

Climate risks in Conveyancing

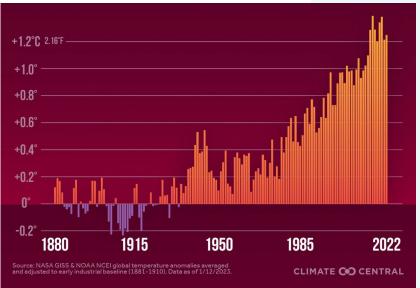
Ensuring guidance compliance

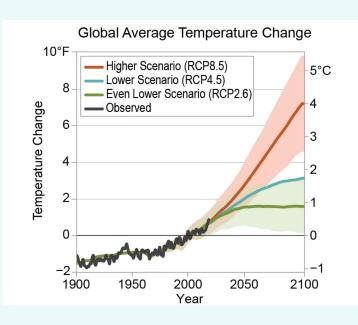
Nick Treble MSc BSc PIEMA

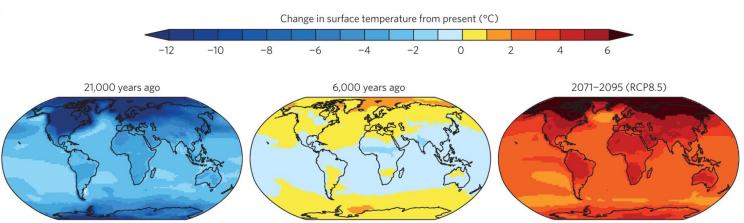


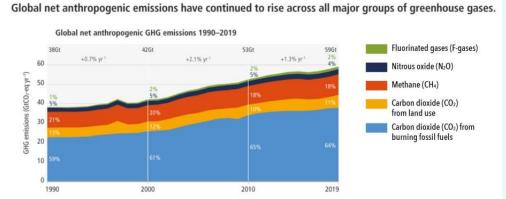
How scientists have come to the climate conclusion









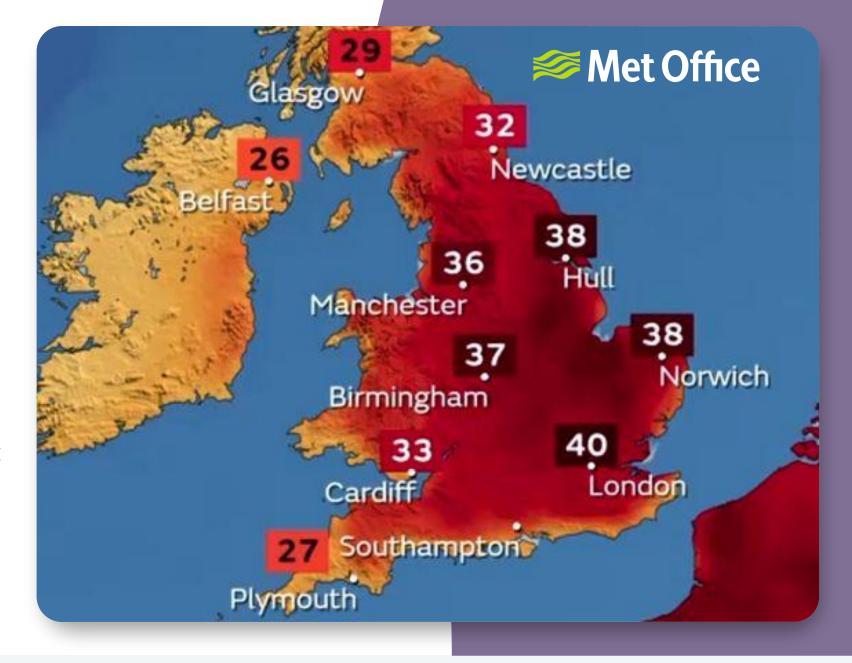




Climate change is here

In 2022, we saw:

- + Record breaking temperatures
- Multiple day extreme heat warnings
- + Highest alert for fire severity
- + UK wide hose pipe bans
- A drought declared
- Yellow weather warning for strong winds and intense rainfall
- + Flash floods







