

<b>Non-Executive Report of the Council 16<sup>th</sup> November 2022</b>	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Corporate Director, Place	<b>Classification:</b> Unrestricted
Update of the Strategy for the Identification of Contaminated Land 2022	

<b>Lead Member</b>	Cllr Kabir Hussain, Cabinet Member for Environment and Climate Change
<b>Originating Officer(s)</b>	David Tolley – Head of Environmental Health and Trading Standards
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	No
<b>Reason for Key Decision</b>	This report has been reviewed as not meeting the Key Decision criteria.
<b>Forward Plan Notice Published</b>	31/5/22
<b>Strategic Plan Priority / Outcome</b>	<b>Priority 7- Working towards a clean and green future</b>

### Executive Summary

This report sets out the Council's updated strategy for identifying contaminated land which is a statutory requirement under Part 2A (P2A) of the Environmental Protection Act (1990). The objective of the strategy is to identify and take action to remedy any areas within the borough that may impact the health of residents.

Statutory guidance issued by the Secretary of State requires periodic review of the strategy to ensure it remains up to date. This revision updates the Strategy for the Identification of Contaminated Land to reflect changes in local, regional, and national policies since the strategy was last reviewed and updated in 2017.

### Recommendations:

The Council is recommended to:

1. Adopt the strategy for the identification of contaminated land.
2. Delegate to the Corporate Director of Place authority to make any amendments to the policy deemed necessary following consultation with the Corporate Director Governance.

## **1 REASONS FOR THE DECISIONS**

- 1.1 Local Authorities are designated appropriate Agencies under Part 2A of the Environmental Protection Act (1990) who are responsible for identifying and determining contaminated land within their jurisdiction. Statutory guidance states “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, although as good practice it should aim to review its strategy at least every five years”.

## **2 ALTERNATIVE OPTIONS**

- 2.1 To not adopt the updated strategy, but the Council risks not being able to fulfil its statutory duty to review and update the adopted plan. Furthermore, the council will not be able to ensure that land within the borough will be fit for its current use. This may result in detrimental impacts to health for the residents of the borough, property, and the wider environment.

## **3 DETAILS OF THE REPORT**

- 3.1 Section 57 of the Environment Act 1995 introduced contaminated land legislation which had been incorporated as Part 2A of the Environmental Protection Act 1990. Part 2A established a legal framework for dealing with contaminated land in England and placed a responsibility on local authorities to inspect its land from time to time for contaminated land. The decision to designate land as contaminated under Part 2A of the Environmental Protection Act 1990 lies with the Authority.
- 3.2 The legal definition of “Contaminated land” is 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—
- significant harm is being caused or there is a significant possibility of such harm being caused; or
  - significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused.
- 3.3 Statutory guidance issued in 2012 places a duty on local authorities to publish a contaminated land strategy setting out the authority’s decision-making process in determining if a land is contaminated. The strategy should reflect the changes introduced in the guidance and is recommended to be reviewed every 5 years. The statutory guidance requires the Authority to take a “strategic approach” to inspecting their areas for contaminated land and to describe and publish this in a written strategy.
- 3.4 The strategy should reflect local circumstances and should include:

- (a) the local authorities aims, objectives and priorities, taking into account the characteristics of its area
- (b) A description of relevant aspects of its area
- (c) Its approach to strategic inspection of its area or parts of it
- (d) Its approach to the prioritisation of detailed inspection and remediation activity
- (e) How its approach under Part 2A fits with its broader approach to dealing with land contamination. For example, its broader approach may include using the planning system to ensure land is made suitable for use when it is redeveloped; and/or encouraging polluters/owners of land affected by contamination to deal with problems without the need for Part 2A to be used directly; and/or encouraging problematic land to be dealt with as part of wider regeneration work
- (f) Broadly, 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.

- 3.5 The Council's strategy was last reviewed and updated in 2017 and incorporated revised Government guidance. There is a need for the Strategy to be updated to reflect changes in local, regional, and national policies. The statutory guidance has remained unchanged since 2012.
- 3.6 The Tower Hamlets Local Plan 2031: Managing Growth and Sharing Benefits was adopted by Full Council on 15 January 2020. The Local Plan 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 this Local Plan objective and takes account of the latest national guidance on contaminated land matters.
- 3.7 The overall objectives for the next 5 years are:
- Continue to identify those sites where land contamination is presenting unacceptable risk to human health or the wider environment and ensure remediation takes place.
  - Identify Council-owned or occupied potentially contaminated sites which should be prioritised for remediation as part of asset management.
  - To promote the regeneration and safe redevelopment of former industrial land using planning system to ensure land is made suitable for use when it is redeveloped.
- 3.8 Each chapter of the Strategy reflects the progression through each phase of identifying contaminated land. Risk assessment protocols are detailed in the Strategy and sites are assessed accordingly at each phase in line with current best practice.
- 3.9 Sites with contaminative uses (e.g., chemical works) were originally identified from historical mapping. These sites were compared with current sensitive uses (e.g. residential) to prioritise potentially contaminated sites. Prioritisation is achieved by applying a risk model which combines weighting factors of the

past use with current land use. The result is a score or risk rating of sites where there is a “potential contaminant linkage”. The sites which have the greatest potential for contamination to be causing significant harm to human health and/or the environment are identified at this first stage.

