A Standard Land Condition Record

Prepared by a Working Group originated under The Urban Task Force, November 2000

Contents

Disclaimer

The members of the Land Condition Record Working Group have developed these notes on the basis of their professional experience of dealing with brownfield sites. However, neither the members of the Working Group nor the organisations which they represent accept responsibility for the use or application of this material in particular circumstances, which remains the responsibility of those commissioning Land Condition Records and their professional advisers.

Foreword by The Rt Hon Hilary Armstrong MP, Minister for Local Government and the Regions

The Urban Task Force's 1999 report, Towards an Urban Renaissance, highlighted the need to get to grips with problems of contamination as part of the process of regenerating our urban areas and made a number of key recommendations for action.

Since then, the Government has made significant progress. The new statutory regime for identifying and dealing with risks from contaminated land came into force in England and Scotland earlier this year, fulfiling the Task Force's call for a national framework for risk management. As well as ensuring that we are providing appropriate protection for human health and the environment, this will create a better climate of certainty and confidence for investors in urban regeneration projects. And the Chancellor's Comprehensive Spending Review, announced in July, has given a massive boost by allocating an additional £150 million to the physical regeneration budgets of the Regional Development Agencies and English Partnerships for 2001/02.

This report, which I welcome warmly, takes forward another of the Task Force's key recommendations in this area, setting out a framework for the collection and sharing of information about land that is, or was once, contaminated. As their report noted, the potential barriers to the successful commercial redevelopment of this land are largely to do with perceptions of risk. Providing the kind of robust and reliable tool for information collection and exchange set out in this report will do much to overcome these barriers.

Of course, the Task Force also identified the need for drive, imagination and partnership as key components in delivering our urban renaissance. All of these have been demonstrated by the team that has put together this report and the Land Condition Record initiative. I want to thank all of the participants from industry and the professions for their inputs into what I am confident will be a major step forward for our shared goals of cleaning up the land.

Hilary Armstrong

Introduction to the Land Condition Record and this Report

I am very pleased to be introducing this new instrument to assist urban regeneration - not only as the Chair of the Working Group responsible for the work and a member of the Urban Task Force, but as someone with a strong personal interest in the successful regeneration of brownfield sites.

The standard form of 'Land Condition Record' or 'LCR' has been developed under the direction of experienced individuals from the property and environmental sectors. The members of the Working Group are shown overleaf, and I would like to take this opportunity to thank them all for their valuable time and their extremely constructive contributions.

The working group was set up to take forward the recommendations of the Urban Task Force and encourage consistent information handling. The standard form of 'Land Condition Record' or 'LCR' is a record of the physical and chemical nature of land contamination and the steps that have been taken to remediate that. It can also include other useful details, such as contractual information or information from a regulatory body.

Of course, completion of the LCR is voluntary on the part of the site owner. Information may not be available or relevant for some sites, particularly where sites do not require assessment or remediation. If wished, the LCR can still be completed for these sites, but using the fast track option.

Using a standard format to present data relevant to land contamination will make land transactions easier and more transparent. For a start, everyone involved in the transaction will be able to make better-informed decisions by knowing exactly what information is available. The technical data will be clearer, so assessing its implications will be easier. Presentation of the data in a technically robust and systematic way, with the quality assurance explicit, will improve confidence in the information. This will also assist negotiations with regulatory authorities, who can be more easily reassured about the scientific basis of the site investigation.

As part of the development of the standard form, the working group looked at the accreditation of individuals who would complete Land Condition Records and assess the information in them. We concluded that accreditation would be an essential component in ensuring the standard of work and improving market confidence in dealing with land contamination. I am very pleased that the professional institutions have risen very positively to this challenge, and are actively developing a scheme for launch in 2001.

The Land Condition Record will benefit the environment, business and urban regeneration. I wish you every success in using it to benefit your work.

Phil Kirby

Members of Land Condition Record Working Group

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Royal Institution of Chartered Surveyors

UK AEA

Background to the Development of a Land Condition Record

The Urban Task Force

In their review of Urban Renaissance, focussing on the regeneration of brownfield sites, the Urban Task Force (UTF) identified the benefits of greater consistency in handling information on land contamination. They recommended the introduction of standardised documentation describing the condition of the land. The UTF stated that the purpose of this would be:

'to ensure that during the sale, purchase and redevelopment of land, all parties had access to the same data sets and could therefore develop some general agreement between them on the levels of risk associated with that particular site and that particular use.' [1]

Working Group

A working group consisting of representatives of organisations with key interests in land management and regeneration was set up to take this forward. (Details of members are given at the front of this document.) The working group's objectives were essentially:

- to agree the content of a standard form for land condition information
- to consider how this standard form could be used.

