

CABINET – 3 NOVEMBER 2010 PORTFOLIO: EMPLOYMENT HEALTH & WELLBEING

CONTAMINATED LAND AT ELING WHARF

1.0 INTRODUCTION

- 1.1 Members will recall that on the 5th July 2010 they considered a comprehensive report concerning contaminated land at Eling Wharf in Totton. The decision made by Cabinet at that time was as follows:

DECISION:

- # (a) That in light of the fact that BBH have confirmed that remediation of the foreshore (land delineated in blue on Appendix 1) will commence on the 5 July 2010, that Cabinet defer any decision to formally determine the foreshore as contaminated land pending a further report back to Members by October 2010 as to the progress of the said works of remediation;
- # (b) That in light of the fact that BBH have confirmed that remediation of the 'main site' (land delineated in red on Appendix 1) has commenced, that Cabinet defer any decision to formally determine the main site as contaminated land pending the assessment by this Council and the EA of the documentation submitted on the 14 June, 2010 by BBH, with a view to bringing a further report back to Cabinet by October 2010 detailing the outcome of the assessment and any subsequent discussions with BBH;
- (c) That without prejudice to the outcome of the assessment referred to in (b), that officers accept BBH's offer for New Forest District Council to join a Working Party along with the EA to monitor progress and discuss the on-going remediation taking place on the foreshore and the main site; and
- (d) That officers report back to Members if they consider that significant progress is not being made, in respect of either the remediation of the foreshore or the main site, whereupon Members will give consideration to formally determining the land as contaminated under Part 2A of the Environmental Protection Act, 1990.
- 1.2 The purpose of this Report is to update Cabinet on the current situation with regard to progress on this site.

2.0 ELING WHARF CONTAMINATED LAND WORKING PARTY

- 2.1 As per the Cabinet's Decision, a Working Party has now been set up with membership from the Environment Agency, Burt Boulton Holdings Ltd (BBH), their consultant's Environ and New Forest District Council.

The Terms of Reference are that:

New Forest District Council and the Environment Agency will work with Burt Boulton Holdings Ltd along with their consultants (Environ and URS) to:

- (i) Secure the site characterisation and remediation of the main site and foreshore to a standard compliant with the requirements of Part 2A of the Environmental Protection Act 1990 and associated statutory guidance*
- (ii) Assess the feasibility of the main site for re-development for a mixed residential, commercial, industrial end use.*

2.2 The Working Group has now met twice and clear progress is being made. It has been agreed that the Working Group should initially meet quarterly but interim meetings will be arranged as necessary to discuss technical issues as they arise. Several technical meetings have already been convened to discuss the content of the various Consultants reports into the contamination on the site.

2.3 The overarching principle of the Working Group from the District Council's perspective is that, whilst the works at Eling Wharf are being progressed on a voluntary basis, they adhere fully to Part 2A procedures. In this respect the Environment Agency has developed a wealth of internal guidance to supplement statutory guidance which aims to advise Project Managers on how to implement investigation and remediation projects under Part 2A. Whilst the Part 2A regime is extremely complex and can appear burdensome and overly procedurally driven, it is felt that by adhering to the procedures and statutory guidance it ensures that best practice is followed. There is a clear audit trail of the work undertaken and how the decision to proceed in a certain way or with a particular remediation option has been derived.

2.4 In this way at the end of the process all parties, including New Forest District Council, can be confident that following comprehensive site characterisation, the nature and extent of the contamination is clearly understood, the key pollutant linkages have been highlighted and the ultimate remedial solution or solutions have been carefully selected in accordance with the Part 2A principles.

2.5 This approach will ensure that subsequent conclusions and compliance, demonstrated through validation, are fully documented and defensible. It therefore would provide the Council with an evidence based trail that will ensure that future land users are not in any way compromised by the voluntary based approach to the remediation of the site.

