



Report to:	Executive Committee
Date of Meeting:	3 March 2008
Report from:	Chief Environmental Health Officer
Title of Report:	Revision of Contaminated Land Strategy
Agenda Item Number:	11

1. PURPOSE AND SUMMARY

- 1.1 The purpose of this report is to ask members to consider the revised Contaminated Land Strategy which is attached as Appendix A. The revision has been necessary due to the restructuring of the Council and changes to the legislation which drives Contaminated Land.
- 1.2 The Committee is requested to agree the revised Contaminated Land Strategy and recommend a version to full Council.

2. CONSULTATION

- 2.1 Consultation has been undertaken with the Head of Legal and Democratic Services, the Officers from the CMT, including the Acting Head of Resources, the Acting Head of Regeneration, the Planning and Building Control Manager, and the Regeneration and Planning Strategy Manager.
- 2.2 External consultation has not been undertaken as the revision has been technical in nature and in response to changes within the Council itself.

3. CORPORATE PLAN AND PRIORITIES

- 3.1 The Strategy will contribute towards Priority One of the Corporate Plan 'Customer Excellence' in that it makes the prioritisation and remediation of Contaminated Land both responsive and accountable to the Community. It is intended that the communities involved will be both consulted and involved in the decision-making process wherever possible.
- 3.2 The Strategy outlines the manner in which we will 'work in partnership to deliver the Community Strategy (Priority 2 of the Corporate Plan) and also contributes towards Priority 10 of the Sustainable Community Strategy 'to manage the built and natural environment to promote biodiversity whilst creating greener, cleaner, more sustainable communities.'

- 3.3 The Strategy contributes towards Priority Four of the Corporate Plan 'Regenerating the District' in that it will contribute towards the protection and enhancement of the natural and built environment.

4. IMPLICATIONS

4.1 Financial

- 4.1.1 The cost implications of initial inspection and limited soil sampling can be met from existing budgets. Additional funding is available from DEFRA under the 'Contaminated Land Capital Projects Programme' should a full intrusive investigation become necessary. This is obtained through a competitive bidding process; however extensive advice regarding both the application process and likelihood of success can be obtained from DEFRA and the Environment Agency. This funding can also be used to pay for Officer time to project manage these investigations.

- 4.1.2 The funding available from DEFRA is in the form of the Capital Grants Programme. This consists of a set amount of funding per year and Local Authorities are required to bid for the funds required. There are a number of factors taken into account including, the likely pollutant linkages (e.g. Human Health, Controlled Waters), the quality of the technical assessment, and the scale of the environmental impact.

4.2 Local Government Review

There are no direct implications for Local Government Review.

4.2 Legal

- 4.2.1 Under Part 2a of the Environmental Protection Act 1990, as inserted by Section 57 of the Environment Act 1995 all Councils are required to inspect their area for Contaminated Land. This legislation includes a requirement to produce a Strategy to define the manner in which this would be carried out.

- 4.2.2 Should contamination be considered likely, a risk assessment must be carried out, and if necessary, the site is declared as Contaminated Land, and action taken to remediate the site to a suitable standard.

4.3 Personnel

There are no obvious personnel implications.

4.4 Other Services

- 4.4.1 The implementation of this Strategy will involve a number of different departments within the Council, during the later stages of implementation.

- 4.4.2 This will include the Planning Section; to ensure that no future plans have been made for the sites in question, and also should any remediation have already taken place, this will need to be assessed to ensure that satisfactory remediation has taken place. This can often occur on sites that have been previously developed, but due to further research on potential contaminants, have not been remediated to today's standards.
- 4.4.3 Should remediation become necessary on a site, this could involve permission being sought from the Planning Team for development, demolition, or other procedures. The Planning and Building Control Manager has confirmed that this can be met from within existing budgets.
- 4.4.4 The Contaminated Land Strategy also has significant legal implications and as such the support of the Legal Team will be required should determination become necessary, as detailed in 4.3.3.
- 4.4.5 The Health and Safety Team will require consultation on site procedures.
- 4.4.6 The Regeneration Section will also be impacted, consultation with this section will guide the order in which sites are inspected, and integration of the Strategy into this will help to drive the Regeneration of the area, as detailed in 4.3.3.
- 4.4.7 It may also be necessary to form a working group prior to the determination of a site, and this will draw in relevant experience from a number of different sections, however, this is entirely dependant on the circumstances of the site involved.
- 4.4.8 It is not considered that the burden on other departments will be particularly onerous, other than that on the Legal Team, should determination become necessary. It may also be necessary to liaise with other Agencies and Councils, in order to achieve a cost-effective outcome.

4.5 Diversity

- 4.5.1 A Diversity Impact Assessment will be carried out as part of the Environmental Health Programme in 2008/9.

4.6 Risk

- 4.6.1 The legislation has a number of risk implications, which are considerably varied. These are outlined below:
- 4.6.2 Should a site be considered to be potentially Contaminated Land following a detailed desk study and risk assessment, an Intrusive Site Investigation will be required. This will require a full Health and Safety Assessment, taking into account working methods, and access to the site by the public, however, since it will be necessary to employ specialist contractors for such investigations, a full Health and Safety Schedule will be required prior to work commencing.

4.6.3 Of much greater concern is the risk of blight to land under investigation. Frequently householders experience difficulty obtaining new mortgages or selling homes which are under investigation due to Part 2a. This can cause considerable stress to those involved and reduce the value of the property until remediation has been achieved. It is partly for this reason that it not intended to make the prioritised list available to the public.

