

DECISION-MAKER:	CABINET		
SUBJECT:	LAND QUALITY STRATEGY 2018-2023		
DATE OF DECISION:	18 SEPTEMBER 2018		
REPORT OF:	CABINET MEMBER FOR TRANSPORT AND PUBLIC REALM		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY	
NOT APPLICABLE	
BRIEF SUMMARY	
<p>The Council has a statutory responsibility to continually inspect its area for land contamination and document how it intends to undertake that process in an 'Inspection Strategy'. Where significant contamination is identified the land must be remediated to prevent further harm. Southampton City Council (SCC) published its first strategy in 2001. Historically The Department of Environment and Rural Affairs (Defra) provided grants to fund the investigation and remediation of contaminated land where the polluter could not be identified. This funding stream was withdrawn in December 2013. Since this date the council has no budget or access to funding to undertake investigation and remediation and therefore has been severely restricted in how it can fulfil its statutory duties.</p> <p>SCC's Land Quality Strategy 2018-2023 has been published to demonstrate how it will deliver its duties under Part IIA of the Environmental Protection Act 1990 (Part IIA) in the absence of central government funding. As well as fulfilling the responsibility to provide an "Inspection Strategy" it also details the Councils wider role in managing and maintaining confidence in the quality of land in the City. It proposes to achieve this by;</p> <ul style="list-style-type: none"> • Using existing resources available in the Scientific Service Team within Transactions and Universal Services. • Recovering costs where appropriate. • Producing an annual business plan identifying future budget pressures. 	
RECOMMENDATIONS:	
(i)	<p>To adopt the proposed Land Quality Inspection Strategy 2018-2023 and;</p> <ul style="list-style-type: none"> • Maintain a proactive Contaminated Land Inspection Strategy that is consistent with our Part IIA duties. • Recover costs where appropriate • Consider any business case put forward to progress site investigations and/or remediation in accordance with part IIA.

	<ul style="list-style-type: none"> • Ensure SCC's own policies regarding land contamination are consistent with best practice.
REASONS FOR REPORT RECOMMENDATIONS	
1	To ensure that the Council's statutory obligations continue to be met and minimise the risk of legal challenge.
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED	
2	Cease Part IIA contaminated land inspection. This was rejected as it did not fulfil the council's statutory duties.
3	Continue Part IIA contaminated land inspection without recovering costs. This was rejected as it was not in accordance with statutory guidance and would place unnecessary financial risks on SCC.
4	Continue Part IIA contaminated land inspection (reactive). This was rejected as it did not fulfil the council's statutory duties.
DETAIL (Including consultation carried out)	
5	Contamination of land arises principally from industrial processes, waste disposal and accidental spillages of contaminants. If not dealt with adequately it can present a risk to human health, the environment and sustainable economic development. This risk only arises where there is a link between the land that is contaminated and a receptor (human, ecological or controlled water).
6	The Council has regulatory responsibility for carrying out the duties and functions under Part IIA of the Environmental Protection Act 1990 in relation to contaminated land. This Act is aimed at addressing the legacy of historical contamination associated with contaminating land uses that were not subject to the pollution control or town planning requirements that exist today. Local Authorities are required to inspect their area for land that could be contaminated and, if legally determined as contaminated land are duty-bound to ensure it is made safe. In carrying out these duties the Council must act in accordance with statutory guidance. Further information of the requirements of Part IIA can be found in Appendix 1.
7	Local Authorities were previously able to access funds to cover the cost of site investigations and remediation through the Contaminated Land Capital Grant Scheme (CLCGS) administered by the Department of Environment, Food and Rural Affairs (Defra). SCC was successful in using this scheme to support its activities in relation to Part IIA until funding was withdrawn in 2014/15 (see Appendix 2).
8	<p>Costs incurred by the Council can be recovered from liable parties, including placing a charge on property, but only so far as the statutory guidance and the Council's own Cost Recovery & Hardship Policy will allow. Currently SCC has no Cost Recovery & Hardship Policy in place but the Housing Renovation Grant test provides a set of principles that can be followed. In addition, other LA's have adopted the following:</p> <ul style="list-style-type: none"> • Costs will be recovered from the original polluter wherever possible. • Cost recovery should not cause undue hardship. • Costs to be recovered should not exceed the value of the land. • Costs would not be recovered from land owners if the contamination was genuinely unsuspected i.e. they took all reasonable precautions to check

