

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 11 December 2012	<b>Decision Taker:</b> Cabinet Member for Transport, Environment & Recycling
<b>Report title:</b>		Land Contamination Strategy 2012 - 2017	
<b>Wards affected:</b>		All	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the Cabinet Member for Transport, Environment & Recycling approves the Land Contamination Strategy for 2012-2017, as set out in Appendix A of this report.

## BACKGROUND INFORMATION

2. Part 2A of The Environmental Protection Act 1990 (as amended by the Environment Act 1995) provides a regulatory framework for the management of historically contaminated land. The act is supported by statutory guidance introduced under The Contaminated Land Regulations 2000 and the Department of the Environment Transport and the Regions (DETR) (now the Department for the Environment, Food and Rural Affairs - Defra) Circular 02/2000 and later revision (Circular 01/2006).
3. The part 2A regime establishes a risk-based approach to the identification and remediation of historically contaminated land where contamination poses an unacceptable risk to human health or the environment. The council has the primary regulatory role under the regime and is under a duty to produce, adopt and implement a contaminated land inspection strategy.
4. This council initially published its contaminated land inspection strategy in June 2001. The first review of the strategy took place in 2004.
5. The strategy has now been subject of a further review intended to bring the reported position up to date.
6. A copy of the revised Contaminated Land Strategy for 2012 - 2017 is attached at appendix A. It is recommended for adoption.

## KEY ISSUES FOR CONSIDERATION

### Contaminated land

7. Section 78A (2) of Part 2A of the Environmental Protection Act 1990 defines 'contaminated land' as "any land which appears to the local authority in whose area the land is situated, to be in such condition by reason of substances in, on or under the land, that (a) significant harm is being caused, or there is significant possibility of such harm being caused; or (b) pollution of controlled waters is being caused, or is likely to be caused". 'Harm' is defined as "harm to the health

of living organisms or other interference with the ecological systems of which they form part, and in the case of man, includes harm to his property”.

8. This country has a substantial legacy of chemical contaminants in soil, much of it caused by industrial and domestic pollution. Most soils have some small presence of contaminants (e.g. caused by natural geology and diffuse pollution) but levels of risk are usually very low. However, some land has the potential to pose unacceptable levels of risk to human health or the environment, including water pollution. This relates particularly to some former industrial sites and previous landfill sites. Land is only considered to be ‘contaminated land’ in the legal sense if it poses an unacceptable risk.
9. For land to be considered ‘contaminated’ there must also be a ‘pollution linkage’. For this to exist there must be a ‘pathway’ between the source of the contamination and the receptor (people, rivers, buildings). A ‘pathway’ might be established by breathing contaminated dust, touching contaminated soil or consuming vegetables grown in the contaminated soil.
10. Since the mid 1990s successive governments have primarily taken a market based approach to historical contamination. By this approach we seek to encourage voluntary remediation of land at the time that it is intended for redevelopment and reserve any regulatory interventions for situations where there is no possibility of a voluntary solution being achieved. This broad approach has been very successful nationally and Defra reports tens of thousands of hectares of affected land as having been dealt with. The very large majority being addressed when brownfield land is redeveloped under planning rules.
11. The Act requires local authorities to inspect their areas to find contaminated land. Where such sites are found, the authority must make sure ‘reasonable’ remediation is undertaken and decide who will pay. In the first instance the ‘polluter’ should pay principle is followed. Where this is not possible then responsibility falls to the current owner. In cases where no one else can be found to pay the authority may take action itself.

### **Contaminated Land Strategy 2012-2017**

12. The aims of the Contaminated Land Strategy 2012-17 reflect those of our initial strategy:
  - To fulfill the council’s duty in relation to the control of contaminated land;
  - To publish a formalised system for the inspection, identification, prioritisation and remediation of land that has been contaminated in the past;
  - To ensure that system provides a transparent, accountable, rational and efficient process for dealing with contaminated land;
  - To ensure that contaminated land is made safe for the current use of the site, or does not pose unacceptable risk to public health or identified receptors in the wider environment;
  - To seek to bring damaged land back into beneficial use;
  - To protect historic sites;
  - To encourage the voluntary remediation of sites where this is possible;
  - To adopt a cost benefit assessment and approach to the remediation of contaminated land;
  - To ensure that actions taken in respect of contaminated land are

proportionate to the seriousness of any actual or potential risk to known receptors;

- To prevent any future contamination of land; and
- To establish a process for dealing with any complaint with respect to contaminated land.

13. Since our original strategy was first published we have made considerable progress in the identification and remediation of contaminated land in our area. This is detailed in paragraphs 15 – 20 of this report. There are currently no identified high-risk sites awaiting attention. Having arrived at this position, the current objectives of the Contaminated Land Strategy for 2012-17 are:

- To maintain an up to date record of all sites that have been identified and remediated under Part 2A requirements;
- To review each new land development proposal brought through the planning process to ensure land is made suitable for use when redeveloped;
- To ensure that other new information regarding potential land contamination within Southwark is assessed and remediation of land is effected where this is identified as necessary; and
- To ensure that every complaint in respect of contaminated land is recorded and investigated and appropriate action is taken.