4.6.4 It is intended to produce a Risk Communications Strategy to detail the manner in which the Council will address communications with stakeholders such as residents, landowners and the Press.

4.7 Crime and Disorder

4.7.1 There are no Crime and Disorder implications associated with this report.

Data Quality

4.8 Every care has been taken in the development of this report to ensure that the information and data used in its preparation and the appendices attached are accurate, timely, consistent and comprehensive. The council's Data Quality Policy has been complied with in producing this report.

4.9 Other Implications

Communications

4.9.1 This is a revised Strategy and as such, should simply replace the current Strategy in that should a copy be requested this version will be supplied. It is also intended to publish the document on the Council's website. It is recommended that a Press Release is published, since this subject can be particularly contentious. This will ensure that the Strategy is released in as open a manner as possible.

4.9.2 Following the decision to investigate a site, communications will be of paramount importance. These will need to be sensitively handled to ensure that the community affected is appropriately informed and involved. As mentioned in Section 4.6.4, a Risk Communications Strategy will be produced, outlining the manner in which the Council will manage communications.

5. BACKGROUND, POSITION STATEMENT AND OPTION APPRAISAL

5.1 Part 2a of the Environmental Protection Act 1990, as inserted by Section 57 of the Environment Act 1995, supported by the Contaminated Land Regulations (England) 2006, and the DEFRA Guidance Note CLAN 01/2006, requires all Councils to inspect their district for Contaminated Land.

5.2 Land is considered to be contaminated within the definition, when:

“any land which appears to the LOCAL AUTHORITY in whose area it is situated to in such a condition, by reason of substances in, on or under the land, that –

“(a) SIGNIFICANT HARM is being caused or that there is a SIGNIFICANT POSSIBILITY of such harm being caused; or

“(b) POLLUTION OF CONTROLLED WATERS is being, or is likely to be, caused”

In addition:

Where HARM is attributable to radioactivity, the definition of CONTAMINATED LAND has been modified 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) HARM is being caused, or

“(b) there is a SIGNIFICANT POSSIBILITY of such harm being caused”.

- 5.3 It is for the Local Authority to decide if significant harm or the possibility of significant harm is being caused. A number of Soil Guideline Values (SGV's) have been produced by DEFRA, however these are considered to be too conservative to serve as sufficient to determine land as Contaminated. This had led to some discussion as to the level of contamination required to determine a site as Contaminated Land, however, the risk assessment process has now developed considerably and this is becoming less difficult.
- 5.4 Each site is assessed on its own individual merits, with various factors taken into account, such as current land use, proximity to receptors, potential of take-up by vegetables, and mobility of contaminants.
- 5.5 Each Council was required to produce a Strategy outlining the method by which this would be done. The District's Contaminated Land Strategy was first published in June 2004, when responsibility for Contaminated Land rested with the Economic Regeneration Team.
- 5.6 Due to a lack of in-house expertise in this area, progress on the investigation and remediation of potentially Contaminated Land, was difficult following the publication of the Strategy, however, the known previous industrial land uses of the area were isolated, resulting in some 700 'sites' identified across the District. Responsibility for Contaminated Land was transferred to the Planning and Environmental Health Department in January 2007.
- 5.7 Since the transfer of responsibility, Chester-le-Street District Council has employed a consultant (Entec UK) to rationalise the sites of potential concern within the district, since there were a number of overlaps on the identified sites. This task has now been completed and the process of prioritising the

sites can begin. This process is essential to ensure that the most potentially urgent sites are dealt with first.

- 5.8 Each site will be initially subjected to a thorough desk top survey in the first instance. This is an office-based activity, which can also include a brief walk-over of the site. All information available is located and incorporated into the study, this leads to the formation of a Conceptual Contamination Model, which is a graphical or tabular representation of conditions on site.
- 5.9 The Conceptual Contamination Model may indicate that a site is unlikely to be a risk in its current condition. However, it is also possible that the study will indicate that further study is needed. This would be in the form of a minor sampling investigation, to establish the condition of the site. This would involve an Officer from the Council taking samples from the site in question, and a basic analytical suite of testing commissioned.
- 5.10 This testing will allow the Council to discount many sites without the expense or controversy that a full investigation would cause. However, the results maybe such that further investigation is required.
- 5.11 At this stage it would be necessary to engage a specialist contractor, and funds would be sought from DEFRA in order to finance this. The funding is explained in Section 4.1.2. This would also be the stage at which stakeholders in the particular site would be informed of the investigation.
- 5.12 Stakeholders, or interested parties, will be identified during the desk-study phase of the investigation, wherever possible. Once the decision has been made to carry out a full site investigation on a site, it is necessary to speak to stakeholders and attempt to gain their co-operation in the project. Informing stakeholders prior to this would increase the risk of blight, on sites which may not be a risk.
- 5.13 The implementation of the Strategy is expected to progress much more rapidly following the appointment of a specialist Technical Officer within the Non-Commercial Environmental Health Team. It is expected that the process of prioritisation will be completed by Summer 2008, allowing progress to the investigation phase of the Strategy.

6. RECOMMENDATIONS

- 6.1 Executive are recommended to consider the draft Contaminated Land Strategy and recommend its adoption by Council.

7. BACKGROUND PAPERS / DOCUMENTS REFERRED TO

- 7.1 Part 2a of the Environmental Protection Act 1990, as inserted by Section 57 of the Environment Act 1995.
The Contaminated Land Regulations (England) 2006
DEFRA Guidance Note CLAN 01/2006

Planning Policy Statement (PPS) 23: Planning and Pollution Control, Annex 2:
Development on Land Affected by Contamination

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