

EXECUTIVE

8th June 2023

Report Title	Adoption of the NNC Contaminated Land Strategy and the Contaminated Land Cost Recovery and Hardship Policy
Report Author	Graeme Kane – Interim Executive Director for Place & Economy
Lead Member	Cllr David Brackenbury, Executive Member for Growth and Regeneration

Key Decision	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for call-in by Scrutiny?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there public sector equality duty implications?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information (whether in appendices or not)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Applicable paragraph number/s for exemption from publication under Schedule 12A Local Government Act 1972	

List of Appendices

Appendix A - Contaminated Land Strategy

Appendix B - Cost Recovery and Hardship Policy

1. Purpose of Report

- 1.1 It is a statutory requirement that each Local Authority publish a strategy for carrying out inspection of its area to identify land that may be contaminated. The purpose of this report is to present a North Northamptonshire Contaminated Land Strategy. Statutory guidance states that the local authority should keep its strategy in respect of such land under periodic review. The Strategy deals principally with the inspection function, showing how the local authority will inspect its area for contaminated land, identify contaminated land and manage the information that it collects in the process.
- 1.2 The North Northamptonshire Council strategy replaces the contaminated land strategies produced by the former District/Borough councils. This strategy explains how the Council will implement the contaminated land regime from 2023 onwards and takes account of the latest statutory guidance, experience from the former Borough/District councils and the resources available to the

Council at this time. The revised strategy is available both in hard copy and on the Council's web site.

- 1.3 A Hardship Policy, is required by statutory guidance to be adopted in support of a contaminated land strategy. The proposed policy reflects this guidance.
- 1.4 This report presents a policy, intended to both guide the decision-making process relating to the recovery of incurred costs, to ensure that the Council meets the criteria for being eligible for any financial assistance available from central government and to ensure compliance with the Council's statutory duty. The policy also demonstrates transparency of the decision-making process when determining how to recover costs associated with the clean-up of contaminated land.

2. Executive Summary

- 2.1 This report outlines the Council's statutory duties in relation to dealing with contaminated land that presents a risk to human health or the environment within the Council's administrative area.
- 2.2 The report proposes a new North Northamptonshire Contaminated Land Strategy.
- 2.3 The report also proposes a policy to guide officer and Member decision making in the event of the Council having to exercise its statutory powers and needing to recover its costs, having carried out works in default following non-compliance with a statutory notice requiring contaminated land to be cleaned up, or remediated.

3. Recommendations

- 3.1 It is recommended that the Executive approves the proposed Contaminated Land Strategy (**Appendix A**) and Cost Recovery and Hardship Policy (**Appendix B**).
- 3.2 Reason for Recommendation: The North Northamptonshire Contaminated Land Strategy and Cost Recovery and Hardship Policy are based on the strategy and policy documents previously adopted by the former Borough and District councils across Northamptonshire. The new documents have been produced in collaboration with West Northamptonshire Council. The responsibility for the inspection of contaminated land has traditionally sat within Environmental Protection.

The document has been the subject of both an internal and external consultation process with comments invited on the document. The comments and changes, where appropriate to the aims and objectives of the document, have been incorporated into the strategy.

- 3.3 Alternative Options Considered – The Executive could decide not to update the strategy and policy, however statutory guidance states that the local authority should keep their contaminated strategy under periodic review and not doing so could threaten the lawfulness of any enforcement action taken. The Council would also fail to meet its statutory duty.

4. Report Background

- 4.1 Under Part IIA of the Environmental Protection Act 1990, which came into force in April 2000, Local Authorities in England are given responsibilities for regulating contaminated land. There are two main parts to the local authority's duties under Part IIA – an inspection function and an enforcement function.

- 4.2 The Contaminated Land Strategy is principally concerned with the inspection of the district to determine whether any land may be contaminated land as defined by the regulations. The definition of contaminated land from the Environmental Protection Act 1990, Part IIA, Section 78A (2) is:

“any land which appears to the Local Authority in whose area it is situated to be in such a condition, by reason of substances in, on, or under the land, that –
(a) significant harm is being caused or there is a significant possibility of such harm being caused; or
(b) pollution of controlled waters is being, or is likely to be, caused.”

Note: It should be noted that substances may include natural and artificial substances

- 4.3 The identification of contaminated land should be carried out in an ordered fashion to ensure that the most pressing and serious problems are addressed first. This strategy gives an overview of the methodology to be used to prioritise sites for further inspection. It does not cover the inspection of land and the apportionment of liability with respect to investigation and remediation. This area of the contaminated land function is laid out in regulations and statutory guidance.
- 4.4 The strategy, if adopted, will be available on the Council's web site and by electronic means on request. Hard copies of the strategy will also be readily available if required.
- 4.5 The principal regulators of contaminated land legislation are local authorities however under certain circumstances the Environment Agency may take on this role pursuant to their statutory duty.
- 4.6 Where a site is declared as being contaminated land, the Council has four main tasks:
- (a) To establish who should bear responsibility for the remediation of the land (the “**appropriate person**” or persons). Normally this will be the person(s) responsible for the pollution or, if they cannot be found, the site owners;

- (b) To decide, after consultation, what remediation is required in any individual case and to ensure that such remediation takes place, either through agreement with the appropriate person, or by serving a remediation notice on the appropriate person if agreement is not possible or, in certain circumstances, through carrying out the work themselves;
- (c) Where a remediation notice is served, or the authority itself carries out the work, to determine who should bear what proportion of the liability for meeting the costs of the work; and
- (d) To record certain prescribed information about their regulatory actions on a public register.

4.7 Where the Council is required to undertake the remediation itself then it may recover all of its reasonable costs but must have regard to any hardship that this action may cause. The Secretary of State has issued statutory guidance on this matter. This has been used as a basis for the recovery policy attached as **Appendix B** to this report.

4.8 Should the Council incur such costs but not be able to recover them from either the original polluter or landowner, then it might be eligible for financial assistance from Defra (Department for Environment, Food & Rural Affairs). However, a pre-requisite of this is that the Council has in place a transparent policy for determining how it will recover these costs that has due regard to financial hardship.

5. Issues and Choices

5.1 The Contaminated Land Strategy and Hardship Policy are necessary requirements in terms of the contaminated land regime. Without a Strategy Policy the Council would have difficulty undertaking inspection, enforcement and in making decisions on appropriate persons and recovering the costs of remediation.

5.2 The North Northamptonshire Council strategy will replace the contaminated land strategies produced by the former District/Borough councils which are currently still in use.

5.3 This strategy explains how the Council will implement the contaminated land regime from 2023 onwards and takes account of the latest guidance, experience from the former Borough/District councils and the resources available to the Council at this time. The revised strategy is available both in hard copy and on the Council's web site.

6. Next Steps

6.1 It is proposed that the Executive adopts the Contaminated Land Strategy and Hardship Policy associated with the remediation of contaminated land under Part IIA of the Environmental Protection Act 1990 (as Amended)" as set out in the attached appendices.

7. Implications (including financial implications)

7.1 Resources, Financial and Transformation

- 7.1.1 It is not proposed that the Council will engage on a proactive investigation of sites whilst central government funding for remediation is restricted unless an emergency situation arises. The Cost Recovery and Hardship Policy identifies relevant duties and powers in the Environmental Protection Act 1990, and provides a framework for cost recovery decisions, applicable persons, costs incurred, and a decision-making process.
- 7.1.2 The cost of remediation will be met by the relevant responsible person(s), and the Cost Recovery and Hardship Policy provides a repayment mechanism, where extenuating circumstances exist.

7.2 Legal and Governance

- 7.2.1 The Council has a statutory duty to ensure that it has a strategy in place to respond to contaminated land issues within its administrative area. Statutory guidance also requires the Council to adopt a Hardship Policy in respect of the costs of remediation before a remediation notice is served. The proposed policy satisfies the requirements of the statutory guidance.

7.3 Relevant Policies and Plans

- 7.3.1 Economy/Housing - The Contaminated Land Strategy and Hardship Policy drive forward the priority of *'enabling a thriving and successful economy that shapes great places to live, learn, work and visit'* by facilitating regeneration of brownfield sites for housing and ensuring they are suitable for use.
- 7.3.2 Environment – The Contaminated Land Strategy and Hardship Policy play an *important part in 'Green sustainable environment' by protecting our environment from pollution and harm to living organisms.*
- 7.3.3 *Health and Well Being - The Contaminated Land Strategy and Hardship Policy assist with the priority of 'active, fulfilled lives'; in particular from determining the possibility of significant harm to human health.*

7.4 Risk

- 7.4.1 Not adopting the Contaminated Land Strategy and Hardship Policy will prevent the Council fulfilling its duties under the Environmental Protection Act 1990 or complying with statutory guidance. By adopting the strategy, the Council will be able to demonstrate that we deal with contaminated land in an open and transparent way.

7.4.2 There are risks to the public and wildlife from contaminated land and these are detailed in the strategy. By having a clear strategy in place this will ensure that appropriate action is taken in response to issues identified.

7.5 Consultation

7.5.1 The statutory guidance under Part 2A of the Environmental Protection Act 1990 requires a Local Authority to consult appropriate public authorities who may be able to provide information and advice. A consultation process was undertaken between: 14.02.23 and 28.03.23 and responses were received from West Northamptonshire Council, Historic England and Natural England. Comments included;

- West Northamptonshire Council considered that the strategy covered all areas it is required to and approved the approach to dealing with contaminated land issues as they arise.
- Natural England did not perceive that the strategy related to their interests to any significant extent and did not wish to comment.
- Historic England had no specific comments, but general comments;
 - Historic England wished to ensure that the councils' conservation officers and archaeological advisors had been consulted.
 - They advised that paragraph 3.5 was welcomed, but that reference to 'ancient monuments' should be updated to 'scheduled monuments' to reflect NPPF terminology and that reference to archaeology should also be included together with reference to designated assets such as scheduled monuments.
 - Reference to 'Property in the Format of Buildings including heritage assets', was welcomed, but that it would be helpful to include 'and their settings' after assets.

