

North Tyneside Council Report to Cabinet Date: 9 September 2019

ITEM 5(d)

Title: Review of the North
Tyneside Contaminated
Land Strategy

Portfolio: **Community Safety and
Engagement**

Cabinet Member: **Councillor Carole
Burdis**

Report from Service Area: **Environment, Housing and Leisure**

Responsible Officer: **Phil Scott
Head of Environment, Housing and
Leisure**

Tel: (0191) 643 7295

Wards affected: **All**

PART 1

1.1 Executive Summary:

Part 2A of the Environmental Protection Act 1990 requires every local authority to produce a Contaminated Land Strategy ("the Strategy") setting out how it will identify and deal with contaminated land within its area. The Authority has a published Strategy which was last reviewed and updated in 2014 and incorporated revised government guidance issued at that time.

This report to Cabinet presents an updated draft Strategy and seeks permission to delegate authority to the Head of Environment, Housing and Leisure to commence a process of public engagement with the statutory bodies who are consultees to the Planning process, developers, businesses and the wider public using the Authority's Engagement Hub as a means of publicising it.

The Local Plan, approved by Council in July 2017, emphasises that new development must be made suitable for its use and enables contaminated land to be brought back into beneficial use. This updated draft Strategy links to the Local Plan and takes account of the latest national guidance on contaminated land matters and updates the work programme.

1.2 Recommendation:

It is recommended that Cabinet:

- (1) Authorise the Head of Environment, Housing and Leisure to commence public engagement on the updated draft Contaminated Land Strategy attached at **Appendix 1** to this report; and

- (2) Agree that a further report be received by Cabinet at the conclusion of the public engagement process when Cabinet will be asked to approve the adoption of the updated draft Contaminated Land Strategy.

1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 14 June 2019.

1.4 Council Plan and Policy Framework

This report relates to the following priorities in the 2018-2020 Our North Tyneside Plan.

Our Places will:

- provide a clean, green, healthy, attractive, safe and sustainable environment

Our People will:

- be healthy and well

Our Economy will:

- grow by supporting new businesses and building on our strengths

1.5 Information:

1.5.1 Background

The Environmental Protection Act 1990 requires local authorities to produce a Contaminated Land Strategy (“the Strategy”) and to periodically review it. The Authority has a Strategy which was last reviewed in 2014. It incorporated revised Government guidance and updated the work programme.

The overarching objectives of the Government’s policy on contaminated land are:

- a) To identify and remove unacceptable risks to human health and the environment;
- b) To seek to ensure that contaminated land is made suitable for its current use; and
- c) To ensure that the burdens faced by individuals, companies and society as a whole are proportionate, manageable and compatible with the principle of sustainable development.

The Authority has a duty under Part 2A of the Environmental Protection Act 1990 to:

- Inspect the area for contaminated land in accordance with statutory guidance;
- Determine whether any particular site meets the statutory definition of contaminated land;
- Act as enforcing authority for all contaminated land, unless the site meets the definition of a “Special Site”, for which the Environment Agency is the enforcing authority;
- Consult with the Environment Agency on the pollution of controlled waters;
- Ensure the remediation of contaminated land; and
- Maintain a Public Register of contaminated land remediation.

The Contaminated Land Statutory Guidance, April 2012 provides a framework for the content required of the Strategy. It requires the Authority to outline:

- How the Authority will investigate contaminated land;
- How land will be assessed and determined as contaminated land;
- How the Authority will deal with contaminated land;
- The responsibilities of Appropriate Persons who have caused contaminated land; and
- The communication of findings following completion of the site investigation by categorising the risk of contamination.

1.5.2 Review of the Strategy

The review of the Strategy has been shaped by engagement with the Contaminated Land North East Regional Group which consists of local authority Contaminated Land officers. Internal consultation has also been undertaken to ensure the Strategy remains up to date with current nationally published guidance.

The Local Plan, approved by Council in July 2017, emphasises that new development must be made suitable for its use and enables contaminated land to be brought back into beneficial use. The updated draft Strategy links to the Local Plan and highlights development as a route to bringing contaminated land back into beneficial use and provides an opportunity to improve the environment.

The main amendments to the Strategy are:

- **Mining and ground water constraints:** Developer guidance has been produced by the Environment Agency and the Coal Authority to ensure protection of water courses, ground water and mine gas;
- **National and local planning policy:** New policies on Planning place the onus on developers to demonstrate that development will not cause serious detriment to the environment;
- **Changes in land status:** There has been a reduction in local designated wildlife sites and sites of local nature conservation interest in the borough. There has been a reduction in publically owned land;
- **Prioritisation of actions relating to contaminated land:** Updates to the work programme to reflect the proactive work that has been undertaken; and
- **Environmental Damage Regulations:** Inclusion of the amendments that have been made to these regulations which remove the need for formal consultation on remediation proposals.

