

## **Wiltshire Council**

### **Cabinet**

**24 May 2010**

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**Subject: Wiltshire Council Inspection Strategy for Contaminated Land**

**Cabinet Member: Keith Humphries – Health and Wellbeing**

**Key Decision: Yes**

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#### **Executive Summary**

The Environmental Protection Act 1990 Part II(a) places a duty on Local Authorities to survey their administrative area for land contamination. Where contamination is found that is or is likely to result in harm then the authority must exercise its duties under the act to identify the parties responsible for the contamination or who allowed the contamination to occur and secure the remediation (clean up) of the land & where necessary, groundwater.

All councils must produce a document detailing how they intend to carry out this statutory function, in the form of a “Contaminated Land Strategy”.

The attached strategy draws together the four district councils’ policies into one unified consistent policy document. The Strategy:-

- Reviews the historical legacy of land contamination
- Examines the key concepts of the UK contaminated land regime.
- Reviews the geology, hydrogeology, biodiversity and other factors
- Details the development of the strategy
- Describes the inspection strategy we will undertake, continuing from the district councils’ work.

Consultation and liaison has been undertaken with statutory consultees such as the Environment Agency who are party to the enforcement of this legislation in respect of special sites. (in some circumstances a site may be designated as “special” by the local authority and passed for enforcement to the Agency. These sites are defined in the legislation).

The unified Contaminated Land Strategy for Wiltshire Council is attached for consideration and approval

**Proposal**

It is recommended the Cabinet adopts the attached Contaminated Land Strategy for Wiltshire Council.

**Reason for Proposal**

The Environment Act 1995 places a duty on Wiltshire Council to develop and adopt a contaminated land strategy for its administrative area. This document has been produced in order to discharge that duty.

**Maggie Rae**  
**Corporate Director for Public Health & Wellbeing**

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### **Purpose of Report**

1. To bring to the attention of Cabinet the new Contaminated Land Strategy for Wiltshire, which replaces the 4 separate strategies previously operated by the district councils with one unified document and to seek its formal adoption by Cabinet.

### **Background**

2. The Environmental Protection Act 1990 Part II(a) came into force in 2000 enshrining in law a national regime for dealing with contaminated land. It placed many duties on local councils, the key components' of which are:
  - To inspect the district to identify areas of land where land contamination is likely to be present.
  - To determine which sites meet the statutory definition of contaminated land and where necessary designate them as Special sites for enforcement action by the Environment Agency.
  - To determine who is responsible for causing pollution.
  - To ensure the remediation (clean up) of contaminated land occurs by voluntary action, where possible, and under enforcement powers if necessary.
  - To determine who should pay for the clean up (following the "polluter pays principle")
  - To inform the public of the action taken and to maintain a public register of sites "determined" as contaminated.
  - To ensure that potential land contamination issues are considered in all strategic planning and development control decisions.

It should be noted that the Governments preferred option is for land contamination to be dealt with through the planning process.

The legislation requires local authorities to develop a formal framework detailing how the council will go about implementing it. This takes the form of a “Contaminated Strategy” and the attached document was been developed in order to discharge this duty. The strategy is attached as appendix 1.

In developing the document we have consulted externally with:

- The Environment Agency
- English Nature
- English Heritage
- Health Protection Agency
- Natural England, and
- The public via the web

Internal consultation has been undertaken with, Area Boards, Elected members, Forward Planning, Development control, Minerals Waste & Planning, Legal Services and Property Services and others.

The document will remain on the website for ease of access by interested parties.

### **Environmental Impact of the Proposal**

3. The objective of the legislation is to protect ecosystems, the general environment and humans from actual and potential harm caused by past environmentally damaging activity.

### **Equalities Impact of the Proposal**

4. Regard has been had to Wiltshire Council’s policies on diversity and equality. The strategy is classed as being “Low relevance” within the Corporate Equality Impact Assessment framework however the strategy will be applied having regard to legislative duties, council policy and relevant officer codes of conduct.

### **Risk Assessment**

5. These are summarised in the table below, in the form of a SWOT analysis.

<b>Strengths</b>	<b>Weaknesses</b>
<p>Adoption:</p> <p>Allow continuance of progressive work by the district councils.</p> <p>Protect the council from civil litigation &amp; Judicial review.</p> <p>Maintain the council's reputation for the protection of the environment &amp; communities.</p>	<p>Rejection:</p> <p>Inhibit officers' exercising the council's legal duties under the legislation.</p> <p>Decisions made in the context of contaminated land may be subject to legal challenge &amp; judicial review.</p>
<b>Opportunities</b>	<b>Threats</b>
<p>To further develop the reputation of the council for protection of environment &amp; communities</p>	<p>Failure to comply with legal duty; council will be ultra vires.</p> <p>Council may be open to claims of compensation.</p> <p>Reputation of the council at risk.</p>

### **Financial Implications**

- The council has a duty to investigate land to establish whether risks to human health or the environment exist. The council has a small budget for limited investigations, however central funding from DEFRA in the form of grants can be bid for each financial year in respect of specific sites and it is our intention to make bids in respect of several sites.

### **Legal Implications**

- Adoption of the strategy will ensure the council is compliant with its legislative duty.

### **Conclusions**

- The council is obliged by the Environmental Protection Act 1990 Pt(II) to adopt a contaminated land strategy to avoid risks of legal Challenge, and to deal both reactively and proactively with contaminated sites.

**Maggie Rae**  
**Corporate Director for Public Health & Wellbeing**

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**Date of report: 24 May 2010**

**Background Papers**

The following unpublished documents have been relied on in the preparation of this report:

None. The Strategy has been developed from the previous four District Council strategies.

**Appendices**

Summary of Strategy  
Contaminated Land Strategy for Wiltshire.

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