

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL
EXECUTIVE MANAGEMENT TEAM'S REPORT TO THE
CABINET

Date 10 September, 2014

REPORT TITLE **Environmental Protection Act Part IIA –
Newcastle Borough Council Contaminated Land Strategy
2014 - 2019**

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Portfolio: **Environment and Recycling**

Ward(s) affected: **All**

Purpose of the Report

To seek approval of and to adopt the Contaminated Land Strategy 2014 – 2019.

Recommendations

To approve and adopt the Newcastle under Lyme Contaminated Land Strategy 2014 – 2019.

Reasons

To accord with the requirements of Part IIA of the Environmental Protection Act 1990 and the requirements of the Statutory Guidance issued under section 78YA of the Act. It is considered that the revised strategy complies with the latest statutory guidance and forms a sound basis for this Authority to undertake its statutory contaminated land duties for the period 2014 to 2019.

1. Background

- 1.1 England and Wales have a considerable legacy of historical land contamination, with a very wide range of substances involved. Nearly all soils contain some small presence of substances that could be called “contaminants” (e.g. as a result of underlying geology or diffuse pollution). However, the sites most likely to pose an unacceptable risk almost always result from site specific industrial pollution and waste disposal activities (e.g. oil, gas, steel, mining, chemicals manufacture, landfills and illegal chemical dumps).
- 1.2 It is not possible to know how much contaminated land there is because risks tend to be highly site specific and each site needs to be investigated and assessed separately. It has been estimated that there may be around 300,000 hectares of land in England and Wales where past activities could have led to contamination (about the size of Greater London and Birmingham combined), but only a very small proportion of this land would be “contaminated land” in the legal sense¹.

¹ Land is only considered to be “contaminated land” in the legal sense if it poses a sufficiently high risk to justify action. On the large majority of potential sites there may be some contamination but the risks will be low.

- 1.3 Within the Borough it is estimated that there are circa 700 “potentially contaminated sites” which will require investigation. These sites have been identified from various information sources held by the Council.
- 1.4 In April 2000, Part IIA of the Environmental Protection Act 1990 came into force, introducing a new regime for the regulation of contaminated land in England. Its main purpose is to provide an improved system for the identification of land that poses unacceptable risks to health or the environment, and for securing remediation where such risks cannot be controlled by other means. Part IIA requires that local authorities cause their areas to be inspected with a view to identifying contaminated land, and to do this in accordance with published Statutory Guidance.
- 1.5 The Borough Council formally adopted its current contaminated land inspection strategy in 2007 and this took account the Statutory Guidance in force at the time. The most recent version of the statutory guidance was issued in April 2012 by the Secretary of State.² This latest version of the Statutory Guidance recognises that there are two broad types of “inspection” likely to be carried out by local authorities:
 - (a) strategic inspection, for example collecting information to make a broad assessment of land within an authority’s area and then identifying priority land for more detailed consideration;
 - (b) carrying out the detailed inspection of particular land to obtain information on ground conditions and carrying out the risk assessments which support decisions under the Part IIA regime (of the Environmental Protection Act 1990) relevant to that land.

2.0 Issues

- 2.1 The latest guidance requires that local authority should take a strategic approach to carrying out its inspection duty under section 78B(1). This approach should be rational, ordered and efficient, and it should reflect local circumstances. Strategic approaches may vary between local authorities.
- 2.2 The local authority should set out its approach as a written strategy, which it should formally adopt and publish to a timescale to be set by the authority. The local authority should include in its strategy:
 - (a) Its aims, objectives and priorities, taking into account the characteristics of its area.
 - (b) A description of relevant aspects of its area.
 - (c) Its approach to strategic inspection of its area or parts of it.
 - (d) Its approach to the prioritisation of detailed inspection and remediation activity.
 - (e) How its approach under Part IIA (of the Environmental Protection Act 1990) fits with its broader approach to dealing with land contamination. For example, its broader approach may include using the planning system to ensure land is made suitable for use when it is redeveloped; and/or encouraging polluters/ owners of land affected by contamination to deal with problems without the need for Part IIA to be used directly; and/or encouraging problematic land to be dealt with as part of wider regeneration work.

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223705/pb13735cont-land-guidance.pdf

- (f) Broadly, how the authority will seek to minimise unnecessary burdens on the taxpayer, businesses and individuals; for example by encouraging voluntary action to deal with land contamination issues insofar as it considers reasonable and practicable.
- 2.3 The local authority must keep its written strategy under periodic review to ensure it remains up to date. It is for the authority to decide when its strategy should be reviewed, although as good practice it should aim to review its strategy at least every five years. Your officers have prepared a draft strategy to reflect the latest government guidance that will cover the period from now up to 2019.
- 2.4 It is a requirement of the statutory guidance that the Authority formally consults with a range of statutory consultees and to take into account their comments before formally adopting its strategy. The following consultees were invited to comment on the new draft strategy.
- Environment Agency
 - Natural England
 - English Heritage
 - DEFRA
 - Stoke on Trent City Council
 - Stafford Borough Council
 - Staffordshire Moorlands District Council
 - Newcastle under Lyme Borough Council .Planning Department
 - Newcastle under Lyme Borough Council Property Department

Their responses have been considered and the strategy has been revised where considered appropriate to do so.

