

MAIDSTONE BOROUGH COUNCIL

CABINET MEMBER FOR ENVIRONMENT

REPORT OF ASSISTANT DIRECTOR OF ENVIRONMENTAL SERVICES

Report prepared by: John Newington

Date Issued: 3 June 2010

1. REVIEW OF THE CONTAMINATED LAND STRATEGY 2001

1.1 Issue for Decision

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

1.2 Recommendation of Assistant Director of Environmental Services

1.2.1 That the Cabinet Member approve the Contaminated Land Strategy 2010 as attached at **Appendix A**.

1.2.2 That the Cabinet Member agrees that the attached Strategy is fit for this purpose; and

1.2.3 That the Cabinet Member notes the work on reviewing the contaminated land database.

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.

1.4 Background

1.4.1 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).

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

1.4.3 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 for approval by this report. Feedback from this meeting is provided within section 1.7 below.

1.5 Current situation

1.5.1 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.

1.5.2 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.

1.5.3 Over 600 sites are identified through 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. See section 1.10.2 for further information on the financial aspects of land remediation.

1.6 Key changes within the 2010 strategy

1.6.1 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)
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

1.7 Overview and Scrutiny Feedback

1.7.1 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.

1.7.2 Members were advised that following a period of consultation, a decision would be made by the Cabinet Member for the Environment on implementing the strategy as based on consultation responses.

1.7.3 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.

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

1.8 Consultation

1.8.1 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.

1.8.2 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.

1.9 Impact on Corporate Plan

1.9.1 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.

1.9.2 As of the 1 April 2010 contaminated land was specifically included within the Council's Strategic Plan. The Action Plan that accompanies the Contaminated Land Strategy (see **Appendix B**) forms the mechanism against which performance can be monitored. It should be noted that there are no relevant national performance indicators, hence the importance of monitoring outcomes against the Action Plan.

1.10 Alternative Action and why not Recommended

- 1.10.1 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.
- 1.10.2 By not updating the Strategy, our system of risk assessment and data management would be open to challenge.
- 1.10.3 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.
- 1.10.4 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.

1.11 Risk Management

- 1.11.1 Attached at **Appendix B** is the 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.

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

1.12 Other Implications

1.12.1

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

1.12.2 Financial

1.12.3 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.

1.12.4 The greatest financial 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.

- 1.12.5 Sites where resources are required over and beyond existing provisions will be subject to individual reports requesting the necessary resources as identified on a case-by-case basis.
- 1.12.6 No additional budget requests have been made in relation to the development and implementation of the revised Contaminated Land Strategy. Based on the information currently available, the proposed work programmes can be accommodated within existing budgets.
- 1.12.7 Legal
- 1.12.8 As previously indicated the Council has a statutory duty to inspect its area to identify contaminated land. In performing its duties it is required to act in accordance with guidance issued by the Secretary of State.
- 1.12.9 Failure to adopt and progress a contaminated land strategy could leave the authority in breach of its statutory duty. 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.
- 1.12.10 Environmental/Sustainable Development
- 1.12.11 A central principle of the Contaminated Land Strategy is that the condition of land, its use and its development is protected from potential hazards. Without appropriate action land will remain contaminated and public health, property and the wider environment may be harmed. Land contamination can preclude development and the potentially beneficial use of land. Having a considered and informed approach to contaminated land will reduce these risks.
- 1.12.12 Asset Management
- 1.12.13 Obviously the Council as an owner of property and land is affected by the Strategy in the same way as any other landowner. The Strategy specifically addresses this issue.
- 1.12.14 In the event of land being identified as contaminated it would be remediated as appropriate and in accordance with a publicly available remediation strategy.
- 1.13 Conclusions
- 1.13.1 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.

1.13.2 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.

1.14 Relevant Documents

1.14.1 Appendices

Appendix A - MBC draft Contaminated Land Strategy 2010
Appendix B - Land Contamination Action Plan

1.14.2 Background Documents

None

NO REPORT WILL BE ACCEPTED WITHOUT THIS BOX BEING COMPLETED

Is this a Key Decision? Yes No

If yes, when did it appear in the Forward Plan? 1 January 2010

Is this an Urgent Key Decision? Yes No

Reason for Urgency

How to Comment

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

Cllr Ben Sherreard
Telephone: 01622 602000
E-mail: bensherreard@maidstone.gov.uk

Cabinet Member for Environment

John Newington
Telephone: 01622 602389
E-mail: johnnewington@maidstone.gov.uk

Senior Pollution Officer - Environmental Health