Flooding

In 5 years

2 Million



By 2050

3 Million



Subsidence

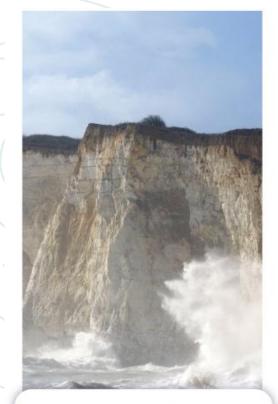
In 5 years

449,000



By 2050

2 Million



Coastal Erosion

In 5 years

10,800

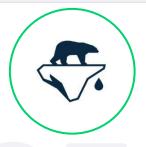


By 2050

42,000



Cause and effect



Rising sea levels

Coastal erosion; flooded
homes & businesses;
increased insurance
premiums; loss of property;
rentability & mortgageability;
loss of life



Extreme heat

Drought; food & water scarcity; reliance on imports; heat stress on buildings; infrastructure damage; wildfires; increased subsidence; cost to insurance industry; serious threat to life, health & wellbeing



Increased rainfall

Flooded homes & businesses; insurance availability & affordability; soil erosion; crop damage; reliance on food imports; displacement; damage; human life; business interruption



Cause and effect



Rising sea levels



East Yorkshire, 2020



Extreme heat



Wildfires California, 2021



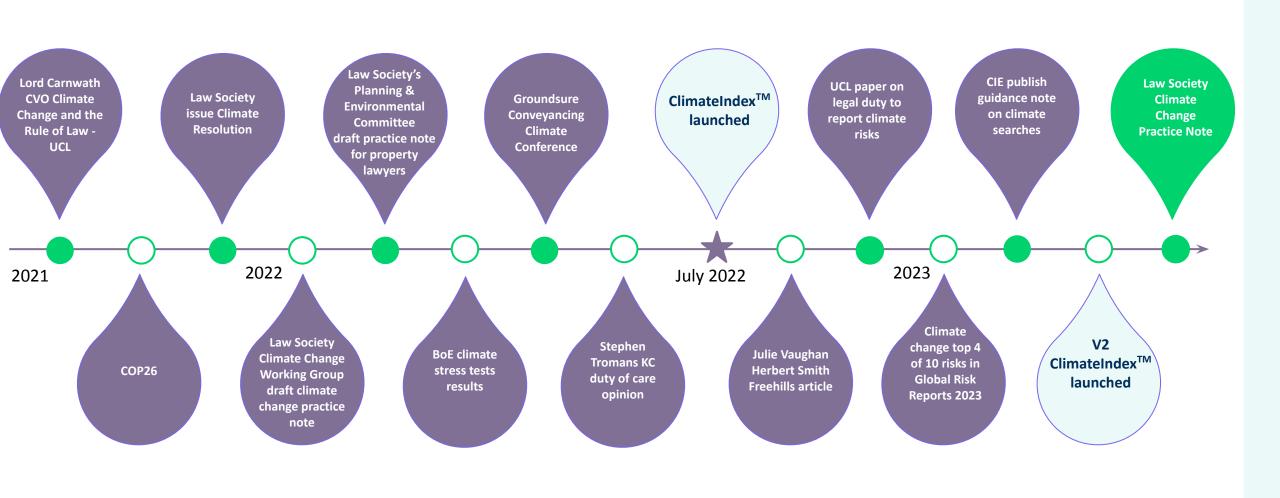
Increased rainfall



Pakistan floods, 2022



The lead up to the guidance





The Law Society Guidance on the Impact of Climate Change on Solicitors

The Law Society published their guidance on 19th April 2023 and it forms three parts:

Part A - focuses on business governance and ethics in both how law firms operate in the context of climate change and their contribution towards achieving Net Zero;

Part B - focuses on the manner in which law firms should engage with clients specifically on climate risks, including how to mitigate risk exposure through available resources;

Part C - focuses on examples of climate related legal risks for specific practice areas, and suggested questions solicitors should be asking.

Download our summary here





Part B - Section 3: Providing climate change risk advice to clients

The key duties and climate advice to clients:

1. Duty of care

"Solicitors have a general legal duty to exercise reasonable care and skill. The standard is that of a reasonably competent practitioner (Per Oliver J in Midland Bank Trust Co Ltd v Hett Stubbs and Kemp [1979] Ch 384 at 403.)"

2. Duty to warn

"A solicitor has a duty to warn a client about potential risks by pointing out hazards of a kind which should be obvious to the solicitor but which the client may not appreciate (County Personnel (Employment Agency) v Alan R Pulver & Co [1987] 1 W.L.R. 916)."

3. Duty to disclose

"Solicitors have a duty to disclose to their client, when acting on a matter, all information material to that matter of which they have actual knowledge (Rule 6.4 of the SRA Code of Conduct for Solicitors)."

