

**Title of meeting:** Cabinet Meeting

**Date of meeting:** 1 December 2020

**Subject:** Contaminated Land Part 2a Strategy

**Report by:** Director of Regeneration

**Wards affected:** All Wards

**Key decision:** Yes

**Full Council decision:** No

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## 1. Purpose of report

- 1.1 The purpose of this report is to seek approval of the 2020 Portsmouth City Council's Contaminated Land Part 2a strategy. The previous strategy produced in 2001 has been updated in light of new Statutory Guidance. The strategy describes the Council's approach to identifying and bringing about the remediation of statutory contaminated land.

## 2. Recommendations

- 2.1 It is recommended that the Cabinet:
- a. Agrees to adopt the 2020 *Contaminated Land Part 2a Strategy*.
  - b. Delegate authority to the Director of Regeneration, in consultation with the Leader of the council to make decisions on the determination of statutory contaminated land and upon decisions of both cost recovery and hardship in accordance with the details contained in the strategy referred to in (a) above.

## 3. Background

- 3.1 Portsmouth City Council has a statutory duty under Part IIa ("Part 2a") of the Environmental Protection Act 1990 to inspect its area to identify any land that may be contaminated land. Land is only statutory 'contaminated land' if chemical pollutants are present in quantities and circumstance where they are likely to significantly affect people's health.
- 3.2 Part IIA of the Environmental Protection Act 1990 main aim is to help address the legacy of historical contamination and the harm it can pose to health or the environment. The Act requires that local authorities identify contaminated land and ensure that significant risks are dealt with. It requires a strategy to be produced that

details the council's strategic approach to inspection of land, and when contaminated land is found, that it be made safe. On occasion this can require enforcement action.

- 3.3 There is a statutory definition in Part 2A of what amounts to statutory contaminated land and this definition and all the other legislative provisions are fleshed out in the detailed Contaminated Land Statutory Guidance issued by the Secretary of State for Environment, Food and Rural Affairs in April 2012, to which the council must have regard. This Guidance covers objectives, investigation, risk assessment, definition, determination and remediation of contaminated land, liability for and recovery of remediation costs. The Guidance requires the strategy be reviewed every 5 years.
- 3.4 The council has an enforcement role to play if land is determined as contaminated land. Unless suitable action is being undertaken to prevent exposure to the pollutants, it must serve a remediation notice on the appropriate persons to secure the remediation of the land. These are statutory duties of the council. The council has the power, a choice, as to whether to enforce the remediation notice. There is also a leadership role in ensuring sustainable development. That is to say, not burden current residents with high costs of unnecessary works, but ensuring current residents and the public in the city are protected from foreseeable impacts from historical pollution.
- 3.5 Aims of the legislation
- 3.5.1 Part 2A sets out the duties of the council in relation to contaminated land. The principle behind the Act is that those responsible for creating contaminated land should pay to clean it up, i.e. 'polluter pays'.
- 3.5.2 Many of the health impacts resulting from the exposure to chemicals are subtle and easily overlooked. Defra's 'Potential Health Effects of Contaminants in Soil' (2010), highlights a plausible linkage between exposure to land contamination and birth defects including congenital anomalies and low birth weight. There are no proven examples that link cancer to directly to land contamination, but there are impacts documented at the same concentrations that can result from contaminated land (the examples are from accidental and occupational exposures).
- 3.5.3 Without proactively seeking contaminated land, on-going health impacts from contaminated land are unlikely to be noticed. The history of a person's house is unlikely to be mentioned with a doctor during a consultation. For a causal relationship to be noticed it would require almost all site occupiers to succumb to similar health complaints at the same time, and even then it is more likely to be attributed to family tendency to a particular health problem or even lifestyle rather than contaminated land. The testing of land where there is already evidence of pollution and then comparing exposures to concentrations that may cause health problems is the only way to prevent such exposures.

### 3.6 Local Background

- 3.6.1 Portsmouth City Council has already inspected and remediated contaminated land under the requirements of the 1990 Act. The council's first strategy in 1991 was ahead of its time and led to the council, winning a substantial portion of the national funding for 30 sites that were investigated and 11 subsequently remediated. These early actions meant that Portsmouth City Council was perceived as a leading council in the subject area. Portsmouth's strategy was updated in 2001 when the 1995 Environment Act introduced a new regime for contaminated land management and a different approach was adopted. Three further sites were investigated and risk assessed under the new Part 2a regime. The in-depth assessment allowed greater reliance on exposure assessments and meant that these sites did not require formal remediation.
- 3.6.2 Since the 1990's land has been assessed by developers and other parts of the council with guidance from the Contaminated Land Team to ensure that land does not then need to be assessed under the Part 2a regime. The databases and knowledge of the city created for the Part 2a work is used to inform our regulatory approaches to development across the city, and to avoid creating new exposures by allowing or encouraging development without properly assessment.
- 3.6.3 As with many industrial cities, Portsmouth soils often contain some residual pollution from previous usages and large areas have been reclaimed from the sea using industrial and domestic wastes. This land is now public open space, people's homes and businesses.
- 3.6.4 The Part 2a regime is not aimed at finding polluted sites which are widespread and can wait to be remediated when they are redeveloped, but on identifying land that is so polluted that harm will be caused unless the council intervenes. Portsmouth's legacy of waste management does not predispose the city to having large tracts of statutory contaminated land so long as appropriate regulation and management continues. Portsmouth early engagement with contaminated land management has meant tens of sites across the city have previously been assessed (albeit under a slightly different regime). These sites should be reviewed in light of regime change and our greater understanding of the impacts of pollutants upon human health (lead, nickel and arsenic for example are known to cause harm at lower concentrations than previously thought), and organic pollutants were previously not fully considered in site surveys as laboratory techniques were limited.

