

## CONTAMINATED LAND STRATEGY – Revised Oct. 2018

Cabinet	<b>29<sup>th</sup> January 2019</b>
Report Author	<b>Morgan Sproates – Environmental Protection Manager</b>
Portfolio Holder	<b>Cllr Lesley Ann Game, Cabinet Member for Housing and Safer Neighbourhoods</b>
Status	<b>For Decision</b>
Classification:	<b>Unrestricted</b>
Key Decision	<b>No</b>
Reasons for Key (if appropriate)	<b>N/A</b>
Previously Considered by	<b>N/A</b>
Ward:	<b>All Wards</b>

### Executive Summary:

Part IIA of the Environmental Protection Act 1990 provides local authorities with a system for identifying land which is posing an unacceptable risk to human health or other named receptors; and where risks cannot be managed by other means, provides powers to ensure land is remediated by a person or party deemed responsible under the Act. The Contaminated Land Strategy is a statutory requirement under this Act, but also links with Thanet District Council's Draft Local Plan 2018-2031 Policies and Thanet's 2015-2019 Corporate Priorities. The strategy has been reviewed in line with changes to legislation, guidance and budget restrictions.

Duties under the strategy fall to the Environmental Protection Team within the Operational Services Directorate.

### Recommendation(s):

To approve the revised Contaminated Land Strategy 2018-2023 (Option 3.1).

### CORPORATE IMPLICATIONS

<b>Financial and Value for Money</b>	There are no additional financial costs associated with the revised Contaminated Land Strategy. The new contaminated land GIS system has been financed through a windfall payment for previous Environmental Protection remediation works received by the authority in November 2017. Any site specific intrusive investigations work outside of the development process or voluntary action by landowners will require CMT approval. The council's financial position is referenced in the report.
<b>Legal</b>	The statutory duty is imposed on the Council under Part IIA of the Environmental Protection Act 1990. This requires the local authority to set out its approach to the inspection of its area to identify contaminated land, the prioritisation of assessment and remediation of contaminated land, the links to other legislation (including the planning system) and measures to minimise

	<p>unnecessary burdens on the taxpayer.</p> <p>Section 78A of Part 2A defines contaminated land as:  “Any land which appears to the local authority in whose area the land is situated to be in such a condition, by reason of substances in, on or under the land, that:</p> <p><b>(a) significant harm is being caused or there is a significant possibility of such harm being caused (SPOSH); or</b>  <b>(b) pollution of controlled waters is being, or is likely to be, caused”.</b></p> <p>Harm is defined within Section 78A as: “Harm to the health of living organisms or other interference with the ecological systems of which they form part, and in the case of man, includes harm to his property.”</p> <p>The government advises that the local authority should take a strategic approach to carrying out its inspection duty under section 78B(1), which it should formally adopt and publish. The local authority should keep its written strategy under periodic review to ensure it remains up to date. It is up to the local authority to decide when to review its strategy, although the recommended timeframe is every 5 years.</p>
<b>Corporate</b>	<p>Failure to comply with the implementation of Part IIA of the EPA 1990 and the relevant statutory guidance leaves the authority open to challenge by Defra. More importantly it leaves Thanet residents vulnerable to potentially toxic impacts from historic contamination of the land or groundwater, based on the existing land use or proposed new use of brownfield sites through the development process. The revised strategy ensures the burden to the taxpayer is effectively managed and is consistent with Thanet’s corporate priorities, in particular ‘A clean and welcoming environment’, Thanet’s corporate value of providing value for money, and Thanet District Council's Corporate Vision 2030, including our role in transforming Thanet through the quality of services.</p> <p>The Council recognises that with the increased demand for housing, and the resulting need to redevelop old Brownfield sites that this brings, the importance of ensuring that the land is suitable for its intended use and the risk of harm is even greater now than at any time in the past. The Council will work in partnership with appropriate persons and the planning department, providing guidance and information, to ensure contaminated sites are remediated to an acceptable standard. Property blight issues will be effectively managed and minimised through the use of the new GIS database, with qualified data only being made available through the information research request process. All sites determined as contaminated land will be entered onto the public register in compliance with GDPR requirements.</p>
<b>Equality Act 2010 &amp; Public Sector Equality Duty</b>	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy &amp; maternity. Only aim (i) of the Duty applies to Marriage &amp; civil partnership.</p>

