

**Committee Name:** Cabinet

**Committee Date:** 08/06/2022

**Report Title:** Contaminated Land Inspection Strategy

**Portfolio:** Councillor Jones, Cabinet member for safer, stronger neighborhoods

**Report from:** Executive director of development and city services

**Wards:** All Wards

### **OPEN PUBLIC ITEM**

#### **Purpose**

To agree to undertake a public consultation on the proposed Contaminated Land Inspection Strategy (CLIS)

#### **Recommendation:**

- It is recommended to agree to the public consultation on the draft Contaminated Land Inspection Strategy (CLIS) for Norwich and to give delegated authority to the Executive Director – Development and City Services, in consultation with the Portfolio Holder of Safer, Stronger Neighbourhoods, to amend the strategy in the light of the consultation response and adopt it.

#### **Policy Framework**

The Council has five corporate priorities, which are:

- People live independently and well in a diverse and safe city.
- Norwich is a sustainable and healthy city.
- Norwich has the infrastructure and housing it needs to be a successful city.
- The city has an inclusive economy in which residents have equal opportunity to flourish.
- Norwich City Council is in good shape to serve the city.

This report meets the Norwich is a sustainable and healthy city corporate priority

## **Report Details**

1. The UK has a legacy of contaminated land from former unregulated industrial processes. Levels of contamination vary widely depending on the type of industry that was present. This relic contamination can have a significant impact on human health, the natural and built environment, archaeology, and controlled waters. Such sites exist in Norwich City Council's administrative area.
2. A Contaminated Land Inspection Strategy (CLIS) is a policy document which the council is required to produce under Part 2A of the Environmental Protection Act 1990. It provides a means of identifying and remediating land that poses a significant risk to health or the environment, where there is no alternative solution. It also works in conjunction with planning rules to help ensure that this land is made suitable for use following redevelopment.
3. Norwich City Council has carried out significant work to identify sites where potential contamination may exist. A list has been drawn up to prioritise these sites into high/medium/low categories. To date 844 sites are listed for prioritisation. This list is not within the public domain as these sites are only suspected of contamination and therefore publicising the list at this stage, before a determination has been made, could lead to land blight unnecessarily.
4. The CLIS provides the policy to guide the approach for the ongoing programme of inspection and remediation of these sites.
5. The CLIS has now been updated to take into account changes in legislation and to refresh the previous strategy produced in 2009/10. The CLIS provides the policy to guide the approach for the ongoing programme of inspection and remediation of these sites.

## **The Draft Contaminated Land Inspection Strategy (CLIS)**

6. The attached draft CLIS has been prepared for consultation. It is attached as appendix 1 and, subject to the views of Cabinet, will be put out for consultation between 13 June 2022 and 4 September 2022.
7. It is proposed to consult with the following bodies:
  - Adjacent authorities (Broadland District Council and South Norfolk District Council) (statutory consultee)
  - The Environment Agency (statutory consultee)
  - The public via the Council's website and through comms channels (e.g., Citizen magazine)
8. Following consultation, the draft document will be revised as necessary. As it is a largely technical document, the form of which is closely prescribed by government guidance, it is suggested that delegated authority be given to the Executive Director, Development and City Services, in consultation with

the portfolio holder to make any changes following the consultation and adopt the policy. Once formally adopted, the policy will be reviewed as required should legislative changes occur.

## **Remediation and cost recovery**

9. If a site is found to pose a risk of significant harm or a significant possibility of significant harm, then the site would need to be remediated such that it does not pose a risk. The remediation can be undertaken either by voluntary remediation by the polluter or the owner, which is the most usual method, or by the council officially 'determining' the site as contaminated land, through risk assessment and inspection, and issuing a remediation notice. The remediation notice would be served on the polluter or owner of the site instructing them to carry out remediation of the contaminated on the land. The notice must be reasonable and take into consideration the cost of the remediation and would also have to include a cost benefit analysis as to the suitability of the remediation.
10. If the risk from the site relates to Groundwater or Controlled Water, then it is potential that the site would potentially be classified as a 'Special Site'. In this situation the Local Authority passes its delegated powers to the Environment Agency to continue the investigation. Although if the site is to be determined as 'Contaminated Land' this remains the responsibility of the Local Authority to ensure that it is remediated by the polluter or landowner as appropriate.
11. Costs associated with the site investigation/remediation can potentially be reclaimed from either the landowner if the site was developed prior to 2000. From 2000 onwards, the expectation would be that any planning permission on brownfield sites should have included contaminated land conditions; if these were not adequate, meaning risks on the site remain, the local authority is expected to bear the cost.
12. As set out below, the Council will seek to recover the costs of contamination from third parties wherever it is lawful to do so.