The working group considered a number of issues relevant to information on land condition and, either individually or through their organisations, have provided comment on the contents, style and specification of a standard information record.

The working group agreed that presentation of information relevant to land contamination in a structured form would improve technical confidence in the information and assist in its evaluation. In turn this 'Land Condition Record' or LCR would assist in a number of specific circumstances related to sale and transfer of land, in development control and certain other regulatory contexts, and in general will promote greater confidence in the management of brownfield sites.

Their main recommendations were that the LCR:

- is to consist of available factual information or basic data relevant to land contamination
- must be completed within a quality assurance system, including the use of accredited specialists in contaminated land when these become available
- is to be voluntary and straightforward to complete and maintain
- should NOT include assessments of the implications of the information, for example whether the land is suitable for use or whether pollutant linkages are present.

The rest of this report describes the content, use and management of the standard land condition record (LCR) agreed by the working group.

A copy of the standard LCR form is included at the end of this report. The form is also being made available in an electronic format, as a 'template' for an MS Word document.

[1] 'Towards an Urban Renaissance'. Final report of the Urban Task Force. Chaired by Lord Rogers of Riverside, London 1999. ISBN 1-851121-65-X

Content of a Land Condition Record

What a land condition record covers
In general terms, the land condition record (LCR) contains or summarises information relevant to land contamination which would normally be obtained during a study or investigation of the land, or as part of remediation or redevelopment. It provides a complete picture of that information, although in some cases this is by means of a succinct summary of data.

The information is presented in a standard form within the following sections:
Executive summary
Document control information

Land referencing information
Current land uses and access
Surrounding land
Proximity to controlled waters
Land history
Desk study and investigation information
Remediation details

Annexes:
Regulatory authority information (e.g. discharge consents, planning conditions)
Contractual information relevant to the land
Record of studies and investigations
Record of reports on remediation
References
Copies of other key documents (e.g. land management records)

Different uses of the LCR may require only certain sections of the information to be completed or used. For example, land with no history of its use or that of surrounding land for industry or waste disposal would have very limited site investigation results and would not have remediation details.

The executive summary is intended to provide a clear overall picture of the information in text form. It could be used as a stand-alone document, simply providing references to the main LCR to support it. For example, a housebuilder may find that the executive summary is both suitable and sufficient for the transfer of information to individual homeowners.

Type of information to be included
The land condition record presents a factual picture.

Key features are that the LCR:
- contains factual information
- is completed on the basis of what information is available
- may summarise information in more detailed reports
- gives the provenance of any information it contains or to which it refers
- uses checklists, standard formats for information and other guidance on its completion as a component of quality assurance
- includes information of particular relevance to brownfield sites, and may therefore need to be supplemented by other reports.

What the land condition record does not include
The LCR does NOT include results or information based primarily on judgement or on particular circumstances. This means for example that assessments of the level of environmental risk are not included, nor are statements about the legal or commercial implications of the condition of the land.

In particular, the LCR does not cover:
- Assessment or evaluation of environmental risk
- Assessment of the potential liabilities
- Estimation of potential costs for particular actions
- Recommendations for action
- Recommendations relating to valuation or sale.

However, the LCR should provide a more reliable and structured basis to make these assessments and recommendations, which will become more consistent as a result. It can therefore form the start of a package that could include further records, for example:

- A Land Evaluation Record: this could include any or all of a risk assessment or evaluation, an assessment of liabilities or an estimation of costs. This would enable the landowner or potential purchaser to decide what action he may want to take about the land.
- A Land Management Record: this could include, for example, detailed recommendations for remediation, monitoring or controls on the use of the land. This enables decisions to be made on actions to be taken, or it could form part of the information provided for other purposes, for example as part of a planning application or in fulfilment of a planning condition.

