

SUBJECT:	CONTAMINATED LAND INSPECTION STRATEGY
DIRECTORATE:	COMMUNITIES AND ENVIRONMENT
REPORT AUTHOR:	SIMON COLBURN, ASSISTANT DIRECTOR HEALTH AND ENVIRONMENT

1. Purpose of Report

1.1 To obtain approval of the revised Contaminated Land Inspection Strategy.

2. Executive Summary

2.1 This is the Council's refreshed Inspection Strategy and has been written to reflect the latest Statutory Guidance and other changes to the regime.

2.2 The Council has a statutory duty under Part 2A of the Environmental Protection Act 1990 to deal with land contamination and to have an inspection strategy setting out our approach.

2.3 The Department for Environment, Food and Rural Affairs used to provide a national grant scheme to fund local authorities carrying out proactive inspections under Part 2A, in the rare circumstances that no other person could be found to carry out that work (e.g., the polluter, landowner or developer). Since that scheme has stopped, costs would fall to the council.

2.4 The refreshed strategy reflects our current operational approach to focus on managing contaminated land through the planning and building control regimes and encouraging voluntary remediation by landowners rather than proactive part 2A inspections.

2.5 The draft strategy was presented to Policy Scrutiny Committee on 15th March 2022 where the Committee resolved that the strategy be supported and referred to Executive for approval.

3. Background

3.1 This is the Council's third Inspection Strategy and has been written to reflect the latest Statutory Guidance and other changes to the regime.

3.2 Section 78B(1) of Part 2A of the Environmental Protection Act 1990 (EPA 1990) places a duty on local authorities to inspect their areas to identify contaminated land and gives us regulatory powers to deliver against that duty.

- 3.3 Contaminated Land Statutory Guidance produced by the Department for Environment, Food and Rural Affairs sets out how local authorities should meet these duties, including the need to have a written strategy setting out their strategic approach. This Contaminated Land Inspection Strategy is the City of Lincoln Council's written strategy.
- 3.4 The strategy provides a brief overview of the contaminated land regime including its aims and objectives.
- 3.5 Any Part 2A inspection undertaken by the Council must be at the council's expense and by its very nature can consist of numerous phases and involve the engagement of environmental consultants.
- 3.6 Where contaminated land assessments conclude that there are unacceptable risks, as per Statutory Guidance, the Council must ensure these are addressed which will usually require some form of remedial works. For example, digging out contaminated ground and sending to landfill, encapsulating the ground or cleaning the soil in situ.
- 3.7 Where no responsible party can be identified (e.g., landowner, developer, polluter), the cost may fall to the Council. Such costs can reach hundreds of thousands of pounds and upwards.
- 3.8 The Contaminated Land Capital Grants programme from Central Government was previously available to local authorities to bid for funds to carry out such investigations and remediation work. This funding programme was withdrawn in 2013 and has subsequently not been replaced with an alternative, leaving many authorities unable to fund such inspections.
- 3.9 To date the Council has carried out one inspection under Part 2A of the EPA 1990 which resulted in the statutory determination of 36 residential properties as Contaminated Land. The details of which are present on the Council's public register of contaminated land, as required by the legislation. The initial investigation was funded by a Contaminated Land Capital Grant and the clean-up was funded by the original polluter and the developer.
- 3.10 While Part 2A gives us powers to proactively deal with contaminated land the vast majority of contaminated land is assessed and dealt with through the planning system particularly in Lincoln as land is reused over the decades.
- 3.11 The updated Strategy was presented to Policy Scrutiny Committee on 15 March 2022. No changes were made to the policy.

4. Main Policy Change

- 4.1 This refreshed Inspection Strategy contains updates based on amended national guidance, the updated Local Planning Policy Framework and, following the ending of the national Contaminated Land Capital Grants Programme, DEFRA's decision not to introduce a replacement scheme.
- 4.2 The Inspection Strategy is therefore proposing to change the approach from undertaking proactive inspection of sites where contamination may be present due

to previous uses, to utilising the existing assessment of sites within the Development Control process to manage the Council's duties under Part 2A. It should be noted that proactive Part 2A work has always been very infrequent.