14. We will judge our performance against the following indicators:

- Land development proposals referred through the planning process considered in terms of potential land contamination in accordance with the planning process timetable – Target 100% of cases;
- New information regarding potentially contaminated sites assessed – Target 100% of cases;
- Appropriate action taken in each case where remediation measures are identified as necessary – Target 100% of cases;
- Complaints of potentially contaminated land received by the council – Target 100% of cases investigated and appropriate action taken in accordance with corporate response times;
- All new relevant information updated on public register - Target within 3 working days.

### **Inspection & assessment of land**

15. The approach taken by this council to the inspection, assessment and remediation of the land in its area is detailed in section 42 of the strategy. The steps taken have comprised:

- The division of the borough into three geographic areas;
- A preliminary investigation of potentially contaminated sites through a desk top study using available data sources, followed by visits to the sites; risk-assessment and sampling or intrusive investigation as required;
- The prioritisation of the sites into categories A-D with category A sites being 'special sites' to be regulated by the Environment Agency and category B – D being classified according to the risk of a pollution linkage being present. Category B is given the highest risk;
- The process of determining liability for sites, remediating identified sites and

- compiling a remediation register; and
- The monitoring of remediation works as necessary.

16. By 2008-9 our preliminary investigations had identified a total of 2016 potentially contaminated sites in Southwark. The prioritisation of these sites has since been completed. Of those 2016 sites, 1356 sites have been confirmed as being either non-polluting or low risk. Of the remaining 660 sites there were no category A sites and the remainder were category C and D.

17. The process has established the following:

Category	A	B	C	D
No of sites	0	0(1)	310	350

18. As has been noted, there are currently no confirmed high-risk Category B sites for which this authority has responsibility. The 0(1) figure shown refers to an ex Ministry of Defence site, the use of which has not yet been confirmed.

19. As will be recognised, this position may change, as new information on potential contaminated land comes to light.

20. More detailed third party testing and investigation of identified sites is now taking place, through the planning process, as sites are proposed for development. This process is ongoing and increasing as new regeneration and development projects are proposed.

### **Review of contaminated land statutory guidance**

21. Defra recently reviewed the contaminated land regime in England for the first time since its introduction in 2000. The review considered whether improvements could be made to the regime, taking into account the experience of ten years delivery and the latest scientific evidence.

22. The review found the primary legislation (Part 2A of the Environmental Protection Act 1990) remained fit for purpose, and that there was a strong need to keep it. However, it concluded that there were flaws in the accompanying statutory guidance which had undermined the effectiveness of the regime and created considerable regulatory uncertainty, especially in terms of the quantitative assessment process for determining contaminated land. The guidance itself has now been revised and this came into effect on 6 April 2012.

23. While the revisions to the guidance are noted, they neither impact upon our local strategy nor our current reported position.

### **The council's fairer future commitment**

24. The contaminated land inspection strategy supports the six underlying principles of the fairer future commitment.

- Creating a fairer borough – A healthy natural environment is essential for our economy, for jobs and for economic prosperity. The remediation of contaminated land supports both the public health agenda and smarter, greener growth.
- Making Southwark a place to be proud of – The maintenance of our natural

environment is important for several reasons. It provides a source of personal relaxation and enjoyment; and generates community pride.

- Realising potential – The process for identification and remediation of contaminated land process enables brown-field sites to be brought back into best use, ensuring best use of our local resources and protecting green-field sites from development demands;
- Spending money as we would our own – The remediation of contaminated land is undertaken on the basis of the polluter pays with responsibility firstly moving to the land owner where this is not possible.
- Transforming public services – This strategy establishes a process which provides for effective partnership working with internal and external partners to improve local outcomes on the natural environment.
- Being more transparent – This strategy sets out the current position regarding land contamination in Southwark. It explains the process the council is following to identify and assess local contaminated land and the steps that are taken to ensure that land is remediated to make it fit for the proposed use.

### **Other policy implications**

25. The Town and Country Planning system provides the framework for controlling the development and the use of land in the wider public interest. A key principle of the planning system is to promote 'sustainable development'.
26. The contamination of land is a 'material planning consideration' under the system. This means that the council, as local planning authority, must consider contamination in the preparation of local development plans or when considering individual applications for planning permission. It is responsible for ensuring that land contamination is dealt with through the planning system and that remediation takes place where it is required.
27. It is the responsibility of the developer to carry out the remediation and satisfy the local authority that the remediation has been carried out as agreed.
28. The Part 2A regime supports the council's planning process. The environmental protection team within the environment and leisure department, which has responsibility for the Part 2A regime, works closely with the planning team to ensure that issues around planning and contaminated land are understood and that appropriate action is taken to address the circumstances of each case.

