

MAIDSTONE BOROUGH COUNCIL

**REGENERATION AND SUSTAINABLE COMMUNITIES OVERVIEW
AND SCRUTINY COMMITTEE**

26 JANUARY 2010

REPORT OF ASSISTANT DIRECTOR OF ENVIRONMENTAL SERVICES

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1. REVIEW OF THE CONTAMINATED LAND STRATEGY 2001

1.1 Issue for Consideration

1.1.1 To consider the draft Maidstone Borough Council (MBC) Contaminated Land Strategy 2010.

1.2 Recommendation of Assistant Director of Environmental Services

1.2.1 That the Committee considers the Strategy, attached at **Appendix A** and the work being undertaken to review the contaminated land database and makes recommendations to the Cabinet Member for Environment as appropriate.

1.3 Reasons for Recommendation

1.3.1 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 this report and where necessary the approach has been updated, modified or additional information has been added.

Background

1.3.2 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).

- 1.3.3 This work is guided by the MBC Contaminated Land Strategy. The strategy underpins the Council's approach to land contamination within the Borough.
- 1.3.4 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.
- 1.3.5 Furthermore work is underway to incorporate actions of the Contaminated Land Strategy into the Council's Strategic Plan.

Current situation

- 1.3.6 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.
- 1.3.7 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.
- 1.3.8 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

- 1.3.9 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.

Note this is included at **Appendix B** in order to aid the comparison process.

Key change	Section within 2010 strategy (Appendix A)	Section within original strategy (Appendix B)
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

1.4 Alternative Action and why not Recommended

1.4.1 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.

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

1.4.3 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.

1.4.4 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.

1.5 Impact on Corporate Plan

1.5.1 Promoting a healthy environment is a key priority within the Council's Strategic Plan. Identifying and remediating contaminated land is an important way in which the Council can contribute to promoting a healthy environment. This area of work also has significance in terms of supporting land regeneration. The strategy is also of relevance to the Council meeting its statutory obligations.

1.6 Risk Management

1.6.1 Attached at **Appendix C** is an Action Plan that identifies the key measures and risks associated with land contamination. The Action Plan identifies the following key steps:

- Reviewing the Contaminated Land Strategy;
- Reviewing and agreeing future prioritisation for investigating potentially contaminated sites;
- Implementing software to assist in the prioritisation of sites;
- Screening, amending and updating the list of potentially contaminated sites;
- Confirming which sites on the revised list are Council-owned;
- Developing a communications strategy;
- Establishing future procedures for effective management of contaminated land issues; and
- Identifying and implementing measures necessary to safeguard potential future access to grants for land remediation.

1.6.2 It is considered that these actions represent the steps that the Council must do in order to minimise the risk to itself and comply with the statutory requirements.

1.6.3 There is the possibility of unbudgeted costs occurring during the remediation of any of site, whether on a prioritised list or not. This could potentially represent a significant sum. As indicated within the Action Plan there is a system of grants that are available to local authorities where there is a need to remediate contaminated land. It must be noted however that grant applications are not supported when the requirement to remediate could have been placed on an owner/developer through the planning system. This fact highlights the

importance of the Council operating a robust contaminated land strategy.

1.6.4 The greatest risk to the Council is in regard to sites that cannot be linked to an 'appropriate person' or such person is unable to support the cost of the remediation. In this situation responsibility may fall on the Council. An application would however be made to DEFRA to cover the investigation and remediation costs. The Council is also in a position to place a charge on the land to recover costs.

1.6.5 There is also the possibility of a legal challenge to the Council from a landowner if they felt that the Council had not protected their health sufficiently.

1.7 Other Implications

1.7.1

1.	Financial	X
2.	Staffing	
3.	Legal	X
4.	Equality Impact Needs Assessment	
5.	Environmental/Sustainable Development	X
6.	Community Safety	
7.	Human Rights Act	
8.	Procurement	
9.	Asset Management	X

Conclusions

1.7.2 The Contaminated Land Strategy was timetabled for review by the Regeneration and Sustainable Communities Overview and Scrutiny Committee in 2009; this provided an ideal opportunity to assess the Council's position regarding land contamination within the Borough. The development of the Strategy, the critical appraisal from the scrutiny committee and Management Team will ensure that the risks posed to public health and to the Council (reputation and financial) associated with this area of work are appropriately resourced and managed in the future.

1.7.3 This reviewed document brings the Strategy up to date and will form the framework for the other important tasks concerning contaminated land in the Borough for the foreseeable future.

1.8 Relevant Documents

Appendix A - MBC draft Contaminated Land Strategy 2010

Appendix B - MBC Contaminated Land Strategy 2001

Appendix C - Land Contamination Action Plan

IS THIS A KEY DECISION REPORT?

Yes

No

If yes, when did it first appear in the Forward Plan?

...1 January 2010.....

Wards/Parishes affected:All Wards.....

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