

Report to the Cabinet

Report reference: C-025-2016/17
Date of meeting: 12 October 2016



Portfolio: Environment

Subject: Budget Allocation for the Investigation of Potentially Contaminated Land Sites within the District.

Responsible Officer: Qasim (Kim) Durrani (01992 564055).
Susan Stranders (01992 564197).

Democratic Services: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

- (1) To agree, subject to staff resources, capacity and competing priorities, to investigate one potentially contaminated land site every two years;
- (2) Subject to recommendation (1) above, to secure a growth bid of £50,000 from the District Development Fund, for two years from April 2017, to carry out the required investigations; and
- (3) To receive a report in September 2019 in order to agree future budget allocation to investigate potentially contaminated land sites within the District.

Executive Summary

The Council is statutorily required to investigate potentially contaminated land sites within the district, as required by Environmental Protection Act 1990 Part IIA and in line with the Council's Contaminated Land Strategy. The inspection regime and allocation of budget need to be reviewed and formalised.

Reasons for Proposed Decision:

To remind Members of the Council's responsibilities contained within its Contaminated Land Strategy; and

To provide the resources required to undertake the minimum of assessment activity.

Other Options for Action:

- (i) Not to carry out any proactive site investigations as required by the Environmental Protection Act 1990 Part IIA and in line with the Council's Contaminated Land Strategy.
- (ii) To reduce the minimum frequency of investigation of one site every three years.
- (iii) To increase the frequency of investigation and allocate further resources as deemed appropriate.

Report:

1. The District presents a number of challenges when dealing with past land uses, some of which arise due to its unique geography, history and geology. The availability of sand, gravel and brick earth led to a burgeoning mineral extraction and subsequently, waste disposal industry. The district is peppered with historical landfill sites, which often overlie chalk deposits, used locally for water supplies. Many redundant sites became home to polluting activities such as scrap yards and haulage depots. In other parts of the district military airfields and sites used for explosive manufacture were used to support the war effort, many of which have now closed.

2. Part IIA of The Environmental Protection Act 1990 sets out the Council's statutory duties with regard to the identification, prioritisation and investigation of potentially contaminated land sites within the District. These duties include producing a formal contaminated land strategy document, which sets out how the Council will meet those statutory requirements. The Council adopted its Contaminated Land Strategy in 2001. It is planned to update the strategy once this report has been presented to Cabinet.

3. The production of the Strategy required the collation of significant volumes of historical information and took a number of years to complete. That exercise resulted in the identification of a significant number of locations which are potentially contaminated and therefore require further investigation as they may pose risks to human health and/or the environment. These sites have been prioritised with the highest priority sites including former landfill sites, land previously subject to heavy industrial use and other land that has historically been subject to contaminative uses and subsequently developed, before the legislation and associated planning controls were put into place.

4. The Council has carried out four major investigations to date, three on ex landfill sites and an emergency investigation on a former gas works site. Given the significant cost associated with the investigations and the number of sites the Council has to investigate, it seems prudent to formalise the frequency of inspection. This needs to demonstrate that the Council is paying due regard to its statutory duties under the Act. It is proposed that the Council aims to investigate one site every two years. However, it should be recognised there may be circumstances when this may not be achievable. **(Recommendation 1)**

5. An investigation consists of a Phase I (desk top study) and a Phase II (intrusive investigation). The cost of investigating each site will vary significantly depending on past use, the size and the risks associated with the site. The Council was successful in securing government grants for two Phase II investigations. However, the reduction in grant aid over recent years and the focus on giving funding for remediation, rather than site investigation, means it is most unlikely that any application for a grant to carry out Phase II investigations will be successful.

6. There is an existing Continuing Service Budget (CSB) that has been used to cover the contaminated land work, pollution, land and water quality work. However, this has been insufficient to cover the cost of one contaminated land investigation, as required by Part IIA of the Environmental Protection Act 1990.

7. As each potentially contaminated land site can be considered as a project in its own right and costs will vary, it is considered that it is more appropriate for the Council to fund the intrusive investigations from the District Development Fund (DDF). This will also allow greater flexibility between financial years in terms of rolling forward or back funds as determined by each site under investigation. Approval is therefore sought to allocate £50,000, for three years from April 2017, from the DDF budget. **(Recommendation 2)**

8. The position will be reviewed in September 2019 when a further report will be presented to the Cabinet (**Recommendation 3**).

