

## **Report to the Cabinet**

**Report reference:** C-092-2009/10

**Date of meeting:** 8 March 2010



**Epping Forest  
District Council**

**Portfolio:** Environment

**Subject:** Contaminated Land – 2010/11 Budget Amendments

**Responsible Officer:** Susan Stranders (01992 564197).  
Paul Baccarini (01992 564537).

**Democratic Services Officer:** Gary Woodhall (01992 564470).

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### **Recommendations/Decisions Required:**

- (1) To note the estimated projected under spend of £33,000 in the 2009/10 Contaminated Land CSB budget;
- (2) To note that the Council has submitted a £60,000 grant bid to the Department For Environment, Food and Rural Affairs (Defra) under the Contaminated Land Capital Projects Programme 2010/11 for a site investigation, under Part IIA of the Environmental Protection Act 1990, which is urgently required for the Bower Hill Industrial Estate in Epping; and
- (3) To agree that the estimated £33,000 under spend in Contaminated Land CSB for 2009/10 be made into DDF and rolled forward into 2010/11.
- (4) To note that a further report will be presented to Cabinet outlining the results of Part IIA investigation.

### **Executive Summary:**

Planned expenditure on the 2009/2010 Contaminated Land CSB budget was stopped in the latter half of 2009 due the urgent nature of works required on the Bower Hill Industrial Estate, a former gas works site. A bid has been submitted to Defra for the 2010/2011 Contaminated Land Capital Projects Programme in order to secure a grant for a site investigation required under the Environmental Protection Act 1990. Until the outcome of the bid is known and given that the Council currently has three other high priority sites under various stages of investigation approval is sought to make the 2009/10 Contaminated Land CSB projected under spend into DDF to be spent in 2010/11.

### **Reasons for Proposed Decision:**

The Council has a duty under the Environmental Protection Act 1990 to investigate potentially contaminated land sites within the District. There are insufficient funds in the current CSB budget allocation to carry out the initial intrusive investigations required at the Bower Hill Industrial Estate where coal tar waste is escaping from the site and urgent investigation is required.

By rolling CSB under spend to DDF the Council can carry out the site investigation itself if it's

bid for Defra grant aid is rejected. Alternatively if the bid is successful then the DDF allocation can be utilised to deal with other high priority sites.

### **Other Options for Action:**

Not to make the projected 2009/10 Contaminated Land CSB under spend into DDF for 2010/11 and to offer up the under spend as potential savings. However, if the bid for a grant is unsuccessful there will be insufficient funds to complete the investigations required on the Bower Hill Industrial Estate and the other high priority sites already under investigation. If additional funding has to be sought in 2010/11 the work which needs to be undertaken on the Bower Hill Industrial Estate, with some urgency, will be delayed.

### **Report:**

1. Local Authorities have a duty under Part IIA of the Environmental Protection Act 1990 to investigate and secure remediation with regard to contaminated land within their area. If after investigation the risks associated with the site are such that the site is declared as 'contaminated land', in accordance with the statutory definition, remediation notices may be served upon the 'responsible' party/parties. This is based primarily on the polluter pays principle but in the absence of being able to identify those who knowingly caused the pollution, the 'responsible' party/parties could be the current landowner/s. There is a provision in the legislation which allows the Local Authority to defer recovery of costs by securing a charge on the land in question.

2. The identification and prioritisation of potentially contaminated land sites within Epping Forest District is a task that has been on going for several years. A CSB of £51,250 is allocated for carrying out the duties placed upon the Council under the above mentioned legislation.

3. The Environment & Street Scene Directorate currently has three high priority sites under different phases of investigation. It was planned to use the balance of the 2009/10 Contaminated Land CSB budget in order to progress to the next phase for one of these sites. Following an incident that occurred in the Autumn of 2009, when a watercourse (rear of The Orchards residential area (off Bower Hill) was polluted with a 'black tarry like' substance and smells were witnessed in the rear gardens of two residential properties, priority was given to investigate the Bower Hill Industrial Estate. It is currently considered that the pollution is originating from this site which is a former gas works.

4. Due to the nature of the problem it is considered that there may be scope to secure grant funding through the Defra 2010/11 Contaminated Land Capital Projects Programme. Costs for the initial intrusive investigations are estimated at £60,000; further investigations may be required. A bid was submitted to Defra by the Environment and Street Scene Directorate on 26 January 2010. The outcome of the bid is not yet known.

5. There is a projected under spend of approximately £33,000 in the 2009/10 Contaminated Land CSB budget. This has arisen due to cautious expenditure elsewhere in the cost centre following the discovery of contamination issues at Bower Hill Industrial Estate. To allow time to pursue possibility of grant aid it is prudent not to spend the remaining CSB budget on this site, or on another site, and await the outcome of the bid to Defra.

6. If the CSB under spend is not made into DDF and rolled forward and, if the Defra bid were unsuccessful, there will be insufficient funds in 2010/11 to carry out investigation of the Bower Hill Industrial Estate. If the bid is successful, the DDF will be used to complete work on other sites currently under investigation by the Council and to which the projected 2009/10 Contaminated Land CSB under spend was planned to be allocated.

7. The Council is statutorily obliged to carry out this investigation. It is planned to start the investigation as soon as the necessary procurement process has been approved, irrespective of the outcome of the bid to Defra.

#### **Resource Implications:**

The existing staff will manage the tasks arising out of the recommendations in this report. There will be no resource implications if the bid is successful and/or the CSB under spend is made into DDF and rolled forward. In the event neither is agreed a report seeking additional budget to carry out the site investigation at Bower Hill will be presented to Cabinet.

#### **Legal and Governance Implications:**

Environmental Protection Act 1990 – Part IIA  
Building Act 1984 Section 59

#### **Safer, Cleaner and Greener Implications:**

Pollution of the land, water and air are inherent issues that need to be addressed to ensure the district is greener and sustainable. It is necessary to conserve and enhance the living environment which forms the habitat on which everything else depends. It is also essential to address pollution issues in order to keep the residents of the district safe and healthy.

#### **Consultation Undertaken:**

Meetings and discussions held with the Environment Agency, National Grid, Thames Water, Defra, Environmental Consultants and with the residents known to be affected. Correspondence with land owners and occupiers of the Bower Hill Industrial Estate. Further consultation will be carried out with all stakeholders when plans for the investigation are finalised.

#### **Background Papers:**

The Council's Contaminated Land Strategy  
Various Planning, Building Control documentation and reports carried out by Environmental Consultants

#### **Impact Assessments:**

##### Risk Management

The Bower Hill industrial site (ex gas works site) was initially risk assessed, in accordance with Government guidance for potentially contaminated land sites. This site was ranked below a number of other sites in the district for investigation under Part IIA of the Environmental Protection Act 1990. An incident in 2009 resulted in contaminants from the site causing pollution of a local watercourse. As a result it has been decided to prioritise investigations at the Bower Hill Industrial Estate. A further more detailed risk assessment will be carried out, in accordance with Government guidance, once the investigations are complete and then future actions determined.

##### Equality and Diversity:

At this time it is unknown as to who will be impacted by the investigation and its findings and hence if there will be any adverse equality implications. Once there is a greater understanding of the problem the equality and diversity implications will be assessed.

*Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?* No

*Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?* No

*What equality implications were identified through the Equality Impact Assessment process?*  
N/A

*How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?*  
N/A