- 4.3 The Environmental Protection team within Environmental Health are a consultee within the planning process. The National Planning Policy Framework (NPPF) requires consideration of potential contamination as part of the planning process to ensure a site is suitable for its proposed use and, after remediation (where required), the land is not capable of being determined as Contaminated Land under Part 2A.
- 4.4 Through this process the Council reviews the previous use of a site from the information submitted by the applicant as well as Council records and decides whether further investigation is required. The Scientific Officer (Contaminated Land) reviews reports submitted, agrees remediation measures where required and agrees validation reports demonstrating that concerns have been addressed.
- 4.5 Many planning application sites have had some previous use and therefore may appear on the Council's list of 'Sites of Potential Concern' (SPC). Ensuring these sites are addressed through the planning process as required by the NPPF also provides the Council with information on these SPC sites. The high number of planning applications received each year allows a much greater number of sites to be addressed than could be under the Part 2A regime.
- 4.6 The revised Statutory Guidance (2012) places an emphasis on this approach stating that the use of Part 2A should only be where 'no appropriate alternative solution exists' and points out that land contamination could be addressed through the planning and building control processes as well as voluntary action by landowners. We continue to provide advice and guidance to landowners wishing to proactively deal with their land.
- 4.7 One of the overarching objectives of Government's policy on the Part 2A regime includes '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.'
- 4.8 The Council will continue to use the favoured mechanisms detailed in the Statutory Guidance to ensure that historical contamination is appropriately dealt with whilst ensuring unnecessary burdens are not placed on the taxpayer.
- 4.9 The Council would still need to, and will, act in any cases where there was evidence of an immediate or likely case of harm occurring from land contamination as this would not be dealt with by other regimes.

5. Strategic Priorities

How the council manages land affected by contamination has a role to play in most of our strategic objectives from attracting investment by bringing brownfield land back into beneficial use, helping to make people safe in their homes and communities, ensuring land is suitable for new housing and enhancing our natural environment.

5.1 Let's Drive Inclusive Economic Growth

Addressing land contamination and bringing brownfield land into use for beneficial purposes often has a beneficial impact on economic growth.

5.2 Let's Reduce all Kinds of Inequality

Our residents, visitors and businesses should be able to live, work and play in areas where there is not an unacceptable risk from the land.

5.3 Let's Deliver Quality Housing

Ensuring houses are fit to live includes ensuring there is no unacceptable risk to the occupiers from the land a house is built on.

5.4 Let's Enhance our Remarkable Place

Contaminated land can pollute watercourses and cause harm to human health and ecosystems. The contaminated land function is primarily monitored under this priority.

6. Organisational Impacts

6.1 Finance (including whole life costs where applicable)

There are no direct financial implications arising from the policy or the report. The legislation already provides that in certain exceptional circumstances a situation might occur where the responsibility for investigating or remediating a site could fall to the City Council.

6.2 Land, Property and Accommodation

The City Council has the same duties under the act as any other landowner or developer. The Scientific Officer (Contaminated Land) has always and continues to liaise with other teams to ensure the council actively discharges their contaminated land duties under the Act.

6.3 Equality, Diversity and Human Rights

The Public Sector Equality Duty means that the Council must consider all individuals when carrying out their day-to-day work, in shaping policy, delivering services and in relation to their own employees.

It requires that public bodies have due regard to the need to:

- Eliminate discrimination
- Advance equality of opportunity
- Foster good relations between different people when carrying out their activities

The Duty has been considered and there is no equality impact arising from the Contaminated Land Inspection Strategy and therefore an equality impact assessment is not required.

7. Risk Implications

7.1 (i) Options Explored

1. Not have, or do not refresh, the Contaminated Land Inspection Strategy – We are required to have a contaminated land inspection strategy or similar document.
2. Identify a budget for progressing proactive Part 2A inspections – Identify and tying up a large budget to replace the Contaminated Land Capital Grants Programme is not a financially prudent or efficient way to deliver our duties. Experience has shown that utilising the planning and building control processes and supporting landowners or developers is a much more effective way of delivering our duties and protecting the environment.

7.2 (ii) Key Risks Associated with the Preferred Approach

- 1) That the council may be liable, under exceptional circumstances, to fund the investigation and remediation of a piece of contaminated land. This is however a statutory duty and has existed for many years
- 2) That not undertaking proactive Part 2A inspections may result in areas of land causing harm or pollution and these are not identified or addressed. However, the risk from this is very small. The current contaminated land regulations have been in place for over 20 years, and throughout that time we have employed a specialist contaminated land officer and we believe that we therefore have a good understanding of the issues across the city. In addition, many new contaminated land issues arise due to changing the way the land is used – which is tackled through the building control or planning processes. We will continue to respond to emergency situations or cases where there is evidence that pollution is or may be occurring.

8. Publication

- 8.1 Once approved the strategy will be published on our website and circulated to the developers and environmental consultants we frequently deal with.

9. Recommendation

- 9.1 Executive is asked to approve the revised policy.

Is this a key decision? No

Do the exempt information categories apply? No

Does Rule 15 of the Scrutiny Procedure Rules (call-in and urgency) apply? No

How many appendices does the report contain? Two
Appendix A – Contaminated Land Inspection Strategy
Appendix B – Policy Scrutiny Committee minute from 15 March 2022

List of Background Papers: None

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