### 3.7 Cost Implications

- 3.7.1 The Strategy does not alter or create new duties, but only describes existing responsibilities, and the council must have this document publically available and updated. As it does not change the council duties, there are no cost implications of its adoption. However if land is determined to be contaminated land the process of investigation and remediation can be costly.



- 3.7.2 The council has a statutory duty to identify and investigate any contaminated land within the city. Whilst the emphasis is on the council to seek contaminated land, in most cases statutory contaminated land is brought to local authorities' attention rather than being found by strategic inspection, as such unexpected costs are an ever present risk to councils. Rather than just being a statutory duty, having a strategy in place and an approach to hardship known in advance, will provide a framework for clear communication and aid the council take a leadership role when or if contaminated land is found.
- 3.7.3 If contaminated land is found then its clean-up may be required. The costs of clean up are clearly stated as being borne by the person who caused or permitted the contamination or, if they cannot be found, by the current owner/occupier of the land in question. These costs may be transferred to the council by virtue of the council being land owner, having previously been connected with the land, or by the land owner being unable to pay. In the latter case, claims of hardship may result in the costs of the 'orphaned land' falling to the council.
- 3.7.4 One significant addition in the new strategy is the consideration of how the council would recover costs and consider applications for hardship should remediation be required. For transparency, it is important that these matters are raised before contaminated land is found. The legal method of apportioning costs is described in the strategy, along with an indication of how hardship would be assessed by the council. This is included so that there is less possibility of the council being seen to be either too eager to step in and pay for remediation (using council tax payers money) or too eager to avoid costs (at the expense of a smaller number of residents).
- 3.7.5 This creates a secondary problem, of the council deciding when it will accept or reject claims of hardship from people who are liable for the costs but where the council should intervene in its pastoral duties to protect its residents where no other agency exists. To ensure a transparent process is evident, a skeletal cost recovery policy based solely on our duties and powers is included in the strategy.
- 3.7.6 The council may at short notice have unexpected and potentially considerable costs to bear from its statutory duty to investigate and bring about the remediation of contaminated land. These risks will be reduced by having a strategy and approach in place, but cannot be removed altogether as sites may be brought to the councils attention.
- 3.7.7 Although there is currently a moratorium on national funding of land remediation by central government, the documented consideration of matters hardship is a prerequisite for obtaining national funding if that funding is reinstated.

#### **4 Reasons for recommendations**

- 4.1 To provide a clear framework to contaminated land management within the city.

- 4.2 It is a statutory requirement of the council to have a current and periodically updated Contaminated Land Strategy. The Strategy should be adopted because it describes but does not change the council responsibilities and so allows the public to view the processes that should be in place.
- 4.3 The Director of Regeneration is responsible for 'pollution', and as such should have powers delegated to make decisions on the determination of statutory contaminated land and upon decisions of cost recovery and hardship

## **5 Integrated impact assessment**

- 5.1 No negative adverse impacts are noted by this document that describes internal procedures. There are also no opportunities to create beneficial impacts until land has been determined as Contaminated Land. At that point, when processes can be put in place, full consideration will be given.
- 5.2 The Integrated impact assessment is attached as Appendix 2.
- 5.3 The purpose of this report is not at this time to ask for any funding, but to provide an approach to our statutory duties which include having this up to date strategy. Where sites are identified as needing works to prevent harm, there may potentially be investigative and remediation costs being borne by the council, then further reports will be submitted to the Portfolio Holder and Director for consideration. By having a Policy in place, we will be allowed to assess more clearly what, if any, costs might be incurred by the council.
- 5.4 Corporate Priority Implications
- 5.5 There are no implications for any corporate priorities. The requirement to inspect and investigate suspected contaminated land is mandatory function.

## **6 Legal implications**

- 6.1 The Strategy describes but does not change the council responsibilities, there are no legal implications

## **7 Director of Finance's comments**

- 7.1 There are no direct financial implications to the Council as a result of approving these recommendations.

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Signed by: Tristan Samuel, Director of Regeneration

**Appendices:**

1. Contaminated Land Part 2a strategy
2. Integrated Impact Assessment

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Portsmouth City Council Contaminated Land Inspection Strategy 2001	Available from the Portsmouth City Council website: <a href="https://www.portsmouth.gov.uk/ext/documents-external/cou-policies-contaminated-land-strategy.pdf">https://www.portsmouth.gov.uk/ext/documents-external/cou-policies-contaminated-land-strategy.pdf</a>
Part IIa of the Environmental Protection Act 1990	Available from the government legislation website: <a href="http://www.legislation.gov.uk/ukpga/1990/43/part/IIA">http://www.legislation.gov.uk/ukpga/1990/43/part/IIA</a>
Contaminated Land Statutory Guidance. 2012. PB13735	Available from the government website: <a href="https://www.gov.uk/government/publications/contaminated-land-statutory-guidance">https://www.gov.uk/government/publications/contaminated-land-statutory-guidance</a>

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

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Signed by: