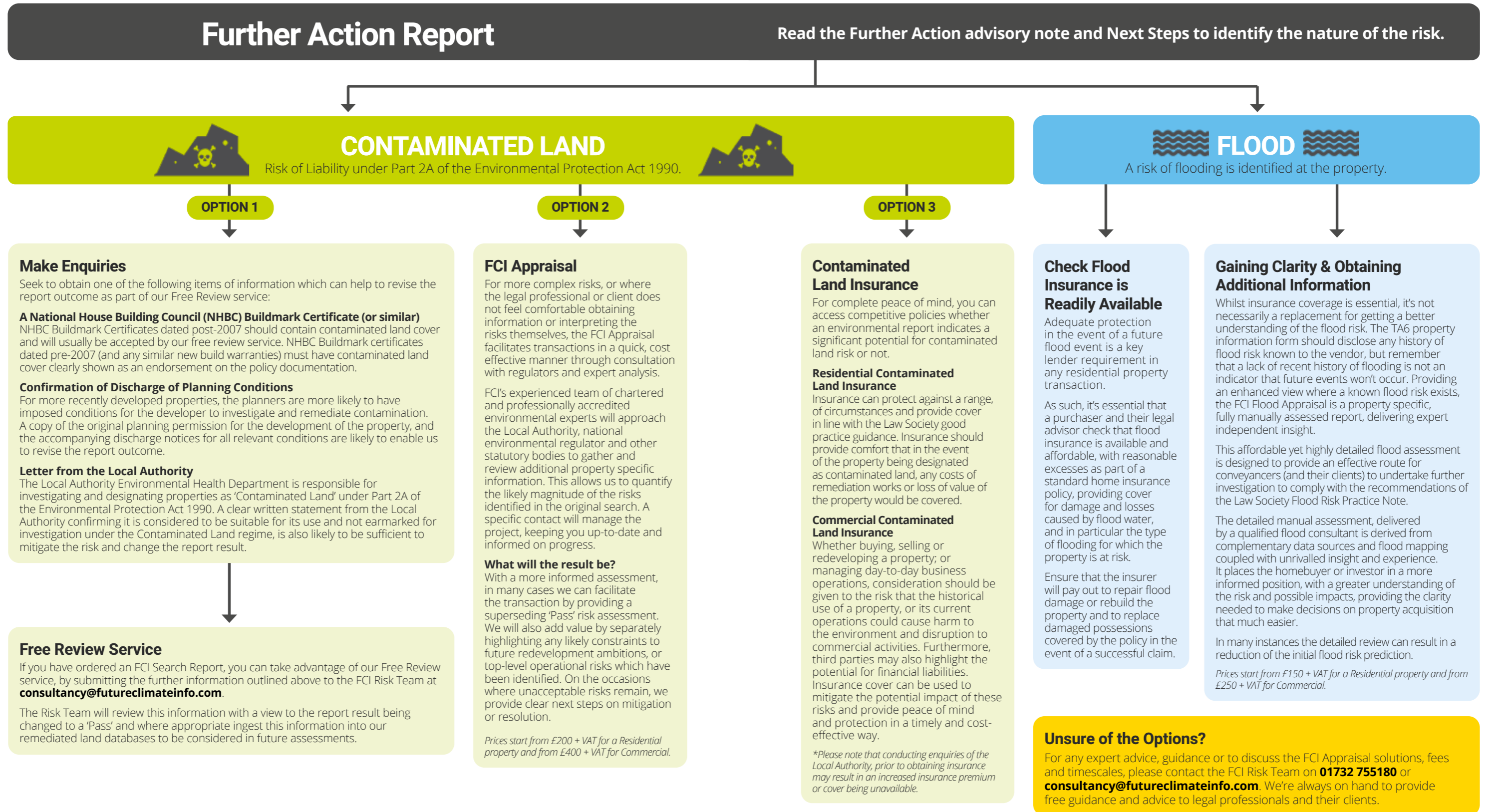


How to Move Past Further Action Results in Environmental Searches

When carrying out environmental due diligence, a Further Action result from an environmental search can be frustrating. But all is not lost. This result does not necessarily mean that the transaction should not go ahead, but that additional research is required in order to ascertain the extent of the risk or simply that some quick, straightforward checks should be carried out to ensure the purchaser is protected.

Below are just a few examples of the options available to navigate beyond a flood or contaminated land Further Action result, and close a transaction having fulfilled the necessary due diligence.



Further Action Report

Read the Further Action advisory note and Next Steps to identify the nature of the risk.

CONTAMINATED LAND

Risk of Liability under Part 2A of the Environmental Protection Act 1990.

OPTION 1

OPTION 2

OPTION 3

Make Enquiries

Seek to obtain one of the following items of information which can help to revise the report outcome as part of our Free Review service:

A National House Building Council (NHBC) Buildmark Certificate (or similar)
NHBC Buildmark Certificates dated post-2007 should contain contaminated land cover and will usually be accepted by our free review service. NHBC Buildmark certificates dated pre-2007 (and any similar new build warranties) must have contaminated land cover clearly shown as an endorsement on the policy documentation.