3.0 THE ROLE OF CONSULTANTS

3.1 Members will be aware that BBH were offering voluntary remediation in order to avoid the land being formally determined as they were concerned that this would cause blight and thereby affect the economic viability of their future re-development aspirations. In having those discussions, BBH had agreed to fund the services of a Consultant to advise NFDC as to the adequacy of their proposals in terms of Part 2A and that any remediation measures are undertaken to the correct standard. This independent advice is vital in order for the Council to come to a proper conclusion on the progress being made by BBH under the voluntary regime and whether or not it would be appropriate to formally determine the site now or at any point in the future.

- 3.2 This approach has been subject to legal scrutiny and confirmation has been received that the Council can enter into such an agreement under its general powers. Indeed, leading Counsel has confirmed that this approach is both lawful and sensible providing the ground rules are clear from the outset and officers are confident that this is now the case. It was felt prudent to make Members aware of why these agreements are being made and how they are being funded. It is also important to point out that the choice of Consultant was made by the Council and the Environment Agency and was not influenced in any way by BBH.
- 3.3 The main objective of the independent Consultant is considered to be:
- “to monitor BBH’s proposals for the remediation of the main site and to advise NFDC/EA accordingly on their compliance with Part 2A of the Environmental Protection Act 1990 and associated statutory guidance”.*
- 3.4 URS have now been appointed to this role and Members may recall that they have extensive knowledge of the contamination issues on this site in view of their previous involvement with the Special Site investigation initiated by the Environment Agency at this Council’s request. Both URS and Environ have been involved in the technical discussions held to date and officers are pleased to confirm that matters are moving forward well and progress has been made on many areas.

4.0 REMEDIATION OF ELING FORESHORE

- 4.1 The remediation of the Eling Foreshore went ahead as planned in early July resulting in the excavation and removal of contaminated material (arsenic, lead, mercury, naphthalene and hydrocarbons) from the foreshore and its replacement with clean fill. The depth of excavation was determined by the extent of the contamination and the physical constraints of the site and on average varied between 0.3 – 1.5 metres below the original surface. The work was completed by late July, including the removal of the stock piles of accumulated waste.
- 4.2 A validation report detailing the analytical results of the clean fill and the material left in situ (i.e that remaining at a depth of around 0.5 metres below the clean fill) is currently being evaluated by the Council and the EA. However, officers are pleased to be able to report that there has been a very significant reduction in the arsenic concentrations pre and post remediation of around three orders of magnitude. A few slightly higher results have been recorded for arsenic at depths greater than 0.5m below the new capping layer but given the depth it is considered that site users are unlikely to become exposed to the material. Also there was a band of material that could not be removed at the spring low water mark without compromising the stability of the foreshore. Again the location of this material is not readily accessible to site users.
- 4.3 Monitoring will continue for the foreseeable future to ensure that the foreshore does not become re-contaminated from materials remaining in situ (at depth beneath the clean fill) or from contaminants leaching off the main site. It is likely that the fencing will remain in place until several rounds of monitoring have been undertaken and officers are confident that there is no indication of any deterioration in the situation.

5.0 REMEDIATION OF THE MAIN ELING WHARF INDUSTRIAL ESTATE

- 5.1 Members will recall that the decision to determine the main site as contaminated land was deferred pending an assessment of the documentation submitted by BBH in June this year. This documentation has now been reviewed by URS and following further discussion with BBH/Environ a revised Action Plan has been submitted.
- 5.2 The action plan is seen as a major step forward in the way that BBH/Environ propose to approach both the site conditions and the regulatory framework. The proposed staged approach to further site characterisation, risk assessment and remediation trials, options assessment and implementation is logical and appropriate and follows best practice principles.
- 5.3 Removal of the free phase product (thought to be the main source of contaminants discharging into the Creek) is continuing on site whilst further investigations are carried out on the quay wall to understand its integrity, structural issues and the mechanism of how contaminants are being discharged into the Creek. A better understanding of these issues will form a key part of any future remediation option appraisal. Other works on site include a full survey of the drainage system and bio-remediation trials.
- 5.4 The action plan will form the framework for further technical discussion and will be used as the basis for monitoring future progress on the main site towards its remediation to a Part 2A compliant standard.