## **Consultation**

13. The purpose of this report is to seek Cabinet views prior to undertaking the consultation. The consultation responses will be analysed and taken into account before the strategy is subject to adoption.

## **Implications**

### **Financial and Resources**

14. Any decision to reduce or increase resources or alternatively increase income must be made within the context of the council's stated priorities, as set out in its Corporate Plan and Budget.
15. The draft CLIS and survey work undertaken to date has been delivered

within existing resources. Following the adoption of the CLIS further consideration will be given to the rate of progress being made in relation to inspecting and remediating sites.

16. Although the strategy seeks to maximise the extent to which these costs can be recovered from the landowner it is possible that some additional costs may be faced by the Council. The case for considering whether to increase resources directed to addressing land contamination will be considered in the forthcoming restructure to regulatory services and further following the adoption of the strategy.
17. Any additional resources would need to be considered in the context of the Council's overall financial position and taking into consideration the potential to recover some or all of those costs from relevant parties.

## **Legal**

18. The CLIS is a statutory requirement and therefore NCC has a duty to produce a CLIS.
19. Contamination can have significant health impacts on human health and the environment of our residents. Not having a CLIS is a breach of the council's statutory obligations. Failure to adopt this policy and act on it could have an impact upon the reputation of the council.

## **Statutory Considerations**

<b>Consideration</b>	<b>Details of any implications and proposed measures to address:</b>
Equality and Diversity	The policy is not likely to affect people because of their protected characteristics
Health, Social and Economic Impact	Having CLIS in place will mitigate the impact on health, social and the economy when sites are developed and potentially increase investment in the area.
Crime and Disorder	None known
Children and Adults Safeguarding	None known
Environmental Impact	Having CLIS in place will have a beneficial impact on the use of resources and mitigate pollution of the soil and water courses through remediation of known sites of contaminated land.

## Risk Management

Risk	Consequence	Controls Required
Non-compliance with statutory obligations under the Environmental Protection Act 1990  Reputational risk	Not having a CLIS is a breach of the council's statutory obligations, not to mention that contamination can have significant health impacts on human health and the environment of our residents.	Ensure an up to date contaminated land inspection strategy is adopted and resources are allocated to carry out the work required.

## **Other Options Considered**

20. None considered because the CLIS is a statutory requirement and therefore NCC has a duty to produce a CLIS.  
Reasons for the decision/recommendation

21. It is recommended that Cabinet approve consultation on the CLIS.

**Background papers:** None

**Appendices:** CLIS

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**ENVIRONMENTAL PROTECTION ACT 1990, PART 2A**



**CONTAMINATED LAND INSPECTION STRATEGY  
APRIL 2022**

**DRAFT FOR CONSULTATION**

## Executive summary

This document details the arrangements which Norwich City Council proposes to fulfil its legal responsibilities for strategic inspection under the contaminated land regime. The legal definition of contaminated land relates to unacceptable risks to human health and/or the wider environment.

In particular, the aims of the strategy are to:

1. Protect human health
2. Safeguard the city's heritage and the natural environment
3. Bring land back into beneficial use either by voluntary remediation and partnership working or remediation notices.
4. Communicate findings to interested parties.

