

## **BRECKLAND COUNCIL**

### **Report of Paul Claussen, Executive Member Planning, Health and Housing Portfolio to the:**

**CABINET: 22 February 2011**

**COUNCIL: 10 March 2011**

**(Author: Andrew Grimley, Principal Environmental Health Officer)**

## **CONTAMINATED LAND INSPECTION STRATEGY**

### **1. Purpose of Report**

- 1.1 The Council has a duty to inspect its district for potentially contaminated land and the existing council's Contaminated Land Strategy needs to be reviewed. A revised Contaminated Land Inspection Strategy has been produced by a task and finish group composed of members and officers under the direction of the Overview and Scrutiny commission.

### **2. Recommendations**

It is recommended that the Cabinet :

- 2.1 Accept the revised strategy as detailed in the attached draft revised Contaminated Land Inspection Strategy subject to external consultation comments and recommend to full council its final adoption as a council working policy.

**Note:** In preparing this report, due regard has been had to equality of opportunity, human rights, prevention of crime and disorder, environmental and risk management considerations as appropriate. Relevant officers have been consulted in relation to any legal, financial or human resources implications and comments received are reflected in the report.

### **3. Information, Issues and Options**

#### **3.1 Background**

- 3.1.1 A report was put to Overview and Scrutiny Commission in March 2010 identifying that the original strategy published in 2003 needed updating in the light of an internal auditor report. Work has also been completed to identify the priority of potentially contaminated land sites within the district in a very basic form.
- 3.1.2 Detailed assessments including a desk study, on-site testing and assessment of the ground conditions now needed to be carried out and a decision is requested on how the Council wants to implement these assessments.
- 3.1.3 Detailed assessments of some of the high risk sites had already commenced as specific circumstances dictated a need and because funding became available through the Defra (Department of Environment Food and Rural Affairs) Capital Grant Programme.
- 3.1.4 Overview and Scrutiny Commission agreed to form a task and finish group to review and update the original document to include the council's new priorities for investigating contaminated land and the procedures to be used in prioritising work activities. The draft document has reported back to Overview and Scrutiny Commission and members who referred the document to cabinet for adoption.

#### **3.2 Issues**

- 3.2.1 A revised Contaminated Land Inspection Strategy has now been produced by a task and finish group composed of members and officers under the direction of the Overview and Scrutiny Commission.

3.2.2 The draft document as Attached in Appendix A recommends that the Council's objectives and priorities are set as follows:

- The strategy to be consistent with the minimum requirements of the statutory guidance
- Identify high risk sites to undergo a detailed risk assessment regardless of ownership.
- Determine whether any sites are 'contaminated land'.
- Ensure that remediation is carried out by the appropriate person.
- Review redevelopment of sites as consultee to the planning department and make recommendations to assist in ensuring that any land contamination is dealt with at the time of new development to ensure it is suitable for its intended use.
- Minimise the Council's risk of obtaining new liabilities associated with the acquisition of further land.

3.2.3 Under the proposals within the strategy each site that is considered to have a potential for land contamination will undergo a six stage process. This is in order to decide if the site should be determined as contaminated land under Part IIA of the Environmental Protection Act 1990.

The six stages which are identified in the strategy are:

- Initially identify potentially contaminated sites
- Establish the potential hazard of sites
- Carry out a preliminary desk study to establish the potential risk for each site working in turn through the high, medium and low hazard sites
- Undertake a detailed desk study to further quantify this risk
- Carry out intrusive investigation.
- Determine whether the site is contaminated land and needs remediation

3.2.5 The document is a draft and will need to be put out to consultation with other external organisations which may include the Environment Agency, English Heritage, the internal drainage boards and English Nature before the document is presented to full council for finalised adoption

3.2.6 Since the review of the strategy document by the task and finish group, the Overview and Scrutiny commission and Cabinet in 2010, the central government draft settlement issued to Councils on 13<sup>th</sup> December 2010 has identified the need for additional savings to be made by the council from 1 April 2011. Posts that were vacant within the organisation were considered and a number deleted from the establishment. A full time permanent Contaminated Land Officer was deleted.

3.2.7 There is a clear merit in adopting a new contaminated land strategy and for the Council's approach to carrying out its duties in respect of contaminated land to adhere to the new risk based framework contained within the strategy (the aims, objectives and methods of assessing sites). The reduced staffing resources however available means that in delivering the strategy the resources will be targeted in the following way:

- Investigating and remediating Brownfield sites through the planning process,
- Complete our investigations into the three current sites with the funding from Defra
- No further contaminated land investigations under the strategy will be carried out unless it is clear that further grant aid or additional resources are available from Defra or through the council.

### 3.3 Options

3.3.1 Adopt the revised strategy with any amendments members wish to make and include any appropriate changes as a result of the external consultation as identified in item 3.2.5 but noting the resource implications as identified in 3.2.6 above.

3.3.2 Reject the revised strategy

### 3.4 Reasons for Recommendation

3.4.1 The council's current strategy is out of date and in accordance with auditor requirements needs reviewing and updating. Members are recommended to adopt the revised strategy subject to any amendments suggested by external consultees as appropriate.

## 4. Risk and Financial Implications

### 4.1 Risk

4.1.1 The council has statutory duties under regulation which requires the Local Authority to identify contaminated land and ensure that it is remediated by the appropriate person to a level that makes the site fit for its current use.

4.1.2 The auditors in a review of the work of the contaminated land team last year concluded that the Council's Contaminated Land Strategy written in 2003 should be subject to review and update.

4.1.3 An updated strategy would provide councillors and officers with a tool by which to properly assess the risk posed by specific sites and identify their priority for investigation, this includes both privately and council owned land.

