

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Portfolio Holder for Public Protection and Executive Director - Strategy and Governance (Monitoring Officer)

To: Policy Development Panel Tuesday, 25 June 2019

(Author: Richard Boole, Environmental Protection Manager)

Subject Review of Contaminated Land Strategy

Purpose: To consider the revised Contaminated Land Strategy as part of the 5-yearly cycle of review, ahead of consultation and approval by the Cabinet Portfolio Holder for Public Protection.

Recommendation:

- 1) That the Panel consider the report and commend it for consultation and approval by the Cabinet Portfolio Holder for Public Protection.

1.0 BACKGROUND

- 1.1 Local authorities have a number of duties in respect of contaminated land. These duties were originally imposed by Part 2A, Environmental Protection Act 1990 (Part 2A), as inserted by Section 57, Environment Act 1995. The duties were implemented by the Contaminated Land (England) Regulations 2000 as amended, supported by Part 2A Contaminated Land Statutory Guidance.
- 1.2 The UK policy on contaminated land is to prevent future pollution (dealt with separately through Groundwater Regulations and Pollution Prevention and Control (PPC) Legislation and to restore past damage / contamination in a structured way. This element of the policy is delivered through a combination of the planning regime and the duties under Part 2A.
- 1.3 The UK policy aims to reduce unacceptable risks to human health and the environment, to enable the re-use of brownfield sites and to protect green-field sites. This is based on a risk based approach that emphasises voluntary, positive and controlled action and recognises that the best means of paying for remediation is often through redevelopment.
- 1.4 The Part 2A contaminated land regime can be summarised as:
 - A regime for the control of specific threats to health or the environment from existing land contamination in a co-ordinated way;
 - It provides a legal definition of contaminated land;
 - It provides for a proactive and strategic approach by local authorities;
 - It is based on the principles of “suitable for use” and “polluter pays”;

- It specifically lays out who pays, when action should be taken, and how enforcement action is organised.

- 1.5 The strategic approach by local authorities referred to above, is dealt with by a requirement for all local authorities to produce and publish a Contaminated Land Strategy. The strategy details how contaminated land is to be identified and the inspection strategy to be employed (rational, ordered and efficient). The aim of the strategy is to direct the work to assess potentially contaminated sites, ensure that the most pressing and serious problems are located first, reflect local circumstances and where appropriate formally determine land as contaminated land. Local Authorities are also required to identify who is liable, secure remediation where necessary, or to act in default and recover costs and to maintain a public register of contaminated land.
- 1.6 The Strategy was last reviewed in 2014, at which time a number of changes had been made to reflect changes in legislation and statutory guidance (The Contaminated Land (England)(Amendment) Regulations 2012), as well as changes in the planning framework which included the introduction of the national planning policy framework at that time and removal of Defra (Department for the Environment, Food and Rural Affairs) grant funding for certain aspects (Pt 2A remediation work).
- 1.7 This was quite a substantial review of the Strategy document, which also included modernising it to make it easier to read and make it slightly less technical in content, making it more accessible to a wider audience.
- 1.8 This current draft revision doesn't materially change the strategic approach already set out for contaminated land and there have been no significant changes in legislation or statutory guidance that we have to have regard to at this time. The opportunity has been taken to remove some duplication of information, move some technical information from the main body of the Strategy and move it to the appendices and make reference to the new South Lincolnshire Local Plan.

2.0 OPTIONS

- 2.1 Do nothing and retain the current published Contaminated Land Strategy dated March 2005, contrary to the new regulatory requirements and statutory guidance
- 2.2 Publish a revised Contaminated Land Strategy as required by new regulatory requirements, having regard to the most current statutory guidance.

3.0 REASONS FOR RECOMMENDATION(S)

- 3.1 To ensure legal compliance and to ensure that the Contaminated Land Strategy is fit for purpose and reflects the most recent statutory guidance, changing financial resources and local circumstances.

4.0 EXPECTED BENEFITS

- 4.1 A revised published Contaminated Land Strategy will ensure that the Council is legally compliant and will give updated direction to the process of assessing, remediating and redeveloping potentially contaminated sites to all relevant stakeholders.

5.0 IMPLICATIONS

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

5.1 Carbon Footprint / Environmental Issues

5.1.1 This report has no Carbon Footprint implications, however the Contaminated Land Strategy has wide reaching implications in connection with the assessment of potentially contaminated sites and the remediation of sites confirmed to be contaminated, with the aim of removing risks to the environment and human health.

5.2 Constitutional & Legal

5.2.1 The Council has a statutory duty to produce a Contaminated Land Strategy and the most recent regulatory changes require that this be reviewed and updated as necessary.

5.3 Corporate Priorities

5.3.1 The contaminated land strategy supports critical activity CA15, specifically the key action:-
- Deliver our duty to ensure land is suitable for its current or intended use, including having a current contaminated land strategy.

5.4 Financial

5.4.1 This report does not in itself give rise to any financial implications, however the Contaminated Land Strategy does reference the financial implications connected with the enforcement role the Council has under Part 2A, Environmental Protection Act 1990.

5.5 Health & Wellbeing

5.5.1 The Contaminated Land Strategy impacts on health, as the contaminated land regime is designed to ensure that land is suitable for its current or intended use in terms of the protection of human health (and the environment).

5.6 Risk Management

5.6.1 The management of contaminated land is intrinsically linked to planning policy through the identification of land for redevelopment and the day to day planning process, through the routine management of planning applications and the assessment and remediation of contaminated land by developers. Were the Council not to publish a revised Contaminated Land Strategy, the Council may be open to risk through legal challenge or judicial review if decisions are made based upon an outdated strategic approach.

5.7 Stakeholders / Constitution / Timescales

5.7.1 Consideration of this report through Policy Development Panel forms part of the consultation process with Elected Members. The Portfolio Holder for Public Protection is also being consulted. It is intended that further consultation will take place with other relevant stakeholders before the draft strategy is submitted for approval. This will include neighbouring local authority specialist contaminated land officers, the Environment Agency, Natural England and the Fire Service (as the lead for petroleum storage). Additionally, in undertaking the revision much research has been done including consulting a large number

of other up to date local authority strategies, information held and provided by the Environment Agency, Defra and professional bodies such as EMAQ+ and the CIEH and YALPAG. In doing so we've had regard to current best practice to ensure that the strategy is consistent with those in use elsewhere and to ensure that it isn't disproportionate nor that it imposes any unreasonable demands upon land owners and developers.

(EMAQ+ is a national professional body providing technical guidance to practitioners and regulators in the areas of Emissions Monitoring, Air Quality Management, and Contaminated Land).

6.0 WARDS/COMMUNITIES AFFECTED

6.1 All Wards within South Holland.

7.0 ACRONYMS

7.1 DEFRA – Department for the Environment, Food and Rural Affairs

7.2 CIEH – Chartered Institute for Environmental Health

7.3 YALPAG – Yorkshire and Lincolnshire Pollution Advisory Group

Background papers:-	None
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Key Decision: N – although the report affects all wards, it's not considered that any significant impact arises from it.

Exempt Decision: N

This report refers to a Mandatory Service

Appendices attached to this report:

Appendix A Draft revised Contaminated Land Strategy