the Environmental Protection Team. The relevant appropriate officer will report to management accordingly. The appropriate officer will deal with the day-to-day implementation of this strategy and be responsible for drafting remediation notices, subject to consultation with management.

4.2 Considering Local Authority Interests in Land

The Council has a statutory obligation to manage its assets in relation to potential contamination. It also needs to be setting an example to other land owners. As indicated in Section 3, investigation of Council-owned land was carried out alongside the population-based inspection schedule and this land was amongst the first investigated in each area.

4.3 Information Collection

Many sources of information were required to identify potential sources of contamination and potential receptors. Some of the resources are detailed below.

Table 4: Sources of information to identify potential sources of contamination and potential receptors

| Resource | District specific | Use |
|----------------------------|--|--|
| Historic maps | Digital maps purchased from Ordnance Survey or similar | To identify sources of potential contamination |
| Historic land use database | Landmark digital format working with GIS, identifying potentially contaminative land use | To identify sources of potential contamination |
| Geological maps | 1:50 000 solid and drift geology maps are available from the British Geological Society (Sheet numbers 305 321) | To characterise sources and pathways |
| Hydrogeological maps | The Groundwater vulnerability maps produced by the Environment Agency and the Soil Survey and Land Research Centre in 1993 will be used to assess the potential for contamination of groundwater (1:100 000) | To identify receptors (controlled waters) |

| Resource | District specific | Use |
|--------------------------------------|--|--|
| Soil maps | A soil map of the Southeast region will be examined from the Soil Survey and Land Research Centre | To characterise sources and pathways |
| Source Protection Zones | Areas of groundwater that receive special protection by the Environment Agency are identified on the EA. website and can be used with a GIS | To characterise receptors (controlled waters) |
| Environmental Protection records | The District Council maintains records of complaints and investigations | To identify known information on contamination |
| Planning records | The District Council holds detailed planning records of development in the area, including information on ground condition presented in surveys. | To identify known information on contamination |
| Environmental Permits | The Council has maintained a public register containing details of authorised industrial processes in the District since 1990 | To identify sources of potential contamination |
| Waste Management Licences | The Environment Agency maintain a public register of sites licensed for waste management activities and have provided relevant information relating to sites in the District | To identify sources of potential contamination |
| Information on closed landfill sites | The Environment Agency has provided a register of closed landfill sites. This document is not a public register | To identify sources of potential contamination |
| The County Archive | The County Archivist may have a number of sources describing land-use in the District essential for researching land uses prior to the end of the Second World War when the Town & Country Planning legislation came into force. | To identify sources of potential contamination |

Where a potential pollutant linkage has been identified within the CSM and a Phase 1 Environmental report has been undertaken and identified that further investigation is required, the next stage is:

- To undertake localised targeted sampling;
- To complete a full Phase 2 Site Investigation report;
- Undertake a Remediation Strategy if required.

4.4 Information Management

A GIS (Geographical Information System) is the primary tool used to manage contaminated land information.

The GIS is used to correlate all information and determine the proximity of potential receptors (residents, controlled waters) to sources of contamination.

4.5 Complaints and Voluntary Information Provision

From time to time, the Council may receive an enquiry regarding contaminated land from a member of the public, business or community group. Interested residents may also voluntarily supply information relating to land contamination that is not directly affecting themselves, their families or their property. These enquiries or acts of information provision may impact on the approach to

inspection and so the procedures to be adopted are detailed here.

4.5.1 Complaints and enquiries

An enquiry regarding contaminated land will be dealt with following the same procedure as currently used by the Environmental Protection Team to deal with statutory nuisance complaints.

All reporters may expect:

- their complaint or enquiry to be logged and recorded
- to be contacted by an officer regarding their complaint or enquiry within 48 hours of receipt
- to be kept informed of progress towards resolution of the problem
- every effort will be made to resolve complaints or enquiries quickly and efficiently. The legislative framework does, however, present a number of obstacles to speedy resolution of problems:
 - i. proof of a viable pollutant linkage before any formal determination as contaminated land is permissible, which might only be possible with detailed investigation
 - ii. prior consultation with interested parties before determination as contaminated land
 - iii. a minimum of a three month period between determination and serving of a remediation notice
 - iv. the requirement for the enforcing authority to make every effort to identify the original polluter of the land (or “Class A” person)

The Regulations allow conditions (ii) and (iii) to be waived in extreme cases but not conditions (i) and (iv).

4.5.2 Confidentiality

All reporters will be asked to supply their names and addresses and, if appropriate, the address giving rise to the complaint. The identity of the reporter will remain confidential. The only circumstance in which this information might be made public would be in the case of a remediation notice being appealed in a court of law and an adverse effect on the reporter’s health was an important reason for the original contaminated land determination.

4.5.3 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.

4.5.4 Anecdotal evidence

Any anecdotal evidence provided to the Council relating to contaminated land will be noted but no determination of contaminated land will occur without robust scientific evidence. In all cases, the relevant officer will use knowledge and experience to decide what, if any, further investigation is required following a complaint or a provision of information.

4.6 Risk Assessment

All information on substances in, on or under the ground that may cause significant harm or pollution of controlled waters will be evaluated against current government guidelines and statistical analysis. In particular the DEFRA Contaminated Land Statutory Guidance and gov.uk *Land Contamination Risk Management* guidance will be followed.

Advice will be sought from the EA on risk assessment if controlled waters are the receptor in a particular pollutant linkage. Risk assessments and remediation will be carried out in accordance with Environment Agency guidance “*Groundwater protection*” published on the gov.uk website.

4.7 Interaction with other Regulatory Regimes

There are other regulatory actions that could be taken to deal with contamination on land. Overlaps with planning, water pollution, Environmental Permitting legislation, Control of Major Accident Hazard Regulations 1999 and Environmental Damage Regulations are considered the most important and are addressed here.

4.7.1 Planning

The vast majority of land contamination issues are currently addressed through the planning regime, where contamination is a material consideration. While the introduction of Part 2A will undoubtedly lead to the problems of additional sites being addressed, it is anticipated that redevelopment of brownfield sites and the associated planning controls will remain the primary mechanism for dealing with land contamination. Any remediation agreed as a planning condition will be dealt with under planning controls and not under Part 2A.

The Environmental Protection Team currently work closely with Planning and Building Control on all issues relating to pollution and the current arrangements for inter-departmental consultation are believed to be sufficiently robust to encompass land contamination issues.

4.7.2 Water pollution

Sections 161 to 161D of the Water Resources Act 1991 gives the EA powers to take action to prevent or remedy pollution to controlled waters. There is overlap with the Part 2A regime and to meet the requirements of the EA’s policy and guidance, the following steps will be taken:

- a) the Council will consult the EA before determining that land is contaminated land as a result of the actual or potential pollution of controlled waters and will take into account any comments the Agency makes with respect to remediation;
- b) the Agency will notify the Council if it identifies any land where actual or potential water pollution is arising, thus enabling the Council to determine the land as contaminated land under Part 2A.

Note: where controlled waters are being, or could be, polluted by land determined to be contaminated land under Part 2A, remedial action will only be taken by the Agency when there are one or more orphan linkages.

4.7.3 Environmental permitting

Environmental Permitting Regulations (England and Wales) were introduced in April 2010 and updated in 2016. Environmental Permitting created one single regulatory system by streamlining

and integrating Waste Management Licensing, Pollution Prevention and Control, Discharge Consenting, Groundwater Authorities, Water Abstraction and Impoundment, Radioactive Substances Regulation and licensing of some waste carrier and brokers. The Regulations provide a single, streamlined, risk-based framework for permitting and compliance. They introduce the possibility of a single permit and regulator for some sites.

The types of industry that operate under Environmental Permits could cause contamination through poor management practice or accidental spills. Different industry sectors will pose different levels of risk. Since these sites are controlled, inspected and monitored by the EA and Local Authority, the risk of future contamination is, however, significantly reduced.

Chapter 5

LIAISON, ENFORCEMENT AND RISK COMMUNICATION

5.1 Communicating with Owners, Occupiers and other Interested Parties

The 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 as much or more effective remediation can be achieved by agreement than by enforcement. This approach requires effective communication with owners, occupiers and other interested parties. The relevant officer will be the central contact point within the authority on contaminated land issues and as such will attempt to keep owners, occupiers and other interested parties informed at each stage of an investigation, regardless of whether there is a formal determination of contaminated land.

Where a formal determination of contaminated land is required, the following actions will be undertaken:

Determining an area of contaminated land

- Write to the owner and / or the occupier of the land at least 5 working days prior to determination, explaining in summary the reason for determination.
- Write to the owner and / or the occupier explaining the land has been determined as contaminated land and seeking appropriate remediation without service of a notice.
- If requested, dispatch a copy of the written risk assessment to the owner and / or occupier of the land within 5 working days of receipt of a request.
- Write to the owner / occupier of neighbouring properties and / or the complainant within 5 working days of determination.

Serving a remediation notice

- Provide a written remediation notice to the owner / occupier specifying action required.
- Write to the owner / occupier of neighbouring properties and / or the complainant within 5 working days of notice being served.
- Should an urgent determination of contaminated land be required, these steps will be observed as far as practicable although some deviation from the timescales specified is to be expected.

5.2 Powers of Entry

Under Section 108(6) of the Environmental Protection Act 1990, the Council has powers of entry to carry out investigation. At least seven days' notice will be given of proposed entry onto any premises, unless there is an immediate risk to human health or the environment.

5.3 Enforcement Action

The Council will need to ensure consistent, fair and transparent practices are used when taking enforcement action in accordance with its current policy.

5.4 Risk Communication

The complex nature of contaminated land issues does not lend themselves to easy explanation to the layperson. Development of effective methods of risk communication is therefore essential.

The Council will treat any concerns raised by a member of the public seriously and with respect, recognising the importance of the issue to the individual. In all instances, the Council will recognise and try to overcome the critical barriers to effective risk communication:

- **familiarity** – increased concern about unfamiliar issues
- **control** – increased 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 the 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

These regulations grant only limited powers to local authorities to deal with materials present in, on or under the ground. Many members of the public believe that any material that is not naturally present in the ground should be removed, especially if it is in the vicinity of their own home. It will be critical to explain this can only be done where this is a risk of significant harm and it is to be expected that some members of the public will have difficulty accepting this.

It is important to appreciate that the expectations of some members of the public will not be met by the powers local authorities may exercise under contaminated land legislation.

Contaminated land can be an emotive issue and it is important that care is given to the way in which the various stakeholders or the general public are informed of risks associated with it.

The Council will apply the principles suggested in the guidance published on communicating risk by the Scotland and Northern Ireland Forum for Environmental Research (SNIFFER).

The approach to communicating contaminated land risks to be followed by Folkestone & Hythe District Council will be open, truthful, involve all relevant parties, and be co-operative and proactive. We will use terminology appropriate for the particular stakeholders.

When contacting stakeholders for the purpose of carrying out further assessment, we will explain the reason why an area of land has been identified as possible contaminated land and the risk based approach underlying our decisions. The outcome of our decision following completed inspection will be communicated to involved parties.

Notwithstanding the above, in order to avoid undue alarm or stress, no proactive communication shall be made with a site owner or occupier, or other stakeholder, unless the desk study shows a strong possibility of a contaminant linkage being present.

5.5 Provision of Information to the Environment Agency

The EA is required, from time to time or at the request of the Secretary of State, to prepare a report on the state of contaminated land in England and Wales. Folkestone & Hythe District Council shall, at the written request of the Environment Agency, furnish them with information on the condition of contaminated land in the district.

