



CABINET: 6th February 2002

Portfolio Holder: Cllr Mel Kendal

CONTAMINATED LAND STRATEGY FOR NEW FOREST DISTRICT COUNCIL

1. INTRODUCTION

- 1.1 Since the introduction of the Environmental Protection Act in 1990 there have been proposals for dealing with contaminated land. Following the amendment of this legislation by the Environment Act 1995, there has been a requirement for every Local Authority to have a Contaminated Land Strategy.
- 1.2 The purpose of the Strategy is to protect human health, important water resources and ecosystems from contaminated land, using some expanded powers under current statutory nuisance legislation.
- 1.3 It was planned to produce the Strategy internally with existing staff but due to the demands of the Dibden Bay application it was delayed, and so this work was put out to contract.
- 1.4 The draft strategy is now complete and it is proposed that the Council adopt this strategy. A summary of the Strategy is attached at Appendix 1 and a full copy of the Strategy has been sent under separate cover to all Councillors.
- 1.5 Guidance requires that the Council employ a suitably qualified and experienced officer to supervise this work. There is no one employed within the Council with these qualifications or experience. There is a proposal within this report to buy in this expertise.

2. THE STRATEGY

- 2.1 An abstract of the strategy is Appended to this report.
- 2.2 The powers given to local authorities under the Environmental Protection Act means that we can deal with contaminated land using statutory nuisance powers contained in the Environment Protection Act. This is a complementary role to the planning function of the Council.
- 2.3 There are five main requirements of the Act:
 - To cause the District to be inspected for contaminated land from time to time
 - To record prescribed information about contaminated land in the Public Register

- To establish who should bear responsibility for the remediation of land associated with contamination
 - To decide, following consultation, what remediation is required and to make sure it takes place through agreement or, when necessary, through enforcement
 - To determine who should bear what proportion of the liability for meeting remediation costs.
- 2.4 The Environment Agency has a role in the strategy in helping to:
- Identify contaminated land particularly where water pollution is involved
 - To provide site specific guidance on contaminated land
 - To act as the enforcing authority for any land designated as a special site, for example, where controlled waters are being polluted or MoD sites
 - To publish periodic reports on Contaminated Land
- 2.5 The new regulations give a definition that has to be satisfied before land can be regarded as contaminated. It is very unlikely that many sites will be put onto our Contaminated Land Register but far more likely that we will identify sites that have had a previous contaminative use. This information will be useful for any planning applications that may be made in relation to a site or adjacent sites in assessing the risk from that contamination.
- 2.6 Contaminated Land will be assessed using a risk assessment method. The method of assessment is not fixed within the legislation because of differing local circumstances, but a computer programme is to be bought in to help in this process, although this will need to be supervised by a suitably qualified and experienced person. If land is believed to be sufficiently contaminated and a recognised pathway and receiver of that contamination is identified, then a further investigation will need to be carried out. In the event that such a 'pollution linkage' cannot be established then the site will not be put onto the Contaminated Land Register.
- 2.7 One of the requirements of the strategy will be for New Forest District Council to investigate and inspect its own land as a priority. This has consequences for the Council as three sites where landfill activity has taken place have already been identified as requiring further investigation, and the Council may have liabilities in respect to this land. At this stage, the risk, if any, has not been identified, and as they are under investigation the locations will be kept confidential until they have been fully investigated.
- 2.8 Guidance requires that a suitably qualified and experienced person carries out or supervises the investigation of contaminated land. It was originally intended to carry out this work within the Environmental Protection section. It has become clear that with the amount of work involved in identifying potentially contaminated sites, gathering information, recording, collating, assessing the information, inspecting and inspecting the sites would take a lot of time. The strategy sets out an estimate of 5 years to carry out the inspection of the District. It is anticipated that approximately 1500 sites will be investigated. If the

investigation of each site were to take on average 5 hours, this would be equivalent to one full time employee over a 5-year period.