We will achieve the above through:

- Strategic inspections to find where the council may need to find out more about the land or where the council doesn't need to take any more action.
- Detailed inspections on priority sites to place them in category 1 to 4 as set out in the Statutory Guidance.
- Where remediation is required, the council will carry out a cost benefit analysis to ensure the sustainability of any remediation option.
- Serving a remediation notice or agreeing voluntary action to ensure that the benefits of remediation outweigh the costs.
- Carry out cost recovery for remediation where the council are entitled but also consider any hardship which the recovery could cause.
- Provide written statements and risk summaries to explain what the council have found on each site.
- Provide access to information about contaminated land inspections through our website or by contacting the offices of Norwich City Council.



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## 1. Introduction and background

In April 2000 legislation was implemented and local authorities were given the duty of identifying contaminated land and addressing the risks which arise from it in accordance with statutory provisions. The current risk-based approach to the investigation of contaminated land was introduced by Part 2A of the Environmental Protection Act, 1990 (EPA, 1990).

Since production of the earlier versions of the strategy some changes have been made to the statutory regime. The most recent revision was to the Statutory Guidance in April 2012. As a result of the new statutory guidance and progress made with inspections, this version of the council's Contaminated Land Strategy updates and supersedes all previous published versions.

The overarching objectives of the government's policy on contaminated land and the Part 2A regime are set out in the statutory guidance:

- a. To identify and remove unacceptable risks to human health and the environment.
- b. To seek to ensure that contaminated land is made suitable for its current use.
- c. To ensure that the burdens faced by individuals, companies and society are proportionate, manageable and compatible with the principles of sustainable development.

This document details the city council's approach to carrying out its inspection duty under section 78B(1) of Part 2A EPA 1990 which is that: '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 such land ... is required to be designated as a special site.'

The statutory guidance suggests that local authorities take a strategic approach to carrying out the inspection duty and that the approach should be rationally ordered and efficient, reflecting local circumstances. This document sets out the city council's approach as a written strategy which was consulted on between 13 June 2022 and 4 September 2022 (subject to agreement by Cabinet on 8<sup>th</sup> June).

### 1.1 Aims

The primary aim of the city council is to fulfil its statutory obligations under the Part 2A regime and to achieve the objectives set out in the statutory guidance. The city council aims to:

1. Protect human health
2. Safeguard the city's heritage and the natural environment
3. Bring land back into beneficial use by voluntary remediation and partnership
4. Communicate findings to interested parties.

### 1.2 Objectives

In order to achieve the aims, the city council will:

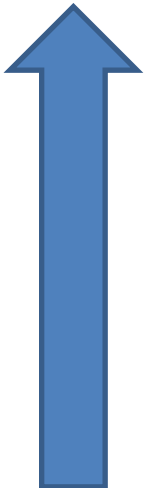
- Prioritise sites for inspection;

- Carry out strategic inspections of priority sites;
- Carry out detailed Inspections of sites where there is a reasonable possibility that a significant contaminant linkage could exist;
- Carry out risk assessment to determine if a significant contaminant linkage exists;
- Communicate the findings and inform interested parties of inspections through written statements and risk summaries;
- Determine whether land is contaminated land as defined by Part 2A EPA 1990;
- Consider how contaminated land should be remediated, the cost, benefits and sustainability of remediation and where appropriate issue a remediation notice;
- Establish who is liable to pay for remediation actions;
- Recover the costs of remediation where possible taking into consideration the financial position of the landowner.

### 1.3 Priorities

Section 1.2 outlined the council's aims. Specific inspection priorities are outlined in table 1.

**Table 1** – Specific inspection priorities

Scenario	Priority
1 Land where significant harm is being caused or there is significant possibility of such harm being caused to human health.	<p>Highest</p> 
2 Pollution of controlled waters is being or is likely to be caused and where the EA advises the council that prompt action is required (e.g. land within source protection zones or affecting potable water supply).	
3 Land where significant harm is being caused or there is a significant possibility of such harm being caused to ecological systems or living organisms within protected locations.	
4 Land where significant harm is being caused or is likely to be caused to property (in the form of crops, produce, livestock, owned or domesticated animals, wild animals subject to shooting or fishing rights and buildings).	

## 2. The council area

### 2.1 Geographical location

Norwich covers 39 square kilometres in the heart of Norfolk with a population of approximately 137,500.