These records reflect the concept of the Land Quality Statement used by members of the Royal Institution of Chartered Surveyors and may form part of such a statement.[2]

Other records or additional information may also be prepared to complement the LCR. For example these could include a building condition survey, or detailed geotechnical information covering wider engineering aspects of ground conditions.

[2] Contamination and its implications for Chartered Surveyors. A guidance note. RICS Business Services Ltd. Sept 1997, revised March 2000. ISBN 0 854 068 392

Use of a Land Condition Record

The use of a land condition record is voluntary. Landowners and others will use it where they see advantages in providing available information in a consistent and transparent way. The main advantages of using an LCR to present the information are that it will make clear what information is being transferred and promote confidence in that information.

There are a number of areas where the LCR could be used specifically. These can be broadly classified under:

- conveyancing
- regulatory contexts
- development and building control
- environmental regulation
- health and safety management
- insurance and confidence building.

These are discussed in more detail below.

Conveyancing
Conveyancing is one of the main activities for which information on the condition of land might be needed. There is a general trend for purchasers to ask for, and expect to get, more information.[3] There are benefits to the seller in ensuring that the purchaser has accurate information on the condition of the land: in particular because the seller may then be able to be excluded from liability later.

However, sellers of land must be careful about the information that they provide - in particular they must avoid misrepresentation of the condition of the land or property.[4] In addition if the buyer is given information that is difficult to interpret or ill informed it may jeopardise the sale.[5] It can also be time consuming and costly to assemble information during the conveyancing process.

LCRs are intended to improve the conveyancing process by creating a standard form that systematises the presentation of clear factual information. Available information can be summarised in this standard form at the time the land is to be sold. It can also be prepared and maintained in this form in advance.

Development and building control
Developers need to provide different levels of information on land conditions at a number of key points during the process of obtaining planning approval and successfully developing brownfield sites. A standard form of information should help developers in managing this information flow and focussing information collection.

The working group recommended there could be pro-active use of the information during the planning process. Developers and development control officers could use the LCR for example:

- as part of the outline application to indicate what is already known about the land
- to inform planning conditions relating to the collection of further information
- to demonstrate that specific planning conditions have been discharged.

The Building Regulations 1991, and in particular Approved Documents A and C, also place requirements on developers and builders in relation to land contamination. The LCR provides a structured framework for presenting the basic data obtained to fulfil these requirements.

Environmental regulation
Information on the condition of the land is relevant to a number of environmental regimes.[6] In particular the information may be relevant for the new regime under Part IIA of the Environmental Protection Act 1990 which deals with contaminated land.

Landowners and others could use the Land Condition Record at a number of stages under this regime:

- in responding to a request from a local authority for information about particular land
- in providing reassurance to a local authority that the land has been remediated in accordance with the statutory requirements
- to formalise transfer of information at the time of sale or transfer of the land to provide a basis for future use under, for example, the exclusion tests set out in the statutory guidance underpinning the new regime.[7]

However, the LCR is intended simply to be a tool for exchanging information which may be helpful in the regulatory process. Its use is not a statutory requirement.

[3] As a general example, the ‘Key to easier home-buying and selling’, a consultation paper by DETR (1999) recommended a ‘sellers information pack’
[4] Property Misdescriptions Act 1991
[5] e.g. in ‘A changing landscape: the valuation of contaminated land and property’. Tim Richards, the College of Estates Management 1995
[6] These are summarised in DETR Circular 2/2000 ‘Contaminated Land’
[7] Statutory guidance on ‘Liabilities: Exclusion and Apportionment’, in Chapter D, DETR circular 2/2000.

Health and safety obligations
Landowners have responsibilities towards others under the Health and Safety at Work etc Act, e.g. as set out in the Construction (Design and Management) Regulations. In particular they are required to provide information regarding potential hazards that may affect those using or working on the land or adjacent property. The LCR will assist landowners in discharging this obligation.

Insurance and confidence building
The Land Condition Record may be relevant to insurance for brownfield sites in two areas. The first is in the increasing market in site-specific insurance or warranties. As part of their consideration of the risks related to particular land, insurance companies require information about its condition. The Land Condition Record therefore aims to provide a starting point for the exchange of information between owners and the insurance companies.

