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## Meeting of the Executive Member for Neighbourhood Services and Advisory Panel

18 October 2006

Report of the Director of Neighbourhood Services

### Contaminated Land Investigation Funding

#### Summary

1. On 9 February 2005, in compliance with the City of York Council 'Contaminated Land Strategy', and the statutory requirements of the Environmental Protection Act 1990, the Executive Member approved a report which included a proposal for initial ("preliminary") investigation by Environmental Protection Unit (EPU) of three areas of land which historically had been used for domestic and / or commercial waste tipping ("landfilling").
2. Later that year, the council's EPU in accordance with the decision by the Executive Member, conducted preliminary contaminated land investigations of the following council-owned land:
  - Nun Ings (off Butcher Terrace) in Micklegate ward
  - King George's Playing Field in Heworth ward
  - Tang Hall Primary School Playing Field (at the junction of Eighth Avenue and Fifth Avenue) in Heworth ward.
3. In March 2006 as a result of preliminary investigations an application was made to the Department for Environment, Food and Rural Affairs (Defra) for grant funding to support more detailed investigation of these areas. In July 2006 Defra replied to say they approved the requested funding (£33,150).
4. A decision is therefore requested from members to accept the grant offered and conduct the detailed investigations.

#### Background

5. Part IIA of the Environmental Protection Act 1990 ("Part IIA") became law in April 2000. This legislation placed a statutory duty on local authorities to undertake an inspection of their areas for the purpose of identifying contaminated land.
6. The areas of land selected for investigation were those noted at Para 2 above. The selection of these three sites was based primarily on their current

land use and their environmental setting (i.e. their proximity to water courses etc).

7. These preliminary investigations were conducted in autumn 2005 and showed the presence of landfill gas in the ground at all three sites. Landfill gas is a mixture of oxygen, carbon dioxide and methane (as well as other substances at "trace" concentrations). Although naturally occurring, in some circumstances, carbon dioxide can have asphyxiant properties if allowed to accumulate (for instance in confined spaces). Methane has explosive properties at certain concentrations.
8. Explosive concentrations of methane were not detected at any of the three sites investigated. However, concentrations of carbon dioxide were such that, whilst not present at the levels to warrant immediate concern, would benefit from long-term monitoring to allow potential future risk to be assessed.
9. Based on the findings of the preliminary investigations, funding was sought from Defra to allow more detailed investigations and assessment to be conducted. On 27 July 2006 Defra agreed to provide the full amount of funding requested (£33,150).

## **Consultation**

10. Nun Ings and King George's Playing Field are both areas of open space, owned by the council. Consultations have therefore been held with the relevant council directorates, to advise them of the investigations and to obtain advice and historical and current information from them. In the case of King George's Playing Field, the local residents' association have been contacted and have been advised of the proposals to conduct more detailed investigations and have been given the opportunity to comment or provide any further local information that they may have.
11. Pupils from Tang Hall Primary School occasionally use the area of land at Tang Hall. The school, plus relevant council officers have been made aware of the proposed investigations. Officers are exploring the opportunity of getting the pupils of Tang Hall Primary School involved in the investigation, for instance by showing how recycling and waste minimisation today could help tackle problems from landfill in the future.
12. Consultations have also been held with the Environment Agency, who conduct technical reviews and assessments of funding applications on behalf of Defra.

## **Options**

13. Two options are available to members:
  - (i) Accept the £33,150 funding grant offered by Defra and conduct further detailed investigation

- (ii) Do not accept the funding grant offered and do not undertake any further detailed investigation

## **Analysis**

- 14. No funding is currently available “in-house” to conduct detailed investigations. This will mean that the Council will not be fully carrying out its statutory obligations under Part IIA of the Environmental Protection Act 1990.
- 15. In addition, new Best Value Performance Indicators (BVPIs 216a and 216b) were introduced by the Office of the Deputy Prime Minister in the financial year 2005/06. These measure the rate at which contaminated land is investigated and dealt with, including land assessed under part IIA.
- 16. If members do decide to accept the grant offered by Defra, the detailed investigations would be carried out within the current financial year (2006/7), allowing long-term monitoring of landfill gas concentrations to be commenced. Monitoring would be conducted at monthly intervals for 12 months in the first instance, by trained and experienced officers. The costs of this monitoring and staff resources are included in the funding offered by Defra. Assessment of risks from any associated contaminants within the landfilled material would also be undertaken.