The latest Environment Agency summary report is dated 2016 and presents the results of a survey of local authorities regarding contaminated land activity.

The local authority must also provide information to the EA whenever a site is determined as contaminated land and whenever a remediation notice; statement or declaration is issued or agreed. The EA is to provide standard forms allowing this information to be provided in a consistent format and the Council will adopt these to fulfil its reporting requirements.

5.6 The Public Register

It is the duty of the Council to maintain a Public Register of Contaminated Land in connection with Part IIA. This will need to record details regarding the formal regulatory actions on a site determined to be contaminated land. It must be made freely available to the public. Its contents will include the following details:

- Site location including National Grid Reference, address, extent, and plan;
- A risk summary for the site in accordance with the requirements of the statutory guidance;
- A summary of why the Council considers that the requirements of the relevant sections of the statutory guidance have been satisfied.
- The Council will seek to ensure as far as reasonable that all aspects of the record of determination are understandable to non-specialists, including affected members of the public.

In the event that Council owned land is determined to be contaminated land, a notice is not served but a remediation statement is made. An entry to that effect will be made in the register. No other information produced by the implementation of the strategy will be recorded on the register. The data collected as a result of the inspection process does not have any statutory status except when a particular area of land is determined to be contaminated land. As a result it will not automatically appear on responses to searches of the register of local land charges.

The register will be held by the Environmental Protection Team at the Council's principal office at Civic Centre, Castle Hill Avenue, Castle Hill Avenue, Folkestone. It will be electronic (using the GIS) and be accessible on request by members of the public during office hours, Monday to Friday

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. Information may also be excluded if its inclusion would be against the interest of national security or the information is commercially confidential.

5.7 Requests for Information

Information built up during the inspection process will form a body of data that will be useful to the Council and other stakeholders for reference to assist with future assessments of land. This may arise for example where planning applications are received for the redevelopment or change of use of sites.

The Environment Agency and other statutory bodies may have a need to see information collated on sites and will be freely provided with it. The Environment Agency has a duty to produce 'State of the Environment' reports that incorporate information supplied about contaminated land. A form of information exchange has been set up with them for this purpose.

Information will be provided for local land charges purposes, following receipt of Form CON29, Enquiries of Local Authorities.

Information from the database that is not confidential may be made available in response to queries about individual sites, as may be required following the Environmental Information Regulations 2004. A reasonable charge is made for the provision of this information.

5.8 Complaints

Environmental Protection has a well-established protocol for dealing with complaints (of any nature), including their logging, acknowledgement, response times and monitoring. When the complaint appears to be about contaminated land then there are a number of possible actions that may follow. This partly depends upon when the complaint is received and how comprehensive is the contaminated land GIS/database. Information received as a result of a complaint may lead to a reassessment of the risk/ranking for the land and/or adjoining land.

All property being considered will be checked against the GIS/database and other information available. If the information leads to a conclusion that significant harm is unlikely then further inspection will not be undertaken. The complainant will be informed of this.

If information is received with the complaint suggesting that harm is occurring or is likely then the site will be inspected and actions initiated as a matter of urgency. If the harm is affecting the water environment then we will liaise with the Environment Agency and similarly for other environmental receptors overseen by statutory bodies.

Anonymous complaints or anecdotal information will be acted on at the discretion of officers in Environmental Protection.

Chapter 6

REVIEW MECHANISMS

This strategy outlines the initial strategic approach that was taken to investigate potentially contaminated land in the District. The document also sets out the progress and programme for planned detailed inspections of potentially contaminated sites identified by the initial strategic inspection.

This chapter describes instances when inspections will occur outside this general investigation framework, circumstances under which previous investigation decisions should be reviewed and measures to be taken to ensure the strategy remains effective and up-to-date.

6.1 Triggers for Undertaking Investigation

The strategy has already recognised there may be occasions where inspections may have to be carried out outside of the general investigation framework.

