

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S
REPORT TO CABINET**

02 February 2022

Report Title: Environmental Protection Act 1990 Part 2A – Contaminated Land Strategy 2022

Submitted by: Head of Environmental Health Services

Portfolios: Environment & Recycling

Ward(s) affected: All

Purpose of the Report

To seek approval and formal adoption of the Contaminated Land Strategy 2022-27.

Recommendation

That the Contaminated Land Strategy for 2022-2027 is approved and adopted.

Reasons

To accord with the requirements of Part 2A 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 duties for the period 2022 to 2027.

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.
- 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.
- 1.3 Within the Borough it is estimated that there are circa 948 “potentially contaminated sites” which may require investigation. These sites have been identified from various information sources held by the council.
- 1.4 In April 2000, Part 2A 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 2A requires that local authorities

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.

inspect their areas with a view to identifying contaminated land, and, that they to do this in accordance with published Statutory Guidance.

- 1.5 The council formally adopted the current contaminated land strategy in 2014, which took into account the 2012 Statutory Guidance. Statutory Guidance (other than for radioactively contaminated land) has not changed since. 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, and prioritising, land requiring 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 Part 2A relevant to that land.

2. **Issues**

- 2.1 The statutory guidance requires that each local authority 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 2A 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 2A to be used directly; and/or encouraging problematic land to be dealt with as part of wider regeneration work.
 - 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.

3. **Proposal**

- 3.1 Your officers submit for your consideration an updated Contaminated Land Strategy.

- 3.2 There are no proposed changes to the method of investigating potentially contaminated land in the Borough, which was approved in the 2014 Strategy.

The proposed 2022 Strategy, as attached in full at Appendix A, has been amended as follows:

- Update to document formatting.
- Update to legislative background.
- Update to government policy (local, county and national).
- Revision to Borough description.
- Revision of miscellaneous provisions.

4. **Reasons for Proposed Solution**

- 4.1 To comply with the requirement of the Statutory Guidance - that local authorities periodically review their contaminated land strategies (see 2.3). The current Contaminated Land Strategy was approved on 10 September 2014.

5. **Options Considered**

- 5.1 The alternative to adopting a revised strategy is to continue to use the 2014 Contaminated Land Strategy. However, as the Statutory Guidance requires the council to periodically review its strategy (albeit at the council's discretion), it is considered appropriate to update the current strategy to reflect current legislation, policy and guidance.

6. **Legal and Statutory Implications**

- 6.1 It is a requirement of the Statutory Guidance that every local authority has an adopted and published contaminated land strategy which accords with the requirements of the Guidance and that this is periodically reviewed; the Statutory Guidance recommends this be undertaken every five years.
- 6.2 The Strategy is not considered to affect any individual's human rights in that it is primarily concerned with land rather than individuals.

7. **Equality Impact Assessment**

- 7.1 Any action required of the council as a result of identifying contaminated land will be taken in accordance with the provisions of Part 2A of the Environmental Protection Act 1990 and the associated Statutory Guidance.
- 7.2 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.

8. **Financial and Resource Implications**

- 8.1 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.
- 8.2 For the majority of sites, the cost of any intrusive investigation will be carried by the council. Support may be available from the Environment Agency, although their resources for this are limited.

8.3 Should a site be determined as 'contaminated land', remediation costs are apportioned by the regulator to relevant stakeholders – this process is set out in the Statutory Guidance.

8.4 The council may wish to assist with some, or all, of the costs of remediation where this would cause hardship (for example, where costs fall to householders) – this decision would be made at the discretion of the council.

9. **Major Risks**

9.1 The council is required to adopt a Contaminated Land Strategy and to keep it under periodic review. It is for the council to determine the priority it gives to the strategic inspection of contaminated land within its area. However, the council 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 area and that it is acting in accordance with any statutory guidance issued under section 78(B)2.

10. **UN Sustainable Development Goals (UNSDG)**

10.1 The Contaminated Land Strategy seeks to enable actions that are directly relevant to the following UNSDG:

3 GOOD HEALTH
AND WELL-BEING



6 CLEAN WATER
AND SANITATION



11 SUSTAINABLE CITIES
AND COMMUNITIES



11. **Key Decision Information**

11.1 Approving the 2021 Contaminated Land Strategy is a key decision as potentially contaminated land is distributed across the borough.

12. **Earlier Cabinet/Committee Resolutions**

12.1 Cabinet meeting 10 September 2014 – item 21.

13. **List of Appendices**

13.1 A. Draft Contaminated Land Strategy 2022

14. **Background Papers**

14.1 Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance