

SCOTTISH ENVIRONMENT PROTECTION AGENCY	Identifier: LUPS-GU3
<p style="text-align: center;"><b>Land Use Planning System</b> <b>SEPA Guidance Note LUPS-GU3</b></p> <p>Planning guidance on land subject to contamination issues</p>	Page no: 1 of 5
	Issue No: Version 8
	Issue date: 06 Jan 2012

## 1. Purpose and scope

- 1.1 SEPA engages with the land use planning system to enable good development in the right place and to protect the environment. The purpose of this note is to provide guidance on the approach that we should take when dealing with development management and development plan consultations in relation to land subject to contamination issues, including formally designated contaminated land. This note has been reviewed to ensure it is consistent with our modern, solution-orientated, enabling approach to the planning process.
- 1.2 The modern planning emphasis is to consider previously developed land in the round, with contamination issues being one constraint associated with such land. This guidance note deals specifically with land contamination but we should bear in mind the wider context of previously developed land within which it mostly sits.

## 2. When do we comment on land contamination issues?

- 2.1 SEPA's Planning Service coordinates responses to planning authorities on planning issues relating to radioactive contaminated land and contaminated land Special Sites.
- 2.2 For other contaminated land issues, it is the responsibility of the relevant Council contaminated land officers to take a lead on commenting on development plans and planning applications, with SEPA's own contaminated land specialists providing input directly to the local authority contaminated land officers in relation to impacts upon the water environment. SEPA have prepared standing guidance to local authorities outlining SEPA's roles and responsibilities on contaminated land within the planning process.

## 3. How are contaminated land, Special Sites and radioactive contaminated land designated?

- 3.1 "Contaminated Land" is statutorily identified as such under Part IIA of the Environmental Protection Act 1990 (as amended). A Special Site is a particular sub-category of contaminated land which meets one of the descriptions in the Contaminated Land (Scotland) Regulations 2000 (as amended).
- 3.2 Each local authority has a duty to periodically inspect its area for the purpose of identifying contaminated land. Some of the land identified as "contaminated land" by local authorities may subsequently be designated as a Special Site. Once a site has been identified as a Special Site, SEPA become the "Enforcing Authority" and have responsibility

SCOTTISH ENVIRONMENT PROTECTION AGENCY	Identifier: LUPS-GU3
<b>Land Use Planning System</b> <b>SEPA Guidance Note LUPS-GU3</b>	Page no: 2 of 5
	Issue No: Version 8
	Issue date: 06 Jan 2012
Planning guidance on land subject to contamination issues	

for securing remediation of such sites. Further guidance on Special Sites can be found on our [website](#). At present, there are ten Special Sites in Scotland:

- a) The Former Oil Refinery, Old Kilpatrick
- b) Site of Pelikan Hardcopy Scotland Ltd, Turriff
- c) Tesco Dry goods distribution centre, Dundee
- d) Seven sites forming part of a larger historic refinery site, Whitelees Road, Lanark

3.3 The Radioactive Contaminated Land (Scotland) Regulations 2007 come into force at the end of October 2007. SEPA has the responsibility under these regulations for the investigation, identification, characterisation and regulation of remediation of radioactive contaminated land (RCL). The Statutory Guidance was issued 31 March 2008 and is available [here](#) or a printed copy can be obtained from [RadioactiveWasteTeam@scotland.gsi.gov.uk](mailto:RadioactiveWasteTeam@scotland.gsi.gov.uk). Sites owned or occupied by a nuclear-site operator are exempt as they are already regulated under a nuclear-site licence.

#### 4. What does Scottish Planning Policy (SPP) require?

4.1 The SPP does not provide policy on contaminated land directly, but does state (paragraph 48):

*"Previously developed land (also referred to as brownfield land) is a potential source of sites for new development and planning authorities should support and promote proposals to bring vacant or derelict land back into productive use for development or to create more attractive environments. Not all previously developed sites are available in the short term, but areas can be identified where investment in site assembly, remediation, infrastructure and environmental improvement will enable successful development in the longer term. Vacant and derelict land and obsolete commercial and industrial property can act as a constraint on the economic growth of towns and cities. Authorities should therefore adopt a proactive approach to encouraging the reuse of buildings and previously developed land, making use of land assembly and compulsory purchase powers to enable redevelopment opportunities."*

4.2 Much land subject to contamination issues will fall within previously developed land. Our responses should assist in the general proactive approach to improving such land in accordance with Development Plans.

Planning Advice Note 33 "*Development of Contaminated Land*" (PAN 33) sets out how proposals for redevelopment should be assessed and should be referred to by SEPA staff when assessing radioactive contaminated land and Special Sites. PAN 33 notes that at the time of its publication, the

SCOTTISH ENVIRONMENT PROTECTION AGENCY	Identifier: LUPS-GU3
<b>Land Use Planning System</b> <b>SEPA Guidance Note LUPS-GU3</b>	Page no: 3 of 5
	Issue No: Version 8
	Issue date: 06 Jan 2012
Planning guidance on land subject to contamination issues	

contaminated land regime as described did not apply to any radioactive contamination of land. Part IIA made provision for the regime to be applied to such contamination with such modification and separate regulations have been implemented through the Radioactive Contaminated Land (Scotland) Regulations 2007 and Radioactive Contaminated Land (Scotland) Amendment Regulations 2009.

- 4.4 Planning Advice Note (PAN) 51 *Planning, Environmental Protection and Regulation* also provides useful guidance on radioactive contaminated land and Special Sites.
- 4.5 The SPP, PAN 33 and PAN 51 can be found at [www.scotland.gov.uk/Topics/Built-Environment/planning/publications](http://www.scotland.gov.uk/Topics/Built-Environment/planning/publications).

