

## **REPORT TO EXECUTIVE**

Date of Meeting: 7 September 2021

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?**

Executive

#### **1. What is the report about?**

- 1.1 To update Members on the review of the Council's Contaminated Land Strategy, and forthcoming consultation.

#### **2. Recommendations:**

2.1 That Executive:

- 1) note the draft revised Contaminated Land Strategy; and
- 2) Approve the consultation on the draft strategy commencing on 08 September 2021 until 03 November 2021.

#### **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. The Council is therefore undertaking consultation on the draft of the latest strategy, which will cover the period 2022 to 2027. The consultation will involve contact with the relevant statutory consultees: the Environment Agency, Devon County Council, neighbouring authorities, Natural England and Public Health England as well as the public via the Council's website.

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

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:**

There are no financial implications for Council to consider.

## **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:

‘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 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.

6.3 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:**

The Council is obliged to have a strategy for dealing with contaminated land. This report deals with the review of that strategy and as such raises no issues of concern for the Monitoring Officer.

## **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 is undertaking consultation on the draft strategy, specifically involving the Environment Agency, Devon County Council, neighbouring authorities, Natural England and Public Health England. Consultation will last 8 weeks. The draft Strategy is included as Appendix 1.

8.4 The strategy will be amended following consultation (if required), and the final Contaminated Land Strategy will be presented to Executive on 30 November 2021 and Full Council on 14 December.

## **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.

### **Director Net Zero and City Management, David Bartram**

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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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