

## Land Forum Meeting

26<sup>th</sup> January, 2012 Meeting Notes

Location: CL:AIRE Office, Marble Arch, London



### FINAL

#### Present:

Phil Crowcroft, ( <i>Chair</i> )	Specialist in Land Condition Register (SiLC)
John Henstock ( <i>Secretariat</i> )	Contaminated Land: Applications In Real Environments (CL:AIRE)
Richard Boyle	Homes and Communities Agency (HCA)
Morwenna Carrington	Defra
Jane Garrett	Contaminated Land: Applications In Real Environments (CL:AIRE)
Euan Hall	The Land Trust
Trevor Howard	The Environment Agency
Ian Heasman	The Soil and Groundwater Technology Association (SAGTA)
Seamus Lefroy-Brooks	Association of Geotechnical Specialists (AGS)
Stephen Moreby	Gloucester City Council
Paul Sheehan	Environmental Industries Commission (EIC)
Mike Quint	Society of Brownfield Risk Assessment (SoBRA)
Andrew Wiseman	EPUK/UK Environmental Law Association

By telephone: Theresa Kearney, Department of Environment Northern Ireland (DoE NI)

#### Agenda:

1. Welcome and Apologies
2. Introductions
3. Membership & Sub-Group Updates
4. Summary Updates:
  - National Planning Policy Framework
  - Better Regulation Sub Group
5. Part 2A
  - Introduction to Morwenna Carrington (Defra) and her portfolio of work
  - Next steps to support implementation of the statutory guidance
  - Support for mechanism of site selection once guidance is live
6. New Projects
  - BGS Background Contamination Project
  - FERA Report
  - Category 4 Screening Levels (C4SL)
  - Open Mosaic Habitats
7. Summary of Meeting
8. AOB
9. Date of next meeting

## Meeting Notes

### 1) Welcome & Apologies

Apologies were given for Peter Witherington (HBF); Mark Plummer Department for Communities and Local Government (CLG); Caroline Thornton (SEPA) and Steve Smith (Welsh Government). Representatives from the Planning Officers Society and UK Contractors Group had excused themselves based on the scope of today's meeting. PC extended a special welcome to Dr Morwenna Carrington from Defra and Trevor Howard from the Environment Agency attending their first meetings. Morwenna Carrington attended further to taking on the former responsibilities of Tom Coles, who had now moved into the Biodiversity team at Defra.

### 2) Introductions

PC welcomed all and initiated round the table introductions.

### 3) Membership & Sub-Group Updates

#### *Membership*

PC welcomed the addition of the Environment Agency to the Land Forum but fed-back that the Standing Conference on Land Contamination had declined the Forum's invitation of Membership. SM clarified that the Standing Conference on Land Contamination only exists within the context of CIEH. PC restating why no single Chartered Institute had been invited for parity as there wasn't space for all to be members.

SM stressed that the principal regulator should be properly represented within the Forum nevertheless. The Forum acknowledged that there was no single organisation which overarches contaminated land for Local Authorities. SM clarified that his representation on the Forum was through the now disbanded LACORS. AW fed-back on the status of EPUK and their minimal staff set-up going forwards.

**Action: PC-AW** to discuss EPUK's further possible representation, and specifically the likely individual representative for future meetings. **PC/CL:AIRE** to further investigate appropriate Local Authority representation.

### 4) Summary Updates

#### *National Planning Policy Framework*

MC fed back on behalf of Mark Plummer (Department of Communities & Local Government), stating the final version of the National Planning Policy Framework (NPPF) is still due for publication on 31st March 2012. Calls for supporting guidance are still being considered. A discussion took place regarding the suitability of supporting guidance, particularly whether PP23 would be replaced and the necessity of Planners to defer issues to local Contaminated Land Officers. IH reiterated the NPPFs presumption in favour of sustainable development, where it will be up to the Local Authority to effectively downgrade the planning from its default go-ahead position and stated the need to understand how this would be resolved in practice. The discussion concluded that the Forum would need to take a watching brief of developments, as only when the NPPF is published will we begin to understand the implications or possible need for supporting guidance. RB suggested that any supporting guidance should be undertaken collectively across England. TK updated the group on the Northern Ireland position of keeping a watching brief on the NPPF, being mindful that Planning in Northern Ireland will be devolved to the Local Authorities by 2015.