### **Community impact statement**

29. The process of the identification and remediation of contaminated land has many benefits, including bringing the land back into more productive use. It also:
  - Removes harmful risks to public health;
  - Helps to reduce the level of unsightly wasteland and derelict buildings.
30. While there are costs associated with the remediation of contaminated land, these are borne primarily by the polluter or the land owner, and are limited to necessary works only. These costs also enable the land and property to be developed so as to be brought back into profitable use.
31. An equalities impact assessment has been undertaken in respect of this strategy

and no equality or diversity impacts have been identified. This is available upon request from the environmental protection team.

### **Resource implications**

32. Work undertaken in connection with this strategy has been contained within the resource of the environmental health and trading standards business unit.

### **Consultation**

33. While no substantial changes to our practice or process have taken place since the last review of our strategy, the following services have been consulted during the preparation of this latest version:

- Burgess Park Director;
- Director of Regeneration;
- Head of Building Control;
- Head of Development Control;
- Head of Environment & Leisure Procurement;
- Head of Strategy, Planning & Performance;
- Land Charges Manager;
- Planning Policy Manager;
- Public Realm Asset Manager;
- Senior Planning Lawyer; and
- Senior Planning Policy Officer.

34. This environmental protection team will continue to work closely in partnership with the council's planning team; other London boroughs; and bodies with an interest in contaminated land.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Legal Services (DP/12/12)**

35. The regulatory regime in relation to contaminated land is set out in Part 2A of the Environmental Protection Act 1990 ("the 1990 Act") and the Contaminated Land (England) Regulations 2006 ("the 2006 Regulations") and statutory guidance issued by the Secretary of State for Environment, Food and Rural Affairs ("DEFRA") under the 1990 Act.
36. The 2006 Regulations were amended on 6 April 2012 and new statutory guidance issued.
37. Under s.78B of the 1990 Act the council has a statutory duty to inspect its area from time to time to identify contaminated land. This includes a duty to determine whether any land should be further designated as a special site under the 2006 Regulations (this is generally where the land was previously used for dangerous operations such as the manufacture of explosives or was a nuclear site). The Council must assess land in accordance with the statutory guidance.
38. If land is identified as contaminated, then the council must notify the persons specified in the 1990 Act. In relation to contaminated land the council is the enforcing authority (the Environment Agency has this role in relation to special sites). As such the council must consider whether remedial action is required and

if so serve a notice requiring the relevant person to carry it out. The council can require anything to be done which it considers reasonable, having regard to cost and the seriousness of the contamination. Again, regard must be had to the statutory guidance. The 1990 Act sets out how the council should determine who is responsible for remediation, as well as certain restrictions and prohibitions, and the 2006 Regulations set out the procedural requirements. A failure to apply the appropriate tests or follow the correct procedure could result in any notices being challenged.

39. The proposed strategy will set out how the council will carry out its statutory duties in relation to contaminated land.
40. The council must have due regard to its Public Sector Equality Duty (“PSED”) under the Equality Act 2010 (“the 2010 Act”), in particular the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity for those with protected characteristics and foster good relations between those with and without such characteristics. The list of protected characteristics is set out in the 2010 Act.
41. An equality impact assessment (“EQIA”) has been carried out in relation to the proposed strategy, to ensure that the council’s public sector equalities duties are complied with. The EQIA has identified no issues in relation to the PSED.
42. Part 3 of the Constitution sets out the councils decision making arrangements. The approval of this strategy is not a decision reserved to full cabinet under Part 3C. Under Part 3D the approval of statutory strategies is reserved to the individual cabinet member with responsibility for the area involved. This strategy falls under the portfolio of the cabinet member for transport, environment and recycling. The decision to approve the strategy should therefore be taken by the cabinet member for transport, environment and recycling.

**Strategic Director of Finance and Corporate Services (NR/F&R/5/3/12)**

43. This report recommends that the Cabinet Member for Transport, Environment & Recycling approves the Contaminated Land Strategy for 2012 - 2017.
44. The strategic director notes that although all operational costs in connection with this strategy are contained within existing budgets, costs of treatment are the responsibility of the land owner, however this would become the responsibility of the council if the land owner cannot be traced.

**BACKGROUND DOCUMENTS**

Background Papers	Held At	Contact
Environmental Protection Act 1990 The Contaminated Land Regulations 2000 DETR Circulars 02/2000 & 01/2006 Defra Statutory Guidance	Health Safety Licensing & Environmental Protection Unit, 160 Tooley St London SE1P 5LX	Mrs Kurtikula Read Phone: 020 7525 5748

## APPENDICES

No.	Title
Appendix A	Contaminated Land Strategy 2012- 2017

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Jonathon Toy, Head of Community Safety and Enforcement, Environment and Leisure	
<b>Version</b>	Final	
<b>Dated</b>	11 December 2012	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Director of Legal Services	Yes	Yes
Strategic Director of Finance & Corporate Services	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>	11 December 2012	