	<p>for land contamination (through legal / environmental searches) when purchasing the property but none was identified.</p> <p>Costs will be recovered in situations where there was knowledge of the contamination at the time of purchasing the property and this was either taken into account in the land value, or specific insurance cover.</p>
9	<p>SCC has made progress in fulfilling its Part IIA duties. In 2006 an initial desk-top study identified 1,517 sites where potentially contaminating land uses have existed. These “sites of potential concern” have been prioritised according to the hazards associated with those specific land uses and the sensitivity of the land uses that might now be exposed to that hazard. That process has identified. (see Appendix 3).</p> <p>Some specific sites were subject to detailed investigation when Defra funding was available. This includes the Radcliffe Road allotment sites which were amongst the first in the UK to be managed under Part IIA.</p>
10	<p>Defra removed the CLCGS in 2013. There was no previous indication that this would happen or that funding was a temporary measure to kick start inspections (as has since been suggested).</p>
11	<p>When Part IIA was first introduced very few tools were available to make robust technical assessments of risk. Only in the last 24-36 months have we seen the introduction of robust assessment criteria and an ‘Expert Panel’. In their absence some Local Authorities were accused of making inappropriate decisions and land was being blighted. SCC was able to avoid such issues by recognising we were not equipped to deal with the more contentious sites.</p>
12	<p>Scientific Service lost 1 FTE in 2009, the post was dedicated to undertaking Part IIA activities and consequently our activity in this area had to be reduced.</p>
13	<p>In the absence of staff resource, technical guidance and capital funds SCC, like other Local Authorities, has been restricted to reactive activities in recent years.</p>
14	<p>SCC’s revised Land Quality Strategy 2018 – 2023 look to address these obstacles by:</p> <ul style="list-style-type: none"> • using existing resources more effectively; • fully utilising its powers to recover costs, and • having regard to the latest published guidance.
15	<p>The content of an “Inspection Strategy” is clearly defined in statutory guidance and has been formatted into the “double sided A3” SCC strategy template (see Appendix 4).</p>
16	<p>In addition the Inspection Strategy includes position statements relating to SCC’s wider approach to land quality and contamination and attempted to differentiate these two elements within the template.</p>
17	<p>The current version has been provided to key stakeholders for comment. No recommendations for material changes have been provided.</p>
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
18	<p>The Scientific Service Team has competent staff able to deliver the strategy. Capacity will be provided by a grade 8, 0.5FTE vacancy which can be used to</p>

	backfill and cover other existing duties. However, if the inspection process identifies the need for any detailed assessments or remedial projects these may bring about additional resource pressures which will be identified in an annual business plan.
19	Given that Government CLCGS funding is no longer available, consideration needs to be given to how the cost for remediating contaminated land will be met moving forward. The proposed principles of the Cost Recovery & Hardship Policy mean that, in most cases, costs incurred by the Council when remediating land would not be recoverable and there is currently no capital budget to cover the costs of these works. The severity and extent of land contamination is typically unknown, therefore the cost of remediation can only be quantified as sites are investigated. Once costs have been identified a business case will be made to obtain capital funds for the following year's detailed investigations and remediation works to take place.
20	It is not possible to accurately cost potential remediation works and consequently SCC's financial liability associated with the 53 priority sites until the inspection works have been completed. However, an estimate for the 53 sites, based on The Homes & Communities Agency (HCA) 'Guidance on dereliction, demolition and remediation costs', indicates that costs are likely to range between £85,750 and £379,862. The table in section 28 provides further sensitivity analysis for best and worst case scenarios.
21	Part 2A only applies to sites where a significant risk to health has been identified. Therefore the options for remediation will typically be limited to those that will provide a short to medium term solution. It is anticipated that any remediation undertaken will take 3-6 months to complete.
<u>Property/Other</u>	
22	As a major landowner the Council must ensure that it has in place appropriate mechanisms to manage ground quality issues. In addition to the activities being undertaken under Part IIA, the need for a proactive means of approaching land contamination within current procedures is required. Those departments with land holdings are therefore supported by Scientific Services to ensure that ground contamination is given the appropriate level of consideration within. <ul style="list-style-type: none"> • Asset and Property Management Plans • Land Transactions • Development Projects • Operational Use / Service Delivery
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
23	The proposed Land Quality Strategy would fulfil the council's statutory obligations under Part IIA of the Environmental Protection Act 1990.
<u>Other Legal Implications:</u>	
24	The Corby case highlights the risks presented to LA's that do not manage land contamination risks appropriately. Compensation pay outs totalling £8M have been suggested (link). Media sources have reported that environmental lawyers are now actively seeking sites which are considered contaminated under Part IIA with the aim of claiming compensation from the Local Authority

