

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	Cabinet Member For Safe & Attractive Neighbourhoods
2.	Date:	18 October 2010
3.	Title:	RMBC Contaminated Land Strategy Review
4.	Directorate:	Neighbourhoods & Adult Services

5. Summary

All Councils are legally required under the Environmental Protection Act 1990 Part 2A to have in place a strategy on how contaminated land will be identified, inspected and investigated.

The Council adopted a Strategy, in the prescribed format, in response to the statutory duty on the on 2nd July 2001. The “Contaminated Land Inspection Strategy” has been reviewed in light of updated guidance which will enable land owners and developers to be more informed on the Council’s approach for identifying and inspecting such land. With completion of the review statutory and non statutory consultation is required.

Further to the Strategy review the report also proposes the adoption of the Yorkshire and Humberside Pollution Advisory Council (YAHPAC) guidance *Development on Land Affected by Contamination: YAHPAC Technical Guidance for Developers, Landowners and Consultants* (March 2010) as an assessment mechanism. This will also enable effective benchmarking to take place with other local authorities in the Yorkshire and Humberside region who have adopted the YAHPAC guidance.

6. Recommendations

It is recommended that the Cabinet Member for Safe & Attractive Neighbourhoods;

- 1. Approves the release of the draft Contaminated Land Inspection Strategy for consultation with Statutory Consultees and non-Statutory Consultees**
- 2. Requests a finalised Strategy for adoption be reported following consideration of consultee response**
- 3. Approves the adoption of the Development on Land Affected by Contamination: YAHPAC Technical Guidance for Developers, Landowners and Consultants**

7. Proposals and Details

7.1 Background

In April 2000, Part IIA of the Environmental Protection Act (EPA) 1990 came into force and introduced a new regime for the regulation of contaminated land in England. Part IIA addresses the legacy of land contamination and its' main purpose is to:

- Provide an improved system for the identification of land that is posing unacceptable risks to health or the environment; and
- Secure remediation where such risks cannot be controlled by other means. This would take into account the cost of risk reduction, practical considerations, and the potential benefits. Part IIA is intended to complement other regimes; for example those aimed at preventing new contamination.

Local Authorities regulate part IIA and the key responsibilities for the Council include:

- Preparation of an inspection strategy setting out how the Authority intends to inspect its area for the purpose of identifying contaminated land.
- Determining whether particular areas of land are contaminated land in accordance with the Secretary of State's guidance.
- Identification and notification of owners and occupiers of the land, those who may be liable and the Environment Agency that the land is contaminated land and whether it is a Special Site.
- Undertaking urgent remediation action where there is imminent danger of serious harm.
- Determining who may be liable to bear responsibility for remediation of contaminated land and what proportion of the costs they should bear.
- Ensuring that appropriate remediation takes place, either by encouraging voluntary action or, unless restrictions apply, by serving a remediation notice on those responsible.
- Taking further action if remediation is not carried out or is not effective.
- Maintaining a public register containing details of regulatory action taken under Part IIA and through other means.
- Providing information on contaminated land under Part IIA to the Environment Agency to allow preparation of the State of Contaminated Land Report.

This is added to by DEFRA Circular 01/2006, Environmental Protection Act 1990: Part IIA Contaminated Land, which lays out the criteria and requirements of the

Contaminated Land Strategy, including a requirement to undertake review of the strategy.

7.2 Proposals

It is proposed that the adopted Contaminated Land Strategy is updated to include:

- New models of Investigation and Assessment are adopted consistent with other Councils in the region
- Targets are adopted that reflect the current capacity of the Council
- The review of the Strategy is considered for Consultation

Recently the Yorkshire and Humberside Pollution Advisory Council (YAHPAC) developed the technical guidance paper *Development on Land Affected by Contamination: YAHPAC Technical Guidance for Developers, Landowners and Consultants*. This document is designed to assist developers, landowners and consultants wishing to re-develop or significantly change the use of land which could potentially be contaminated. This guidance has been adopted by a number of Local Authorities and incorporated into their existing Contaminated Land Strategies including Barnsley MBC, Doncaster MBC, Hull CC, Leeds CC, Wakefield MBC and York CC. This guidance paper is attached to this report for information (Appendix 1).