4. Duty to uphold service and competence levels

"Both the law and SRA codes provide that solicitors must ensure that they provide a proper standard of service to their clients."



Part B - Section 4: The impact of climate change on the solicitor

Client relationship in practice:

4.2 How to approach a new instruction

"When presented with a new instruction, solicitors should consider whether climate legal risks may be material to their advice"

4.4 The scope of the retainer

"A solicitor and client, may, by agreement, limit the terms of the retainer which may limit the solicitors duties. In certain circumstances it may be possible to exclude climate issues specifically from your retainer, e.g. where you are not competent to advise or where the client is directed to more expert technical advice." "As a matter of good practice, you should confirm any such agreement in writing. If you do not do so, a court may not accept that any such restriction was agreed." See SRA v Hayhurst.

4.5 Impact on professional indemnity insurance

"To obtain PII cover, in the future solicitors may need to demonstrate how they are equipping themselves to be able to advise on climate legal risks and identify when they are not competent to advise."

4.7 Educational materials and resources

"The guidance has references to the need for solicitors to source appropriate education resources to equip solicitors to be able to provide competent advice on relevant climate legal risks and also to be aware of other relevant professionals whose skills may be needed."



Part C - categorising climate risks, checklists, examples and key questions

Climate change risks can be split into three categories:

- + **Physical risk** environmental impacts that could affect the value of the asset or investment such as the site or property being acquired;
- + **Transition risk** the impacts of policy or legislation that moves economic assets away from high carbon, energy intensive activity to Net Zero emissions;
- + **Liability risk** a customer or company seeking damage losses (including a loss of value) suffered as the result of the physical or transitional risk related to climate change.



Part C - categorising climate risks, checklists, examples and key questions

How the guidance relates to specific legal practice areas - Real Estate / Asset-based transactions:

"You should advise on physical climate risks and how they impact real estate ownership and use, such as flooding, fire, inaccessibility, uninsurability and availability of capital investment."

- 1. Have you reviewed the physical and transition risks associated with the transaction? For example, is the property on a floodplain or in an area at high risk of damage owing to climate change?
- Will these risks affect the:
 - (i) finance available to purchase the asset;
 - (ii) refinancing in the future where refinancing is needed;
 - (iii) insurance or;
 - (iv) value and marketability of the assets now or in the future?
- 3. Will these risks mean that the use of the property is restricted? For example, climate risk may prevent further development of a property on a flood plain or may mean that onerous planning conditions are imposed to make the development floodproof.



How to discharge your duty

Obtain a Groundsure report which includes ClimateIndexTM

- Provides a property specific A F rating
- Time horizons based on Bank of England/PRA 5 and 30 years
- Projects changes in **forward looking physical risks** due to a warmer, wetter climate from flooding, natural ground stability and coastal erosion
- + Physical and transitional risk guidance, specific to peril
- Included as standard in core Groundsure environmental reports, at no extra cost





How to discharge your duty

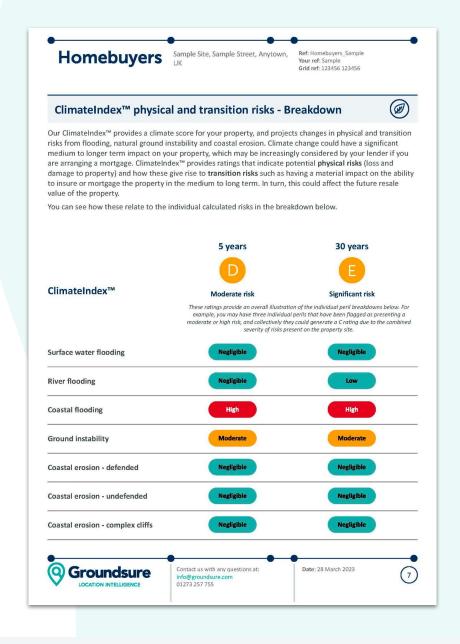
2. Identify the level of risk to the property & summarise

- + **Properties rated as A or B** no further action required;
- Properties rated as C some minor issues identified. Follow recommendations in report if any are present;
- Properties rated as D, E or F you should be aware there are physical risks
 affecting the property either now or in the future which could significantly impact
 upon the availability of insurance or a mortgage which in turn can impact upon
 the properties resale value. Follow the recommendations presented in the report.