- 2.9 It is expected that over 1200 sites will be identified as having previous use but very few of these will go on to be recorded on the Contaminated Land Register.
- 2.10 It is proposed to maintain this information on a computer system that is linked to the Corporate GIS System so this information can be passed to the Planning Department for consideration, when planning applications are received.
- 2.11 The Contaminated Land Strategy is a Public document and it is intended that it will be published on the New Forest District Council Website along with an electronic version of the Register if it is considered that this is appropriate.

3. POTENTIAL LIABILITIES

- 3.1 There are potentially very large liabilities for the Council in dealing with contaminated land.
- 3.2 There are clear duties placed on the Council for any land that it owns, or has previously owned.
- 3.3 In carrying out assessment of land, **or** checking contaminated land reports as a result of a planning application, or even omitting to require an assessment, the Council leaves itself open to huge liabilities of tens or even hundreds of thousands of pounds.
- 3.4 Guidance for the new regulations require a suitably qualified and experienced officer to be employed, who will have professional indemnity insurance in place. By ensuring that a 'proper person' is employed, the liability will be greatly reduced.

4. FINANCIAL IMPLICATIONS

- 4.1 It is very difficult at this stage to quantify the financial implications for the Council. It has to be borne in mind however, that as the Council is a landowner or has owned land that it might have liability for contamination if it is found on any of the site that we have been or are involved in. If work is passed to consultants to investigate contaminated sites, the cost can escalate very quickly. A desk top study could cost in the region of £5000 and an investigation depending on the size of the site and type of contamination can very quickly add up to 10's of thousands of pounds. Remediation of sites can easily reach hundreds of thousands of pounds in costs.
- 4.2 It is normal with dealing with contaminated land to make supplementary credit approval applications to cover the costs of an intrusive investigation or remediation, provided the Local Authority is not debt free.

- 4.3 Contact has been made with a consortium of 6 Local Authorities within Dorset. The consortium has already identified a consultant who will be shared as a resource amongst the Local Authorities signed up to the consortium. The consultant has been identified through a rigorous tendering process and an invitation has been made to the New Forest District Council to join the consortium. The cost of joining the consortium will be £15,000 for which we will receive 864 hours of consultancy per year, an hourly rate that is extremely competitive for a Contaminated Land Consultant.
- 4.4 This is equivalent to approximately 0.5 of a full time employee the rest of the work being carried in house enabling expertise to be built within the section, as experience is gained.
- 4.5 As no budget provision currently exists, a new provision of £15,000 would be required.
- 4.6 A bid for the funding for this work can be made either as a supplementary bid at this stage, or wait for the spending cycle for 2003/4 and fully consider it at that stage, along with all other bids. Waiting until 2003/4 has the advantage that it will not increase spending over the next financial year, with a current need to identify large savings.
- 4.7 It will have to be borne in mind, that if the bid is made in 2003/4 that the strategy will need to be delayed for one year. Bids may need to be made for the three sites already identified, to be assessed by consultants on an individual basis. Simply doing a desktop study will cost in the region of £5,000 for each site.

5. ENVIRONMENTAL IMPLICATIONS

- 5.1 The Contaminated Land Strategy has the potential to greatly affect the environment in identifying contaminated sites or those that may require further investigation should a planning application be made on, or adjacent to a site.

6. CRIME AND DISORDER IMPLICATIONS

There are no Crime and Disorder implications.

7. RECOMMENDATIONS

The Environment Review Panel considered this report on the 17th January 2002 and supported the following recommendations:

1. That the Contaminated Land Strategy be approved subject to the Director of Community Services being authorised to incorporate any relevant comments into the strategy from the consultation process.
2. That any Council land that is potentially contaminated be investigated as a priority
3. Due to the current financial position that the application to join the Dorset Contaminated Land Consortium be delayed for 1 year, so the bid

for funding can be fully considered in the 2003/4 spending review. It has to be recognised however that this will delay the strategy by a year.

4. That the progress on the Contaminated Land Strategy be reported to the Environment Review Panel on an annual basis and any amendments to the strategy to be made at that time.

BACKGROUND INFORMATION.

None

For further information please contact:

Martin Lowe
Environmental Protection Manager
(02380) 285594
martin.lowe@nfdc.gov.uk