The updated draft Strategy is included in **Appendix 1** of this report.

A summary of the amendments to the updated draft Strategy are included at **Appendix 2** to this report.

1.5.3 Public Engagement

This report seeks permission from Cabinet to commence public engagement on the updated draft Strategy. Consultation will be undertaken with the statutory bodies who are consultees to the Planning process, developers, businesses and the public. The Authority's Engagement Hub will be used as a means of publicising widely with comments being coordinated by the Environmental Health Service.

It is proposed that the engagement process will commence on 30 September 2019 for a period of 6 weeks. At the conclusion of the consultation the updated draft Strategy will be presented to Cabinet for final consideration.

1.6 Decision options:

The following decision options are available for consideration by Cabinet:

Option 1

To approve the commencement of public engagement on the updated draft North Tyneside Contaminated Land Strategy 2019.

Option 2

To not approve the commencement of public engagement on the updated draft North Tyneside Contaminated Land Strategy 2019

Option 1 is the recommended option.

1.7 Reasons for recommended option:

It is a statutory requirement that the Authority has an up to date Contaminated Land Strategy. The updated draft Strategy will provide developers, businesses and residents of North Tyneside with guidance on how the Authority will determine whether land is deemed to be contaminated. When land is deemed to be contaminated it sets out what action the Authority will take.

If the preferred option is not approved, the Authority risks not being able to fulfil its statutory requirements and not being in a position to ensure that land within North Tyneside will be fit for its current use. This may result in detrimental impacts to health for the residents of North Tyneside and the wider community.

1.8 Appendices:

Appendix 1: Updated draft Contaminated Land Strategy

Appendix 2: Amendments to updated draft Contaminated Land Strategy

1.9 Contact officers:

Colin MacDonald, Senior Manager Technical & Regulatory Services, (0191) 643 6620

Joanne Lee, Public Protection Manager, (0191) 643 6901

Frances McClen, Environmental Health Group Leader, (0191) 643 6640

David G Dunford, Acting Senior Business Partner, (0191) 643 7027

1.10 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

(1) Environment Protection Act 1990 Part 2A Section 78

<http://www.legislation.gov.uk/ukpga/1990/43/contents>

(2) The Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance April 2012

<https://www.gov.uk/government/publications/contaminated-land-statutory-guidance>

(3) Mining and ground water constraints webpage link

<https://www.gov.uk/guidance/mining-and-groundwater-constraints-for-development>

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

There are no financial implications directly arising from the report.

Defra funding for clean-up of contamination had previously been available to local authorities in the form of contaminated land capital grants. In 2014 the Government reduced the funding to £0.5m and then phased out altogether from April 2017.

2.2 Legal

The Environment Act 1995 introduced contaminated land legislation which had been incorporated as Part 2A of the Environmental Protection Act 1990. Part 2A established a legal framework for dealing with contaminated land in England and placed a responsibility on the local authority to inspect its land from time to time for contaminated land. The decision to designate land as contaminated under Part 2A of the Environmental Protection Act 1990 lies with the Authority.

Statutory guidance issued in 2012, placed a duty on the Authority to publish a contaminated land strategy to reflect the changes introduced in that guidance and review the strategy every 5 years. This statutory guidance requires the Authority to take a “strategic approach” to inspecting their areas for contaminated land and to describe and publish this in a written strategy.

The first Contaminated Land Strategy was produced in 2001 and a review was published in 2014 incorporating the new statutory guidance. There is a need for the Strategy to reflect the current guidance and the risk based inspection process.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

Internal consultation will take place with the Cabinet Members, Members and service areas.

2.3.2 External Consultation

As outlined in section 1.5.3 of the report, a consultation process will commence to allow this Strategy to be refreshed.

2.4 Human rights

There are no human rights implications arising directly from this report.

2.5 Equalities and diversity

There are no equality and diversity implications arising directly from this report.

2.6 Risk management

There are no risk management implications directly arising from this report. Risks associated with delivery of the Authority’s Public Protection function are monitored via the

Technical Services Partnership risk arrangements included within the strategic partnership governance framework.

2.7 Crime and disorder

There are no crime and disorder implications directly arising from this report.

2.8 Environment and sustainability

The Strategy will have a positive impact for the environment in that it will ensure that all land within the Borough is suitable for its current use.

PART 3 - SIGN OFF

- Chief Executive
- Head(s) of Service
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Head of Corporate Strategy and Customer Service