Download our clauses and further guidance:



https://www.groundsure.com/climateindex-client-care-clauses/





How to discharge your duty

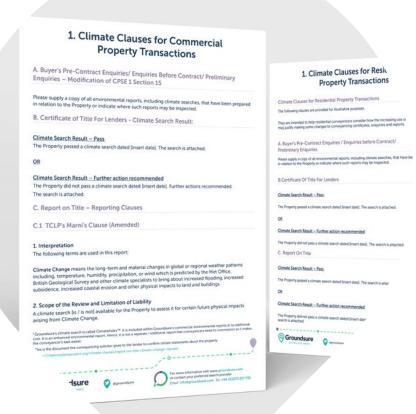
Include search results in Report on Title using Groundsure's Climate Clauses

- A. Buyers Pre-contract Enquiries/Enquiries Before Contract/Preliminary Enquiries;
- B. Certificate of Title for Lenders Climate Search Result;
- C. Report on Title Reporting Clauses:
 - C.1 TCLP's Marni's Clause (Amended);
 - C.2 Groundsure Reporting Clause.

Download our clauses and further guidance:



https://www.groundsure.com/climateindex-client-care-clauses/

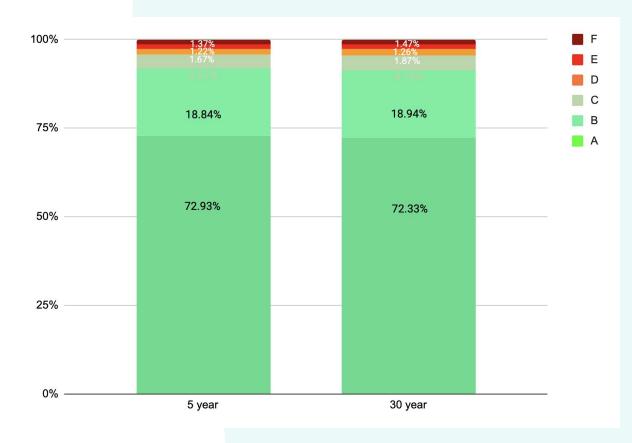




ClimateIndex scores

ClimateIndex[™] score distribution March - June 2023 (residential reports)

Band	Description
Α	No risks of concern predicted
В	Minor risks e.g. low level surface water flooding
С	Minor to moderate risks e.g. river flooding above property threshold
D	Moderate risks e.g. above threshold flood events & increase in subsidence
E	Significant risks e.g. multiple flood risks above property threshold
F	Severe risks e.g. coastal erosion - loss of property





Reporting clauses:

Certificate of Title for Lenders:

The Property **did not pass** a climate search dated 3rd May 2023. The search is attached.

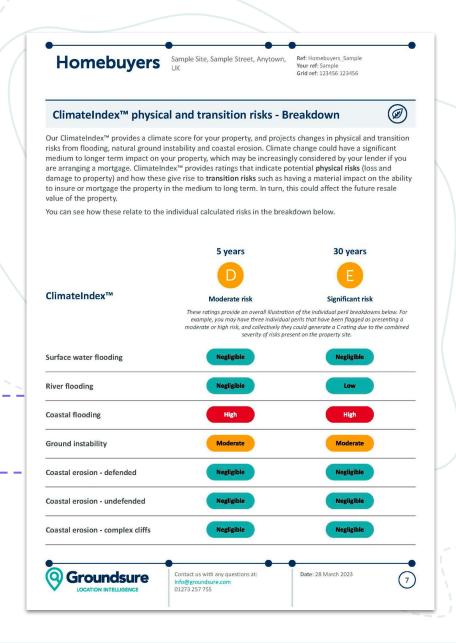
The impact of climate change is likely to exacerbate the risks to this property. This is due to a **high coastal flood** risk, a **moderate ground instability** risk and a **low river flooding risk** in 30 years time.

Report on Title - shorter version:

The Property **did not pass** a climate search dated 3rd May 2023. The search is attached.

The property has **moderate** (**D**) **r**isk in 5 years time due to **coastal flooding** and **ground instability,** and this increases to a **significant** (**E**) **r**isk in 30 years time due to the addition of a **low river flooding** risk. This means you may experience issues obtaining insurance and mortgage lending in the coming years.

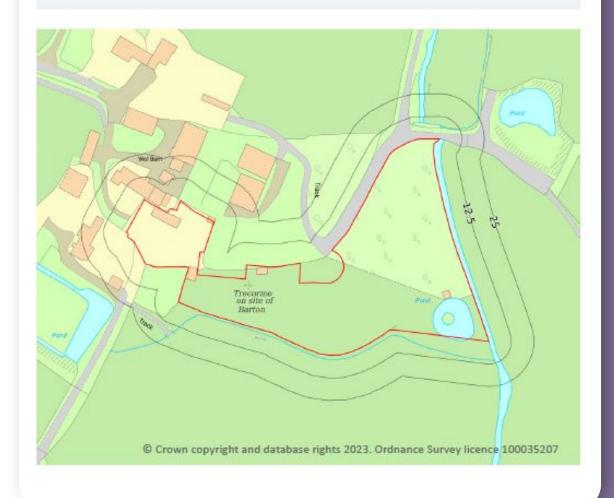
Insert recommendations.



Example - Risk of Flooding in Cornwall

- Property is shown to be at Moderate risk from surface water flooding in 5 & 30 years time
- Also a Low risk for river flooding across the same time frames
- + Overall 'D' ClimateIndex rating for the property
- + Further action recommended. Insert Clause 3
- Include next steps advice as outlined in the page following the breakdown table.

Site Plan





Summarise possible next steps:

In 30 years time your property has a ClimateIndex[™] rating of **E**: There are physical risks that could affect the property either now or in the future. The availability of insurance or a mortgage in the coming years could be significantly affected. In turn, this may impact upon the property's resale value. Projections may show that the property could also become uninhabitable in a worse case scenario.

Flooding

Climate change is likely to increase the risk of flooding on this property over time. To best protect the property, and your investment, against this risk we recommend the following:

- Investigate the insurance on offer for the property to ensure any implications on premiums are fully understood before completion, and take into consideration premiums could be impacted in the future if the risk increases due to climate change;
- Check to see if the property is eligible for the <u>Flood Re</u> scheme. Please note this scheme is due to end in 2039 and owners may be required to invest in improving flood resiliency of the property in order to obtain affordable insurance. Your insurance provider may be able to provider further information;
- Sign up for flood warnings https://www.gov.uk/sign-up-for-flood-warnings
- Investigate the various forms of flood <u>resistance</u> and <u>resilience</u> measures that will help protect your property in the event of a flood.

Ground stability

Over time, this property is susceptible to an increased risk of ground stability due to the impact of climate change. To protect your property against this risk, we recommend the following next steps:

- If no survey has been undertaken, consider commissioning a building survey carried out by a suitably qualified person which considers ground instability, and how the conditions may become more extreme (more extreme wet and dry periods) with climate change;
- If the property has clay drainage pipes, consideration should be given to replacing these with a modern equivalent;
- Seek specialist advice before any of the following: starting major building work; removing any mature trees that pre-date the construction of the property or planting any new trees near the property. The safe planting distance is dependent on the tree species, foundation type and soil composition. A guide can be found here;
- Ensure foundations of new constructions or extensions are designed with shrink-swell clay soil conditions in mind, particularly how these could become more extreme with climate change;
- Ensure the property has adequate insurance covering subsidence. Premiums may be higher where subsidence has occurred, or the property is at an increased risk. We recommend speaking to an insurance broker for specialist advice.



Inclusion of transitional risk advice

ClimateIndex[™] has been designed to be dynamic and adaptable to market requirements and industry demand

As a result, we have now launched specific advice on transition risks

- Included in Groundsure Avista and Homebuyers
- EPC information and advice to landlords
- Additional flood guidance
 - + Flood resilience & resistance measures
 - Potential associated costs
 - Flood Re





Flood protection

Now includes more detailed information on Flood Re & flood protection measures

- + Flood Re is a government-backed insurance scheme in the UK
- + Aims to make flood insurance more affordable for properties at high risk of flooding

Installing flood resilience measures can increase the likelihood of affordable insurance even after the Flood Re scheme ends

This, in turn, can positively impact the availability of mortgages for your property.

