

Pre-decision Scrutiny: PUBLIC PROTECTION & ENFORCEMENT PDS COMMITTEE

Date: 15th November 2022

Decision Maker: PORTFOLIO HOLDER FOR SUSTAINABILITY, GREEN SERVICES AND OPEN SPACES

Date: 22nd November 2022

Decision Type: Non-Urgent

Title: CONTAMINATED LAND STRATEGY 2022

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Chief Officer: Colin Brand – Director of Environment & Public Protection
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Ward: (All Wards);

1. Reason for report

Part 2A of the Environmental Protection Act 1990 deals with the identification, prioritisation, determination and remediation of contaminated land. The legislation places a statutory duty on local authorities to inspect their area for the purpose of identifying potentially contaminated sites and for the further inspection of such sites.

Under statutory guidance local authorities should take a strategic approach to the identification of land and inspection. The Authority has a published Strategy which was last reviewed and updated in 2010. The guidance confirms that local authorities should keep their strategies under periodic review to ensure it remains up to date.

The Bromley Local Plan, adopted in January 2019, emphasises that new development must be made suitable for its use and enables contaminated land to be brought back into beneficial use. This updated draft Strategy links to the Bromley Local Plan and takes account of the latest national guidance on contaminated land matters and updates the work programme.

2. RECOMMENDATION(S)

1. The ECPDS Committee approves the adoption of the finalised Contaminated Land Strategy 2022 and that delegated authority be given to the Assistant Director of Public Protection to make minor amendments

to the Strategy post adoption, should it be required.

Impact on Vulnerable Adults and Children

1. Summary of Impact: No direct impact, however children and adults with underlying health issues may be more susceptible to the impact of contaminated land where a contaminant linkage exists.
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Corporate Policy

1. Policy Status: Existing Policy: This is an updated strategy; the last contaminated land strategy was updated in 2010
 2. BBB Priority: Quality Environment, Safe Bromley, Healthy Bromley, Regeneration
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Financial

1. Cost of proposal: No Cost:
 2. Ongoing costs: Not Applicable
 3. Budget head/performance centre: Environmental Protection
 4. Total current budget for this head: £231k
 5. Source of funding: Existing revenue budget 2022/23
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Personnel

1. Number of staff (current and additional): The Pollution Control Team has 2.8 FTEs. This team is responsible for the regulation and enforcement of contaminated land, air quality, noise control and private water supplies. No additional staff are proposed for the implementation of this strategy.
 2. If from existing staff resources, number of staff hours:
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Legal

1. Legal Requirement: Statutory Requirement
 2. Call-in: N/A
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Procurement

1. Summary of Procurement Implications: N/A
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

Background:

The Environmental Protection Act 1990 requires local authorities to produce a Contaminated Land Strategy (“the Strategy”) and to periodically review it. The Authority has a Strategy which was last reviewed in 2010.

The overarching objectives of the Government’s policy on contaminated land are:

- a) To identify and remove unacceptable risks to human health and the environment.
- b) To seek to ensure that contaminated land is made suitable for its current use; and
- c) To ensure that the burdens faced by individuals, companies and society as a whole are proportionate, manageable and compatible with the principle of sustainable development.

The Authority has a duty under Part 2A of the Environmental Protection Act 1990 to:

- Inspect the area for contaminated land in accordance with statutory guidance.
- Determine whether any particular site meets the statutory definition of contaminated land;
- Act as enforcing authority for all contaminated land, unless the site meets the definition of a “Special Site”, for which the Environment Agency is the enforcing authority;
- Consult with the Environment Agency on the pollution of controlled waters;
- Ensure the remediation of contaminated land; and
- Maintain a Public Register of contaminated land remediation.

The Strategy:

The draft strategy details the relevant legislation and responsibilities of those involved in the identification and remediation of contaminated land. It sets out the characteristics and history of the London Borough of Bromley in relation to land use, ecology, geology and hydrology and emphasises how the authority will take a risk-based approach to the identification, prioritisation and site investigation of land.