Resource Implications:

A Phase 1 (desk top study) currently costs approximately £4000 to £7000. On average a Phase II (intrusive investigation) costs approximately £75,000 but is strictly dependant on a number of factors. The Council will, under the polluter pays principle, endeavour to recover any costs of remediation works from the persons responsible.

Currently £25,000 is allocated to the CSB to carry out the Phase 1 - desk top studies and other land, pollution and water quality work. There has been DDF budget allocated for the contaminated land work over the last few years but due to limited staffing resources and the need to concentrate on implementing the provisions of the Private Water Supply Regulations, this has not been spent. A new Water and Pollution Control Officer post was created in 2015/2016 and the post was filled in April 2016. Given this, it is anticipated that the Council, with sufficient budget, should be able to carry out one investigation every two years. It is currently considered that a DDF allocation of £50,000 per annum from April 2017 will be required to meet this target.

Legal and Governance Implications:

The Environmental Protection Act 1990 (Part IIA) places a statutory duty on Local Authorities to carry out inspections of all potentially contaminated land in their area and not just Council owned land. This should include, where deemed necessary, a physical examination not just taking a strategic overview. If the Council decided not to implement an inspection strategy, as proposed in this report, it would have to justify their reasoning for not fulfilling that duty.

The Contaminated Land (England) Regulations 2000 (as amended)
Environment Act 1995

Safer, Cleaner and Greener Implications:

It is essential to address pollution, protect the environment and maintain good public health in order to keep the residents of the District safe and healthy, in accordance with the Council's Safer, Cleaner, Greener Strategy and its statutory responsibilities.

Consultation Undertaken:

None.

Background Papers:

The Council's Contaminated Land Strategy.

Cabinet Reports:

Contaminated Land - C/025/2005-06

Contaminated Land Consultancy Budget – C/019/2007-08

Contaminated Land – 2010/11 Budget Amendments – C/092/2009/10

Public Health Committee reports:

New Contaminated Land Regime - 23 May 2000

Contaminated Land – 17 October 2000

Risk Management:

The inability to complete investigations and the potential risks associated with any pollutant linkages found on sites being assessed by the Council, under Part IIA of the Environmental Protection Act, have been itemised in the Neighbourhood's Business Plan. No sites investigated to date have met the definition of being statutorily 'contaminated land' and therefore remediation to reduce the risks posed by any of the sites has not been required. In addition the investigations have been completed within the allocated budget/secured grants. Therefore there has been no need to change the risk matrix associated with this work.

It is considered, that by aiming to undertake one investigation every two years, that the Council is showing due regard to its statutory duties. If the Council decides not to carry out any investigations, both the Directorate and Corporate risk register would require updating to reflect the increase risk. This would also present a reputational risk to the Council if it is seen to not consider assessing potentially contaminated land that it is aware exists.

Given the number and nature of potentially contaminated land sites within the district the Council could be open to criticism/risk of challenge from third parties/Government if it decides to not implement a proactive inspection regime.

Advice on what would constitute a defensible inspection regime for Epping Forest District, given the nature and numbers of potentially contaminated land sites, was sought from an external solicitor who is the Chair of DEFRA's Expert Panel on Contaminated Land and a former advisor to the Local Government Association on environmental law. It is considered that carrying out one site investigation every two years is defensible given the time it takes to complete the complex investigation work, existing staff resources, the significant cost of an investigation and the lack of grants for such work.

Of note is that whilst the vast majority of sites are investigated through the planning process it must be noted that not all are. Most of the high risk sites e.g. landfills are highly unlikely to be redeveloped given their high risk of contamination and the cost of remediating them. The duty under Part IIA is different from any obligation under the planning regime.

Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

The title of the report due to be presented to Cabinet is 'Budget allocation for the investigation of potentially contaminated land sites within the district'. An Equality Analysis Report has been completed for the provision of the service relating to the investigation of potentially contaminated land sites. The service is assessed and processed in accordance with the Environment Protection Act 1990. Whilst the issue itself may have public health and environmental impact consequences, there are no issues with respect to the elimination of unlawful discrimination, advance equality of opportunity and fostering good relations with respect the personal characteristics protected by equality law.