

**Decision Session -  
Executive Member for the Environment**

4 April 2016

Report of the Assistant Director – Housing and Community Safety

**Contaminated Land Strategy Review**

**Summary**

1. The purpose of this report is to seek approval by the Executive Member for the adoption and publication of the updated Contaminated Land Strategy.

**Recommendations**

2. The Executive Member is asked to:
  - **Approve Option 1** - To approve the updated contaminated land strategy and undertake a review at least every five years.

Reason: This will fulfil the council's legal duties to update the contaminated land strategy and to inspect potentially contaminated sites.

**Background**

3. The UK has a legacy of historic land contamination derived from past industrial activities and waste disposal practices. Land contamination, if not addressed can be hazardous to human health and the environment.
4. Local authorities have a statutory duty to implement and enforce contaminated land legislation (Part 2A of the Environmental Protection Act 1990), to create a clean and safe environment for all.
5. Local authorities must outline their approach to the identification and remediation of contaminated land in their area via a written strategy. City of York Council's initial contaminated land strategy was published in July 2001 with subsequent updates in 2005 and 2010.

## Legislation

6. Part 2A of the Environmental Protection Act 1990 defines contaminated land 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 the water environment is being caused or there is a significant possibility of such pollution being caused.’*
7. Local authorities are required to inspect their areas for contaminated land and secure the cleanup of any sites which pose unacceptable risks to human health and/or the environment.
  8. Statutory Guidance, published by the Department for Environment Food & Rural Affairs (DEFRA) in April 2012, established a legal framework for dealing with contaminated land and must be strictly followed by the council.
  9. Part 2A works alongside planning rules to help ensure that land is made suitable for use following redevelopment.

## Contaminated Land Strategy (2016)

10. The contaminated land strategy has been updated to incorporate recent changes in legislation and guidance and to provide an update on progress made to date.
11. In York 3,690 potentially contaminated sites have been identified and prioritised; detailed inspections of these sites should be undertaken in priority order.
12. Of the 3,690 potentially contaminated sites, 88 sites have been categorised as Category A (high priority), where there is a high risk of an unacceptable impact on people or the environment:
  - 13 of the Category A sites have been inspected under Part 2A and 9 of these required Phase 2 investigations;

- 20 of the Category A sites have already been, or will soon be, investigated through the planning regime (including Heworth Green gasworks, York Central and British Sugar);
  - 49 of the Category A sites are currently in use as industrial / commercial premises and no further action is required at present; and
  - 6 of the Category A sites have not yet been inspected.
13. Part 2A inspections are very expensive and can cost tens of thousands of pounds; historically these have been funded by DEFRA's contaminated land capital grants programme; however, the contaminated land capital grants programme was withdrawn in April 2014 and no budget has been allocated to undertake contaminated land investigations of the remaining 6 Category A sites (high priority) or any of the Category B sites (high to medium priority).
  14. In order to protect people and the environment from harm, contaminated land sites must be dealt with as and when they arise.
  15. Most potentially contaminated land sites in York are remediated via the planning system and hundreds of sites have been investigated and voluntarily remediated by developers this way e.g. Hungate, Jorvik Service Station, Pullman's Bus Depot and Askham Bar Park & Ride.
  16. Contaminated land is a material planning consideration and all planning applications for one house or more must include a contamination assessment, which is reviewed by the council. Appropriate planning conditions are used to ensure that suitable investigation and cleanup is carried out by the developer. Planning conditions will only be discharged once we are satisfied that the site is safe and suitable for its new use.
  17. The contaminated land strategy will be reviewed at least every five years, inline with Statutory Guidance, to ensure it remains up to date and relevant.

## Options

18. The Executive Member is asked to consider the following options:
  - **Option 1:** To approve the updated contaminated land strategy and undertake a review at least every five years.
  - **Option 2:** To reject the updated contaminated land strategy.

