

BRECKLAND COUNCIL

Report of: Executive Member for Public Protection

To: Cabinet – 15th March 2016

(Author: Richard Boole, Environmental Protection Manager)

Subject: Revised Contaminated Land Strategy

Purpose: To seek approval the revised draft Contaminated Land Strategy (4th edition), as considered by Overview and Scrutiny Committee on 28 January 2016.

Recommendation(s):

1) That the revised Contaminated Land Strategy (4th Edition) be approved by Cabinet.

- 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 greenfield 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 Due to national changes in policy around development, revised legislation and guidance has been published which isn't reflected in the current version of the strategy. The Contaminated Land (England) (Amendment) Regulations 2012 require that local authorities review their contaminated land strategies and in doing so they are required to have regard to revised statutory guidance.
- 1.7 A revised Contaminated Land Strategy has been produced, to take account of the changes in 1.6 above. The main changes to the document have been made to:-
- reflect changes in the regulatory framework that deals with contaminated land;
 - reflect changes in the planning framework - i.e. the removal of the old planning policy guidance and introduction of the national planning policy framework;
 - reflect changes in the statutory guidance for dealing with contaminated land; and
 - reflect the reality of available resources to deal with contaminated land in the current financial climate affecting local government, including removal of Defra (Department for the Environment, Food and Rural Affairs) grant funding for certain aspects (Pt 2A remediation work).

2.0 **OPTIONS**

- 2.1 Do nothing and retain the current published Contaminated Land Strategy dated June 2011, contrary to the 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 going forwards 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 enable this land to be re-developed. A clear and up to date strategy will allow all parties with an interest in the re-development of brownfield sites or land adjacent, to understand the Council's approach to potential contaminated land issues and the expectations regarding remediation for the proposed use

5.0 **IMPLICATIONS**

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 human health and the environment.

5.2 **Constitution & 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 **Contracts**

5.3.1 This report does not give rise to any contract implications.

5.4 **Corporate Priorities**

5.4.1 The proposals support 3 of the Council's priorities. These being:

- Supporting Breckland to develop and thrive
- Providing the right service at the right time and in the right way
- To enable stronger, more independent communities.

5.5 **Crime and Disorder**

5.5.1 This report does not give rise to any crime and disorder implications.

5.6 **Equality and Diversity / Human Rights**

5.6.1 This report does not give rise to any equality and diversity or human rights implications.

5.7 **Financial**

5.7.1 This report does not in itself give rise to any financial implications; however the Contaminated Land Strategy does detail processes that need to be purchased commercially by duty holders to meet the Council's requirements. These requirements do however reflect legislative requirements and national policy / guidance and thus are broadly consistent with local authorities across the Country. It is in the Council's best interest to have sites remediated by land-owners / developers through the planning process under the 'polluter pays' principle and to get such sites back into productive use.

5.9 **Risk Management**

5.9.1 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 legal challenge or judicial review if decisions are made based upon an outdated strategic approach.

5.10 **Safeguarding**

5.10.1 This report does not give rise to any safeguarding implications.

5.11 **Staffing**

5.11.1 This report does not give rise to any staffing implications.

5.12 **Stakeholders / Consultation / Timescales**

5.12.1 The reporting of this draft strategy to Members forms, to a certain extent, part of the consultation process. The draft strategy was considered by Overview and Scrutiny Committee on 28 January 2016. 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 (Department for the Environment, Food and Rural Affairs) and professional bodies such as EMAQ+* and the CIEH (Chartered Institute of Environmental Health). 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 and communities within Breckland.

7.0 **ACRONYMS**

7.1 All acronyms are clarified within the report body.

Background papers: - None

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Key Decision: No

Exempt Decision: No

This report refers to a Mandatory Service

Appendices attached to this report:

Appendix A – Revised Contaminated Land Strategy.