

MAIDSTONE BOROUGH COUNCIL

**RECORD OF DECISION OF THE CABINET MEMBER FOR
ENVIRONMENT**

CABINET MEMBER FOR ENVIRONMENT

Decision Made: 11 June 2010

REVIEW OF THE CONTAMINATED LAND STRATEGY 2001

Issue for Decision

To approve the Maidstone Borough Council (MBC) Contaminated Land Strategy 2010.

Decision Made

1. That the Contaminated Land Strategy 2010, as attached at Appendix A to the report of the Assistant Director of Environmental Services, be approved.
2. That the Contaminated Land Strategy 2010 is fit for purpose.
3. That the work on reviewing the contaminated land database be noted.

Reasons for Decision

The MBC Contaminated Land Strategy was originally published in 2001. Although the inspection strategy remains the 'core' document that will enable the Council to deliver its statutory duty, there have been a number of significant developments since it was prepared. These are discussed within the report of the Assistant Director of Environmental Services and where necessary the approach has been updated, modified or additional information has been added.

Background

Environmental Health provides several key services to internal departments and external stakeholders through:

- Its statutory function under Part IIA of the Environmental Protection Act 1990;
- A Statutory function under the Environmental Information Regulations 2004; and
- Contaminated Land consultation services to other council departments, in particular Planning (Development Control).

This work is guided by the MBC Contaminated Land Strategy. The strategy underpins the Council's approach to land contamination within the Borough.

In developing this Strategy, the subject of contaminated land was informally discussed with the Regeneration and Sustainable Communities Overview and Scrutiny Committee on the 24 November 2009 (minute number 78 refers). Ideas generated at this meeting were incorporated within the draft Strategy along with some further information that was added. A further meeting of this Overview and Scrutiny Committee, held on the 26 January 2010, considered the draft Strategy as presented here. Feedback from this meeting is provided below.

Current situation

To support the services listed above, the Council keeps records relating to sites of concern. Although the information held by the Pollution Team is good and largely adequate, the gaps in information and weaknesses in certain parts of the system are increasing the risk of this becoming an issue in the future. Action is now essential to improve the quality and reliability of the data and ensure a robust policy is in place for the future.

It is now apparent that there are inaccuracies and flaws in both the data and previous Strategy which puts the service and potentially the Council in a vulnerable position. To address this issue a sum of £6,000 to £8,000 was identified from within existing Environmental Health budgets to fund a short-term contract for a consultant to enable an initial screening, amendment and updating of the potentially contaminated site list to be expedited as a matter of priority. This work is set out in the updated Strategy and will enable the Council to direct resources to the highest priority sites as set out in order of hierarchy in the Contaminated Land Strategy.

Over 600 sites are identified though the current Strategy as being potentially contaminated. By undertaking the work described above, it is believed the number of sites that will require assessment will be reduced to approximately 200. These sites will require further assessment and possible remediation. How this is achieved will be dependant on the type of site involved and in particular the history and land ownership situation.

Key changes within the 2010 strategy

The following table indicates the key changes within the 2010 strategy. The first column briefly describes the change and the second column indicates the relevant section within the new strategy. Where necessary a cross reference is given to the original 2001 strategy which can be accessed through the Maidstone Borough Council website (<http://www.maidstone.gov.uk/pdf/2001%20Contaminated%20Land%20Strategy%20.PDF>).

Key change	Section within 2010 strategy (Appendix A)	Section within original strategy (MBC website)
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Update to legislative provision to new DEFRA circular 01/2006 and other recent policy and guidance documents.	Referenced throughout the document	
Updated information regarding the Borough in line with developments in spatial planning and conservation	Section 4	Section 4
Inclusion of more details regarding review and assessment process in line with DEFRA circular 01/2006	Section 9 & "Urgent Remedial Action".	Section 9
Change to the prioritisation process	Section 9 (Stage 2)	Section 9 (9.6)
Updated relevant internal and external stakeholders in line with changes in personal and organisations	Referenced throughout documents	
Inclusion of Scrutiny recommendations	Section 7.6, Section 10 and specifically 12.3	N/A
Re-establishment of the working group	Appendix B	Appendix B

Overview and Scrutiny Feedback

A meeting of the Regeneration and Sustainable Communities Overview and Scrutiny Committee, held on the 26 January 2010, considered the draft Strategy (minute number 89 refers). The main amendments to the original strategy were presented. These included the legislative changes, developments in spatial planning and conservation, details with regard to review and assessment, amendments to prioritisation process, stakeholder amendments and the re-establishment of an internal working group. It was also highlighted that the earlier recommendations of the committee were incorporated.

Members were advised that following a period of consultation, a decision would be made by me on implementing the strategy as based on consultation responses.

The Committee agreed that the work undertaken by officers was extensive and agreed that a further review of contaminated land by Overview and Scrutiny was not required.

The Committee removed the contaminated land review from its work programme.

Consultation

In addition to the consultation provided by the Regeneration and Sustainable Communities Overview and Scrutiny Committee, the draft Strategy has been issued to statutory consultees; namely the Environment Agency, Natural England and Food Standards Agency. It has also been issued to all Kent Local Authorities.

Only one substantive response has been received from Tunbridge Wells Borough Council. Support was given for the Strategy with particular mention being made to the collaborative nature of the working group. A query was raised in relation to the Urgent Remedial Action Section which it was felt was unclear as to how any monies will be claimed back without the services of notices allowing works in default. As a result of this comment further clarification has been provided within this section of the Strategy.

Alternatives considered and why rejected

The alternative would be to leave the Contaminated Land Strategy as it currently stands. This is an untenable position as the strategy refers to some legislation and statutory guidance that is now outdated. The Strategy also refers to a number of people, organisations and processes that no longer exist.

By not updating the Strategy, our system of risk assessment and data management would be open to challenge.

By not updating the strategy, undertaking the risk assessments, or undertaking the necessary work to complete the review and documenting of sites of potential concern, there is a risk that land remains contaminated.

The majority of the other Kent local authorities have undertaken or are in the process of updating their strategies. Several have been involved in successful remediation schemes including Shepway, Ashford, Dover and Medway. These have been facilitated by Department for Environment, Food and Rural Affairs (DEFRA) grant applications. A key requirement of making an application for a grant is for the Council's Contaminated Land Strategy to be up-to-date and fit for purpose.

Background Papers

None

Should you be concerned about this decision and wish to call it in, please submit a call in form signed by any two Non-Executive Members to the Head of Change and Scrutiny by: 18 June 2010