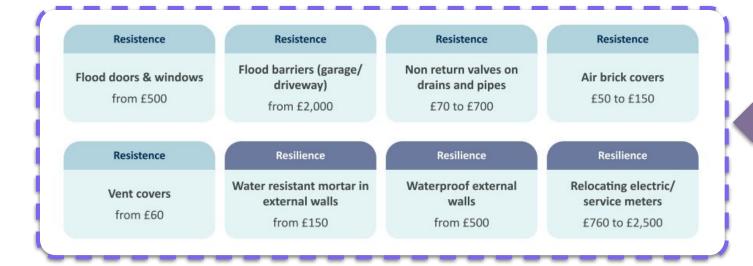


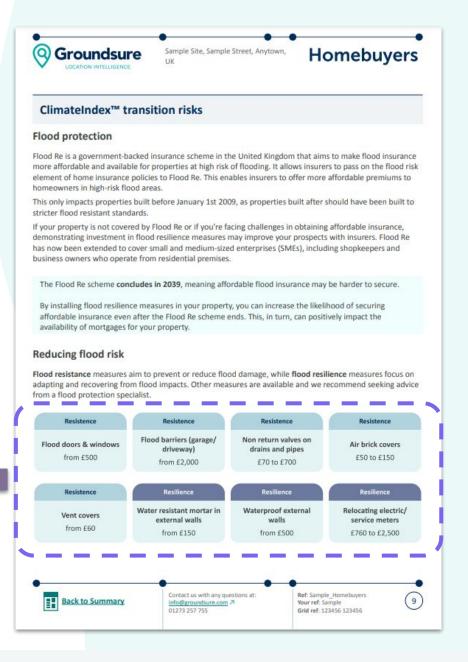


Reducing flood risk

Flood resistance measures aim to prevent or reduce flood damage, while flood resilience measures focus on adapting and recovering from flood impacts

- Outlined in a clear table
- Variety of possible protection measures
- Potential associated costs



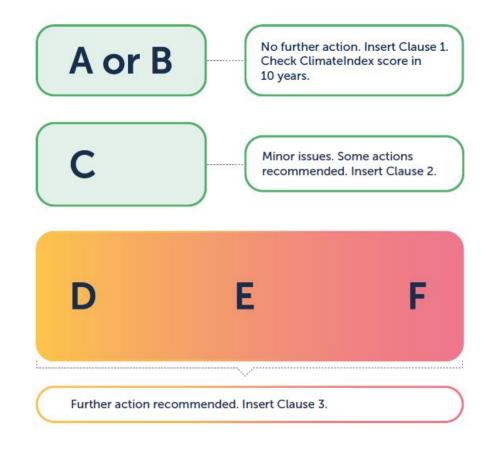




Climate change tool kit

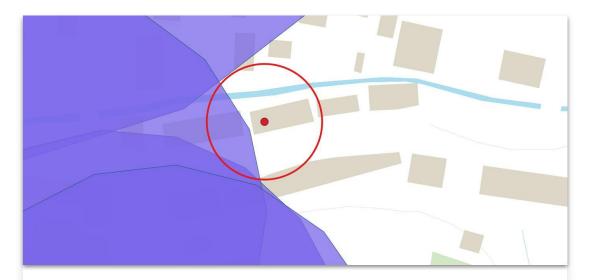
- + Client care letters
- Climate clauses: Groundsure & Chancery Lane project
- + Groundsure support & dedicated climate change contact climate@groundsure.com
- + Or <u>info@groundsure.com</u> for other environmental matters
- + Training/CPD's on request

What is the property's ClimateIndex™ rating over the next 30 years?



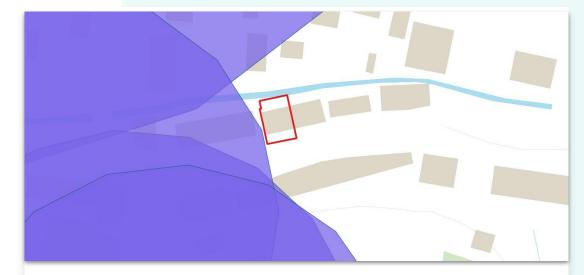


Point vs Polygon



Point Searches - no site boundary provided

- + Alerts will be based on a **point** with a **25m buffer**
- Certain risks will have an additional search distance applied e.g. HS2
- + Alerts will return **any risk** found within the **25m buffer**. This can include adjacent properties