With this document in mind Rotherham's Contaminated Land Strategy has been reviewed and updated to include the YAHPAC document as the reference document against which to undertake inspections and reviews. This will ensure that there is considerable regional consistency across Yorkshire which will ensure a level playing field and allow benchmarking to take place on a like for like comparative basis.

This methodology would also benefit from annual reporting through to the Cabinet Member for Safe and Attractive Neighbourhoods as a means to ensure that elected members are informed of progress and to enhance benchmarking against other regional Local Authorities that report annually on their Contaminated Land Strategies.

It is proposed that the guidance *Development on Land Affected by Contamination: YAHPAC Technical Guidance for Developers, Landowners and Consultants* is adopted.

The revised draft Strategy document revises the Inspection Strategy and covers the period 2010-2013 (see Appendix 2). Whilst national guidance and legislation does not provide for any specific performance targets, within Rotherham's reviewed Strategy targets set that are reflective of the number of sites that the Council has the capacity to examine within a twelve month period.

The draft Strategy has already been considered by Legal and Democratic Services and Planning Services, who have raised no concerns.

It is proposed that if the draft Strategy is considered suitable then required Statutory and relevant non-Statutory Consultees are consulted with prior to adoption of the reviewed Strategy. This will fulfil the Council's obligations in relation to reviewing and consulting upon its Contaminated Land Strategy.

8. Finance

Provision is contained within existing revenue budgets, however, it should be noted that where a contaminated site was identified requiring invasive investigation the costs of such works could exceed planned budget allocation.

9. Risks and Uncertainties

The receipt of any monies from Department for Environment, Food and Rural Affairs is not guaranteed.

Budgetary pressures might have a negative impact on the Council's abilities to fully fulfil its statutory duties. Failure to undertake statutory duties in relation to Contaminated Land presents the risk of legal challenge to the Council.

Failure to achieve national objectives and targets will have a negative effect on the Council's ability to contribute to success in tackling contaminated land.

There is a risk that if a site that requires urgent attention is identified or brought to the Council's attention, then there might be failure against the set targets through prioritisation of capacity and finance to deal with the emergency.

10. Policy & Performance Agenda Implications

The Community Protection Unit's contaminated land work discharges the Council's statutory duties in relation to contaminated land and contributes to the Corporate Plan's objectives of;

- Helping to create safe and healthy communities, and
- Improving the environment

In addition to contributing to the Community Strategy's **Sustainable Development** cross cutting theme by protecting and enhancing the environment, the work also contributes to **Rotherham Alive** by ensuring a place where people feel good, are healthy and active, **Rotherham Achieving** by helping to improve the quality of life in the most deprived communities and **Rotherham Proud** by increasing the satisfaction in the local area as a place to live and putting pride in the hearts of our communities.

In addressing the **Rotherham Alive** priorities contaminated land work contributes to delivering the following key Public Health strategic action:

- Tackling Health Inequalities.

Dealing with issues related to contaminated land has clear linkages to the seven outcomes of the Outcomes Framework for Social Care, and importantly includes:

- Improved Health and Emotional Well-being, by promoting and facilitating the health and emotional well-being of people who use the services.

11. Background Papers and Consultation

- The Contaminated Land (England) Regulations 2000
- The Environment Act 1995
- The Environmental Protection Act 1990
- Environmental Information Regulations 1992
- *Development on Land Affected by Contamination: YAHPAC Technical Guidance for Developers, Landowners and Consultants*
- DEFRA Circular 1/2006 Environmental Protection Act 1990: Part IIA Contaminated Land. HMSO, London.
- Consultation with EDS Planning & Regeneration Services

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