7.5.2 The comments from Historic England have been incorporated into the strategy. No issues were raised from other stakeholders and partner agencies.

7.6 Consideration by Executive Advisory Panel

7.6.1 The Contaminated Land Strategy and Hardship Policy were taken to the Sustainable Communities Executive Advisory Panel on 26th April 2023 and clarification was provided on the following points:

- The purpose of the strategy and hardship policy:
 - That they reflect statutory guidance but in a more manageable and readable form.

- They are in essence copies of those strategies and policies previously adopted by the former sovereign councils which have been updated and references checked.
- Section 2 of the statutory guidance issued by DEFRA in 2012 'Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance' deals with the inspection duty conferred on a local authority.
- Section 2.4 states that a local authority should set out its approach to carrying out its duties under 78B(1) of the EPA 1990 in a written strategy, which should be kept under review. Hence the revision.
- The contaminated land regime is based on the polluter pays principle. In that those persons responsible for the contamination being present should cover the cost of remediation. There are no/limited government funds available to the Council for investigating contaminated land.
- The section on Corby within the strategy:
 - This section is there to provide the main characteristics of a local authority area only such as: Geographical area, Population, Character of the area, rural, metropolitan, etc, Geological features, Main industries, etc and Water resources.
 - The liability faced by the former Corby Borough Council (CBC) is not mentioned as the legal case was a civil litigation group action brought against the former CBC. This was not an action brought under the contaminated land regime as per Part IIa of the Environmental Protection Act 1990.
- List of potentially contaminated sites:
 - A list of potentially contaminated sites is compiled and managed by the former sovereign councils in the Environmental Protection teams. The lists are of potentially contaminated sites simply by virtue of historic/current land use. For the majority of sites, the Council has no evidence at this point in time, that they are actually affected by contamination.
 - The lists are commercially confidential and incomplete. Revealing the lists of sites may result in prejudice, and unnecessary blight.

7.7 Consideration by Scrutiny

7.7.1 This report is eligible for call in by the Scrutiny Commission, as part of their work programme.

7.8 Equality Implications

7.8.1 An Equality Screening Assessment has not identified any adverse impact on individuals with protected characteristics.

7.8.2 The Strategy and Policy seeks to promote fairness, transparency and the need to prevent hardship when making a decision with regards to determining financial responsibility for the remediation of contaminated land. Appropriate persons are defined by the legislation and the Policy does not create any differential impacts between equality groups.

7.9 Climate Impact

7.9.1 The Strategy and Policy has positive impacts in respect of air quality, water quality and pollution, built environment, natural environment and diversity, energy consumption / efficiency, food production, employment, housing, access to leisure, and access to green space.

7.10 Community Impact

7.10.1 It is not considered that there will be a distinct community impact as a result of the Policy or Strategy.

7.11 Crime and Disorder Impact

7.11.1 Crime reduction - The clean-up of contaminated land is not expected to have a significant direct effect on crime reduction.

8 Background Papers

8.1 Contaminated land Strategies of former districts and boroughs with NNC.

8.2 Environmental Protection Act 1990. HMSO (1990) - <https://www.legislation.gov.uk/ukpga/1990/43/contents>

8.3 The Environment Act 1995 HMSO (1995) <https://www.legislation.gov.uk/ukpga/1995/25/contents>

8.4 The Contaminated Land (England) Regulations 2006 <https://www.legislation.gov.uk/uksi/2006/1380/contents/made>

8.5 DEFRA Contaminated Land Statutory Guidance, April 2012 <https://www.gov.uk/government/publications/contaminated-land-statutory-guidance>

8.6 Ministry of Housing, Communities & Local Government - National Planning Policy Framework, July 2021

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

- 8.7 British Standards Institute. Code of Practice for ground Investigations. BS5930:2015+A1:2020
- 8.8 British Standards Institute. Investigation of Potentially Contaminated Sites – Code of Practice. BS10175:2011+A2:2017
- 8.9 Environment Agency - Land contamination risk management (LCRM) 2021
<https://www.gov.uk/government/publications/land-contamination-risk-management-lcrm>
- 8.10 Historic England – Land Contamination and Archaeology, February 2017
<https://historicengland.org.uk/images-books/publications/land-contamination-and-archaeology/>
- 8.11 The Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015
https://www.legislation.gov.uk/uksi/2015/1623/pdfs/uksiod_20151623_en_auto.pdf