Triggers for undertaking non-routine inspection may include:

- **Unplanned events** – e.g. if an incident such as a spill has occurred
- **Introduction of new receptors** – e.g. persistent trespass onto a site
- **Supporting voluntary remediation** – e.g. a potentially liable party wishing to undertake clean-up before their land has been inspected by the local authority
- **Identification** of localised health effects that appear to relate to a particular area of land
- **Responding** to information from other statutory bodies, owners, occupiers, or other interested parties

While these occurrences may trigger non-routine inspections, if this strategy is to prove effective, they must not be allowed to significantly interfere with the milestones laid down in the general inspection framework. This issue has been considered during the current review (September 2021), previous reviews and will be considered in all future strategy reviews.

6.2 Triggers for Reviewing Inspection Decisions

In addition there may be occasions where the findings of previous inspection decisions should be reviewed. This might occur, for example, if there were:

- Significant changes in legislation
- Establishment of significant case law or other precedent
- Revision of guideline values for exposure assessment

It is important therefore that all decisions are made and recorded in a consistent manner that will allow efficient review.

6.3 Reviewing the Strategy

As part of the overall quality management of this work, it is important to consider the need to review the strategy from time to time. The next review is scheduled for 2026 unless an earlier review is prompted by changes in legislation.

Glossary

Brownfield site – A site that has been generally abandoned or underused where redevelopment is complicated by actual or perceived environment contamination. Only a small proportion of brownfield sites will meet the definition of contaminated land.

CLEA – Contaminated Land Exposure Assessment, a methodology for carrying out a risk assessment.

Contaminated Land – any land which appears to the local authority in whose area it is situated to be in such condition, by reason of substances in, on or under the land, where:

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

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

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

Contaminant linkage – The term “contaminant linkage” means the relationship between a contaminant, a pathway and a receptor. All three elements of a contamination linkage must exist in relation to particular land before the land can be considered potentially to be contaminated under Part 2A, including evidence of the actual presence of contaminants. The term “significant contaminant linkage”, as used in the statutory guidance, means a contaminant linkage which gives rise to a level of risk sufficient to justify a piece of land being determined as contaminated land. The term “significant contaminant” means the contaminant which forms part of a significant contaminant linkage.

Controlled waters – Are defined by section 104 of the Water Resources Act 1991 as territorial waters...which extend seawards for the three miles...coastal waters, inland freshwaters, that is to say, the waters in any relevant lake or pond or of so much of any relevant river or watercourse as is above the freshwater limit and groundwaters, that is to say, any waters contained in underground strata. The definition of controlled waters is clarified (for the purpose of part 2A of the EPA) in that groundwaters does not include waters contained in underground strata but above the saturation zone (SI 2004/2528).

Cretaceous – geological period and system.

DEFRA – Department for Environment, Food and Rural Affairs

Drinking water abstraction – The taking of water from a source (in this case, primarily an underground source) for drinking. Also known as a potable water abstraction.

EA – Environment Agency

Eco-system – A biological system of interacting organisms and their physical environment.

GIS – Geographical Information System.

Groundwater – Any water contained in underground strata, wells or boreholes and includes any soil water and pore water present in the unsaturated zone.

Pathway – A pathway is a route by which a receptor is or might be affected by a contaminant.

Phase 1 environmental report – is designed to give an overview of the risk of contamination to end-users and the immediate environment. The report includes a walkover survey and a detailed look at the site history and current use/setting.

Phase 2 site investigation / Intrusive investigation – is undertaken to investigate each aspect highlighted by the Phase 1 environmental report. This comprises exploratory holes constructed using the most appropriate method for the site to investigate the local subsurface strata. Site Investigations are designed and implemented, using a variety of intrusive exploratory methods. Chemical analysis of soil and water samples for contaminants is undertaken to establish the concentration and extent of any contamination present. A risk assessment, using the “source-pathway-receptor” model would then be carried out; this assessment may be Semi-Qualitative or Quantitative dependent upon the level of risk.