## **2.2 Brief description/history**

Norwich has a skilled workforce, particularly in the professions of education and research and development. Employment is mainly in the service sector but manufacturing, although small in employment terms, is crucial to the local economy and smaller businesses are increasingly important. Services are sited in the centre of Norwich, whilst industrial and trading estates, and recently established business parks, are sited throughout the city.

## **2.3 Land use characteristics (current and historical)**

The built-up area of the city contains a wide range of land uses. The city centre contains the main concentration of commercial uses such as retail, office and leisure, together with residential and some mixed residential/industrial uses. The suburban areas are predominantly residential in use, apart from:

- The river valleys of the Yare and Wensum, in which there are pockets of industry together with preserved open spaces and wildlife areas.
- Some modern industrial/commercial estates around the Outer Ring Road area.
- Norwich Airport and the adjoining industrial area
- Mousehold Heath, which is a heathland/woodland area, protected by a special Act of Parliament.

The main industries in the city historically have been food processing, brewing, engineering, chemical manufacture, tanning, shoe manufacture, wool manufacture and electricity and gas generation.

## **2.4 Protected locations**

The city hosts a range of designated sites of nature conservation value. These include 2 Sites of Special Scientific Interest (SSSI) and 3 Local Nature Reserves (LNR). These are listed as potential receptors within the Contaminated Land Statutory Guidance 2012. Therefore, if potentially contaminated land is located on or adjacent to these ecologically sensitive receptors then the potential effect to these receptors will be assessed.

## **2.5 Information on contaminated land**

Norwich City Council maintains a database of potentially contaminated land which is updated on a regular basis. The potentially contaminated sites are also located spatially on the councils (Geographical Information System) GIS mapping system. This data currently held “in house” will influence the recommendations for the placement of conditions on planning permission for relevant sites which are put forward for re-development where required.

## **2.6 Geological characteristics**

Chalk formed during the Cretaceous period underlies the Norwich district. It is soft, white limestone laid down in warm, late Cretaceous seas. The chalk contains a lot of flint in many levels above the lower chalk (which is flintless).

Outcrops of the chalk are confined to the river valleys in the vicinity of Norwich. Around Norwich, the chalk is overlain by marine, shelly sands, silts and clays of the Norwich Crag, deposited during the Lower Pleistocene, when the area was covered by sea. Later again, during the Middle Pleistocene, there was major climatic change, and East Anglia experienced several periods of extensive glaciation. As ice sheets repeatedly advanced and retreated over the area, they deposited and shaped a series of sediments. These include glacial sands and gravels which now cover much of Norwich and the surrounding area, and the Lowestoft Till, or “Chalky Boulder Clay”.

## **2.7 Water resources**

The groundwater located under Norwich contributes significantly to the drinking water supply of the district, accounting for approximately one-third of total licensed abstractions. The Cretaceous chalk aquifer and Pleistocene Norwich crag formations are classed by the Environment Agency as a major aquifer with highly permeability. The groundwater also supports the baseflow of local rivers, including the River Wensum which provides the balance of water supply for Norwich. Therefore, the importance of groundwater for local water supply is two-fold.

The region's principal aquifer is the Cretaceous chalk, which extends across most of the county. Groundwater levels within the aquifer are highest to the west and north-west of Norwich (where they generally exceed 40m AOD), and lower to the east (falling to around sea level at the coast). Groundwater flow predominantly occurs through fractures in the chalk, and generally in an eastern direction.

Throughout Norwich, the chalk is principally covered by glacial sands and gravels, with some areas of Lowestoft till and Norwich crag. The glacial sand and gravels are highly permeable and permit most residual rainfall to infiltrate the underlying aquifer, where no till intervenes (BGS, 1989). However, recharge of the aquifer principally occurs to the north of Norwich, and in areas where the chalk is exposed, for example on the edges of the river valleys.

The chemical quality of the groundwater within the chalk aquifer is generally satisfactory for most purposes, although the water is hard, and locally, has a high iron content.