The second application is in Professional Indemnity insurance. Clients who commission reports on land condition expect the organisations or individuals who provide information about land to have adequate insurance cover should they be negligent in their work. The availability and cost of this cover will depend partly on the assessment of the quality assurance procedures in place. The use of a standard form and specification of information, together with the introduction of accreditation of individuals for the process of completing a Land Condition Record, should improve quality.

The working group also agreed that improving the consistency and quality of information would improve confidence more generally in the market.

Who prepares the LCR?
The Land Condition Record is most likely to be prepared by or on behalf of a land owner, although a potential purchaser might commission an LCR if one does not exist or is not forthcoming from the owner.

The preparation of the LCR should comply with quality assurance procedures. At present, this is likely to be in three distinct stages in line with current practice in, for example, many environmental and engineering consultancies.

- Information entry - following the form and guidance on completion
- Verification - checking that information has been entered appropriately
- Approval - agreement for the issue of the LCR.

Information entry will require technical expertise in land management and contamination issues, experience in assessing land contamination information and an ability to identify and present data succinctly and reliably.

Verification is a critical part of the process. It provides the reassurance that the LCR is a reliable representation of the information about the site. In the short term, verification could be by someone with both the relevant background and the management responsibility for the production of LCRs. The verifier would be responsible for checking that the information entry has met the overall requirements, and that any necessary caveats or explanations of assumptions have been included. The quality of this stage will be particularly dependent on the choice of verifier within any organisation.

However the working group considered that it was essential that an accreditation process be established for those completing the LCR to improve the confidence in the quality and reliability of information even further. An accredited specialist would then be responsible for both the information entry and the verification stages. Key professional bodies, supported by members of the working group, are now working to develop an accreditation system for specialists in completion of LCRs.

The approval stage applies both when the LCR is completed under contract and when the LCR is provided to a third party. At this stage the liability for the accuracy of the information and the assignment or transfer of responsibilities for it, e.g. under contract, need to be made explicit. Whoever carries out the approval stage must therefore have sufficient authority to accept responsibility for the LCR on behalf of their organisation.

How is the quality of information controlled?
In addition to quality assurance in the management of the preparation of the LCR, it incorporates other types of quality control in compilation of the information, for example by:

- Detailed specification of the information type and content
- Use of structured checklists.

The LCR prompts entry of relevant information where available. It is also transparent about gaps in the underlying data, thus improving confidence in the information as a whole. The information includes references to the sources of data and the methods for its collection, as well as to any assumptions relevant to the collection or reporting of the data.

To ensure that the LCR focuses on appropriate information, the LCR allows in certain very specific circumstances for an entry stating that information is not relevant.

Maintaining the LCR
There are two basic options for the maintenance of the LCR:

- Keep it up to date whenever further information about the land is obtained, for example when there are changes to the circumstances of the land, or
- Check and update it when it is next to be provided to a third party, e.g. at the time of sale.

The choice between these is a matter for the organisation which will hold the LCRs. The relative administrative convenience of the two basic options mainly depends on the number of properties involved for a particular organisation. It is also related to the degree to which suitable resources are available to keep the LCR up to date on a continuous basis; and the likely timeframe for demand for the LCR.

Whichever process is followed, the audit trail of changes must be maintained. Detailed information entry must follow the data specifications and more general requirements for data quality. The overall LCR must continue to represent an accurate picture of the land condition.

Storing the LCR

The Urban Task Force envisaged the LCR as a dynamic document, travelling with the land. In practice, this happens when the LCR is provided during sale or transfer of the land, and its subsequent maintenance becomes primarily the responsibility of the new owner. The landowner may for example keep the LCR with the other information relevant to his ownership of the land. It will be appropriate for some organisations to keep the LCRs within a system compatible with the requirements for storage and retrieval of formal 'Health and Safety' files.

However, any of the former owners of the land may wish to retain copies of the LCR current at the time of their disposal of the land. Others with an interest in the land may also keep copies of the LCR. For example, relevant departments of local authorities will hold copies of any LCRs used as part of the planning or other regulatory process.

Systems for storage and cross-referral of this type of information are already in place within many organisations. No new formal system for storage of LCRs is proposed. Instead the LCR is provided with land referencing information and other document control information such as date of completion or amendment to assist in tagging a particular version of the LCR to particular land. This is particularly relevant where an LCR is prepared for land subsequently split into smaller units, and an audit trail to earlier LCRs and where they are held is needed.

