

To: Cabinet
Date: 9 December 2020
Report of: Head of Environmental Sustainability
Title of Report: Land Quality Strategy – December 2020

Summary and recommendations	
Purpose of report:	To agree the adoption of the updated Land Quality Strategy 2020
Key decision:	Yes
Cabinet Member:	Councillor Tom Hayes, Cabinet Member for Green Transport & Zero Carbon Oxford
Corporate Priority:	Support Flourishing Communities
Policy Framework:	Council Strategy 2020-24
Recommendations: That Cabinet resolves to:	
<ol style="list-style-type: none"> 1. Approve the revised Land Quality Strategy for adoption; 2. Continue to endorse the approved procedure for dealing with contaminated land by: <ul style="list-style-type: none"> - Using the development control regime wherever possible in order to assess and remediate land affected by contamination. - Where this is not possible we will utilise powers under Part 2a of the Environmental Protection Act (1990) in order to ensure contaminated land is remediated; and 3. Note that if works are required under Part 2a Of the Environmental Protection Act (1990), then this will be funded from contingencies and reserves. 	

Appendices	
Appendix 1	Draft Land Quality Strategy 2020
Appendix 2	Risk Register

Introduction

1. There is a statutory requirement for the Council to have a Land Quality Strategy in accordance with national contaminated land legislation. Part 2A of the Environmental Protection Act 1990(EPA) was introduced in April 2000 to provide a system for the identification and remediation of land with the potential to cause a risk to human health or the environment from contamination. The legislation places a duty on local authorities to produce a strategy outlining how it will identify and address potentially contaminated land in its district area.
2. The proposed Land Quality Strategy seeks to provide a clear framework for addressing land contamination at a local level within the national policy framework. The Strategy has been developed following consultation with internal stakeholders. The Strategy is required to be reviewed on a 5 yearly cycle.

Background

3. The Council published a Contaminated Land Inspection Strategy in 2001 and an updated Land Quality Strategy in 2014. The proposed Land Quality Strategy 2020 presents an update to the 2014 Strategy required following minor changes to legislation.
4. Since 2001 the Council has prioritised over 800 potentially contaminated sites according to risk and ten proactive investigations have been undertaken by the Council. No sites in Oxford have to date been determined as “contaminated land” as defined in the Act.
5. The legal definition of “contaminated land” set out in the Act is as follows:
“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 (a) significant harm is being caused or there is a significant possibility of such harm being caused; or (b) significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused”
6. It is important to note that a site will not meet the definition of “contaminated land” just because contamination is found to be present. For a site to be determined as “Contaminated Land” it must be proven that there is a clear contaminant – pathway – receptor linkage and that significant harm (or significant possibility of significant harm) is being caused as a result.
7. In October 2014 City Executive Board approved a Land Quality Strategy for Oxford. This report presents and recommends adoption of an updated Land Quality Strategy for Oxford. As the draft Land Quality Strategy 2020 represents a minor update to an existing strategy, it is not proposed to hold a public consultation.

Strategy Aim

8. To deliver an efficient and effective framework for managing land affected by contamination by;
 - Using the development control regime wherever possible in order to assess and remediate land affected by contamination.
 - Where this is not possible the Council will utilise powers under Part 2a of the EPA (1990) in order to ensure contaminated land is fully remediated.

Strategy Objectives

9. The Strategy contains the objectives below as the means to comply with the Council's statutory duties, both as enforcement authority and land owner.
 - Objective 1 – To deal with land contamination through the development control and building control processes wherever possible.
 - Objective 2 – To implement the Part 2A detailed inspection process where strong evidence becomes available that significant harm is occurring or will occur unless the council intervenes, and remediation through planning, building control or voluntary action is not possible.
 - Objective 3 – To maintain and continue to update a comprehensive land quality database for Oxford.
 - Objective 4 – To promote the use of sustainable remediation where possible.
 - Objective 5 – To act as a responsible landowner to ensure the Council achieves full legal compliance.
10. The approach of the draft Strategy is to maximise redevelopment through the planning process to address contamination issues and to use Part 2A powers only where appropriate. Efficient information management is fundamental to applying the appropriate controls through the planning process to ensure affected land is made suitable for use.

Review

11. It is proposed to continue to review the Strategy every 5 years or as required through changes to legislation or statutory guidance.

Environmental Impact & Sustainability

12. The effective management of land affected by contamination positively contributes to reducing environmental impacts. Improving the quality of soil and water resources leads to healthier ecosystems which increases resilience to climate change.
13. Re-using land and the redevelopment of brown-field sites, is by its nature a sustainable approach, and underlies the government's commitment and overall objective to bring damaged land back into beneficial use.
14. A commitment to encourage sustainable remediation methods as set out in the Strategy should contribute to reducing the amount of waste soils sent to landfill and reduce lorry movements associated with site re-development. By reducing the amount of waste sent to landfill and reducing traffic movements the Council is helping to reduce the carbon footprint of remediation activities.

