

Cabinet

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Contaminated Land Inspection Strategy

Report of Corporate Management Team

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Purpose of the Report

- 1 To consider, in the light of the formal public consultation, the revised draft Contaminated Land Inspection Strategy (CLIS) (Appendix 2), dated September 2015.

Background

- 2 In April 2000, a statutory regime for the regulation of contaminated land was implemented, under Part 2A of the Environmental Protection Act 1990. It imposes a statutory duty on each local authority to strategically inspect the land within its area for the purpose of identifying land which could be defined as 'contaminated land'.
- 3 Contaminated Land for the purposes of Part 2A of the Environmental Protection Act 1990 is defined as 'any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land that: -
 - a. Significant harm is being caused or there is a significant possibility of such harm being caused; or
 - b. Significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused.
- 4 Under the provisions of Part 2A local authorities are also obliged to produce a written CLIS outlining how they intend to fulfil their inspection duties.
- 5 Contaminated land new statutory guidance, issued by Defra and released in April 2012, brought several changes to the regime. The main changes contained within the guidance and reflected in the 2015 Strategy are: -
 - a. The introduction of risk categorisation of sites inspected under Part 2A and their allocation into one of four categories.
 - b. The principle that normal levels of contaminants such as those caused by common human activities as opposed to former industrial uses

should not be considered to cause land to qualify as contaminated land, unless there is a particular reason to consider otherwise.

- c. Changes to the reporting of sites assessed under Part 2A.
- 6 The 2015 CLIS sets out the proposals for identifying, inspecting and assessing contaminated land within the Council's area between 2015 and 2020, taking into account the statutory guidance and the Council Plan, ensuring an attractive local living environment, and contributing to tackling global environmental challenges ('Altogether Greener'). It does not include information on the enforcement, determining liability and details of remediation of contaminated land.
- 7 The Strategy includes the following: -
- a. Introduction
 - b. Principles of Contaminant Linkages and Risk Assessment
 - c. Characteristics of Durham County Council Area
 - d. Implementing the Strategy
 - e. General Communication, Liaison and Consultation
 - f. Information Management
 - g. Dealing with land contamination outside Part 2A of the Environmental Protection Act 1990
- 8 The priority actions are summarised in Table 2 of the Strategy.
- 9 The Strategy aims to fulfil the requirements of the statutory guidance and it includes the following main objectives: -
- a. Continue with the identification of all potentially contaminated land sites in the Durham County Council area in a manner, which is rational, ordered and efficient.
 - b. Ensure the approach taken and resources are concentrated on investigating the most pressing and serious potentially contaminated land sites as a priority of the approximate 7,000 sites identified.
 - c. Prioritise human health.
 - d. Consider all land on an equal basis, whether it is private or public (such as the Council's own land).

- e. Undertake detailed inspections of potentially contaminated land sites subject to annual funding through the Land Quality Inspection Programme.
 - f. Promptly inspect of those sites where solutions are most urgently needed, without waiting for it to emerge from the prioritised list.
 - g. Maintain an up to date website to ensure the public have access to current information and a current Public Register.
- 10 Part 2A of the Environmental Protection Act will only be used as a last resort to deal with land contamination and only where no appropriate alternative solution exists. The planning regime remains the primary mechanism for dealing with sites affected by land contamination.

Consultation

- 11 Consultations began on Monday 6th July 2015 and ended on Monday 31st August 2015. The purpose was to engage with members of the public and key stakeholders to gather their feedback on the revised CLIS. Responses could be made either directly or by completing the online survey form on the Council's website. The survey was open ended and allowed respondents to answer freely on any aspect of the strategy.
- 12 Responses were received from the following organisation: Brandon and Byshottles Parish Council; Durham Wildlife Trust; The Coal Authority; and the Environment Agency. Four interactions were made by residents however only one resident left a response and the remaining three residents left no comments. Overall there was support of the CLIS.
- 13 The consultation revealed overall strong support of the CLIS.
- 14 Brandon and Byshottles Parish Council discussed the CLIS at their meeting on 17th July 2015. They fully support the CLIS and had no issues with the content.
- 15 The Coal Authority was pleased to note they were included within the CLIS as a potential source of information regarding contamination.
- 16 The Environment Agency provided a detailed response relating to the controlled waters sections of the report and references to the Statutory Guidance.
- 17 A resident stated that they believed that is a robust strategy for dealing with contaminated land, however pointed out it must have adequate resources to underpin the delivery.