The bedrock beneath the city is classified as a principal aquifer with the superficial deposits being classed variably as either non-productive or as Secondary A aquifer. The entirety of Norwich and most of the area to the north is classified by the Environment Agency as having a high vulnerability, with the area to the south being classed as having an intermediate vulnerability. These designations generally apply to soils with a coarse texture and deep permeability that readily transmit a wide range of pollutants. When investigating contaminated land consideration will be given to the aquifer and the rivers Wensum and Yare where there is a hydraulic continuity from the surrounding land.

### 3. Wider approach

The analysis of environmental issues forms a key part of the Corporate Plan. Therefore, many of the underlying corporate objectives are environmentally based. The city council's Environmental Strategy presents progress and future plans in the context of these corporate objectives. The Environmental Strategy reports the council's environmental aims and activities.

Policies on land use and development reflect the government's policy of encouraging sustainable development as set out in the National Planning Policy Framework (NPPF). The council's Local Plan, including site allocations and development management policies, sets out the spatial planning framework for the development of the city up to 2026, and provides guidance on the scale and location of future development in the city. It contains strategic policies on a range of topics that include: the environment, employment, infrastructure, and housing.

The city council's Environmental Strategy explains in general terms the approach adopted by the council when carrying out its duty to enforce a wide range of legislation. Central to this Environmental Strategy is the aim to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens.

This strategy aims to support the Local Plan and Environmental Strategy by providing detailed policies and guidance.

#### 3.1 Planning

The approach to contamination issues is predominantly through the planning system. Remediation would be secured by planning conditions and negotiations with the developer. The council's approach is guided by the National Planning Policy Framework (NPPF) and Norfolk wide technical guidance. The NPPF states that:

Planning policies and decisions should ensure that,

- the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;
- after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part 2A of the Environmental Protection Act 1990;
- and adequate site investigation information, prepared by a competent person, is presented.

#### 3.2 Regeneration

Norwich City Council operates Norwich Regeneration Limited as a wholly owned company which is currently developing residential housing at Ber Street and Threescore, in addition to other sites.

Additional to this other development companies request planning permission to build new residential dwellings and convert existing building stock into residential dwellings. All sites proposed for redevelopment are assessed for the potential for contamination to exist. Where contamination is potentially present conditions are placed on the planning permission requiring the assessment of the site. The assessment of potentially contaminated land through the planning process is considered to be a major mechanism by which potentially contaminated land can be brought back into use.

### **3.3 Brownfield register**

The Housing and Planning Act 2016 has the objective to increase the number of new build homes. One requirement is for councils to compile a register of brownfield land suitable for housing. This will make it easier for developers to identify and build on brownfield sites. This is published on the council's website here: [Brownfield land | Norwich City Council](#)

Information from contaminated land inspections will be made available to help compile the brownfield register.

## **4. Approach to strategic inspection**

### **4.1 Objectives**

Strategic inspection aims to collect information to make a broad assessment of land and then identify priority land for more detailed consideration.

To achieve this aim we will carry out:

- Summary desk study
- Site visit and walkover survey
- Outline conceptual model
- Identify potential unacceptable risks
- Report including recommendations for further action

### **4.2 Risk based prioritisation of inspection activities**

We will comply with the requirements and advice set out in section 2 of the statutory guidance which relates to local authority inspection duties of land. BS 10175 (published in January 2001) and other good practice documents (e.g. CIRIA documents, EA R+D publications, British Standards) are used as a basis for the investigation of potentially contaminated sites. Procedures are provided in the Environment Agency & DEFRA document 'Model Procedures for the Management of Land Contamination' (CLR11), 2004. Although some of the terminology used has changed since the revision of statutory guidance, the procedures provide a technical framework for applying the risk management process.

The process involves identifying, making decisions on, and taking appropriate action to deal with land contamination in a way that is consistent with government policies and legislation within the UK.



Priority will be given to the identification and inspection of areas of land where it is potentially most likely that a pollutant linkage will exist involving human health. For example, land where people live and have a garden where they grow vegetables to eat.

If we consider it likely that land might be determined as 'contaminated land' on the grounds that significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused, the council will consult the Environment Agency and have regard to the agency's advice.

We have already undergone an assessment exercise that has decided which sites are a priority for strategic inspection. This is not published by the council but is available to inspect upon request. On all sites where we have found a previous contaminative use, a score has been allocated according to the types and number of sources and receptors present and the likely pathways. The identified sites will be inspected in order of their priority, unless previously identified and remediated through the planning system.

Depending on the individual site, the risk assessment process may be stopped part way through. For example, if enough is known about risk either to leave the process altogether or to move to the next part of the process – options appraisal. If after a strategic inspection, the site is no longer a priority for inspection then we will produce a written statement explaining how this has been decided.

#### **4.3 Written statements**

The statutory guidance states that 'the local authority is likely to inspect land that it then considers is not contaminated land.' For example, where inspection is ceased because there is little or no evidence to suggest the land is contaminated land. 'In such cases, the authority should issue a written statement to that effect'.

The city council will produce written statements for all sites which have been subject to a strategic inspection and where we have decided not to proceed any further with inspection. The written statement will summarise desk study and walkover survey information and will include conclusions and recommendations for the site. The written statements will make it clear that on the basis of the assessment, we have concluded that the land does not meet the definition of contaminated land under Part 2A.

#### **4.4 Monitoring and reporting progress**

Progress on achieving the objectives is reviewed and reported to cabinet by the public protection manager. An action plan has been produced to set out individual tasks and measure progress. Objectives have been set reflecting the Citywide Services Service Plan as part of the department's performance management system.

## 5. Approach to detailed inspection

### 5.1 Aim

The aim of detailed inspection is to obtain sufficient information to decide whether the land is contaminated land. Where there is evidence that significant harm is being caused or that there is a significant possibility of significant harm, the site will be first priority. An example would be a site where contamination has been identified on the surface of a site where humans may come into direct contact.

Sites may also require detailed inspection because the findings of the strategic inspection recommend that we find out more information. The statutory guidance says that detailed inspections are required where it is considered that “there is a reasonable possibility that’s a significant ‘contaminant linkage’ exists”.

### 5.2 Detailed inspection procedures

A detailed inspection will be carried out when there is a reasonable possibility that a contaminant linkage exists because of:

- information or complaints received
- evidence gathered during strategic inspection

To achieve the aim of detailed inspection our objectives will be to identify and characterise:

- current use
- sources, contaminants & receptors
- the relationships between sources, contaminants & receptors (contaminant linkage)
- whether any contaminant linkage is significant

To achieve the above objectives the detailed inspection will include some or all of the following actions (consultants may be used where skills not available in-house):

- i. detailed desk study
- ii. site visit and walkover survey
- iii. intrusive investigation
- iv. soil sampling
- v. chemical analysis of selected samples
- vi. generic quantitative risk assessment (GQRA)
- vii. detailed quantitative risk assessment (DQRA)
- viii. detailed inspection report including conclusions on whether or not the land might be contaminated land, including categorisation from 1 to 4 as set out in the statutory guidance
- ix. recommendations for further action.

We will consult the Environment Agency if the site may meet the definition of a special site as set out in Contaminated (England) Land Regulations 2006 and the Contaminated Land Statutory Guidance.

### 5.3 Risk summaries

If enough is known about likely unacceptable risks and there is a risk of harm, the land will be determined as contaminated land. Determination is the formal process in the

statutory guidance for Part IIA by which the local authority decides whether a particular area of land is contaminated land or not. The local authority has sole responsibility for determination although it can choose to rely on information provided by others, such as the Environment Agency or consultants. The responsible officer will collect sufficient information from a detailed inspection of a particular piece of land to determine whether or not the land is contaminated land and will produce a written record of the decision.

The statutory guidance sets out categories of harm and pollution of controlled waters from 1 to 4. Risk summaries will be produced for sites in the categories 1 and 2. Written statements (see section 4.3 above) will be produced for land in categories 3 and 4.