- 3.10 The second phase involves undertaking a site reconnaissance of each of the priority sites in which further information is gathered to establish an “actual contaminant linkage” exists. The outcome of this is to produce a list of high priority sites which require an intrusive soil investigation. This is known as strategic inspection.
- 3.11 The third phase involves reviewing the outcome of the intrusive soil investigation (known as detailed inspection) and if contaminants are present at the site and they constitute “a significant contaminant linkage”, followed by a risk assessment to establish whether a “*significant possibility of significant harm*” (SPOSH) exists before a land may be determined as contaminated land.
- 3.12 Once a site has been designated as contaminated land, in accordance with the statutory criteria, the Council will in the first instance engage the appropriate persons as defined in the legislation to clean up the site before formally declaring the site as contaminated land.
- 3.13 DEFRA funding for site investigation and clean-up of contamination had previously been available to local authorities in the form of contaminated land capital grants. This was also match funded by the Council. In 2014 the Government reduced the funding to £0.500m and then phased out altogether from April 2017. This means that strategic inspections will continue, however, detailed inspections cannot be carried out unless a source of capital funding could be found for this via central government or through the Council. Land contamination can be addressed under the planning system when land is developed, and developers will cover the cost of site investigation and remediation without the need for Part 2A to be used directly.

#### **4 EQUALITIES IMPLICATIONS**

- 4.1 There is no equality and diversity implications arising from the draft strategy. Please refer to equalities impact assessment checklist in Appendix 2.

#### **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
  - Best Value Implications- The Council is fulfilling its best value duty by ensuring that staff resources are targeting the higher risk potentially contaminated sites as determined through the process of risk

assessing and prioritising sites. Where detailed soil inspection will be required, and subject to securing funding, the acquisition of consultancy services to deliver soil investigations will be subject to Council procurement procedures. Tenders will be assessed based on quality and cost.

- Consultations- A 4-week consultation was undertaken with key stakeholders including the Environment Agency, DEFRA, Planning service, Building Control service, Parking and Highways. Only the Planning service provided comments, which were considered, and the draft strategy amended as required.
- Environmental- The aim of this Strategy is to improve land quality within the borough and increase the quality of life for residents.
- Risk Management- The Council as an enforcing Authority is the primary regulator for implementation of Part 2A of the Environmental Protection Act 1990 which establishes a legal framework for dealing with contaminated land in England. The updated Strategy for the Identification of Contaminated Land sets out how the Council will fulfil its obligations under this legislation. Failure to ensure that the council discharges its responsibilities can have serious consequences for the Council and these are set out below.
  - (i) Should the Council not exercise its duties to inspect and determine contaminated land in its area it would be considered negligent if it were proven that residents' health was impacted by contaminated land when the Council had not taken action.
  - (ii) In delivering the Strategy for the Identification of Contaminated Land, the Pollution Team is reliant on the Services of other key Teams such as Legal Services, Communications and Public Health to provide support to meet the objectives of the Strategy.
- Crime Reduction- There are no crime reduction implication with this report
- Safeguarding- There are no safeguarding implications with this report.
- Data Protection / Privacy Impact Assessment- There are no data protection/privacy impact implications

## **6 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 There are no financial implications directly emanating from this report which is seeking approval of the LB Tower Hamlets Strategy for the Identification of Contaminated Land 2022
- 6.2 DEFRA funding for site investigation and clean-up of land contamination had previously been available to local authorities in the form of contaminated land capital grants. This was also match funded by the Council. However, this

funding has been phased out in recent years with the burden now falling entirely on the Council resulting in existing budget provision being sufficient for strategic inspections only. Any detailed inspection will require a source of capital funding to be identified and will be sought through the capital governance process.

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 LBTH adopted a Contaminated Land Strategy which was first published in July 2001. The Strategy was last reviewed and adopted in Nov 2017. and detailed how the Council intended to respond to the statutory duties in relation to contaminated land. The legislative framework which governs the Council's responsibilities in this area is contained in Part 2A of the Environmental Protection Act (EPA) 1990, together with regulations which elaborate on details of the Part 2A regime, such as dealing with issues like what qualifies as a "special site"; public registers; remediation notices; and the rules for how appeals can be made against decisions taken under the Part 2A regime. The Contaminated Land Statutory Guidance, published by the Department for Environment, Food and Rural Affairs in April 2012 is the latest guidance provided.
- 7.2 Part 2A of the EPA 1990 defines 'Contaminated Land' and gives a number of functions to local authorities. In accordance with Part 2A, the Council has to do the following:
- carry out inspections of the land that may be contaminated;
  - find out who is responsible for causing the contamination;
  - formally designate land that is found to be contaminated;
  - agree on the required action to clean up (remediate) the land; and
  - keep a Public Register of designated contaminated sites in the borough, specifying how the land was cleaned up and what, if any, legal action was taken.
- 7.3 The Council is required to act in accordance with statutory guidance issued by the Secretary of State when carrying out specified functions under the Part 2A of the EPA 1990. This includes the carrying out of inspections under section 78B of the Act for the purposes of identifying contaminated land and determining whether it should be designated as a special site. The statutory guidance states that the Council's approach to inspections should be rational, ordered and efficient and it should reflect local circumstances. The statutory guidance proceeds to state that 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, which should be reviewed at least every five years.
- 7.4 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 specify that any function relating to contaminated land is a local choice function, which may be but need not be the responsibility of an executive of the authority. In Tower Hamlets the decision was taken to make functions in relation to contaminated land a council-side function. Accordingly, the responsibility of making the contaminated land strategy is not an executive function but is a decision for Full Council.

- 7.5 Before adopting the revised contaminated land strategy, the Council must have due regard to the need to eliminate unlawful conduct under equality legislation the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic.
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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- NONE

### **Appendices**

Appendix 1 – Strategy for the identification of contaminated land

Appendix 2 – Equalities Impact Assessment – Checklist

### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

NONE

### **Officer contact details for documents:**

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