	Please indicate which aim is relevant to the report.	
	Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,	
	Advance equality of opportunity between people who share a protected characteristic and people who do not share it	
	Foster good relations between people who share a protected characteristic and people who do not share it.	
<p>It is not felt that the revisions to the strategy will have any negative impacts in respect of protected characteristics and the public sector equality duty.</p> <p>The strategy does not discriminate against any of the protected characteristics outlined and will seek to protect all residents from the significant possibility of significant harm from any substances in on or under the ground in Thanet. There are no changes to fees and charges (CIA completed and approved for 2018-2019 financial year) or to the current service provision being offered as a result of the revisions to the Contaminated Land Strategy.</p>		

<b>CORPORATE PRIORITIES (tick those relevant)✓</b>	
A clean and welcoming Environment	✓
Promoting inward investment and job creation	
Supporting neighbourhoods	

<b>CORPORATE VALUES (tick those relevant)✓</b>	
Delivering value for money	✓
Supporting the Workforce	
Promoting open communications	

## 1.0 Introduction and Background

- 1.1 A statutory duty is imposed on the Council under Part IIA of the Environmental Protection Act 1990 (Background Paper 1) to identify land posing an unacceptable risk to human health, or other named receptors. In carrying out its inspection duty under section 78B(1), the government advises that the approach should be rational, ordered and efficient, and it should reflect local circumstances. Whilst strategic approaches may vary between local authorities, the statutory guidance requires the local authority to set out its approach as a written strategy, which it should formally adopt and publish.
- 1.2 Strategies produced in accordance with previous versions of Statutory Guidance should be updated or replaced to reflect the current guidance. The local authority has reviewed its written strategy in 2018 to make sure it is up to date.
- 1.3 The revised Contaminated Land Strategy 2018-2023 addresses the following key areas outlined within the current statutory guidance (Background Paper 2):
- (a) Aims, objectives and priorities, taking into account the characteristics of the Thanet area.
  - (b) A description of relevant aspects of Thanet.

- (c) Thanet District Council's approach to the strategic inspection of the area; giving priority to particular areas of land that it considers most likely to pose the greatest risk to human health or the environment.
- (d) Thanet's approach to prioritisation and remediation activity.
- (e) How the approach under Part 2A fits with a broader approach to dealing with land contamination, including using the planning system to ensure land is made suitable for use when it is redeveloped; and encouraging polluters/owners of land affected by contamination to deal with problems without the need for Part 2A to be used directly.
- (f) The strategy details how the authority will seek to minimise unnecessary burdens on the taxpayer, businesses and individuals; for example by encouraging voluntary action to deal with land contamination issues as far as it considers reasonable and practicable.

1.4 The strategy has been reviewed to produce a concise written document reflecting current best practice guidance, links to Thanet Local Plan Policies (Background Paper 3) and introduction of the new contaminated land risk assessment and prioritisation software procured in April 2018; whilst recognising the current financial position of the Council and lack of capital funding from central government for Part IIA work.

## **2.0 The Current Situation**

2.1 Thanet District Council's existing published Contaminated Land Strategy can be found at:

<https://www.thanet.gov.uk/info-pages/contaminated-land/>

## **3.0 Options**

3.1 Approve the Contaminated Land Strategy 2018-2023.

3.2 Make relevant changes and adopt the Contaminated Land Strategy 2018-2023.

3.3 Do not approve the Contaminated Land Strategy 2018-2023.

## **4.0 Next Steps**

4.1 Contaminated Land Strategy 2018-2023 to be published on Thanet District Council website following approval.

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## **Annex List**

Annex 1	Revised Contaminated Land Strategy 2018-2023
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## Background Papers

<b>Title</b>	<b>Details of where to access copy</b>
<b>Part IIA of the Environmental Protection Act 1990</b>	<a href="https://www.legislation.gov.uk/ukpga/1990/43/part/IIA">https://www.legislation.gov.uk/ukpga/1990/43/part/IIA</a>
<b>Contaminated Land Statutory Guidance, DEFRA, April 2012</b>	<a href="https://www.gov.uk/government/publications/contaminated-land-statutory-guidance">https://www.gov.uk/government/publications/contaminated-land-statutory-guidance</a>
<b>Draft Local Plan, July 2018-2031</b>	<a href="https://www.thanet.gov.uk/wp-content/uploads/2018/11/CD1.1-Draft-Thanet-Local-Plan-Reg-19.pdf">https://www.thanet.gov.uk/wp-content/uploads/2018/11/CD1.1-Draft-Thanet-Local-Plan-Reg-19.pdf</a>

## Corporate Consultation

<b>Finance</b>	Matt Sanham, Interim Head of Financial & Procurement Services
<b>Legal</b>	Sophia Nartey, Interim Head of Legal Services