

**Development Control Committee – 7<sup>th</sup> April 2015**

**Report of the Acting Strategic Director of the Environment, Economy & Housing**

**Adoption of the Contaminated Land Inspection Strategy and Cost Recovery Policy for Dudley Borough.**

**Purpose of Report**

1. To inform the Development Control Committee of the Cabinet decision taken on 11<sup>th</sup> March 2015 to adopt the Contaminated Land Inspection Strategy and the Cost Recovery Policy documents which were subject to a statutory public consultation commencing on 12<sup>th</sup> December 2014 for a period of five weeks.

**Background**

2. Following the introduction of the Environmental Protection Act 1990, and specifically Part 2A which deals with Contaminated Land, a Statutory Duty was placed on all Local Authorities to prepare and adopt an Inspection Strategy to identify, categorise and deal with as appropriate any land within their Borough that fell within the specific definition of Contaminated Land as set out in the Act. Dudley's initial inspection strategy was prepared and adopted in June 2001, following approval by Corporate Board and the Environmental Health Committee.
3. New legislative guidance was issued in April 2012 which required the preparation of a revised Inspection Strategy to take account of these changes. The Contaminated Land Inspection Strategy is the framework whereby the Council sets out its methodology for the inspection of the Borough to determine what, if any, contamination may be present, how individual sites may be prioritised for further investigation and what options are available for remediation. The document is written from the basis of the Council as a Regulator, implementing the requirements of the Act. Consequently this focuses investigation and any subsequent action on those sites that potentially pose a significant risk.
4. Currently most land is remediated by the Private Sector through regeneration and development, and the Development Control Committee plays a key role in that process. The latest figures for the year 2013/2014 show that 98% of new build dwellings were on Brownfield sites. The Council Contaminated Land Team acts as a key Consultee to this at both Pre-Application stage and during the formal Planning and Building Control processes to advise on the existing conditions to applicants, customers and Officers, and to assist with verification of on-site measures. Additionally the team provide specialist advice and guidance to the Council and public on issues generally related to contaminated land.
5. Works that have been undertaken to date have not identified any land that has been formally classified as "Contaminated Land" under the Act. These adopted documents will provide the future framework for the continuing investigation and

analysis of the Borough, following current guidance and best practice. Should any land be formally identified as 'Contaminated', then the team will act in their capacity as regulator and enforcing authority to secure the remediation of the site.

6. It should be noted that, even though land may contain some contamination, it will not necessarily fall within the strict definition of "Contaminated Land" within the Act.
7. In acting as a Regulator, there may be occasions where work has to be undertaken and incurred costs recovered. Corporate Property Group has been consulted on these documents.
8. The Cost Recovery Policy applies no waiver or reduction and seeks to recover all reasonable costs incurred by the Council in exercising its duties under the Act and Inspection Strategy, whilst having due regard to Statutory Guidance.
9. At the Cabinet Meeting of 4<sup>th</sup> December 2014, approval was given for a public consultation exercise on the proposed Contaminated Land Inspection Strategy and Cost Recovery Policy for a period of five weeks from 12<sup>th</sup> December 2014. Based on the comments and observations received, the Inspection Strategy and Cost Recovery Policy were amended to take account of the items raised during consultation and the revised documents were adopted by Cabinet on 11<sup>th</sup> March 2015.
10. The summary of the consultations and alterations are detailed in Appendix A. There were no comments or representations received for the Cost Recovery Policy. The Contamination Land Strategy Document is available to view on the Committee Management Information System and a paper copy is available in the Member's Room.

## **Finance**

11. The Contaminated Land Inspection Strategy and the Cost Recovery Policy will be initially funded through existing budgets. The Cost Recovery Policy seeks to recover all costs that the Council incur during the exercising of its duties.
12. Previous investigative works on Contaminated Land have been supported by grants available from Department of the Environment, Food and Rural Affairs (DEFRA). Whilst grants are still available, they are for the remediation of land that has already been designated as "Contaminated Land". Dudley currently has no land that meets this designation. This funding has been reduced and will not be available from April 2017.
13. Investigations may reveal contamination on sites owned by the Council, or on sites where ownership cannot be established – in which case the remediation costs would have to be borne by the Council itself. Resources to meet these costs would be identified in due course.

