

Land Forum Meeting

20th October 2015

Meeting Notes



Location: CMS Cameron McKenna LLP, Cannon Place, 78 Cannon Street, London EC4N 6AFAA

11.00am – 4.00pm

FINAL

Present:

Paul Sheehan (<i>Chair</i>)	
Nicola Harries (<i>Secretariat</i>)	Contaminated Land: Applications In Real Environments (CL:AIRE)
Seamus Lefroy Brooks	Association of Geotechnical and Geoenvironmental Specialists (AGS)
Matthew Whitehead	Environment Agency
Frank Evans	Soil and Groundwater Technology Association (SAGTA)
Chris Taylor	SoBRA
Phil Crowcroft	Specialist in Land Condition Register (SiLC)
Richard Boyle	Homes and Communities Agency (HCA)
Rob Ivens	Mole Valley Council
Julia Reynolds	Yorkshire and Humberside Pollution Advisory Council
Steve McKenna	Royal Institution of Chartered Surveyors (RICS)
Lisa Hathway	National House Building Council (NHBC)
Howard Price	Chartered Institute of Environmental Health (CIEH)
Euan Hall	Land Trust (LT)
Jane Thrasher	Environmental Industries Commission (EIC)
Steve Manning	Wiltshire Council
Anne Wood	Department of Communities and Local Government (CLG)

By telephone:

Theresa Kearney	Department of the Environment and the Northern Ireland Environment Agency (NIEA)
Caroline Thornton	Scottish Environment Protection Agency (SEPA)
Mark Edwards	Lancaster Council

Apologies:

Matthew Llewellyn	Natural Resources Wales
Richard Clark	Welsh Government
Peter Witherington	Home Builders Federation (HBF)
Maggie Charnley	Defra
Rachael Davies	Welsh Contaminated Land Working Group
Andrew Wiseman	UKELA & EP UK
Trevor Howard	Environment Agency
Julia Thrift	Town and Country Planning Association (TCPA)
David Middleton	Defra
Elaine Wort	Natural Resources Wales

Peter Johnson	UK Contractors Group/UK Strategic Forum for Construction
Nicky Linihan/John Silvester	Planning Officers Society
Peter Ellis	Communities and Local Government (CLG)
Trystan James	Natural Resources Wales

Agenda

1. Welcome and Apologies
 2. Introductions of represented organisations
 3. Terms of Reference review
 4. Review of previous minutes & actions
 5. Update from Government Departments and Environment Agencies
 - Welsh Government & Natural Resources Wales
 - Scottish Government & Scottish Environment Protection Agency
 - Department of Environment Northern Ireland & Environment Agency
 - CLG
 - Defra Soil and Contaminated Land Team
 - Environment Agency
 - Homes and Communities Agency
 6. Standards update – what's new
- LUNCH
7. Discussion Topics
 - National Quality Mark Scheme for Land Affected by Contamination – update
 - Future direction : feedback from Land Forum members
 8. AOB
 9. Date and location of next meeting

Meeting Notes

1) Welcome & Apologies

Paul Sheehan (PS) welcomed everyone and apologies were given. He thanked Cameron McKenna for hosting the meeting. PS provided the housekeeping and health and safety briefing. As this was PS first meeting as chair he introduced himself and thanked the outgoing chair Seamus Lefroy-Brooks (SL-B) for his hard work and dedication he'd given to the Land Forum and driving forward the National Quality Mark Scheme for Land

Affected by Contamination. SL-B would remain as chair of the Professional Standards subgroup to help deliver the National Quality Mark Scheme.

2) Introductions of represented organisations

Introductions were performed around the table.

3) Terms of Reference Review

It was agreed that the Terms of Reference was still valid and the updated affiliations were acknowledged. Richard Boyle (RB) requested that his affiliation is just Homes and Communities Agency.

ACTION: NH to amend and upload the updated version onto the website.

4) Review of Previous Minutes & Outstanding Actions

It was noted that there was a minor error in the previous minutes in the “Welcome and Apologies”. Paul Sheehan did not provide the housekeeping, ERM did.

Theresa Kearney (TK) also asked for a minor amendment to be made with reference to the “Update from Government Departments and Environment Agencies”.

ACTION: TK to send the amendment through after the meeting.

Post Meeting Note:

The Department and the Agency are known as the Department of the Environment and the Northern Ireland Environment Agency (NIEA) rather than the Department of Environment Northern Ireland and Environment Agency Northern Ireland. All future references to DoE & NIEA to use this nomenclature.

