

## CABINET

14 November 2023

<b>Title:</b> Contaminated Land Inspection Strategy 2023-2028	
<b>Report of the Cabinet Member for Enforcement and Community Safety</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
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<b>Accountable Director:</b> Gary Jones, Operational Director, Enforcement, Regulatory Services and Community Safety	
<b>Accountable Executive Team Director:</b> Fiona Taylor, Chief Executive	
<b>Summary</b> <p>Part 2A of the Environmental Protection Act 1990 was implemented in legislation in 2000, to deal with land which may historically have been redeveloped when remediation standards were not as stringent. The Council was required to publish a Contaminated Land Inspection Strategy (CLIS) which it did in 2001. This strategy has now been reviewed and a draft revised strategy reflects our current operational approach to focus on managing contaminated land through the planning regime.</p> <p>The Council did excellent work in progressing their CLIS between 2001 and 2011. LBBB was a leading London LA with regards to completing Part 2A work and secured £2.5m of DEFRA funds to investigate high risk sites. One of 13 sites which were investigated met the legal definition of contaminated land. Wantz Road depot (now Pondfield House) is the site which was declared and involved groundwater contamination. The remediation process is called natural monitored attenuation which means that remediation takes place over a few decades.</p> <p>After 2012, the Government ceased providing funding for Part 2A investigations. All of the most important sites which potentially caused a risk to human health were investigated. The remaining sites on the original high priority list have now been assigned a medium risk and can be dealt with through the planning regime.</p>	
<b>Recommendation(s)</b> <p>The Cabinet is recommended to:</p> <ul style="list-style-type: none"><li>(i) Approve the proposed Contaminated Land Inspection Strategy (CLIS) 2023-2028 as set out at Appendix 1 of the report; and</li><li>(ii) Agree the Council's position that, to the best of its knowledge, the London Borough of Barking and Dagenham no longer had any high-risk sites to investigate.</li></ul>	

## **Reason(s)**

The approval and adoption of the Council's Contaminated Land Inspection Strategy (CLIS) 2023-2028 is best practice. The policy supports the council's key priority that "residents live in, and play their part in creating, safer, cleaner, and greener neighbourhoods".

### **1. Introduction and Background**

- 1.1 Part 2A of the Environmental Protection Act 1990 (EPA 1990) places a statutory duty on local authorities that they shall, from time to time, cause their areas to be inspected for the purpose of identifying and dealing with contaminated land; that is land which in its current condition and current use poses a significant risk of significant harm to man, eco-systems or controlled water. The meaning of "from time to time" is not defined in the EPA 1990 or in the accompanying Statutory Guidance.
- 1.2 Local Authorities do not have a statutory duty to publish a CLIS, however it is considered best practice. Since its publication in 2001 the Council's CLIS has not been updated.
- 1.3 The Council carried out its first round of inspections in between 2005 and 2011 at which time the contaminated land inspection programme was concluded, the Land Quality team disbanded and budgetary provision for this function withdrawn. During the programme, some thirteen sites were subject to detailed evaluation at a total cost of £2.5 million, much of the cost being grant funded by central government.

### **2. Proposal and Issues**

- 2.1 The updated CLIS at Appendix 1 sets out the Council's progress in identifying, documenting, prioritising and inspecting potentially contaminated land in the borough.
- 2.2 The work completed between 2001 and 2011 was reviewed by a specialist officer and is compliant with updated statutory guidance published in 2012 and updated Land Contamination Risk Assessment procedures published in 2017. These updates have been incorporated into the CLIS.
- 2.3 The Environmental Protection team investigated the highest risk sites and it has been decided that the remaining sites which were allocated a high risk are re-prioritised to medium risk. Only one out of 13 sites investigated was determined as contaminated land; therefore, it is extremely unlikely that any remaining sites will be determined as such.
- 2.4 This means that the Borough, to the best of the Council's knowledge, has no high-risk sites prioritised for inspection. In January 2017, the Council's Assurance Board agreed that any remaining potentially contaminated land should, going forward, be assessed and remediated through the planning regime. In addition to this, a residual capacity to respond to incidents which might cause land to be identified as

contaminated land was agreed to be retained within the Environmental Protection Team.

### **3. Options Appraisal**

- 3.1 When the legislation was introduced in 2001, the majority of local authorities in England had contaminated sites they already knew needed to be investigated. This was the case with the Wantz Road Depot site, which had undergone several ground investigations since 1998 and hydrocarbon/solvent contamination was detected in the soil and groundwater.
- 3.2 In the highly unlikely event that a new source of historical contamination information is uncovered in the future, which is an imminent risk to resident's health then the Council will need to commission an inspection of that land. No government funding for an inspection of the land is available, so the cost of this would need to be borne by the Council, the landowner or the polluter. This constitutes a potential financial risk to the Council. A soil investigation can cost between £10,000 to £100,000.
- 3.3 There is a low risk that one of the sites originally listed as high risk, then changed to medium risk is, in fact, causing harm to the residents.
- 3.4 A decision needs to be made as to how the Council communicates its progress to the public. Given the minimal risks referred to above, it is proposed that Option 1 below is approved as the Council's position.

#### **Option 1:**

The Council states that, to the best of its knowledge, it no longer has any priority sites for inspection as the highest priority sites that were inspected did not meet the legal definition of contaminated land. This means we do not need to publish a list of sites for inspection because our work is complete.

#### **Option 2:**

We state that our list of sites for inspection is still being revised. All other boroughs who still have potentially high-risk sites listed for inspection keep their list of prioritised sites unpublished as a precautionary approach. The reason for this is because the list is continually being revised.

Here is an example from the Corporation of London: "The prioritisation of sites is an evolving process and 'prioritisation' of a site or parcel of land for more detailed inspection is based on information contained within the GIS at the time that the assessment is undertaken. Results of any prioritisation exercise are therefore subject to change at any point and may not be reflective of actual site conditions. It is for this reason that a register of site prioritisation outputs is not maintained or published."

The Council could take this absolute risk averse approach.

### **4. Consultation**

- 4.1 The full list of stakeholders consulted can be found at page 29 of the updated CLIS 2023-2028 (Appendix 1)

4.2 Formal consultation, as endorsed by the Executive Group at its meeting on 25 May 2023 was undertaken between 28 June 2023 and 23 August 2023, which provided an opportunity for stakeholders to provide feedback.

4.3 One consultation response was received from the Environment Agency which related to references to the latest guidance and information. The draft strategy has been amended to include these minor changes as follows:

- Para 1.2 Land Contamination Risk Management Guidance 2023
- Para 4.9 addition of the following text *‘The vast majority of contaminated land issues have been and will continue to be directed towards and addressed through the Development Control regime, where contamination is a material consideration for the purposes of the Town and Country Planning Act 1990. National Planning and Policy Framework (NPPF § 183c.) provides advice to Local Authorities on dealing with contaminated land during the planning process. The Environment Agency also recommends that developments should consider using the National Quality Mark Scheme for Land Contamination Management.*
- Para 2.11 amended to clarify that the groundwater vulnerability maps *‘shows that the Borough has no “Principal Aquifers” within its boundary. The area is designated as “Secondary A Aquifers” or “Secondary B Aquifers or Unproductive Strata”.* The following text has also been added *“However, the DEFRA Magic Map indicates a small area of Principal Chalk to the south-west of the Borough where Barking Creek meets the River Thames. The Borough also contains one Water Framework Directive Groundwater Water Body – Greenwich Tertiaries and Chalk (GB40602G602500), which currently has a ‘poor’ quantitative, chemical, and overall status.”*

## 5. Financial Implications

Implications completed by: Afzal Hussain, Senior Accountant

5.1 Should a site in the Borough need an intrusive soil investigation, the financial risk to the Council is estimated at £10,000 to £100,000. The probability of this occurring is extremely low.

## 6. Legal Implications

Implications completed by: Dr Paul Feild Principal Governance & Standards Lawyer

6.1 The Contaminated Land Inspection Strategy requirements are set out in the Environmental Protection Act 1990 Part IIA and secondary legislation and Ministerial guidance made thereunder. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 provide that functions relating to contaminated land can be an Executive (Cabinet) function.

6.2 While there is not a legal requirement to periodically review the strategy the time span of 20 plus years since it was produced does as a matter of good practice mean that it is timely to revise and review.

## 7. Other Implications

7.1 **Risk Management** - In the highly unlikely event that new information should come to light about a site which has not yet been investigated or which suggests that contaminated land is causing harm to residents of the borough, then the procedures set out in the revised strategy will be adhered to. Updates to statutory guidance have also been included in the updated CLIS.

7.2 **Corporate Policy and Equality Impact** - An equalities screening assessment was completed and a full equalities impact assessment is not required. The following points are noted:

- A young female child (0-6) i.e. is potentially the most vulnerable group. This has already been factored into land contamination risk assessments.
- Children diagnosed as pica would be at more risk than other individuals with this protected characteristic. Children with this characteristic have factored into contaminated land risk assessments which have been produced by the Environment Agency. A SEN school has been proposed at a location which is undergoing long term groundwater remediation. This will not impact the children as the contamination is located metres below ground.
- The strategy would have a potential impact on pregnant women, whose foeti are susceptible to the placental transfer of pollutants which can impact their development. All high-risk sites have already been investigated in the Borough, therefore the risk of this occurring is minimal.

Although contaminated land is not mentioned in the Council's Corporate Environmental Policy or the Joint Health and Wellbeing Strategy, the CLIS has a positive impact on the borough's environment and health and wellbeing.

7.3 **Health Issues** - the updated Contaminated Land Inspection Strategy is intended to improve the health and wellbeing of residents in the borough.

7.4 **Property / Asset Issues** - the Council is currently in the process of selling Pondfield House (formerly Wantz Road Depot) the only determined contaminated site in the borough. The site is currently listed on the Council's contaminated land register and that information regarding its status has been provided. The purchaser will in due course be taking responsibility for the continued remediation of the site.

**Public Background Papers Used in the Preparation of the Report:** None

**List of appendices:**

- **Appendix 1:** Draft Contaminated Land Inspection Strategy 2023-2028.
- **Appendix 2:** Equalities Impact Assessment Screening Tool