

REPORT TO EXECUTIVE

Date of Meeting: 8 February 2022

REPORT TO COUNCIL

Date of Meeting: 22 February 2022

Report of: Director Net Zero and City Management

Title: Review of the Council's Contaminated Land Strategy

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

1.1 To seek adoption of a revised Contaminated Land Strategy, following consultation.

2. Recommendations:

2.1 That Executive supports the adoption of the revised Contaminated Land Strategy;
and

2.2 That Council adopts the revised Contaminated Land Strategy

3. Reasons for the recommendation:

3.1 The City Council first published a Contaminated Land Strategy in 2001. Since then, there have been significant changes to the legislation and statutory guidance, which resulted in the strategy being updated in 2014. It has now been reviewed again, for the period 2022 to 2027. The Council has undertaken consultation on the draft strategy. No comments or recommendations were received from the public or any of the statutory consultees.

4. What are the resource implications including non financial resources?

4.1 The revised Contaminated Land Strategy will be implemented within existing resources. The Strategy explains how the Council, in its approach land contamination will seek to minimise unnecessary burdens on the taxpayer, businesses and individuals, where it is reasonable and practicable to do so.

5. Section 151 Officer comments:

5.1 There are no additional financial implications for Council to consider contained within this report.

6. What are the legal aspects?

6.1 Section 57 of the Environment Act 1995 created Part 2A of the Environmental Protection Act 1990 (“Part 2A”) which establishes a legal framework for dealing with contaminated land in England. Part 2A requires that local authorities cause their areas to be inspected with a view to identifying contaminated land, and to do this in accordance with published Statutory Guidance.

6.2 For the purposes of the legislation, “contaminated land” has a strict definition. Section 78A states that “contaminated land” 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) significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused.

This should be distinguished from the much broader category of “land affected by contamination” where contaminants are present but usually not at a sufficient level of risk to be contaminated land.

6.3 Section 78B of the Environmental Protection Act 1990 states that in performing its functions in respect of the identification of contaminated land that ‘...a local authority shall act in accordance with any guidance issued...by the Secretary of State. The Secretary of State has issued statutory guidance on Contaminated land which states that ‘[t]he local authority should take a strategic approach to carrying out its inspection duty under section 78B (1)’ and that it ‘...should set out its approach as a written strategy, which it should formally adopt and publish.’

6.4 The guidance goes on to state that ‘[t]he local authority should keep its written strategy under periodic review to ensure that it remains up to date. It is for the authority to decide when its strategy should be reviewed, although as good practice it should aim to review its strategy at least every five years.’

6.5 The Statutory Guidance was updated in 2012. It requires that local authorities should take a strategic approach to carrying out their inspection duties. This approach should be rational, ordered and efficient, and it should reflect local circumstances. The local authority should set out its approach as a written strategy, which it should formally adopt and publish to a timescale to be set by the authority.

6.6 The local authority should keep its written strategy under periodic review to ensure it remains up to date. It is for the authority to decide when its strategy should be reviewed. There have been no changes to the legislation or statutory guidance since the 2014 Strategy was adopted.

7. Monitoring Officer’s comments:

Members will note the legal aspects above. The Monitoring Officer has no additional comments.

8. Report details:

8.1 In the reviewed strategy which covers the period from 2022 to 2027, the Council sets out:

- Its aims, objectives and priorities, taking into account the characteristics of its area;
- The relevant aspects of the Exeter area;
- Its approach to strategic inspection, the prioritisation of detailed inspection and remediation activity;
- How Part 2A fits with its broader approach to dealing with land contamination, using other legislation, voluntary remediation or as part of wider regeneration work; and
- How in its approach to Part 2A and land contamination, the Council will seek to minimise unnecessary burdens on the taxpayer, businesses and individuals, where it is reasonable and practicable to do so.

8.2 There has been no change to the legislation or statutory guidance since the 2014 Strategy was adopted. The 2020 Strategy is therefore little changed from the previous version, except to update the local development context and statistics.

8.3 The Council undertook consultation on the draft strategy, specifically involving the Environment Agency, Devon County Council, neighbouring authorities, Natural England and Public Health England. Consultation lasted 8 weeks but no responses were received. The revised Strategy is included as Appendix 1.

9. How does the decision contribute to the Council's Corporate Plan?

9.1 The main contribution of effective management of contaminated land is to support the key priorities of 'building great neighbourhoods and promoting active and healthy lifestyles.'

10. What risks are there and how can they be reduced?

10.1 Risks associated with the failure to manage contaminated land include risks to the population of Exeter, those working in the city, and risks to the environment. There is also a reputational risk to the Council if it fails to act in a reasonable manner. Failure to make a reasoned judgement on contaminated land could result in legal action or insurance claims, particularly in the case of land owned by the Council, or risk assessment decisions made by Council officers.

11. Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority

from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal potential impact has been identified on people with protected characteristics as determined by the Act and an Equalities Impact Assessment has been included in the background papers for Member's attention.

12. Carbon Footprint (Environmental) Implications:

12.1 There are no direct carbon/environmental impacts arising from the recommendations.

13. Are there any other options?

13.1 Adoption of a Contaminated Land Strategy is a legal duty.

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Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

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