Consultation and Communications

15. Internal consultation with legal and finance will be completed in accordance with standard Council procedures. External consultation with nearby local authorities within Oxfordshire has also been completed. As the draft Land Quality Strategy 2020 represents a minor update to an existing strategy, it is not proposed to hold a public consultation.

Financial Implications

16. If land is determined as “contaminated land”, the Local Authority has a duty to secure remediation and to ensure the “appropriate person” (principally, the polluter) pays for remediation wherever possible. Where the polluter cannot be identified, the owner or occupier of the land may be liable. Detailed inspection and remediation can be very costly and a significant part of the legislation is focused on identifying and recovering the costs of remediation from the appropriate person.
17. The Contaminated Land Statutory Guidance 2012 sets out that in general the enforcing authority should seek to recover all of its reasonable costs. However, it further states that the authority should “waive or reduce” the recovery of costs to avoid any undue hardship which the recovery may cause. Hardship should be taken into account for individuals, trusts, charities etc. The guidance states that “in making such decisions, the authority should bear in mind that recovery is not necessarily an “all or nothing” matter (i.e. where reasonable, appropriate persons can be made to pay part of the authority’s costs even if they cannot reasonably be made to pay all of the costs).”
18. It should be noted that it is theoretically possible that the Council could be identified as the appropriate person as a landowner and/or as “the polluter” (e.g. pollution from former council landfill sites, council depots with fuel tanks etc.).
19. To help cover the costs of investigation and remediation, local authorities have previously been able to apply for funds from DEFRA. However, in December 2013 this funding mechanism was removed. Should a high risk site be identified as needing further investigation and/or remediation there are now limited funding options for local authorities to manage the risks efficiently. Furthermore, in cost recovery, if hardship is to be taken into account, the Council may need to be able to finance all or part of the work.
20. The Strategy proposes to encourage investigation and remediation through the planning process and through voluntary action and to only use Part 2A powers as a last resort. The Council does not currently have any sites which have been identified as having a significant possibility of significant harm occurring. However, this may change as new information becomes available.
21. The bulk of the workload of data management, planning control and review can be delivered within present funding levels
22. Funding is not available to cover action under Part 2A following the Governments withdrawal of grant money and it would therefore be prudent that the City Council ensure that contingency funding is made available in the event that action under Part 2A is required. Based upon previous experience it is estimated that the Council should be aware that around £150k may be required for this purpose. In the event that this is required then the Head of Finance Services will arrange for this to be funded from reserves and contingencies.

Legal issues

23. Under Part 2A of the Environmental Protection Act 1990, local authorities have a statutory duty to inspect their area with a view to identifying contaminated land and to do this in accordance with the Contaminated Land Statutory Guidance. The relevant sections of the Act include:

(a) Section 78B(1): Every local authority shall cause its area to be inspected from time to time for the purpose – (a) of identifying contaminated land; and (b) of enabling the authority to decide whether any such land is land which is required to be designated as a special site.*

(b) Section 78B(2): In performing [these] functions... a local authority shall act in accordance with any guidance issued for the purpose by the Secretary of State.

Level of risk

24. The updated Land Quality Strategy sets out our statutory responsibilities and how we intend to meet them. The adoption of the Strategy itself should reduce reputational risk to the Council by communicating its roles and responsibilities clearly. The Strategy also clearly explains the definition of contaminated land in a legal sense, which should help to clarify possible misconceptions surrounding contaminated land responsibilities and management. However, there are potentially significant reputational and financial risks to the Council if contaminated land is not managed appropriately.
25. There are potentially significant financial implications of undertaking Part 2A work. Our responsibilities under Part 2A are not new but changes to the statutory guidance and limited government financial support for the regime mean that there remains a degree of financial risk for local authorities. The adoption of the Strategy should enable the Council to be better prepared in the event that a significant issue relating to land contamination occurs.
26. The emphasis on using the development control process to remediate land should minimise this risk and ensure that land owners and developers bear this cost rather than local tax payers.
27. The financial risks associated with these statutory duties have been mitigated by previous actions to identify and assess sites so that there is now a good level of knowledge about sites in the city.
28. A risk register has been completed and is available to view in Appendix 2.

Equalities impact

29. An Equalities Impact Assessment was carried out prior to the previous Strategy being adopted by the City Executive Board in 2014. No equalities impacts were identified at the time. The updated Strategy contains only minor amendments from the previous Strategy which are not expected to impact on equalities so a further Equalities Impact Assessment has not been considered necessary.

* *Special sites* are cases of land contamination where the Environment Agency is the enforcing authority for the purposes of the Part 2A regime.

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Background Papers: None