**Action: CL:AIRE** to watch this space on NPPF and framework circulate for further group action.

#### *Better Regulation Subgroup Feedback*

JH fed-back a basic summary of the 27th September 2011 meeting which took place 5 days after the previous main Land Forum Meeting. Encouraged by the success of the 'Definition of Waste Code of Practice' the Environment Agency had tasked CL:AIRE to look at possible ways of streamlining any of its regulatory processes. The first meeting had an open agenda focussed on Permitting and Planning issues which may be made more streamlined with the conclusion being for organisations collating evidence of examples of where regulatory processes had given rise to undue delay. TH said that the Environment Agency was actively looking into international practices, including the various Licenced Professional schemes operating in some Australian States (3rd party auditing). TH also reported that, outside of the contaminated land sector, the Environment Agency were running some trials with companies to see how third party compliance checks could work and be funded. TH promised to obtain information and feedback on these trials to the subgroup.

PC raised that within some sections of the contaminated land community there had been a perception that better/self regulation had been about replacing public sector with private sector staff, but stated that is not the case, with a far more accurate description being an examination of the entire process of regulation. PC advised that he had received a suggestion that the Forum change the name of the subgroup to better practice group. He felt this was inappropriate as it would not reflect the intended area of work, and the wider meeting agreed this was unnecessary. IH suggested the crux of the regulatory interface was one of ensuring competences, describing both sides of the interface being of gradational scales of competence where the two levels of competence infrequently coincide which can result in friction. TH commented that the Environment Agency had been pushing better regulation for 10 years with examples evident such as Mobile Treatment Permitting, nevertheless they still wish to be more effective on better regulation.

SM commented that in his opinion he felt wider confidence in the group was undermined as a result of the group's initial name (name initially 'self-regulation', but changed to the more accurate 'better regulation') but was reassured by PC's summary and stressed as a Forum we need to continue better communicate the group's stated objectives. TH offered an introductory one page summary paper to be developed for wider circulation through the CL:AIRE website. **Action: TH & CL:AIRE.** The next Better Regulation meeting is scheduled for February/March.

#### *Estimating the true costs of Brownfield Land Subgroup Feedback*

EH summarised the purpose and progress of the sub-group, explaining that a PhD student, partly funded by British Land Restoration Society (BLRS), had been bought on board to start collecting evidence for this project. EH offered to re-circulate the original paper to the group before the next meeting where it was suggested that the work initiated from the subgroup should be a main agenda item. **Action: EH** to provide paper to JH for circulation.

#### 5) Part 2a

Morwenna Carrington introduced herself explaining she had been with Defra for 10 years and had responsibility for the Soil Framework Directive (SFD), with Part 2a being added to her remit since Tom Coles' internal transfer.

MC informed the group that the updated Part 2a Statutory Guidance is scheduled to be laid before parliament (taking 40 days) on the 7th February, with the parallel statutory instrument (taking 21 days) coming into force on 6th April. It is therefore hoped that the Statutory

Guidance will be able to be issued (assuming no objections) after this 6th April date. Exact timing is uncertain, and Defra are presently liaising with Wales and DECC. TK updated the Forum that in Northern Ireland, Part 3 (Part 2a equivalent) is not presently seen as a priority.

MC was asked about the Soil Framework Directive status, responding that it still had a blocking minority and was not on the active agenda of the present Danish Presidency. A Common Forum unofficial version of their proposed alternative text is freely available from their website<sup>1</sup>. It was noted that there should be recognition that it is a rolling update to the document. The newest SFD version allows a prioritized approach to assessing sites with the timetable to be relaxed or scrapped. **Action:** TK offered to get back to MC on the Northern Ireland lead on the SFD.

#### *Next Steps Work*

MC suggested there might be established a chaired National Expert Group to take on cases on the border between Categories 2 & 3, to help establish how this is best implemented. These cases would be written up as case studies for dissemination (see discussion on C4SL that follows in item 6).

#### 6) New Projects

##### *BGS Background Contamination Project*

The BGS Background Concentration Project is due to complete its reporting in April 2012, having already completed and disseminated 3 of the 4 Project Reports to Defra and the EIC. The project's scope is based in part on the wording in the final version of the updated Part 2a Statutory Guidance discussed earlier. The Project Steering Group recently met, deciding upon priority substances which include: Lead, Benzo-a-Pyrene and Asbestos. Contaminants considered as the next tier down will now be decided upon. A short discussion ensued which questioned in what capacity the report would be published and who would be able to use it as a practical tool. MC confirmed that the report would come out as Defra R&D Report and SLB said that AGS had already discussed the project and suggested that the outcomes may ultimately result in the setting of borough-wide substance concentration policies within certain Boroughs.

TK informed the Forum that there was a present project ongoing with the Northern Ireland Geological Survey (TELLUS Border) and BGS which took soil and water samples to help ascertain background concentrations and started sampling from the border counties last year. ACTION TK to send a link to the project with contact details. MC/TH encouraged contributions to these projects and offered to be the contacts for any background concentration characterisation data which could be usefully contributed.