## 5. How do we engage with development plans?

- 5.1 When we engage in the preparation of development plans, we need to ensure the following aspects are addressed:
- a) In areas where there is radioactive contaminated land or a Special Site, is there a general policy on land contamination which also covers radioactive contaminated land and Special Sites, perhaps contained within a previously developed land policy, seeking remediation and/or environmental improvements?
  - b) Are any allocations on or adjacent to radioactive contaminated land?
  - c) Are any allocations on or adjacent to Special Sites?
  - d) Where there are known areas with radioactive contamination issues or are a Special Site, do the allocation descriptions address the need to deal with remediation?

As the SPP and PAN 33 highlight that planning authorities should encourage and promote the re-use or environmental improvement of previously developed land (which will include most contaminated land), it is important that the development plan contains a generic planning policy which sets out how proposals to redevelop previously development land will be progressed.

- 5.3 Possible policy wording should be discussed with Council planning officers and Council contaminated land officers to ensure that such a policy includes where relevant radioactive contaminated land and Special Sites. An example of the type of policy we would seek (either as a stand-alone policy, or as an element of a wider policy) is as follows:

“The Council will ensure that remediation proposals and objectives are consistent with the requirements of PAN 33 Development and Contaminated Land, insofar as the development is suitable for use post remediation and that it is not causing unacceptable risk to human health and to the wider environment, including all aspects of the water

SCOTTISH ENVIRONMENT PROTECTION AGENCY	Identifier: LUPS-GU3
<p style="text-align: center;"><b>Land Use Planning System</b> <b>SEPA Guidance Note LUPS-GU3</b></p> <p>Planning guidance on land subject to contamination issues</p>	Page no: 4 of 5
	Issue No: Version 8
	Issue date: 06 Jan 2012

environment. Where site conditions are appropriate, consideration should be given to both radioactive and non-radioactive sources of contamination".

- 5.4 Insofar as SEPA's remit is concerned (radioactive contaminated land and Special Sites), and in line with PAN 33, the policy should ensure redevelopment proposals include remediation measures which avoid unacceptable risks to human health and the wider environment from the contamination on the site, both during the restoration period and for the final end use.
- 5.5 We have developed a GIS layer showing contaminated land sites and Special Sites within Scotland that have been identified under Part IIA of the Environmental Protection Act 1990. Where allocations are on or adjacent to such sites, we will seek internal specialist input. For radioactive contaminated land we should consult our Radioactive Contaminated Land Officer. For Special Sites we should consult our local Contaminated Land Specialist. In appropriate allocations, it should be ensured that a developer requirement is specified addressing contaminative issues relevant to SEPA. Our internal specialists may be able to advise on what investigation and remediation we would expect for these sites. If possible this should be included in developer requirements to provide some certainty for developers on what is required.
- 5.6 Where the planning authority does not propose to include a policy which deals with land with contamination issues relevant to us or we have concerns regarding any of the allocations we should make representations (object) detailing what modifications are required to remove our objection. It is important to set this information out clearly to provide helpful information to the planning authority.
- 5.7 Further guidance on how to respond to development plans can be found in SEPA Guidance Note 11 [Guidance on SEPA engagement with the development plan process](#).

## **6. How do we engage with planning applications?**

- 6.1 At the pre-application stage, the potential need for land contamination issues relevant to SEPA, namely site proximity to a designated special site or radioactive contaminated land, should be flagged up where applicable.
- 6.2 When we are consulted on the planning application, and the planning authority has specified that it is seeking advice relating to radioactive contaminated land or a Special Site, we should seek specialist advice from either our Radioactive Contaminated Land Officer or our local Contaminated Land Specialist as appropriate. This is crucial as issues relating to Special Sites or Radioactive Contaminated Land are often site specific so we cannot provide generic advice what an applicant needs to

SCOTTISH ENVIRONMENT PROTECTION AGENCY	Identifier: LUPS-GU3
<b>Land Use Planning System</b> <b>SEPA Guidance Note LUPS-GU3</b>	Page no: 5 of 5
	Issue No: Version 8
	Issue date: 06 Jan 2012
Planning guidance on land subject to contamination issues	

assess and what remediation would be acceptable. On this basis advice should always be sought from our Radioactive Contaminated Land Officer or our local Contaminated Land Specialist as appropriate.

6.3. In order to assist this, when we are consulted on developments on or near Radioactive Contaminated Land or Special Sites, we should pose specific questions to our internal consultees via the Planning Casework System on the following matters:

- a) Can you confirm that the site is on or adjacent to radioactive contaminated land or a Special Site?
- b) Has remediation been proposed and if so will this provide adequate protection during the restoration, construction and end use of the site for human health and the wider environment?
- c) What will be controlled by SEPA through regulations?
- d) Do we require any matters to be controlled by planning condition which cannot be controlled through regulation?
- e) Are there any other issues relevant to your specialism?

6.4 It is assumed that pre-application engagement will have resolved issues relating to radioactive contaminated land or Special Sites. Where this has not occurred, you should consider whether or not planning conditions could satisfactorily address these issues. Contaminated land issues are commonly addressed by planning condition. However, if there are unresolved significant concerns which cannot be addressed through planning conditions, we should object clearly setting out what modifications or information we require prior to determination in order to remove our objection. It is important to set this information out clearly to provide helpful information to the planning authority and developer.

6.5 For all other land contamination issues, we should refer planning authorities to the Council's own contaminated land specialists. In certain cases, material relating to contaminated land investigations (including site investigation reports) is directed by consultants or developers to our Planning Service in the first instance. These should not be logged in the Planning Casework System but be immediately passed to the relevant Planning Authority advising the Council to seek advice from their own contaminated land officers within Environmental Health. The Council's Environmental Health staff may then consult SEPA Contaminated Land Specialists as indicated in Section 2.