4.1.3 The council could be open to challenge if it has not reviewed or taken action over the contaminated land sites within its area and has no justification for this. The process identified within the strategy allows the council to prioritise sites through the risk they pose and how they will be assessed.

4.1.4 The full implementation of the strategy is limited by the resources available to the contaminated land team, however the adoption and consultation of the revised document can take place.

### 4.2 Financial

4.2.1 Under advice from colleagues in the finance team a Proforma B is not attached as the adoption of the strategy in itself does not introduce any financial implications.

4.2.2 The strategy sets down procedures for the investigation of contaminated land sites which ultimately will lead to the production of reports, giving options for further actions available to members should they wish to carry out remediation works in default of a legal notice or after a determination has been made. Such reports would be accompanied by Proforma B information requesting the drawing down of funding or the authorisation of the use of government grant aid as discussed below.

4.2.3 There is no duty for the council to carry out remediation work on privately owned land and the investigation procedure for in-depth site investigations is currently funded by grants provided by central government (Defra).

- 4.2.4 The Defra grant system only pays out the funding once the works have been completed. Therefore, whilst we will receive initial confirmation that an application for funding has been successful and a grant will be paid, the council will need to cover the costs of works during the process.
- 4.2.5 Since the publication of the government spending review restrictions have been placed on the amounts of funding available from central government departments including Defra. It is unclear if a new round of grants for contaminated land investigations / remediation work will be available in the future.
- 4.2.6 The council as a land owner does have responsibilities towards its own land stock particularly where these pieces of land have had a past contaminative use i.e. former landfill sites. The implications of individually owned council sites will be reported to members through reports produced by the asset management team with guidance from the contaminated land officers as appropriate. Subject to the past use and age of such sites it may be possible to apply for grants to finance some of the cost of investigations and any other work.
- 4.2.7 At the Cabinet in November 2010 the financial implications to Breckland Council in dealing with land it owns or may have responsibility towards was requested and details of these are held within Appendix B of this report. This appendix also includes details of current Defra funded investigations being pursued by the team.

## 5. Legal Implications

- 5.1 The council has a duty to inspect its district for contaminated land and the guidance produced to help councils in this process, Defra circular 01/2006, states that this should be carried by councils adopting a written and published strategy. The legal team will advise of any additional liabilities as the review and external consultation process takes place.

## 6. Other Implications

- a) Equalities; There are no Equalities implications
- b) Section 17, Crime & Disorder Act 1998: There are no Crime & Disorder implications
- c) Section 40, Natural Environment & Rural Communities Act 2006: None
- d) Human Resources: None
- e) Human Rights: None
- f) Other: [e.g. Children's Act 2004] None

## 7. Alignment to Council Priorities

7.1

**Building safer and stronger communities** – contributing to improving the health of people who live in Breckland

**Environment** – protect and improve Breckland's natural environment and resources

**Prosperous Communities** – develop flourishing rural communities and securing decent standard of housing across the district.

## 8. Ward/Community Affected

- 8.1 All

Background Papers

Contaminated Land Strategy Review - Overview and Scrutiny Committee – 18<sup>th</sup> March 2010

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Key Decision Status (Executive Decisions only):

*Key Decision - to approve a new plan*

Appendices attached to this report:

Appendix A

*Draft Inspection strategy*

Appendix B – see paragraph 4.2.7 above

## Appendix B

High Hazard Site Data	Number	Issue	Comments
Sites currently under investigation using funding from Defra Grant	3	The contaminated land officer team are currently investigating three contaminated land sites, two privately owned and one former land fill site using funds from Defra. This work includes a former gasworks site in Swaffham with residential properties built on part of the site. As an example of the costs involved, the intrusive investigation in this site has cost £35,000 funded by Defra grant.	These investigations will produce reports allowing for the council to determine if the sites are contaminated under the regulations. Legal notices would be the next part of the process requiring the owners or the polluter to clean up the site as appropriate. The council would not be liable for any further costs unless the notices are not complied with and the council believes it is in the public benefit to take legal action or carry out works in default.
Private / Council owned land where the past use may have implications for remediation by Breckland Council. (this applies to privately owned land where either Breckland or its predecessors may have been involved with waste disposals on this land)	3	Preliminary assessment of these sites has discovered that the information supplied to the Council by the Environment Agency was incorrect. As such the potential hazard posed by the sites has been reassessed	The potential Hazard/Risk rating for these sites have been downgraded to such an extent that in two of the cases there is not considered to be any need for further assessment, and the last should be assessed further at a later stage, but is not of immediate concern
Private land with no obvious direct Council responsibility but with action being taken to investigate them	5	These sites are potentially being dealt with through the planning process	Subject to the investigations and sites being satisfactorily remediated as necessary through the development process these sites would potentially be removed or downgraded within the categorisation list. Officers would be involved with reviewing the investigation and remediation work proposals through the planning process.
Private land with no obvious direct Council responsibility or action being taken	9	If the Council adopts the new inspection strategy the Council would only be liable to undertake investigations	Following the investigations, if a risk was found to exist the onus to remediate the

to actively investigate them		sufficient to ascertain if a potential risk to human health exists. Where preliminary assessment identify the need for further investigation details of the site in question would be reported to members and how they wish to proceed. The intention would be to apply to Defra for grant aid to cover the investigation costs.	site would rest with the original polluter (if they are known) or the land owner. The council would not be liable for any further costs unless the notices are not complied with and the council believes it is in the public benefit to take legal action or carry out works in default.
Total Number of sites in Councils High Potential Hazard Category	20		