##### *C4SL (Category 4 Screening Levels)*

MC confirmed that C4SL tender will soon be let. Background levels would, in most circumstances, be defined within Category 4 and the BGS Report work will feed into the C4SL work when the tender is let. A discussion followed prompted by MQ suggesting that there might be a need to explain further the rationale behind the C4SLs. Many discussion points could not be resolved until the revised Part 2a Statutory Guidance is issued and visible to all as there are believed to be some significant text changes between the version consulted upon, and the final version which will be issued. MC clarified that the C3-4 boundaries were likely to be higher than the current Generic Assessment Criteria (GAC) Values, however, the intention was that they would still be highly precautionary. The necessity of the Health Protection Agency being involved in the C4SL work was discussed as Local Authorities cannot oppose the view of the HPA on these issues and particularly Health Criteria Values.

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<sup>1</sup> <http://www.commonforum.eu/SoilDirectiveAlternative.asp>

Defra confirmed that the HPA and the EA would be closely involved. RB questioned why we work on minimum risk, where other sectors involving the Health and Safety Executive work to 1:100,000 death rate. SM remarked that that the discussions of the Forum illustrated the range of views that exist, and clear and unambiguous guidance was required to enable those implementing policy on the ground to be able to uniformly understand and implement Defra's intentions. AW concluded that the other intended work to establish an expert group to help Local Authorities take decisions under the new Category 1-4 framework, and to produce case studies describing the process to be disseminated to other Local Authorities, will be incredibly useful for helping transposition. MC clarified that positions on the expert group could not be paid by Defra.

TH stated industry views and buy-in to the C4SL work would be through the Steering Group composition. PC confirmed that a sub-group of the Land Forum would be established (with Defra's blessing) generally to oversee the bedding in of the new Statutory Guidance over the next few years, suggest areas for improvement if need be, and to help develop any required tools once the Statutory Guidance is in place. PS commented that EIC has already had one sub-group meeting, to discuss the contribution that EIC might make to develop such tools. PC recommended that the Land Forum sub-group linked with the EIC group, and their contact on this, Simon Firth. **Action: PC/CL:AIRE**

#### *Food and Environment Research Agency (FERA) Report*

SLB introduced an AGS discussion paper on the 2009 Defra Commissioned FERA Report and asked the Forum whether there was an appetite to send a message out to government on the relative importance of contaminated land, which had possibly been downgraded as a result of the FERA Report. A discussion took place and the prevailing view was that the report may have been used to highlight a widespread over-reaction to land contamination, possibly instigating the Statutory Guidance revision. SLB suggested that there might be usefully more work done on communicating the relative risks involved in adopting less precautionary guidance values as compared with other involuntary life risks and RB commented that the FERA report is a great starting point for the C4SL work.

#### *Open Mosaic Habitats Directive*

RB introduced the Directive, summarising as a Defra-led, biodiversity action plan habitat site type for previously developed land. The Directive as a biodiversity catch-all is looking at 50 sites around the country, in a thematic area regulated by Natural England. RB suggested this should be a main agenda item at a subsequent meeting and gave the name of Helen Pontier at Defra who is their contact person who is presently trying to tighten up the scope of the Directive. EH elaborated on a Land Trust site in Essex is looking to trial survey methodology for the Directive which considers biodiversity offsetting and translocation of species and stated the case for the Forum developing a Land Use Strategy. **Action: CL:AIRE** to contact Defra to register interest in the Directive and in particular the statutory duties to Local Authorities (e.g. with a neighbourhood plan) for possible future engagement.

#### 7) Meeting Summary

PC wrapped up the agenda points of the meeting and asked for attendees AOB.

#### 8) AOB

TH updated all of an upcoming revision of Environment Agency guidance regarding 'Significant Pollution', stating his intention to include the Forum in the project steer and possibly steering group.

PC reminded all that the next Land Forum meeting would be his last as Chair, having held the position for the intended year and asked the group to think of a suitable replacement to approach from within the group. It was suggested that to balance the scope of focus of the

Forum and move from the focus from the last year, that this perhaps should not be a Part 2a person as was the possibility of rotating between consultant, regulator and Government Agency chairs. **Action: CL:AIRE** to circulate the forthcoming process.

IH reminded that the Forum Logo should be used on all meeting minutes and agendas.

9) Date of the Next Meeting

To follow the intended release of the Part 2a Statutory Guidance, **Action CL:AIRE** will circulate meeting dates for 2 weeks from the middle of April. Intended agenda items at this point would include the following:

- Future funding round on the Capital Grants Fund / Funding Part 2a
- Open Habitats Directive
- True Costs of Brownfield Land
- NPPF
- Part 2a ongoing work.
- Better Regulation Update
- 1 Year Review, how are we doing?