6.0 FINANCIAL IMPLICATIONS

- 6.1 There are cost implications arising from investigations on this site relating to fees for specialist legal and technical advice. However, currently the latter are being met by BBH and the former are being contained in the overall budget of the Head of Public Health and Community Safety. Should this situation change the matter will be brought to the attention of members.

7. ENVIRONMENT IMPLICATIONS

- 7.1 Given the nature of the contaminants on the foreshore with the ensuing health implications together with the identification of controlled waters issues, the environmental consequences, as indicated in the report to Cabinet in July, are considerable unless the site is remediated to a Part 2A compliant standard (whether by voluntary means or by formal determination under the Act) thereby ensuring that any pollutant linkages are broken.

8. CRIME AND DISORDER AND EQUALITY & DIVERSITY IMPLICATIONS

- 8.1 There are none arising directly from this report.

9.0 PORTFOLIO HOLDER COMMENTS

- 9.1 I am pleased to note that the Terms of Reference of the Working Party have been agreed and that voluntary remediation of the site is progressing. Considerable progress has been made on Eling Foreshore and it may well be returned to public use in the very near future. In view of the contamination on the main site, and the legal advice that the Council has on this matter we must be clear that we reserve the right to formally determine this site, if significant progress does not continue to be made.

10.0 CONCLUSIONS

- 10.1 It was concluded in July that, based on available evidence, significant pollutant linkages in respect of contaminated land exist on both the main site and Eling foreshore. Following advice from Counsel, this Cabinet carefully considered the proposal for a remedial scheme of works to be undertaken on a voluntary basis. However, it is imperative that the matter continues to be kept under strict review and hence this Report to Cabinet.
- 10.2 It is currently concluded that works to the foreshore appear to have gone well but the validation report is still to be fully assessed by ourselves and the EA and the potential linkage between the main site and the foreshore still needs to be monitored to ensure that future contamination of the foreshore does not recur.
- 10.3 With regard to the main site, clearly, whilst work is underway and there has been encouraging progress, there is still a considerable amount of review and assessment required before any conclusion can be made on the method of remediation.

11.0 RECOMMENDATIONS

It is recommended that:

- 11.1 In view of the fact that BBH have carried out extensive remedial works to the foreshore, the Cabinet defer any decision to formally determine this land as contaminated, subject to the full appraisal of the validation report of the samples taken from the land following initial remediation and the results of any post remediation monitoring.
- 11.2 In light of the fact that BBH have confirmed that they will voluntarily remediate the main site to a Part 2A compliant standard in line with best practice and statutory guidance and progress in that respect is being made through the Working Group and technical discussions, the Cabinet defer any decision to formally determine the main site as contaminated land at this time.
- 11.3 Without prejudice to the outcome of the two recommendations above, that the District Council continue to work with BBH, the Environment Agency and our respective consultants to monitor conditions on the foreshore and monitor progress and discuss the ongoing remediation taking place on the main site.

- 11.4 Officers report back to Members if they consider significant progress is not being made in respect of the remediation of the main site and that they report back on the actual condition of the foreshore following the full appraisal of the validation report and the results of the post remediation monitoring, so that Members can formally consider their options under Part 2A of the Environmental Protection Act 1990 relating to the determination of contaminated land.

For Further Information Please Contact:

Carole Gallagher
Environmental Health Manager
(Environmental Protection)
Tel: (023) 8028 5162
E-mail: carole.gallagher@nfdc.gov.uk

Background Papers:



A36

Totton



A35

Totton By

High Street

Mill Road

High Street

Road

School Road

Eling Lane

Downs Park Avenue

Lexby