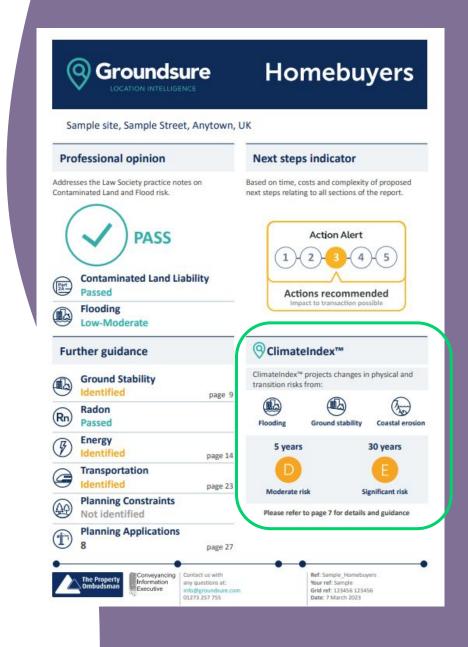
Polygon Searches - site boundary provided

- Alerts will be based on that boundary only
- + Certain risks will have an additional search distance applied e.g. HS2. *These will be measured from the site boundary*
- + A more accurate way of identifying risk in relation to the property and whether a report is actually required



Navigating the report

- + Overall ClimateIndex rating shown on the front page
- + Explanation of risks considered within the model
- Hyperlinked page number to get further information
- + Outline of the rating for 5 & 30 years
- Multiple risks considered within model to produce outcome
- Guidance for identified perils
- Rating for each peril identified
- Explanation of the highest overall, combined property risk rating





Navigating the report

- Overall ClimateIndex rating shown on the front page
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iample site, Sample Street Anvtown. UK Ref: Sample_Homebuyers Your ref: Sample Grid ref: 123456 123456

ClimateIndex™ physical and transition risks - Breakdown



Our ClimateIndex[™] provides a climate score for your property, and projects changes in physical and transition risks from flooding (undefended), natural ground instability and coastal erosion. Climate change could have a significant medium to longer term impact on your property, which may be increasingly considered by your lender if you are arranging a mortgage. ClimateIndex[™] provides ratings that indicate potential physical risks (loss and damage to property) and how these give rise to transition risks such as having a material impact on the ability to insure or mortgage the property in the medium to long term. In turn, this could affect the future resale value of the property.

You can see how these relate to the individual calculated risks in the breakdown below. The letter ratings should be used in conjunction with the change variance over the two time periods. Where an increase has been recorded we recommend following the additional advice below.



Navigating the report

- Overall ClimateIndex rating shown on the front page
- Explanation of risks considered within the model
- Hyperlinked page number to get further information
- Outline of the rating for 5 & 30 years
- Multiple risks considered within model to produce outcome
- Guidance for identified perils
- Rating for each peril identified
- Explanation of the highest overall, combined property risk rating



Sample site, Sample Street,

Ref: Sample Homebuyers Your ref: Sample Grid ref: 123456 123456

In 30 years time your property has a ClimateIndex™ rating of E: There are physical risks that could affect the property either now or in the future. The availability of insurance or a mortgage in the coming years could be significantly affected. In turn, this may impact upon the property's resale value. Projections may show that the property could also become uninhabitable in a worse case scenario.

Climate change is likely to increase the risk of flooding on this property over time. To best protect the property, and your investment, against this risk we recommend the following:

- Investigate the insurance on offer for the property to ensure any implications on premiums are fully understood before completion, and take into consideration that premiums could be impacted in the future if the risk increases due to climate change;
- . Check to see if the property is eligible for the Flood Re scheme. Please note this scheme is due to end in 2039 and owners may be required to invest in improving flood resiliency of the property in order to obtain affordable insurance. Your insurance provider may be able to provider further information;
- · Sign up for flood warnings provided by the government;
- Look into the various forms of flood resistance and resilience measures that will help protect your property in the event of a flood.

Over time, this property is susceptible to an increased risk of ground stability due to the impact of climate change. To protect your property against this risk, we recommend the following next steps:

- · If no survey has been undertaken, consider commissioning a building survey carried out by a suitably qualified person which looks at ground instability, and how the conditions may become more extreme (more extreme wet and dry periods) with climate change;
- If the property has clay drainage pipes, consider replacing these with a modern equivalent;
- Seek specialist advice before any of the following: starting major building work; removing any mature trees that pre-date the construction of the property; or planting any new trees near the property. The safe planting distance is dependent on the tree species, foundation type and soil composition. A guide can be found here;
- Ensure foundations of new constructions or extensions are designed with shrink-swell clay soil conditions in mind, particularly how these could become more extreme with climate change;
- Ensure the property has adequate insurance covering subsidence. Premiums may be higher where subsidence has occurred, or the property is at an increased risk. We recommend speaking to an insurance broker for specialist advice.