## Analysis

19. Option 1 will allow the council to fulfil its statutory obligations; to ensure that the strategy is kept up to date and to inspect potentially contaminated sites. Our resources will focus on dealing with sites through the planning system to ensure that Brownfield land is redeveloped safely, which is particularly important for large sites with complex contamination issues e.g. York Central and the former British Sugar factory site.
20. Following the withdrawal of DEFRA funding in 2014 there is currently no budget is currently available to carry out programmed Part 2A inspections. To ensure that the council continues to manage the risks associated with the 6 sites that are identified as Category A sites that have not yet being inspected, we will continue to monitor the current use of high priority sites and if this changes to a more sensitive use (i.e. a children's play area or allotments) the site may need to be dealt with as a matter of urgency to protect people and the environment from harm. Should an urgent case arise and funding is required to investigate it and/or clean it up, a further report will be brought to members outlining the funding options available at that point in time.
21. Options 2 will prevent the council from adopting the updated contaminated land strategy and fulfilling its statutory obligations. We will have to continue using the outdated 2010 strategy. This could present a risk to people and the environment.

## Council Plan

22. The council plan aims to deliver a prosperous city for all, a focus on frontline services and a council that listens to residents. The adoption of the updated contaminated land strategy and the associated investigation and cleanup of contaminated sites will support the council plan as follows:
  - **Help protect residents from harm and help residents to live healthier lives** – the investigation and cleanup of contaminated land will help protect people from significant harm (life threatening diseases, serious injury, birth defects, and impairment of reproductive functions).

- **Help to give children the opportunity to get the best possible start in life** – exposure to lead, mercury and other substances can affect cognitive development in children. The investigation and cleanup of contaminated land will help protect children from coming into contact with these harmful substances.
- **Encourage and support a green economy** – contaminated land legislation and guidance is based on the ‘suitable for use’ approach. We encourage the use of innovative investigation and cleanup technologies. We ensure that all works are reasonable, practicable, effective and durable.
- **Help to deliver an environmentally sustainable city** – the investigation and cleanup of contaminated land will help protect groundwater and rivers from pollution, and will help protect designated ecological systems (e.g. SSSIs) from harm.
- **Help to protect the quality of our city and its unique heritage** – in addition to the health risks and environmental risks, contaminated land can often look unsightly and blight land. The investigation and cleanup of contaminated land will help create a more pleasant environment for visitors, businesses and residents.

## Implications

23. The various implications of this report are summarised below:

- a) **Financial** - There are no financial implications associated with the adoption of the updated contaminated land strategy. No budget is currently available to fund the programmed Part 2A inspections, so we will deal with site through the planning system instead.

Should urgent action is required to protect people and the environment from contaminated land a further report will be would brought to members setting out the available funding option at that point in time.

- b) **Human Resources (HR)** - There are no human resource implications.
- c) **Equalities** - There are no equalities implications.
- d) **Legal** - The council has a statutory obligation to ensure that its contaminated land strategy is kept up to date and to inspect

potentially contaminated sites. If contaminated land is found, then the council must ensure that it is cleaned up and made safe.

Through the planning system, the council is responsible for assessing and approving the investigation and cleanup of sites by developers. The council must ensure that sufficient and appropriate cleanup has been carried out. Failure to do this could result in legal action and compensation claims against the council.

- e) **Crime and Disorder** - There are no crime and disorder implications.
- f) **Information Technology (IT)** - There are no IT implications.
- g) **Property** - There are no property implications.
- h) **Other** - There are no other implications.

## Risk Management

24. In compliance with the council's risk management strategy, the processes for managing the risks associated with this report are embedded within the work plan for the team and the use of Category A sites will continue to be monitored.

## Contact Details

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Mike Southcombe Public Protection Manager Public Protection (CANS) Tel: (01904) 551514		<b>Report Approved</b>	√	<b>Date</b>	21 <sup>st</sup> March 2016
<b>Specialist Implications Officer(s)</b> None					
<b>Wards Affected:</b> <i>List wards or tick box to indicate all</i>				<b>All</b>	<b>X</b>
<b>For further information please contact the author of the report</b>					

## **Background Papers**

- [Contaminated Land Strategy, July 2001](#)
- [Executive Member for Environment and Sustainability and Advisory Panel, July 2001](#)
- [Review of the Contaminated Land Strategy, February 2005](#)
- [Executive Member for Environment and Sustainability and Advisory Panel, February 2005](#)
- [Contaminated Land Strategy, January 2010](#)
- [Executive Member Decision Session – Neighbourhoods, February 2010](#)

## **Annexes**

Annex 1 – Contaminated Land Strategy (February 2016)

## **Abbreviations**

DEFRA – Department for Environment Food & Rural Affairs