There are wider considerations regarding the holding and use of information, particularly in relation to environmental information [8, 9, 10]. All those compiling, maintaining, storing or using the LCR will need to be aware of any particular constraints or requirements regarding the use of the LCR or its transmittal to a third party. The LCR will record the status of the document in terms of confidentiality and any caveats or restrictions on the information within it.

[8] Data Protection Act 1998
[9] Environmental Information Regulations 1992 (as amended)
[10] The Local Government (Access to Information) Act 1985

GENERAL NOTES

Provision of information:

The Land Condition Record (LCR) is to contain factual information which is:

- Clear and unambiguous
- Succinct
- Correct
- Referenced to the source data / report, and which
- Conveys all relevant features for the particular category.

Only information which is available and meets these criteria should be entered.

Using the form

Information is to be inserted in the boxes shown on the form. These give a general indication of the amount of information to be included, but the boxes can be extended within the electronic version of the form to give more space. Some of the sections include tables for which headings and some blank rows are shown. Clearly, the number of rows will depend on the number of items for which that information is available.

In some cases, sections or part sections of the form will need to be repeated and completed separately, eg for different parts of the property where the information is significantly different. These sections are indicated in the form.

Absence of information

Where information is not provided in the LCR, this MUST be indicated by one of the following as appropriate:

- Not known
  meaning no data available
- Not found
  meaning looked for, e.g. in study / investigation, but results negative
- Not examined
  meaning excluded from study / investigation
- Not relevant (for specified reason)
  meaning an activity or item of information not relevant for the particular land

Fast tracking

Where different uses of the LCR require only certain sections of the information to be completed, the section or sub-section can be omitted with a reference to the reason why the information is not relevant. Similarly, where information is not known for some complete sections or sub-sections, the section or sub-section can be omitted, recording that the information is not known. The form makes provision for this explanation to be entered at the beginning of sections where these are most likely to apply.

Referencing

Information in the report cannot be considered as valid if it does not have clear referencing to source reports / data. There are two main types of referencing:

- 'Report ref. no.': A reference number for a data source, which is the number the report or other data source is given in annex 3 or annex 4 of the LCR.
- 'Ref. in report': A detailed cross-reference to a data source. This must include the source reference number as above, and a page or section reference.

More generally, 'reference no.' is used for other circumstances where an item has been given a reference no., e.g. a project reference number or a report reference number issued by the organisation who prepared it.

Caveats and assumptions

A general caveat at the front of the LCR must record any general 'disclaimer' covering the liability for and use of the information in the form. A suggested form of words is provided with the standard form.

Within the form, all caveats and assumptions from the underlying reports should be explicitly reported in the relevant place in the LCR. In some cases the form specifically prompts this, but caveats or reporting of assumptions may be appropriate elsewhere.

Those completing the LCR may also need to add their own specific caveats or assumptions for particular information. For example underlying data may be obviously unreliable, ambiguous or clearly incorrect.

Any caveats or assumptions must be clearly explained.

ADDITIONAL ADVICE FOR COMPLETION OF PARTICULAR SECTIONS

Contents

The contents list represents the standard contents agreed by the working party. Where information is not known or is not relevant under any of the section or sub-section headings, and the section is therefore not completed, the contents page should show this.

SECTION A1 - EXECUTIVE SUMMARY

This section aims to provide a text summary of the key features of the Land Condition Record. It should cover all the sections of the LCR to provide an overall picture of the relevant information.

It should be suitable for use as the sole document describing the property, for example on sale of a property to a private individual or homeowner.

If the Executive Summary is used on its own, a copy of the associated section A2, 'document control information', and where appropriate, earlier versions of section A2, should accompany it. These should show clearly who has prepared section A1 and who has authorised its release, as well as the record of completion, verification and authorisation of the main LCR. It may also be appropriate to include some of the annexes with this summary.

Explanation of terms:

Related LCR reference numbers
Reference number of, e.g. LCR prepared for a property subsequently divided into smaller areas of land for which individual LCRs have been prepared.

Parent site
Where the related LCR is for land which includes the land for which the LCR is being prepared - for example a large development site now split into smaller properties.

Daughter site
Where the related LCR is for land within the larger site for which the LCR Is being prepared - for example one plot within a large development site for which a separate LCR has been prepared.