Confirmation of Discharge of Planning Conditions
For more recently developed properties, the planners are more likely to have imposed conditions for the developer to investigate and remediate contamination. A copy of the original planning permission for the development of the property, and the accompanying discharge notices for all relevant conditions are likely to enable us to revise the report outcome.

Letter from the Local Authority
The Local Authority Environmental Health Department is responsible for investigating and designating properties as 'Contaminated Land' under Part 2A of the Environmental Protection Act 1990. A clear written statement from the Local Authority confirming it is considered to be suitable for its use and not earmarked for investigation under the Contaminated Land regime, is also likely to be sufficient to mitigate the risk and change the report result.

Free Review Service

If you have ordered an FCI Search Report, you can take advantage of our Free Review service, by submitting the further information outlined above to the FCI Risk Team at consultancy@futureclimateinfo.com.

The Risk Team will review this information with a view to the report result being changed to a 'Pass' and where appropriate ingest this information into our remediated land databases to be considered in future assessments.

FCI Appraisal

For more complex risks, or where the legal professional or client does not feel comfortable obtaining information or interpreting the risks themselves, the FCI Appraisal facilitates transactions in a quick, cost effective manner through consultation with regulators and expert analysis.

FCI's experienced team of chartered and professionally accredited environmental experts will approach the Local Authority, national environmental regulator and other statutory bodies to gather and review additional property specific information. This allows us to quantify the likely magnitude of the risks identified in the original search. A specific contact will manage the project, keeping you up-to-date and informed on progress.

What will the result be?
With a more informed assessment, in many cases we can facilitate the transaction by providing a superseding 'Pass' risk assessment. We will also add value by separately highlighting any likely constraints to future redevelopment ambitions, or top-level operational risks which have been identified. On the occasions where unacceptable risks remain, we provide clear next steps on mitigation or resolution.

Prices start from £200 + VAT for a Residential property and from £400 + VAT for Commercial.

Contaminated Land Insurance

For complete peace of mind, you can access competitive policies whether an environmental report indicates a significant potential for contaminated land risk or not.

Residential Contaminated Land Insurance

Insurance can protect against a range, of circumstances and provide cover in line with the Law Society good practice guidance. Insurance should provide comfort that in the event of the property being designated as contaminated land, any costs of remediation works or loss of value of the property would be covered.

Commercial Contaminated Land Insurance

Whether buying, selling or redeveloping a property; or managing day-to-day business operations, consideration should be given to the risk that the historical use of a property, or its current operations could cause harm to the environment and disruption to commercial activities. Furthermore, third parties may also highlight the potential for financial liabilities. Insurance cover can be used to mitigate the potential impact of these risks and provide peace of mind and protection in a timely and cost-effective way.

**Please note that conducting enquiries of the Local Authority, prior to obtaining insurance may result in an increased insurance premium or cover being unavailable.*

FLOOD

A risk of flooding is identified at the property.

Check Flood Insurance is Readily Available

Adequate protection in the event of a future flood event is a key lender requirement in any residential property transaction.

As such, it's essential that a purchaser and their legal advisor check that flood insurance is available and affordable, with reasonable excesses as part of a standard home insurance policy, providing cover for damage and losses caused by flood water, and in particular the type of flooding for which the property is at risk.

Ensure that the insurer will pay out to repair flood damage or rebuild the property and to replace damaged possessions covered by the policy in the event of a successful claim.

Gaining Clarity & Obtaining Additional Information

Whilst insurance coverage is essential, it's not necessarily a replacement for getting a better understanding of the flood risk. The TA6 property information form should disclose any history of flood risk known to the vendor, but remember that a lack of recent history of flooding is not an indicator that future events won't occur. Providing an enhanced view where a known flood risk exists, the FCI Flood Appraisal is a property specific, fully manually assessed report, delivering expert independent insight.

This affordable yet highly detailed flood assessment is designed to provide an effective route for conveyancers (and their clients) to undertake further investigation to comply with the recommendations of the Law Society Flood Risk Practice Note.

The detailed manual assessment, delivered by a qualified flood consultant is derived from complementary data sources and flood mapping coupled with unrivalled insight and experience. It places the homebuyer or investor in a more informed position, with a greater understanding of the risk and possible impacts, providing the clarity needed to make decisions on property acquisition that much easier.

In many instances the detailed review can result in a reduction of the initial flood risk prediction.

Prices start from £150 + VAT for a Residential property and from £250 + VAT for Commercial.

Unsure of the Options?

For any expert advice, guidance or to discuss the FCI Appraisal solutions, fees and timescales, please contact the FCI Risk Team on **01732 755180** or consultancy@futureclimateinfo.com. We're always on hand to provide free guidance and advice to legal professionals and their clients.