## **Law**

14. The introduction in April 2012 of revised Statutory Guidance made under the Environmental Protection Act 1990 requires the revision of the Contaminated Land Inspection Strategy. The Cost Recovery Policy is a supplementary document to assist in the implementation of the Inspection Strategy.

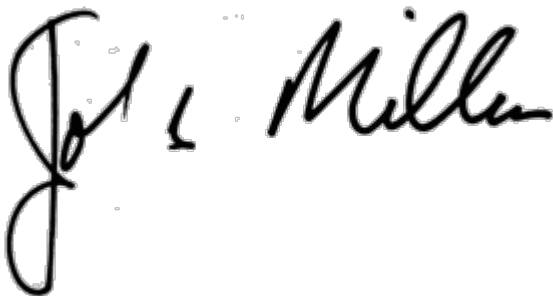
15. In addition Section 2 of the Local Government Act 2000 allows the Council to do anything that it considers is likely to promote or improve the economic, social or environmental well-being of the area.

### **Equality Impact**

16. The Contaminated Land Inspection Strategy and Cost Recovery Policy set the framework for the investigation and any subsequent action required for the Council to meet its obligations under Part IIA of the Environmental Protection Act 1990. The methodology allows sites to be ranked and prioritised depending upon several factors but including the likely impact on residents and members of the public, thus meeting the needs of the communities in the Borough. This will include meeting the needs of children and young people by seeking to provide a safe environment in which they can live, and also ensuring that the environment for future generations is improved.

### **Recommendation**

17. That Development Control Committee notes the formal adoption by Cabinet of the Contaminated Land Inspection Strategy and the Cost Recovery Policy documents.



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**J. B. Millar**

**Acting Strategic Director of the Environment, Economy & Housing**

Contact Officer: Helen Martin (Head of Planning)  
Telephone: 01384 814186  
Email: [helen.martin@dudley.gov.uk](mailto:helen.martin@dudley.gov.uk)

Contact Officer: Craig Worgan (Building Control Manager)  
Telephone: 01384 814114  
Email: [craig.worgan@dudley.gov.uk](mailto:craig.worgan@dudley.gov.uk)

## **List of Background Papers**

Current Contaminated Land Inspection Strategy. Adopted June 2001

<http://www.dudley.gov.uk/about/plan/plans-policies--strategies/contaminated-land-strategy-/>

Contaminated Land Inspection Strategy draft document

<http://www.>

Cost Recovery Policy draft document

<http://www>

Contaminated Land Statutory Guidance – Section 8. Recovery of the costs of remediation.

<http://www>

**APPENDIX A - CONTAMINATED LAND INSPECTION STRATEGY (CLIS) –  
SUMMARY OF RESPONSES TO CONSULTATION AND MODIFICATION TAKEN**

REFERENCE	ORIGIN OF MODIFICATION	CLIS PAGE NUMBER	PROPOSED MAIN MODIFICATION
1.	Land Contamination Team. Final preparation, proof read and consistent conventions within text.	Whole document	Number paragraphs and figures; publication date of document; contents pages; 'Council'; 'contaminated land'; 'statutory guidance'; and 'special site'.
2.	Land Contamination Team.	4.	Delete text "the first of" within fourth paragraph.
3.	English Heritage.	4.	Amend text within sixth paragraph from " new statutory guidance" to "statutory guidance (April 2012)".
4.	Land Contamination Team.	5.	After the word "contaminated" in 16 <sup>th</sup> paragraph insert the word "land".
5.	Land Contamination Team.	6.	Delete text "successfully" within caption to photographs.
6.	Land Contamination Team.	7.	Amend text with 3 <sup>rd</sup> paragraph. Delete last sentence and insert it earlier in paragraph, amend it from "Primarily land contamination can also be addressed.." to "Primarily, land contamination should be addressed..".
7.	Land Contamination Team	7.	Remove bold text of 4 <sup>th</sup> paragraph.
8.	Land Contamination Team.	8.	Amend text within 9 <sup>th</sup> paragraph from "the following diagram" to "Figure 1".
9.	Land Contamination Team.	10.	Amend layout of text after heading Who is responsible for the cost of remediation? Separate into 4 individual paragraphs and rearrange order of text.
10.	Land Contamination Team.	13.	Amend text within 10 <sup>th</sup> paragraph from "in Section 4" to "in Section Four".
11.	Land Contamination Team.	14.	Amend text within 15 <sup>th</sup> paragraph from "objectives of Government policy on contaminated land which are" to "objectives of the Government's policy on contaminated land and the Part 2A regime which are".
12.	Land Contamination Team.	15.	Amend text within 18 <sup>th</sup> paragraph from "and in particular the following guidance. Paragraph 1.6 of the statutory guidance:" to "and in particular Paragraph 1.6."
13.	Land Contamination Team.	16.	Delete text "as required" from first bullet point within 22 <sup>nd</sup> paragraph.
14.	Land Contamination Team.	17.	Insert text (8 <sup>th</sup> paragraph). "The risks to human health will be prioritised above others."
15.	Land Contamination Team.	18 onwards.	Amend Section Three to make clearer the distinction between strategic and detailed inspection. Revise layout and headings.
16.	Land Contamination Team.	18.	Delete text "There are four principal aspects to the implementation of the Inspection Strategy" and the four bullet