## **Corporate Priorities**

- 17. The investigation of contaminated land links to the corporate objective to “Take Pride in the City, by improving quality and sustainability, creating a clean and safe environment” and to the service objective “to protect residents and our environment from pollution and other public health and safety hazards”. BVPIs 216a and 216b are in the Council Plan. Since most of the former landfill sites are currently open space and playing fields, this links to the corporate priority to “improve the actual and perceived condition and appearance of the city’s streets, housing estates and publicly accessible spaces”. It is also hoped that the investigations can provide a learning exercise to pupils at Tang Hall Primary School relating to disposal of waste and environmental sustainability. The ultimate outcome of the investigations will also be to ensure that two major areas of publicly accessible space (Nun Ings and King George’s Playing Field) are shown to be free from risk.

## **Implications**

### **Financial**

- 18. The amount of grant offered by Defra (£33,150) will cover the cost of the council employing specialist subcontractors, as well as internal costs for matters such as internal project management by officers and the associated costs for on-going monitoring.
- 19. The grant that Defra have offered the Council is a capital grant, which cannot normally be spent on revenue items, such as internal project management and

resources for on-going monitoring. However, in such circumstances Defra normally issue a section 16 notice which allow the grant to be spent in this way. However, the Treasury are tightening the rules surrounding section 16 notices as they impact on the Chancellors "golden rule", whereby government borrowing can only be used for capital investment over the economic cycle. As such the Treasury will not decide on whether individual section 16 notices can be issued until they have assessed the total number requested. Government departments will be informed of whether they are successful in the application by March 2007. If the ruling is against the request then the Council will have to spend the grant on capital items in accordance with the grant, and therefore not on revenue items as planned. The Council is therefore taking a risk that this grant will be converted to revenue.

### **Human Resources (HR)**

20. The Council employs one specialist contaminated land officer. The investigation and monitoring of this site will require additional staffing resources of 0.5 FTE contaminated land assistant on a temporary basis until the investigation is completed. The costs of this additional resource is contained within the grant, subject to the conditions explained at para 19 above.

### **Equalities**

21. There are no Equalities implications.

### **Legal**

22. There are no specific legal implications.

### **Crime and Disorder**

23. There are no Crime and Disorder implications.

### **Information Technology (IT)**

24. There are no IT implications.

### **Property**

25. As noted above, the council are the landowners of all three sites.

### **Other**

26. There are no other implications falling outside those noted above.

## **Risk Management**

27. Members should be aware that if the detailed investigations do show that any of these areas are causing (or have the potential to cause) significant harm to human health or the environment, the council as a land owner would become responsible for any required clean-up (“remediation”). Defra currently have funding available to local authorities for remediation in some circumstances, but long-term funding is subject to review by government.
28. It is possible, therefore, that the council could ultimately have financial liability for any required remediation which Defra may (or may not) support. At this stage it is not possible to estimate the costs for any such remediation

## **Recommendations**

29. That the Advisory Panel advise the Executive Member :
  - (i) To accept the grant funding offered by Defra.

REASON :

This will allow the council to investigate the three areas of land identified at para 2, in accordance with obligations placed on the council by Part IIA of the Environmental Protection Act 1990.

- (ii) To note that the Director of Neighbourhood Services exercises his delegated powers to appoint a part-time contaminated land assistant on a temporary basis as detailed at para 20.

REASON : To update the Executive Member.

## Contact Details

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**Report Approved**  **Date** 20 September 2006

## Specialist Implications Officer(s)

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**Wards Affected:** Micklegate, Heworth

**All**

**For further information please contact the author of the report**

## Background Papers:

Review of the Contaminated Land Strategy, February 2005.

## Annexes

None