

This Report will be made public on 7 December 2021



Report Number **C/21/53**

To: Cabinet
Date: 15 December 2021
Status: Key Decision
Responsible Officer: Ewan Green, Director of Place
Cabinet Member: Cllr Stuart Peall, Cabinet Member for Enforcement, Regulatory Services, Waste & Building Control

SUBJECT: UPDATE TO THE CONTAMINATED LAND STRATEGY

SUMMARY:

The council has a duty under Part 2A of the Environmental Protection Act 1990 to manage contaminated land within the district. The council is expected for this purpose to prepare a Contaminated Land Strategy. The strategy must cover a number of objectives notably how contaminated land is identified, risk assessed and remediated if required. Legally, only land where contamination is assessed as a significant risk is considered under the strategy. Land where contamination is present is routinely considered under the Planning Regime for new developments. There have been no major changes to legislation or statutory guidance since the strategy was last reviewed in 2017. The latest version of the strategy is a general update on progress since the last review.

REASONS FOR RECOMMENDATIONS:

It is a statutory requirement of the council to have a Contaminated Land Strategy. The current strategy needs to be reviewed and updated.

RECOMMENDATIONS:

1. To receive and note report C/21/53.
2. To approve the new strategy for the period 2021 to 2026.

1. BACKGROUND

1.1. Local authorities under Part 2A of the Environmental Protection Act 1990 have a duty to manage 'contaminated land' in their area. The EPA 1990 requires each local authority to publish a strategy setting out how it will carry out its duties. The regulations came into force in April 2000 and the council first adopted a Contaminated Land Strategy in 2002, which was then reviewed in 2012 and again in 2017.

1.2. Part 2A of the EPA 1990 defines contaminated land as '*any land which appears to the local authority in whose area it is situated to be in such condition, by reason of substances in, on or under the land, where -*

(a) significant harm is being caused or there is a significant possibility of such harm being caused; or

(b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.'

It is important to note that only land where an unacceptable level of risk has been identified through investigation and risk assessment should be defined as 'contaminated land' under Part 2A EPA 1990 and listed on the Public Register as requiring remediation. The government's approach remains that most land that is affected by contamination should be dealt with through the planning regime where remediation measures are required as part of any development.

1.3. Statutory guidance first published in 2012 summarised the purpose and aims of the contaminated land strategy as -

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

1.4. The council last reviewed its strategy in 2017 and there have been no major regulatory changes in the intervening period. The new edition of the strategy therefore shares a high degree of continuity with the 2012 and 2017 editions.

1.5. In summary the strategy covers the following -

- The regulatory background covered in the EPA 1990 and the statutory guidance. How contaminated land is risk assessed and categorised.
- The characteristics of the district including geographical features, historic and current land use.

- How the strategy was first developed, work carried out in previous strategies and future work.
- The internal processes the council has adopted in relation to investigating and managing issues related to contaminated land.
- The external procedures the council will follow with owners, occupiers and other interested parties in relation to liaison, risk communication and enforcement.
- How further reviews of land not currently under investigation would be triggered.

1.6. The draft Contaminated Land Strategy (as defined under Part 2A of the EPA 1990) for the period 2021-21 is attached as Appendix 1

2. INSPECTIONS, REMEDIATION & FURTHER INVESTIGATIVE WORK

2.1. The 2012 statutory guidance set out the two forms of inspection that local authorities would normally conduct. The first was a 'strategic inspection' that would take a broad top-down assessment of the land in the district and allocate priority sites for further investigation. This would be followed by a 'detailed inspection' of the priority sites, which would often involve some form of intrusive ground investigation.

2.2. Chapter 1.4.3 explains the 'contaminant', 'receptor' and 'pathway' linkage required for the land to be assessed as contaminated. All three elements must exist before a piece of the land can be determined as contaminated under Part 2A, including evidence of the actual presence of contaminants. If at completion of the detailed inspection the land contamination is assessed as a significant unacceptable level of risk, then remedial action would be required.

2.3. The responsibility for remediation of contaminated land lies initially with those responsible for the contamination. As the cause of the contamination is often due to the historic use of the land (e.g. former industrial processes) it may not be possible to trace all those responsible. In those circumstances, the current owner or occupier of the land may be held liable.