Principal Aquifer – These are layers of rock or drift deposits that have high inter-granular and/or fracture permeability. This means they usually provide a high level of water storage. They may support water supply and/or river base flow on a strategic scale. In most cases, principal aquifers are aquifers previously designated as major aquifer.

RAMSAR site – A site protected under an international convention on protection of wetlands of international importance, especially as habitats for waterfowl, named after the city in Iran where the convention was signed.

Receptor – A receptor is something that could be adversely affected by a contaminant, for example a person, an organism, an ecosystem, property, or controlled waters.

Remediation – Generally accepted as being the carrying out of works to prevent or minimise effects of contamination.

Risk Assessment – The study of a) the probability, or frequency, of a hazard occurring, and b) the magnitude of the consequences.

Secondary Aquifer – These include a wide range of rock layers or drift deposits with an equally wide range of water permeability and storage.

Source – A substance in, on or under the ground with the ability to cause harm.

Source Protection Zone – Protection zones around certain sources of groundwater used for public water supply and also around certain industrial and private supplies. Within these zones, certain activities and processes are prohibited or restricted.

Special Site – A contaminated land site that is regulated by the Environment Agency and *not* the Local Authority. Includes sites where controlled waters are being affected or where the land involves the MOD estate.

Unproductive Strata – These are rock layers or drift deposits with low permeability that have negligible significance for water supply or river base flow.

APPENDIX A

DETAILS OF THOSE CONSULTED IN 2021

STATUTORY CONSULTEES

Natural England
International House
Dover Place Ashford
Kent TN23 1HU
0300 060 3900
enquiries@naturalengland.org.uk

Kent County Council
Invicta House
County Hall
Maidstone
Kent ME14 1XX
03000 41 41 41
county.hall@kent.gov.uk

English Heritage
South East Region
Eastgate Court
195-205 High Street
Guildford
Surrey GU1 3EH
01483 252 000
0370 333 1181
customers@english-heritage.org.uk

DEFRA
Room 141 Nobel
House 17 Smith
Street
London SW1P 3JR
03459 33 55 77
defra.helpline@defra.gsi.gov.uk

Environment Agency
Orchard House
Endeavour Park
London Road
Addington
West Malling Kent
ME19 5SH
01189 535 224
0370 850 6506
enquiries@environment-agency.gov.uk

Food Standard Agency
Contaminants Division
Aviation House
125 Kingsway London
WC2B 6NH
0207 276 8736
helpline@food.gov.uk

APPENDIX B

REFERENCES

Groundwater: Our Hidden Asset, R. A. Downing, NERC (1998).
Waste Management Paper No 27 – Landfill Gas, DOE (1991)
Communicating Understanding of Contaminated Land Risks, SNIFFER (2000)
Methodology for the Derivation of Remedial Targets for Soil and Groundwater to Protect Water Resources, Environment Agency R&D Publication 20 (2000).
British Regional Geology, The Wealden District (4th Edition), HMSO 1965
Local Environment Agency Plan (LEAP) Kent Area, Environment Agency (September 1999)
Local Environment Agency Plan (LEAP) Kentish Stour, Environment Agency (March 2000)
Local Environment Agency Plan (LEAP) Eastern Rother (Consultation Draft), Environment Agency (December 1999)
Dealing with contaminated land in England: A review of progress from April 2000 to December 2013 with Part 2A of the Environmental Protection Act 1990, Environment Agency (April 2016)