See page 30 for further details



Contact us with any questions at 01273 257 755

Date: 7 March 2023



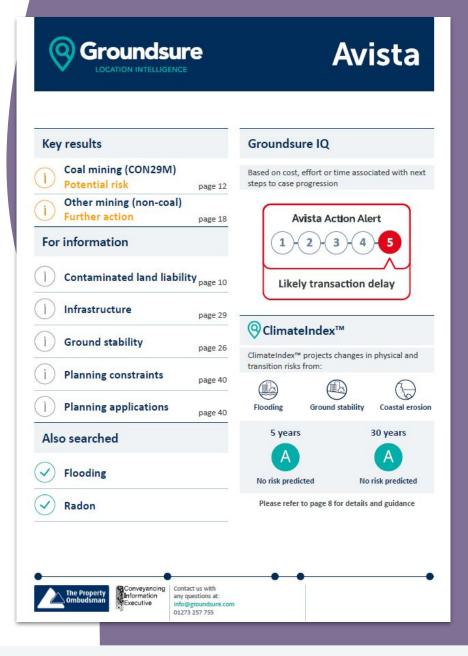


Avista

The most comprehensive environmental search report available - now with **ClimateIndex** TM

Key Features & Benefits:

- + 10 environmental and geological searches in one
- + 10 years of planning applications
- + ClimateIndex™
- + Environmental experts & in-house qualified consultants
- + Supports compliance with 2 Law Society practice notes
- + Clear, accurate risk identification and next steps
- Uses our National Brownfield Risk Model and National Mining And Stability Risk Model





Groundsure Screening

Key features:

- Satisfies practice notes and Guidance on Contaminated Land, Ground Stability and Flood Risk
- ClimateIndex[™] Forward climate scenario modelling for flood, subsidence & coastal erosion risks
- Contaminated land assessment utilising the most comprehensive data available including our National Brownfield Risk Model (NBRM)
- Flood risk assessment covering river, coastal, surface water and groundwater
- Natural and non-natural ground stability assessment including natural ground subsidence, cavities and non-coal mining





Coastal erosion

30 years

Ref: Sample_Screening Your ref: Sample Grid ref: 123456 123456

Groundsure Review

Key features:

- ClimateIndex[™] Forward climate scenario modelling for flood, subsidence & coastal erosion risks
- Detailed consultants commentary and site history write up
- Operational environmental risk assessment
- Law Society compliant
- Name of consultant listed in the report
- Most comprehensive commercial report covering risks including:
 - **Ground stability**
 - Radon
 - Energy
 - **Transportation**
 - Planning constraints
 - Optional planning applications



Review

Sample site, Sample Street, Anytown, UK

Professional opinion



Contaminated Land

Low-Moderate: **Acceptable Risk** page 7

Flooding

QClimateIndex™

ClimateIndex[™] projects changes in physical and transition risks from:









30 years



Please refer to page 5 for details and guidance Consultant's guidance and recommendations inside.

page 9

Operational Environmental Risk Low-Moderate page 7

Flooding

Negligible

Ground Stability

Not identified



Radon Passed



Energy Identified

Transportation Not identified



Planning Constraints

Identified

Planning Applications Not selected

Ground stability



Contaminated land liability

Banking security

Is it likely that the property will represent acceptable banking security from a contaminated land perspective?

Statutory or 3rd party action

Is there a risk of statutory (e.g. Part 2A EPA 1990) or third party action being taken against the site?

Unlikely

Environmental liability

Is there a risk that the property value may be impacted due to contaminated land liability issues? Unlikely





Ref: Sample_Review Your ref: Sample Grid ref: 123456 123456 Date: 7 March 2023



Supporting you and your clients through the whole transaction

- Pre and post sale consultancy support;
- Assist all parties in transaction;
- Highest quality environmental data / historic mapping;
- Provide environmental risk advice to top 3 lenders;
- Additional data included as standard: mining & ground stability, coal, Cheshire salt, energy, transportation, planning applications;
- Work with industry experts and professional associations

- Ensuring you are compliance ready
- Climate specific content via a microsite including clauses, FAQ, blogs and training materials
- On hand climate experts climate@groundsure.com
- Agile product development in response to new guidance
- 20+ years experience
- £10m PII

Get in contact for one to one training on how to implement the guidance in practice





Thank you and questions