Current land reference numbers
Reference number used by organisation commissioning LCR.

Project reference numbers
Reference number used by organisation completing LCR.

Key features
A systematic summary of KEY POINTS of each of sections A3 - A9.

Gaps in information
Reference to any sections or sub-sections not completed, or other relevant gaps. E.g. 'The land condition record does not include information on…'

Caveats on information
Reservations by the provider of the LCR about the information within the summary or within the full LCR. E.g. 'The information in this form has been completed without access to Report XYZ…'

SECTION A2 - DOCUMENT MANAGEMENT INFORMATION

This section aims to provide a record of the chain of control of completion of the LCR, and identify who has taken responsibility for its issue.

Where new versions have been prepared, the A2 form for the earlier versions should be kept with the LCR.

Where the commissioning organisation or subsequent holder of the LCR issues the LCR to a third party, a new A2 sheet should be prepared showing a change to the 'approval for issue' section. The earlier A2 sheet showing the details of approval for issue by the compiling organisation to the commissioning organisation should be kept with the LCR.

Explanation of terms:

Information entry
Details of anyone who has completed sections of the form.

Verification
Completed by the person who has checked that the LCR has been completed with relevant, factual, accurate and referenced information.

Approval for issue
Completed by whoever has taken responsibility on behalf of their organisation for issue of the LCR, for example to the organisation commissioning the LCR.

SECTION A3 - LAND REFERENCING INFORMATION

This section aims to provide sufficient information to identify the land to which the LCR applies and give other information which might be helpful in relation to its location.

Where appropriate, the information should be given in recognised and nationally acceptable data formats.

Explanation of terms:

Current reference number
Reference number used by organisation commissioning the LCR.

Project reference number
Reference number used by the organisation completing the LCR.

SECTION A4 - CURRENT LAND USE AND ACCESS

This section aims to provide information primarily relevant to identifying who has access to the property. It also provides information to assist in identification of the 'receptors' (in the context of environmental risk assessment) which are or are not present on the land (other than controlled waters which are given in section A6).

Explanation of terms:

Future changes to use of the land
E.g. planning applications (with current status), structure plan designation.

SECTION A5 - SURROUNDING LAND

This section aims to provide information to assist in identification of 'receptors' (other than controlled waters) which are or are not present on surrounding land.

Explanation of terms:

Possible future changes to use
E.g. planning applications (with current status), structure plan designation.

SECTION A6 - PROXIMITY TO CONTROLLED WATERS

This section aims to provide an overall indication of the proximity of the land to controlled waters (rivers, aquifers etc) and the relevant use classifications, quality objectives or standards of these waters as appropriate. It does not include detailed hydrogeological information established from intrusive investigation (covered in section A8.5).

Explanation of terms:

Surface water
E.g. 'a stream runs through the northwest corner of the property'; or 'the River X is 1km to the south of the property.'

SECTION A7 - HISTORY

This section aims to summarise the history of the land to give a continuous picture from its earliest known use to present day, with additional information which may be relevant to the current condition of the land.

SECTION A8 - DESK STUDY AND INVESTIGATION INFORMATION

This section aims to summarise the information in more detailed reports of studies and investigations. Further information on these reports, including the underlying basis of the information used in section A8, should be given in Annex A3.

Explanation of terms:
Visual appearance
A summary of the general appearance of the land surface and identifying any debris, distinctive colours of soil, amount of soil exposed etc.

This section may refer to more detail in other sections of the LCR, e.g. in sections A8.2 & A8.3.

Additional information
(1) Any relevant information given in the underlying reports which may set the results in context.

E.g. 'The sampling for xz gas took place on a day when the concentrations may have been abnormally high.'

(2) any relevant features not included in the table.

SECTION A9 - MOST RECENT REMEDIATION

This section aims to provide a summary of remediation already carried out on the land or current risk management arrangements.

Separate entries should be provided for different zones or sub-areas, where different activities have been carried out in those different zones.

Explanation of terms:
Dealing with
This should indicate the contaminants or, where relevant, pollutant linkages being addressed.

Technical remediation objectives
These should be identified for each contaminant or pollutant linkage: e.g. 'to remove tar well'; 'to reduce concentration of xy substance to 100mg/kg'; or 'to provide a barrier between zx substance and groundwater.'