TK also clarified that the public consultation on the draft second cycle River Basin Management Plans closed in June 2015 with a synopsis of the consultation responses underway.

Attendees were asked to ensure that they review the draft minutes in a timely manner to ensure that full and accurate minutes get circulated externally.

Any outstanding actions would be addressed during discussions in the meeting.

5) Update from Government Departments and Environment Agencies

Welsh Government and Natural Resources Wales

Representatives from Wales were unable to attend the Land Forum meeting. They confirmed that there were no public updates to provide at present.

Scottish Government & Scottish Environment Protection Agency

Caroline Thornton (CT) provided an update on behalf of Scottish Government and SEPA. Scottish Government (SG) has had the human health risk assessment project, where they propose to provide additional guidance tools for local authorities to determine Significant Possibility of Significant Harm (SPOSH), peer reviewed. They are currently reviewing the comments received. SG is still working on the guidance to support the Regulatory Reform (Scotland) Act 2014 section 45 contaminated land and special sites. This is to provide a mechanism to remove special sites from the register.

CT confirmed that they are working with UK Technical Advisory Group (UK TAG) on the implementation of the European Water Framework Directive.

CT also confirmed that Revenue Scotland has been looking at Scottish Landfill Tax (SLfT) and contaminated soil. They ran a consultation on SLfT guidance for contaminated soils between 5 June to 15 July 2015. This consultation is now closed and the final outcome is published on the Revenue Scotland website [here](#).

Post Meeting- CT provided additional information on SLfT consultation.

Revenue Scotland received fifteen responses to their consultation from a wide range of interested parties. Overall, the published responses indicated significant support for Option 1 and much less support for the Option 2. Revenue Scotland proceeded to implement Option 1 and this is now published in Revenue Scotland's Scottish Landfill Tax guidance.

Considering all factors, SEPA supported option one. There were a number of reasons why SEPA did not support Option 2. One of these was that adopting Option 2 would create a powerful economic driver for waste crime. Under Option 2 only a small proportion of non-hazardous waste soils would qualify for the lower rate of tax and this could lead to illegal disposal routes being sought for this material. SEPA's response noted that a significant proportion of non-hazardous soils may continue to be used under legitimate waste management exemptions without the need to landfill. A key reason that SEPA could not support Option 2 is that it would create an incentive to landfill the 'cleanest' soil.

It should be noted that unauthorised disposals of waste, both within and outwith permitted landfill sites, are subject to Scottish Landfill Tax. Therefore, any person disposing of (or knowingly permitting the disposal of) hazardous contaminated soils as non-hazardous would be liable to be charged the correct rate of SLfT on the disposal and may also incur a penalty. In addition, this is also likely to constitute an offence under environmental law.

SEPA's Scottish Landfill Tax Team, operating under authority delegated by Revenue Scotland, will proactively lead compliance activity in this area.

Department of the Environment (DoE) and the Northern Ireland Environment Agency (NIEA)

TK gave an update on the activities of Department of the Environment (DoE) and Northern Ireland Environment Agency. She confirmed that the new planning authorities are now working effectively, with the NIEA as a consultee.

NIEA has been contributing to the Technical Advisory Group on UK Groundwater Hazardous Substances for regulated sites. Currently the timescale has not been confirmed for consultation yet.

Department of Communities and Local Government (DCLG)

Anne Wood (AW) from DCLG presented on proposals to require local authorities to have a register of brownfield land suitable for housing which will be taken forward in the [Housing and Planning Bill](#) that had its first reading in the House of Commons on 13th October 2015. The proposals are intended to assist the Conservative Government deliver on its manifesto pledge.

The Bill will require local authorities to have a register of brownfield land suitable for housing to provide up-to-date transparent information about local availability. The aim is to ensure 90 per cent of suitable brownfield sites have planning permission (no longer just local development orders) for housing by 2020. The register will also be used as a mechanism for granting permission in principle for housing on suitable brownfield sites. Permission in principle is intended to be another tool to help local planning authorities deliver permissions for new homes on suitable brownfield land, and would sit alongside the standard planning permission application process and local development orders.

Decisions about the suitability of sites for inclusion in registers must be consistent with the National Planning Policy Framework. Local authorities would be expected to use established processes such as Local Plans and the Strategic Housing Land Availability Assessment process, including annual reviews, to identify suitable sites.

Local planning authorities will assess the suitability of sites on registers against criteria that will be set out in Regulations. These criteria will be drawn from the National Planning Policy Framework and Planning Practice Guidance, and will ensure that decisions about site suitability are consistent with the policies of the Framework.