	for failure to undertake its duty of care under the Environmental Protection Act.												
25	The need to complete a Data Protection Impact Assessment (DPIA) has been identified. A Full DPIA will be necessary as personal information relating to land and property ownership is likely to be collected when a site progresses to detailed investigation. This will be completed prior to implementation of the strategy.												
RISK MANAGEMENT IMPLICATIONS													
26	The assessment process is a rolling one. Whilst Part IIA exists Southampton City Council will always have a responsibility to inspect and re-inspect land within its boundary. Therefore the need for funding could arise at any time.												
27	<p>Remediation costs can vary significantly as severity of contamination can vary and each site has specific needs. An estimate of the financial liability associated with the 53 priority sites has been calculated as follows:</p> <ul style="list-style-type: none"> • Status of the site in terms of land use and ownership identified from SCC corporate mapping system. • Where multiple land uses exist on one site, each land use was recorded as a percentage of the whole priority site • Range of costs for remediation of each priority site estimated using The Homes & Communities Agency (HCA) 'Guidance on dereliction, demolition and remediation costs' (range of costs relates to severity of contamination) <p>Local Authorities that have pursued an Inspection Strategy report that only 5-10% of priority sites eventually require remediation. The remaining 90-95% were found to not meet the definition contaminated land and therefore did not require remediation.</p>												
28	<p>Having calculated the mean cost of remediation for each site on the priority list, the upper 7.5%, lower 7.5% and middle 7.5% have been identified to illustrate the range of financial liability.</p> <table border="1" data-bbox="331 1370 1428 1697"> <thead> <tr> <th></th> <th>SCC Landholdings</th> <th>All Land</th> </tr> </thead> <tbody> <tr> <td>Best Case (lower 7.5%)</td> <td>£632 ± £282</td> <td>£282 ± £368</td> </tr> <tr> <td>Most Likely (middle 7.5%)</td> <td>£159,135 ± £73,385</td> <td>£259,418 ± £120,444</td> </tr> <tr> <td>Worst Cast (top 7.5%)</td> <td>£1,001,147 ± £418,749</td> <td>£4,935,194 ± £2,058,196</td> </tr> </tbody> </table> <ul style="list-style-type: none"> • Of the 53 priority sites SCC has ownership of 23 sites (2 in full ownership and 21 where SCC owns a portion of the site). • The lowest cost for remediating SCC owned land on an individual site on the priority list is £315. • The highest cost for remediating SCC owned land on an individual site on the priority list is £650K. 		SCC Landholdings	All Land	Best Case (lower 7.5%)	£632 ± £282	£282 ± £368	Most Likely (middle 7.5%)	£159,135 ± £73,385	£259,418 ± £120,444	Worst Cast (top 7.5%)	£1,001,147 ± £418,749	£4,935,194 ± £2,058,196
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29	<p>SCC may be liable for the cost of remediation any site where;</p> <ul style="list-style-type: none"> • It is identified as the "Class A appropriate person" because it caused the pollution or permitted development of an unsuitable site. • The land is in its ownership and no other "Class A appropriate person" is identified. 												

	<ul style="list-style-type: none"> The site is an “Orphan Site” i.e. where it is not possible to find either the polluter or the owner/occupier or where certain members of the liability group are exempt from liability under the provisions of Part IIA.
POLICY FRAMEWORK IMPLICATIONS	
30	The recommendations are consistent with the Southampton City Council Strategy 2016-2020 outcome; “People in Southampton live safe, healthy, independent lives.

KEY DECISION?	Yes
WARDS/COMMUNITIES AFFECTED:	ALL
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Environmental Protection Act 1990, Part IIA Duties
2.	Letter from Defra regarding funding under the Contaminated Land Capital Grants Scheme.
3.	Process map for rolling inspection programme
4.	SCC Land Quality Strategy 2018-2023

Documents In Members’ Rooms

1.	Equality and Safety Impact Assessment
2.	Data Protection Impact Assessment

Equality Impact Assessment

Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	Yes
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Data Protection Impact Assessment

Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.	Yes
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Other Background Documents

Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 1IIA allowing document to be Exempt/Confidential (if applicable)
1.	NONE