			points. Insert heading “The inspection process”.
17.	Land Contamination Team.	18.	Insert additional Figure: Schematic of the inspection process, showing distinction between strategic and detailed inspection activities.
18.	English Heritage.	19.	After “Environmental setting, including” within Table One, Step 2 , Process, insert text “historic environment” .
19.	Land Contamination Team.	19.	Correct spelling within Table One. “prioritization” to prioritisation”
20.	English Heritage.	20	Amend text of penultimate bullet point in box from “Protected buildings and ancient monuments” to “Heritage assets, protected buildings and ancient monuments”.
21.	Land Contamination Team.	21	Amend box with methodology scoring to show current factors following recent review.
22.	Land Contamination Team.	21.	Amend text of first sentence of last paragraph on page from “On completion of the screening exercise” to “On completion of the initial screening exercise”.
23.	Land Contamination Team.	21.	Amend text of last sentence of last paragraph on page from “more detailed desk studies.” to preliminary risk assessments.”
24.	Land Contamination Team.	22.	Delete ‘Detailed Inspection’ section including box and replace with revised text. Insert section headed ‘Preliminary risk assessment’ and revised box referring to desk study and site visit, and limited sampling and monitoring. Insert section headed ‘Detailed inspection’ and revised box referring to intrusive investigations.
25.	Land Contamination Team.	22.	Amend text within ‘Risk Assessment’ paragraph from “After each stage of the detailed inspection all information..” to “At each stage of the inspection process all information..”
26.	Land Contamination Team.	22.	Insert new paragraph at the beginning of the ‘Managing the inspection process...’ section. “The Council does not intend to complete all preliminary risk assessments before any site is subjected to detailed inspection. The preliminary risk assessment of sites and the detailed inspection of others will be carried out simultaneously.”
27.	Land Contamination Team.	24.	Correct grammar in last bullet point on page. Amend text from “..risk assessments on all Council property holdings..” to risk assessments of all

			Council property holdings..”.
28.	Land Contamination Team.	25.	Amend text in last two paragraphs to place Risk Management and Property Management before relevant land holding Directorates and Service Areas.
29.	Land Contamination Team.	26.	Various amendments to Work Programme. Minor changes in terminology - Initial screening exercise; preliminary risk assessments and detailed inspections. Amend text to “Formally adopt & publish the Council’s cost recovery policy”. Correct grammar and amend text from “..risk assessments on all Council property holdings..” to risk assessments of all Council property holdings..” Amended some target dates.
30.	Land Contamination Team.	27.	Amend text within notes from “it follows that any desk study could quite easily escalate into a comprehensive intrusive investigation and possible determination. Committing resources to a detailed intrusive investigation will undoubtedly influence the ability to continue with the desk studies and site reconnaissance exercise.” To “it follows that any preliminary risk assessment could quite easily escalate into a comprehensive detailed inspection and possible determination. Committing resources to a detailed inspection will undoubtedly influence the ability to continue with the preliminary risk assessments.”