2.4. Chapter 5 of the draft strategy explains the process by which the council would seek to communicate with owners where remedial action was needed, generally seeking to reach voluntary agreement for remedial action before taking formal enforcement action by issuing a remedial notice.

2.5. Contaminated land will be listed on the Public Register (as described in Chapter 5.6) including details of remedial notices issued. At this current time there are no entries in the Public Register, however this position may change during the period of the next strategy as further site investigations are concluded.

2.6. Chapter 3 of the draft strategy gives a history of the inspections completed and investigative work carried out since 2002 and how this has developed

through each updated strategy. The council firstly completed a strategic assessment in 2002 that identified 100 potential sites. These original potential sites either through remediation or further investigation (e.g. by conceptual site modelling) were refined to 10 sites by the 2011 strategy. There are now four remaining sites that require further investigation, which will be actioned in the course of this next strategy.

3. DRAFT STRATEGY – MAIN UPDATES

3.1. As previously stated, the main regulations (EPA 1990) and the statutory guidance remain largely unchanged so there is a high degree of continuity between the draft strategy and the current edition. The new strategy was prepared by the Environmental Protection Team in conjunction with the council's technical consultants Idom Merebrook.

3.2. In summary, the main updates are listed below -

- Addition of the strategy policy objectives as set out in the statutory guidance (1.1).
- Reference to non-statutory guidance *Land Contamination Risk Management* (LCRM) guidance (authored by the Environment Agency) published on gov.uk in April 2021.
- Expanded definition including examples added to the description of the 'Contaminant', 'Receptor' and 'Pathway' assessment process (1.4.3).
- General update to Chapter 2 'Characteristics of the Folkestone & Hythe District' including addition of the Otterpool Park project and noting the return to the council direct responsibility for the management of the housing stock.
- Expanded note under 2.11.3 about the decommissioning of Dungeness A and B. This is for background information purposes only as legally the decommissioning is actioned separately under other regulatory regimes and stands outside of the Contaminated Land regulations.
- Chapter 3 updated with latest information related to completed site investigations and remaining investigations to be completed.
- General update to the guidance documents referenced in Appendix C including the latest Local Plan 2020.
- Appendix D updated to reference Corporate Plan 2021 aims and objectives.

3.3 As the strategy remains unchanged in terms of regulation and processes no formal public consultation is required. We have however directly contacted the previous statutory consultees (from 2011) with the new draft strategy. It was also added to the Consultation Page of the council's website on 24

September to 24 November 2021. No comments from the public or statutory consultees were received.

4. CONCLUSION

4.1 The EPA 1990 Part 2A requires the council to have a strategy for the management of contaminated land. The draft strategy has been reviewed to ensure the council complies with the regulations and statutory guidance. The draft strategy outlines the inspection, risk assessment and remediation processes, the council will follow in relation to contaminated land. It provides an update on the progress on site investigations and provides an action plan for the four remaining sites.

5. RISK MANAGEMENT ISSUES

5.1 Risk management issues -

Perceived risk	Seriousness	Likelihood	Preventative action
Failure to comply with EPA 1990	High	Low	Revised and updated Contaminated Land Strategy
Technical information is missed in the new update	Medium	Low	Review of regulatory changes completed and engagement of technical consultant.
Contaminated Land is not remediated	Medium	Low	The strategy outlines the inspection process followed up to this point and how the process for further reviews would be carried out. The strategy also sets external procedures leading to the remediation notices being issued.

6. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

6.1 Legal Officer's Comments (NM)

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 Council.

Statutory guidance issued in 2012 placed a duty on the Council 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 Council to take a “strategic approach” to inspecting their areas for contaminated land and to describe and publish this in a written strategy.

6.2 Finance Officer’s Comments (RH)

No financial implications to this report

6.3 Diversities and Equalities Implications (AR)

No equalities implications.

6.4 Climate Change Implications (AT/HS)

No climate change implications.

7. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

Karen Weller
Environmental Protection Senior Specialist
Telephone: 01303 853251
Email: karen.weller@folkestone-hythe.gov.uk

Daniel Stone
Environmental Protection Specialist
Telephone: 01303 853530
Email: daniel.stone@folkestone-hythe.gov.uk

The following background documents have been relied upon in the preparation of this report:

None

Appendices:

Appendix 1: Contaminated Land Strategy (As defined under Part 2A of the Environmental Protection Act 1990)