The risk summary will include:

- a) a summary of our understanding of the risks including contaminant linkages, potential impacts, estimated possibility that impacts may occur, timescale that impacts may happen.
- b) description of our understanding of the uncertainties behind the assessment.
- c) description of the risks in a context that is understandable to a non-expert.
- d) Description of our initial views on remediation

#### **5.4 Remediation cost benefit analysis**

The statutory guidance states that the enforcing authority must decide if remediation actions are reasonable with regard to:

- i. The practicability, effectiveness and durability of remediation;
- ii. The health and environmental impacts of the chosen remedial options;
- iii. The financial costs which is likely to be involved;
- iv. The benefits of remediation with regard to the seriousness of the harm or pollution of controlled waters in question.

Norwich City Council will consider these factors as described in section 6(d) of the statutory guidance and report our findings and recommendations to the person/s who is/are responsible for the site/pollution. If we serve a remediation notice we will require the 'best practicable technique' to be carried out. This will require the remediation action which has been identified as having benefits outweighing the costs. At this stage the statutory guidance states that 'the financial standing of any person who may be required to pay for a remediation action are not relevant to the consideration of whether the costs of a remediation action are reasonable'. However, we will consider this factor as described in the next section below.

## 6. Cost recovery

The provisions for establishing liability are set out in Part 2A. The statutory guidance provides further guidance on circumstances where more than one person is liable to bear the responsibility for remediation. The statutory guidance further sets out what the enforcing authority should consider when making any cost recovery decision.

In general, Norwich City Council will:

1. Seek to recover in full reasonable costs incurred when performing its duties in relation to remediation of contaminated land
2. Wherever possible apply the 'polluter pays' principle, whereby the costs of remediating pollution are borne by the polluter
3. Where cost recovery is not possible, seek sources of finance (external to the council) for remediation
4. Have due regard to the avoidance of hardship which the recovery of costs may cause
5. Aim for an overall result which is as fair and equitable as possible to all who may have to meet the costs of remediation.

Section 5.4 set out the process of cost benefit analysis which will be used to decide if a remediation action is reasonable. These factors, particularly the financial cost of remediation, will also affect the decision on whether to recover costs. The statutory guidance states that 'the financial standing of any person who may be required to pay for a remediation action are not relevant to the consideration of whether the costs of a remediation action are reasonable, although they may be relevant in deciding whether the cost of remediation can be imposed on such persons.

The statutory guidance sets out some considerations which the enforcing authority should have regard to when making the following cost recovery decisions:

- i. Threat of closure or insolvency of a commercial enterprise
- ii. Availability of funds from a trust when the appropriate persons act as trustees
- iii. Impact on charity's activities
- iv. Impact on a social housing landlord to provide or maintain social housing
- v. If a person is likely to have profited financially from the activity which led to the land being contaminated land (Proceeds of Crime Act)
- vi. Where another person is also responsible for the contamination but cannot now be found
- vii. Where the cost of remediation may exceed the likely value of the land after remediation.
- viii. Any increase in the value of the land
- ix. Precautions taken before land was acquired
- x. Where owner-occupiers did not know and could not reasonably have known that the land was affected by the contaminants in question

The city council will also consider whether it could recover more of its costs by deferring recovery and securing costs by a charge on the land in question.

As recommended in the statutory guidance, we will have regard to the circumstances of each individual case. In deciding whether to recover costs we will report our reasoning to the director of development and citywide services for approval.

## **6.1 Voluntary action**

Where appropriate remediation measures are being taken, we will not serve a remediation notice. The cost of remediation in this case would be borne by the person carrying out the remediation. In this case the statutory guidance states that the authority should assume that appropriate measures are being taken if (a) it is satisfied that the standard of remediation will be equal to or better than what would have been specified in a remediation notice and (b) the authority is satisfied with the timescale.

## **6.2 Hardship**

When making the decision to recover costs the city council will consider: (a) the extent to which the liable person would suffer financial hardship were they required to pay the costs (b) all other circumstances as deemed relevant.

In the case of owner-occupiers of dwellings, the city council will apply an approach which will take account of the liable persons means tested benefits, or the Means Test, as set out in the Norwich City Council Policies.