The London Borough of Bromley has no Part 2A registered sites i.e., where there is an established source, pathway and receptor. The aim of the strategy is to ensure that the land within the Borough is safe and suitable for its current use. The Authority will undertake a review of its site prioritisation mapping to ensure that information is up-to-date and reflective of current conditions with land assigned an appropriate risk level.

The draft strategy presents a commitment to prevent future contamination of land through effective planning controls and pollution control regimes as well as requiring suitable remediation of sites through the planning regime.

Consultation:

This report was initially presented at the Environment and Community Services PDS on 21st June for approval to consult with relevant organisations on the proposed draft strategy.

The consultees were The Environment Agency, Natural England, English Heritage and The Department for Environment, Food and Rural Affairs (DEFRA). Following a 6-week consultation period, the Environment Agency and Natural England provided feedback on the strategy. As a result edits were made to ensure the language used was clear to distinguish between Contaminated Land and land affected by contamination. The Environment Agency highlighted that strategy should address the obligation to identify and action any potential or actual Part IIA sites clearly with action outside of planning. We consider the Strategy is in accordance with guidance and Local Authority resourcing and that the formal action for Part IIA sites has been set out should it be necessary to address Contaminated Land through this avenue.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

There is no direct impact on vulnerable adults and children.

5. POLICY IMPLICATIONS

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6. FINANCIAL IMPLICATIONS

6.1 Existing service budgets fund day-to-day implementation of the strategy.

6.2 The strategy predominantly focuses on remediation through the planning process whereby the developer is responsible for any costs, alternatively the owner of the land is responsible for remediation costs. Any site investigation work undertaken for enforcement purposes, would potentially result in costs to the Council that would be funded from the department's budget. In addition to this, depending on whether the site is owned by the Council, this may have an impact on the relevant property revenue budget.

7. PERSONNEL IMPLICATIONS

None

8. LEGAL IMPLICATIONS

8.1. The Draft Contaminated Land Strategy outlines the Authority's approach to dealing with contaminated land within its area (in line with the 2012 statutory guidance) and how it will discharge its duties prescribed by Part 2A of the Environmental Protection Act 1990 (the Act).

8.2. The Environmental Protection Act 1990 is not included in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and can therefore generally be an executive decision. As such, this comes under the Executive Committee's remit (Environment and Community Service) in the London Borough of Bromley and thus presented to this PDS Committee for prior review (Executive Procedure Rules 1.8(c)).

8.3. Section 78B of the Act requires the Local Authority to inspect its area from time to time to identify contaminated land and decide if such land requires to be designated as a special site, and paragraph 2.3 to 2.7 of the Contaminated Land Statutory Guidance requires the Local Authority to have a written strategic approach to the carrying out of these inspections, hence the annexed Strategy.

8.4. Neither the Act nor the Guidance require consultation in relation to the Strategy, but it is good practice to do so, especially as the Act requires notification to some agencies when land is identified as contaminated (s78B(3)).

8.5. Only "closed landfill sites" are included in the Borough's Air Quality Action Plan 2020-2025 (action point 19D) but dealing with contaminated land in general will improve air quality in the Borough, especially for neighbouring properties, and will play its part towards fulfilling the Action Plan.

8.6. As mentioned in the Air Quality Action Plan's effect of poor air quality (p5), "poor air quality disproportionately affects the health outcomes of the very young, the elderly, the ill and the poor". By tackling contaminated land and its possible effects on air quality, the Borough will further its Public Sector Equality duties under the Equalities Act 2010. The Public Sector Equality Duty will also need to be considered in the prioritisation of contaminated sites.

9. PROCUREMENT IMPLICATIONS

None from this report.

Non-Applicable Sections:	[List non-applicable sections here]
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Background Documents: (Access via Contact Officer)	Contaminated Land Statutory Guidance Available: https://www.gov.uk/government/publications/contaminated-land-statutory-guidance Contaminated Land Strategy (revised 2010) Available: https://www.bromley.gov.uk/downloads/download/273/contaminated_land_strategy
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