Permission in principle provides a new way to grant consent for 'in principle' issues such as location, use, and amount of development but will be granted subject to more detailed matters being agreed later. The technical details consent stage will provide an opportunity to assess the detailed design of the scheme and ensure appropriate mitigation of the impact of the development in line with local and national policy.

Provision will be made for local planning authorities to have the opportunity to consult statutory consultees and others on sites that they propose to include in their registers. Where authorities propose to grant permission in principle on suitable sites such consultation will be a requirement.

Sites on the register which are not considered to be suitable for permission in principle would be taken through an existing planning permission process.

Details will be set out in secondary legislation and there will be a consultation in relation to this while the Bill is before Parliament. Secondary legislation was expected to be in place by October 2016 but this was subject to how quickly the Bill passed through Parliament.

The power in the Bill is a wide power to enable the power to require local authorities to hold a register to be used for other types of land. Secondary legislation will set out the type of land to be included in a register.

Discussion flagged that some level of risk assessment would need to be carried out, with a minimum of a desk study required to decide the suitability of the site. Who would be required to pay for this and would the land owner be able to carry this out? It was also suggested that there was a risk that the register could be interpreted as a contaminated land register. It was also pointed out that factors such as air quality, noise and contamination would be material considerations and would need to be addressed before consent could be given.

In relation to the assessment by the local authority on the suitability of sites it was questioned whether they had the expertise to assess the viability of the site or whether the expertise was with the developer, though it should be noted that authorities undertake a viability assessment as part of their SHLAA.

No further announcements had been made in relation to the £1 billion fund to focus on unlocking homes on brownfield land for additional housing.

It was also confirmed that there was a large section of the Bill on Compulsory Purchase.

Defra Soil and Contaminated Land Team

Nobody from Defra's soil and contaminated land team were available to attend, but they sent an update that was read out by Nicola Harries (NH) on behalf of Defra.

EU Soils

- Defra's position remains the same, they support the objective of protecting Europe's soils but want to avoid additional regulatory burdens and costs on Member States, farmers and businesses at a time when the Government are seeking to simplify legislation.
- Defra are looking toward a more suitable approach to soils, particularly on the exploration of non-regulatory options such as dissemination of best practice and use of guidelines.
- Maggie Charnley is today at the 1st of 3 EU soil expert groups (next 2 are spring & autumn 2016)
- The Commission is undertaking a gap analysis of existing soil protection measures as there is a need to reflect with Member States on the state of play and to assess existing instruments at EU and national level.
- This will ultimately be used by the Expert Group to discuss & agree on the policy baseline and the need to further act at EU level, ultimately paving the way for a further wider consultation process with stakeholders on soils.

25 Year Environment Plan

- The Secretary of State has outlined her new approach to the environment – to build a long term ‘open environment’ framework which will ensure Britain has the best environment anywhere.
- Defra will have clearer outcomes for our environment, underpinned by tools that allow for better decision making at all levels on how we prioritise our action and investments.
- Establishing a clear enabling framework ensures we all pulling in the same direction delivering greater improvements to our environment and benefits to our nation
- Open Environment event on 14th October was the start of the process of developing the 25 year Environment plan. Input from over 100 key organisations that shape the health of the environment has given Defra a sense of priorities. Next steps are a series of technical workshops in early November.
- These will feed into a “framework for the plan” in early 2016, which will set the key themes and priority areas of exploration to be pursued during the development of the 25 year Environment Plan ahead of publication in late 2016.
- Broadly, Defra want to support people to make better decisions to protect and improve the environment. Defra will make sure they have the right information and tools, and that the value of environmental assets is taken into account:
 - Making environmental data more accessible will mean businesses will be able to get it for themselves and target their activity accordingly
 - Using innovative new technology will improve the environment and mitigate damage
 - Making sure the incentives are right will reward those who do the right thing
 - Expecting individuals, businesses and NGOs to take more responsibility for the environment will benefit all parties

Environment Agency

Matthew Whitehead (MW) confirmed that the Environment Agency (EA) is continuing to work with the Smarter Environmental Regulation Review Team (SERR), to ascertain which guidance documents the Environment Agency is uniquely placed to deliver and therefore will remain on their .gov.uk website. It is felt that the majority of the land contamination management documents will not remain with the Environment Agency and is being transferred to an information portal being housed by CL:AIRE. This all links up with the National Quality Mark Scheme.

The SERR team have decided not to amend/shorten the Statutory Guidance. They have also decided to not amend CLR11. This document will also be transferring over to the information portal being housed by CL:AIRE.

MW confirmed that the EA are in the final stages of completing the State of the Contaminated Land Report. MW reminded people that the data has already been made public that the report is based on. It is hoped that the report will be finalised next month.

The EA are continuing to work with UK TAG and Joint Agencies Groundwater Directive Advisory Group (JAGDAG) on Hazardous Substances.

The EA has also provided input to the Chancellor's Spending Review 2015, with suggested costed ideas in relation to land regeneration. One such idea was amending the Landfill Communities Fund to allow LAs and EAs to access funds to be used for investigation and remediation of land contamination orphaned sites.

NH confirmed that the CL:AIRE information portal that MW referred to is going to go live shortly. It will be freely available with the thanks to industry partners providing some seed funding for its construction. The documents are being organised along CLR11 headings ie risk assessment options appraisal etc. It is listing relevant document with links to the PDFs. It will include documents from the EA, NHBC, DOE (Industry Profiles), EIC, CIRIA, AGS, BRE, LQM etc. For those documents that are not freely available it will provide the title of document and only link to the organisations web page. It is hoped that industry will assist CL:AIRE in keeping it up to date by letting them know of other documents that they wish to have listed to help it provide a comprehensive list of reference documents for everyone to access.

Homes and Communities Agency (HCA)

Richard Boyle provided an update of HCA's activities. He confirmed that HCA are now the default agency for developing surplus government land. They are managing a number of government backed initiatives to encourage the development of first time buyer/starter homes. They are working very closely with house builders to help meet the government targets of new homes but there is still a lot of work to do.

6) Standards

NH confirmed that Mike Smith had sent her details about a number of standards that are currently in preparation. These were kindly prepared on a separate sheet that she shared with Land Forum members. A link to this document can be found here:

http://www.claire.co.uk/index.php?option=com_content&view=article&id=475&Itemid=127

NH was asked to provide Mike Smith's contact details on future documents to enable Land Forum members to get in touch.

7) Discussion Topic:

National Quality Mark Scheme for Land Affected by Contamination

MW confirmed that the Professional Standards Sub-Committee had met recently and a summary of progress was provided in the paper http://www.claire.co.uk/index.php?option=com_content&view=article&id=475&Itemid=127

From the consultation, it was confirmed that industry believed that CL:AIRE, SiLC and SoBRA were organisations that could help deliver the NQMS, therefore a collaborative

approach was needed. From the professional standards meeting it was felt that the most effective route would be for CL:AIRE to administer the NQMS and declaration system on behalf of the Land Forum (managing the overall scheme) and SiLC to deliver Suitably Qualified People (SQP). They would therefore adapt their existing training and qualification to enable SQP to be trained and therefore awarded SQP status. It is intended that SiLC would award SQP status in conjunction with the SiLC qualification and not as a standalone at this stage. The requirements set by Land Forum for an SQP closely match those of SiLC (relevant experience, Chartered or full Membership of an Institution, written exam and interview). It was queried if this was the best way to ensure the scheme was successful in the short term as the take up rate of the SiLC scheme has been relatively limited and some may not want to be co-awarded. However, with a current listing on the SiLC Register of 160 people, this presents the best potential start on numbers for the SQP scheme. It was confirmed that a direct entry route had not been considered as yet. There is an agreement in principle for SiLC and CL:AIRE to work together on developing the scheme with the division in duties this way. SoBRA will develop their accreditation scheme to line up with the Brownfield Skills Development Framework to enable SQPs to be able to identify Qualified Risk Assessors. It is hoped the Remediation Technology Society (REMSOC) that is currently being considered will also produce a competency scheme to enable SQPs to be able to identify qualified remediation practitioners.

Further details still need to be developed on how the scheme will work. It is anticipated that there will be a web based declaration system developed, which will need seed funding to allow it to be developed. Land Forum members were asked if they would help support with seed funding.

The EA are currently working on their regulatory position statement for controlled waters aspects but they are not the lead regulator for planning in relation to land contamination. How will engagement with Local Authorities (LAs) be managed? It was agreed that more communications will need to be carried out with LAs and it was felt engagement with the Contaminated Land Officer Groups (CLOGS) will probably be the most effective as there is no one body that represents all local authorities. It is agreed that it is unlikely that a position statement for all LAs to agree to is possible, but regional CLOGS might be possible.

A draft communications plan has also been developed to help demonstrate how the scheme needs to be communicated externally. It was agreed that the messaging of the scheme still needs to be clearer as there remains some confusion.

It was agreed that there will be payments required for the declaration scheme to help finance it, however it is being set up to cover costs, not profit making.

It was confirmed the NQMS is not limited to England and it is hopeful it will be rolled out to Wales, Northern Ireland and Scotland. TK and CT confirmed that they are interested in the scheme and will be watching carefully.

It was agreed that the members of the Land Forum to feed through their thoughts on the draft papers presented within two weeks. The amended papers will then be circulated to

Land Forum members for wider circulation to their membership and uploaded with the minutes of the meeting.

As this is a voluntary scheme, the message to industry needs to be clearly stated and correct, which some felt it was not at the moment. The real benefit to both Regulators and Regulated is for an efficient route through the regulatory system, If industry can see this, then they are more likely to buy into such a scheme otherwise they will continue with what they know and not pay the additional costs.

ACTION: All Land Forum members to provide comments of the draft papers by 3rd November 2015

It was agreed that the Professional Standards sub group will continue to work on the papers and communication.

Papers discussed:

Draft Extract of Proposed Standards & Project Quality Procedures
Draft NQMS Communications Strategy
Draft NQMS Declaration

All documents can be downloaded:

http://www.claire.co.uk/index.php?option=com_content&view=article&id=475&Itemid=127

ACTION: Professional Standards Group to continue to work on the papers and communication.

Future Direction of the Land Forum

With the chair of the Land Forum changing, it was felt that an open discussion needed to be had on what were the next challenges that the Forum would like to tackle. The Land Forum needs to agree the activities for the next 18 months – 2 years. The Land Forum has been very land contamination focussed up to now but it was felt that the challenges facing the land sector are broader than that and the Land Forum should have a view on this. This may also help the Land Forum membership broaden as it now has surveyors and planners involved and it wants to maintain their engagement. It is always going to be challenging as the membership is diverse, but by engaging on wider subjects, there could be opportunities to ensure that land contamination is always considered. It was agreed that it is a good opportunity for the Land Forum to open and widen the discussion as Government has put “Brownfield” back on the political agenda with the introduction of the Housing and Planning Bill.

It was suggested that the way the Land Forum could engage on related subjects, such as air quality, noise etc could be by linking to other similar forums. It was thought that this was a good idea. It was also felt that there was a good opportunity to make a difference and to help influence particularly CLG. The Land Forum wants to be the “Go To” organisation on specific subjects as they have up to now demonstrated their qualities.

As there was such a diverse group of members in the Land Forum, and their wishes to focus on subjects were different, it was proposed to pick four/five key specialist subjects that members wanted to discuss and small working groups are set up on these subjects. These groups would identify the issues that need addressing within the subject area and how they were going to achieve this. It may be that the working group did not have the right skills and may need to work with others external to the Land Forum. These groups would then feedback progress to the main Land Forum.

It was suggested that perhaps CLG could help by identifying any big issues that they would like the Land Forum to focus on?

ACTION: NH to ask Peter Ellis on CLG's view on what he thinks might be useful for the Land Forum to focus on.

To wrap up the discussion, all members were asked for their top subject areas that they would like the Land Forum to focus on. The following subjects were stated:

- Land Use
- Soil Framework/EU Legislation
- Wider scale facilitation
- Air Quality Infrastructure
- Brownfield/Housing Bill
- Tracking Europe
- Synergies with other industry groups
- Planning
- Development of Good Technical Guidance
- Raising Standards
- Skills
- Greenfield/Brownfield
- Environmental Strategies
- Professional Standards
- Land Use/Resource Issues
- Infrastructure
- Technical Standards
- Brownfield Advocacy
- Resilience

PS thanked the members. He will now go away and look at ways that these diverse subjects could be wrapped up into different working groups and then ask for volunteers to take the lead.

ACTION: PS to work up different working groups and ask for volunteers.

8. Any Other Business:

Euan Hall confirmed that the Landscape Institute was interested in contributing to the Land Forum. This was noted and it was suggested that they were a group that could be worked with on one of the working groups.

Chris Taylor confirmed that SoBRA's website is currently being updated to include information about the Risk Assessors accreditation scheme and aims to go live at the end of the month ready for launching early 2016.

Frank Evans confirmed that SAGTA celebrated its 20 years recently.

9. Date of next meeting

It is proposed that the next meeting will be held at the end of February/Early March 2016. Date to be confirmed subject to room availability.

ACTION: NH to circulate date of meeting.