## **6.3 Contaminated land - capital funding requirement**

Landowners should be primarily responsible for remediating contaminated land to reduce the risks to the public. As a result, the council does not allocate capital budgets to fund contaminated land remediation on privately owned sites. Where there is an immediate risk to public health, and the council is required to intervene, an emergency business case for capital funding will be prepared for consideration by the Corporate Leadership Team (CLT), with the expectation that wherever possible, the council will seek to recover costs through remediation notices served on landowners. If there is an identified need for remedial action where the council is the landlord, a business case giving due consideration to funding opportunities will be prepared for approval through the council's existing decision pathways.

# **7. Access to information**

## **7.1 Communication**

The statutory guidance suggests that we keep a record of our reasons for deciding if land is not contaminated land and that we should inform landowners and consider informing other interested parties. We will consider each site individually and let landowners have a copy of the written statements from strategic inspections. The Public Protection team will use this information as a basis for their response when the team are consulted by the planning department on an application.

We may let other interested parties such as neighbours and potential purchasers have the written statement if they want to know more about the land. For example, in response to 'failed' environmental searches. Written statements will be provided on

request unless there are exemptions under the Environmental Information Regulations.

If we are carrying out a detailed inspection, we will let landowners and occupiers know. Before making a determination that land is contaminated land, we will inform the owners and occupiers of the land and any other person who appears to be liable to pay for remediation, unless there is an overriding reason not to do so. We may also let owners and occupiers of neighbouring land know if they could be affected.

The statutory guidance sets out who we shall give notice to if we determine that land is contaminated land. A written record of the determination including the risk summary will be publicly available and published on our webpage.

## **7.2 Arrangements for giving access to information**

Information on the progress of strategic and detailed inspections is managed using the city council's IT system and displayed on our geographic information system. We can produce reports to manage our workload and to find information in response to customer enquiries.

Any information related to land contamination which appears as part of an application for planning consent with the City Planning Office is a public record by virtue of the Town and Country Planning Act 1990 and the Town and Country Planning (General Development Procedures) Order 1995 and is available at the Council's offices or via the website (<https://www.norwich.gov.uk>).

Information which is recorded as part of the public register as required by Contaminated Land (England) Regulations 2000 is available to the public in the Public Protection Department during normal office hours. Charges are made for the copying of such information to cover the costs reasonably incurred. Public Register information is also made available on the city council website.

Requests for environmental information are subject to the Access to Environmental Information Regulations. They can be made in person, by post or email. A standard charge is made to cover research and administration costs. We can supply information collated as part of our strategic inspections, particularly on current Part 2A status, pollution incidents (where known), complaints, historic land use, and historic landfill.

## **7.3 Public register**

The public register will record regulatory action taken on land determined as contaminated land.

The register will form a publicly available source of information. The particular details to be included in the register are prescribed in regulation 15 of, and schedule 3 to, the Contaminated Land (England) Regulation 2000. This can include:

- remediation notices and appeals against such notices;
- remediation statements and declarations;
- appeals against charging notices;
- notices relating to the designation of land as a special site;

- notices relating to termination of designation as a special site;
- guidance issued by the Environment Agency;
- notification of remediation actions;
- convictions for offences under the legislation.

At the time of writing the register contains no entries.

## **8. Review**

### **8.1 Timetable**

Once adopted, this strategy will apply until reviewed or if there is a significant change in legislation.

## Appendix

### Main changes to the statutory guidance.

The main changes to the statutory guidance relate to the following:

- Introduction of the category system to classify the state of contamination present on site.
- Postponing determination to allow voluntary remediation.
- Codifying 'voluntary remediation' so that the Class A or Class B person can agree to undertake voluntary remediation, thereby avoiding the site being determined as contaminated land.
- Subdivision of sites to allow section of sites to be determined as contaminated land, dependant upon the levels of contamination present.
- Apportionment of cost and cost recovery, including the financial ability of the Class A or Class B person and hardship.
- Health and environmental impacts, including the value of the remediation and the potential effect on the physical and mental health of the occupiers by not remediating.
- Identifying potential appropriate persons and liability groups including advise on 'orphan sites'.