Main Changes made to the draft 2015 CLIS following consultation

- 18 The suggestions / comments made by the Environment Agency have been considered and some changes made in light of their feedback along with some additional alterations. None of the changes have altered the original draft priority actions or aims of the CLIS.
- 19 The main changes are as follows:
- a. Section 2.5 (Page 8, Paragraph 1) a change has been made from 'significant pollution of controlled waters' to 'significant possibility of significant pollution of controlled waters'.
 - b. Section 2.5 (Page 8, Paragraph 2) a change has been made from 'Paragraphs 4.19 to 4.30' to 'Paragraphs 4.19 to 4.29 and 4.46'.
 - c. Section 2.5 (Page 10, Paragraph 1 and 2) a change has been made from 'significant possibility of significant harm' to significant possibility of significant harm and / or a significant possibility of significant pollution of controlled waters'.
 - d. Section 2.6 (Page 10, Paragraph 4) and References (Page 32), updated the reference from Environment Agency (1999) Methodology for the Derivation of Remedial Targets for Soil and Groundwater to Protect Water Resources to Environment Agency (2006) Remedial Targets Methodology – Hydrogeological Risk Assessment for Land Contamination
 - e. Section 2.9c (Page 12) the word 'revised' added.
 - f. Section 3.2 (Page 16, Paragraph 3) removed the reference to 2000.
 - g. Section 4.2.1 (Page 22, Table 3) the number of sites has been amended.
 - h. Section 4.2.3 (Page 23, Paragraph 3) a change has been made from 'Paragraphs 4.19 to 4.30' to 'Paragraphs 4.19 to 4.30 and 4.46'
 - i. Section 5.3.1 (Page 26, Paragraph 2) the following was added after 2006 'and the Contaminated Land (England) (Amendment) Regulations 2012'
 - j. References (Page 31) a reference added, Contaminated Land (England) Regulations 2006 (SI 2006/1380)
 - k. References (Page 31) a reference to the River Basin Standards added, Defra and Welsh Government (August 2010) The River Basin Districts Typology, Standards and Groundwater threshold values (Water Framework Directive) (England and Wales) Directions 2010

- i. References (Page 31) a reference added, Defra and Welsh Government (May 2014) Water Framework Directive implementation in England and Wales: new and updated standards to protect the water environment
- m. References (Pages 31 and 32) the webpage references checked and updated from 2014 to 2015.
- n. References (Page 32) a reference added, European Commission (November 2000) Water Framework Directive (2000/60/EC)
- o. References (Page 32) a reference added, Water Resources Act 1991
- p. Glossary of Terms (Page 37) an amendment made to the definition of a special site: *Special Site*: Contaminated land, which meets one of more of the conditions, listed in the Contaminated Land (England) Regulations 2006 and the Contaminated Land (England) (Amendment) Regulations 2012. These can be broadly split into two categories; land use and significant pollution of controlled waters:
 - (a) Land use categories include land used for: petroleum refining, Part A PPC processes and land owned or occupied by the MoD. A special site can also be land adjacent to an area used for the processes in the list that is consequently affected by contamination.
 - (b) Significant pollution of controlled waters categories are land where contamination:
 - (1) affects controlled waters that supply public drinking water
 - (2) causes failure of water quality standards set under Water Resources Act 1991 or environmental objectives that apply to specific protected areas in the Water Framework Directive
 - (3) reaches controlled waters contained in specific underground strata

Summary

- 20 The revised CLIS supports compliance with the Council's statutory duty under Part 2A of the Environmental Protection Act 1990 to provide a written CLIS detailing how to inspect the county to identify contaminated land. It has taken into account the responses of the interested parties.

Recommendations

- 21 It is recommended that the draft CLIS is approved by Cabinet.

Background papers

- Defra (April 2012) Environmental Protection Act 1990: Part 2A, Contaminated Land Statutory Guidance, HM Government
- Durham County Council's November 2011 Contaminated Land Inspection Strategy
- Durham County Council's 2015 Contaminated Land Inspection Strategy
- Part 2A Environmental Protection Act 1990

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Appendix 1: Implications

Finance –

Costs may be associated with implementing the CLIS, carrying out the strategic and where necessary detailed inspections. Phase 1 Preliminary Risk Assessments (Desk Top Studies) will be carried out by the EP team or a suitably qualified Environmental Consultant and Phase 2 Site Investigations and Risk Assessments will be carried out by a suitably qualified Environmental Consultant / Contractor.

It is proposed that the contaminated land revenue budget available from 2016/2017 onwards is reduced to 50k in line with the Council's MTFP saving targets.

Staffing – None

Risk – None

Equality and Diversity / Public Sector Equality Duty – None

Accommodation – None

Crime and Disorder – None

Human Rights – None

Consultation –

The Environment Protection team have consulted with internal sections of the Council and external organisations and all comments received have been carefully considered and where appropriate the strategy has been amended accordingly.

A list of the bodies consulted can be found in Appendix A of the Strategy.

Procurement –

In implementing the CLIS, carrying out the strategic and where necessary detailed inspections, suitably qualified Environmental Consultants / Contractors may be procured to undertake the Phase 1 Preliminary Risk Assessments (Desk Top Studies) and Phase 2 Site Investigations and Risk Assessments.

Disability Issues – None

Legal Implications –

Part 2A of the Environmental Protection Act 1990 imposes a statutory duty on local authorities to strategically inspect land within its area for the purpose of identifying land which could legally be defined as 'contaminated land'.

The Contaminated Land Inspection Strategy 2015 provides a clear set of objectives and actions for inspecting land within the Durham County Council area.