- 2.5 The principal changes to the draft strategy arising from the consultation process are;
- Reference and implementation of the revised Statutory Guidance for contaminated land, which details how the Council should carry out its duties.
 - Reference to central government policy, national planning policy framework, environment agency policy and the Council's corporate plan, along with the current local planning policy framework.
 - The Strategic Inspection section has an updated methodology to follow DEFRA and the Chartered Institute of Environmental Health (CIEH) guidance.
 - Inclusion, for reasons of transparency, of the requirement to compile a risk summary document where land is considered for determination as contaminated.
 - Updated information on the provision of contaminated land information.
- 2.6 Your officers are satisfied that the revised draft strategy complies with the latest statutory guidance and forms a sound basis for this Authority to undertake its statutory contaminated land duties for the period 2014 to 2019.

3. **Options Considered**

- 3.1 Under the provisions of the Environmental Protection 1990 – Part IIA, section 78(B)(2) the Borough Council is required to publish and adopt a formal Contaminated Land Strategy which outlines its strategic approach to the identification and investigation of contaminated land within the Borough. In these circumstances doing nothing is not an option.

4. **Proposal**

4.1 **To approve and adopt the Newcastle under Lyme Contaminated Land Strategy 2014 – 2019.**

5. **Reasons for Preferred Solution**

5.1 To comply with the requirements of Part IIA of the Environmental Protection Act 1990 and the relevant statutory guidance.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

6.1 The identification and remediation of contaminated land within the Borough is considered to meet the following Corporate Priorities:-

- creating a cleaner, safer and sustainable Borough
- creating a Borough of opportunity
- creating a healthy and active community

7. **Legal and Statutory Implications**

7.1 It is a requirement of the Statutory Guidance issued under section 78YA of the Environmental Protection Act 1990 that the Authority has an adopted and published contaminated land strategy which accords with the requirements of the Guidance and that this is reviewed at least on a five yearly basis.

7.2 The Strategy is not considered to affect any individual's human rights in that it is primarily concerned with land rather than individuals.

8. **Equality Impact Assessment**

8.1 Any action required as a result of identifying contaminated land is taken in accordance with the provisions of Part IIA of the Environmental Protection Act 1990 and the associated Statutory Guidance. Part 7 of the Guidance contains substantial and detailed guidance concerned with establishing who is liable for remediating a site which is identified as contaminated.

8.2 The Council is required to act in full accordance with this legislative framework and guidance when determining who is responsible for remediating a contaminated site. As such there is not envisaged to be any adverse impact arising out of the implementation of the strategy on any of the protected groups as defined in the Equality Act 2010.

9. **Financial and Resource Implications**

9.1 The costs associated with the strategic inspection of the Borough for the identification and prioritisation of sites for further detailed inspection will be met from existing budgets and resources as part of the core functions of the Council.

9.2 Up until the end of the 2013/14 financial year local authorities were able to apply to the DEFRA Contaminated Land Capital Fund to facilitate detailed inspections of sites. However this funding stream has now been withdrawn so local authorities now have to bear the full costs of any site investigation themselves Sites will only be subject to a detailed inspection where the Council considers it necessary to do so and any required additional financial resources would be sought at that time. It should be noted that there

are no provisions in the relevant legislation to require developers to fund the Council's statutory role of inspecting such sites.

10. **Major Risks**

- 10.1 The Council is required to adopt and publish a Contaminated Land Inspection Strategy and to periodically review the strategy. It is for the Council to determine the priority it gives to the strategic inspection of contaminated land within its administrative area. However, in any event it must be able to demonstrate that it is complying with its statutory duty under section 78(B)(1) to undertake a periodic inspection of its administrative area and that it is acting in accordance with any statutory guidance issued under section 78(B)2.
- 10.2 Failure to comply with any statutory duty may leave the Council open to Judicial Review of its decision making process.
- 10.3 The implementation of the strategy is dependant on a number of key factors and to this end a Risk Assessment has been completed and is available upon request. It is considered that the operational risks which affect the implementation of the strategy are within the control of the Authority and that they are currently adequately controlled.

11. **Sustainability and Climate Change Implications**

- 11.1 The Contaminated Land Strategy does not have any obvious direct links to the Council's Climate Change Strategy, although it is likely that any site-specific measures may have in due course.

12. **Key Decision Information**

- 12.1 Agreeing to the Contaminated land strategy is a key decision as it will affect all wards within the Borough.

13. **Earlier Cabinet/Committee Resolutions**

Cabinet 2007 - Revised Contaminated Land Strategy - Minute Number 575

14. **Background Papers**

Newcastle under Lyme Borough Council Contaminated Land Strategy 2014 -2019
(available in the member's room)

Environmental Protection Act 1990 : Part 2A Contaminated Land Statutory Guidance
(available in the member's room)

Grace Risk Assessment (available upon request)