LEGISLATION AND GUIDANCE

The Environmental Protection Act 1990 HMSO (1990)
The Environment Act 1995, HMSO (1995).
The Contaminated Land (England) Regulations 2000, SI 2000 No.227 HMSO (2000).
The Environmental Protection Act 1990: Part 2A. Contaminated Land Statutory Guidance (2012)
DETR Circular 02/2000, Environmental Protection Act 1990:Part 2A - Contaminated Land, HMSO (March 2000).
Contaminated Land Inspection Strategies, Technical Advice for Local Authorities, DETR (Draft for comment April 2000).
Local Authority Guide to the Application of Part 2A of the Environmental Protection Act 1990, Environment Agency R&D Contract REG/CON-79 Working Draft 01 (2000)
Communicating Understanding of Contaminated Land Risks, SNIFFER Project Number SR97(11)F
Private Water Supply Regulations 2009
Private Water Supplies (England) Regulations 2016
Water Industry Act 1999
Water Resources Act 1991
Gov.uk Land Contamination Risk Management Guidance
(<https://www.gov.uk/government/publications/land-contamination-risk-management-lcrm>)
Gov.uk Groundwater Protection Guidance
(<https://www.gov.uk/government/collections/groundwater-protection>)

FOLKESTONE AND HYTHE DISTRICT COUNCIL PUBLICATIONS

Folkestone and Hythe District Council Corporate Plan 2021 – 2030
Folkestone and Hythe District Council Water Cycle Study (2018)
Folkestone and Hythe District Council Places and Policies Local Plan (Adopted Sept 2000)
Folkestone and Hythe District Council Heritage Strategy (January 2019)
Kent Minerals and Waste Local Plan 2013 - 2030
Shepway Core Strategy Local Plan 2013-2026
Shepway District Council Corporate Plan 2013 - 2018
Shepway District Council Performance Plan 2001 - 2002
District Local Plan Review (1st Deposit), (July 2000).
A Strategy for the District and Communities of Shepway 2000 - 2005, SHEPWAY (April 2000)
Environmental Audit State of the Environment Report for Shepway
Vol I Water Quality Topic Report

Vol II Air Quality Topic Report
Vol III Waste Management & Recycling Topic Report
Vol IV Noise Pollution Topic Report
Vol V Land-use & Landscape Topic Report
Vol VI Nature Conservation Topic Report
SHEPWAY (March 1992 to September 1994)

APPENDIX C FOLKESTONE & HYTHE CORPORATE AMBITIONS AND GUIDING PRINCIPLES

Folkestone & Hythe District Council has identified their main service priorities and themes as part of their new Corporate Plan for 2021 – 2030. The Council recognises their central role in developing, commissioning and delivering vital services in housing, planning, environmental protection (including this Contaminated Land Strategy), community services and more.

The Council's corporate plan is focused on four service ambitions which are priority areas of action that relate to the key services that the council plans, delivers and commissions. In achieving these service ambitions, the Council will abide by six guiding principles. These service ambitions and guiding principles are set out below.

Service Ambition 1 – Positive community leadership:

- Improve physical and mental health and wellbeing.
- Safer communities.
- Supporting and empowering our communities.

Service Ambition 2 – A thriving environment:

- Ensure an excellent environment for everyone.
- Grow the circular economy and reduce waste.
- Increase our resilience to climate change.

Service Ambition 3 – A vibrant economy:

- Reinvigorate the high streets.
- Support a vibrant and diverse business community.
- Help people access jobs and opportunity.
- Grow the skills we need for the future.

Service Ambition 4 – Quality homes and infrastructure:

- Improve outcomes and support for homeless people.
- Deliver sustainable affordable housing.
- Deliver a safe, accountable housing service.
- Digital inclusion and connectivity.
- Deliver a sustainable new development at Otterpool Park.

Everything the Council does will follow these guiding principles:

- Sustainable recovery: We will do all we can to ensure a strong recovery for the district from the effects of COVID.
- Locally distinctive: We will protect the special distinctive and diverse nature of our district – working with our key partners to enhance it.
- Greener Folkestone & Hythe: We will encourage and create a more sustainable district consuming fewer natural resources.
- Transparent, stable, accountable and accessible: We will be financially sustainable and communicate effectively with our communities in an accessible way.
- Working effectively with partners: We will engage with partners to understand the vital role they play and work collaboratively with them to ensure the best outcomes for our residents.
- Continuous improvement: We will embed a culture of continuous improvement, seeking feedback and being creative to find new ways to deliver services.