

Title of Report	Revision of London Borough of Hackney's Contaminated Land Strategy	
Key Decision No	NH S068	
For Consideration By	Cabinet	
Meeting Date	24 October 2022	
Cabinet Member	Cllr Mete Coban, Lead Member for Energy, Waste, Transport and Public Realm	
Classification	Open	
Ward(s) Affected	All	
Key Decision & Reason	Yes	Significant in terms of its effects on communities living or working in an area comprising two or more wards
Implementation Date if Not Called In	1 November 2022	
Group Director	Rickardo Hyatt, Group Director, Climate, Homes & Economy	

1. Cabinet Member's introduction

- 1.1. The Revision of London Borough of Hackney's Contaminated Land Strategy 2022-2030 (the Draft Strategy) sets out the Council's strategic approach to investigating and addressing land within the borough where previous uses may have left a legacy of contamination. The Council has a key role in protecting the health of its residents and all people who spend time in the borough. Therefore, it is essential that we address the potential risks posed by historical land use and where the health of the current and/or future occupiers of the site may be compromised.
- 1.2. The Council is statutorily required to have a Contaminated Land Strategy in place. The current strategy dates back to 2001. The Draft Strategy has been updated according to the most recent statutory guidance issued by DEFRA and will replace the existing strategy.
- 1.3. This Draft Strategy sets out our vision, goals and objectives to ensure that where needed contaminated land is thoroughly investigated and remediated. It has been developed to build on the progress that has already been made and aims to clearly define our overall approach to addressing contaminated

land. Setting out our process will help ensure a fairer, cleaner and greener Hackney. Once approved, the implementation of the Contaminated Land Strategy will make Hackney an even better and safer place to live, work and visit.

2. **Group Director's introduction**

- 2.1. This report introduces the draft Contaminated Land Strategy 2022-2030 (see Appendix 1).
- 2.2. Part 2A of the Environmental Protection Act 1990 (Part 2A) requires all local authorities in England to have a contaminated land strategy in place. This report presents the Draft Strategy, which is a revised and updated version of the original Strategy that was adopted in 2001. The revisions to the Strategy take account of the progress made in tackling contaminated land in the borough and amendments to the statutory guidance which have been made since this time.
- 2.3. Before the Industrial Revolution, Hackney was an agricultural area to the northeast of the City of London. We can see that Hackney has seen significant transformation since this time through successive periods of expansion and development of residential, commercial, industrial and transport-related land uses. These changes have brought opportunities to the borough and its residents, creating a diverse and vibrant community. However, some of the uses of the land will have left a legacy of pollution, meaning that there are areas of the borough which are potentially contaminated.
- 2.4. Only a small proportion of the potentially contaminated sites will meet the statutory definition of contaminated land; that is where action needs to be taken to protect people's health, water resources, property and/or the environment.
- 2.5. Over the past decades, the borough has been transformed and has become a popular destination to live and work. Each year, many areas of the borough are being renovated and redeveloped, with new schools, residential blocks and public facilities being constructed. Hackney must help deliver a lasting solution to the housing crisis by bringing brownfield land back into use while ensuring that the infrastructure is in place to support our communities. We also need to work to reduce harm and enable community well-being by ensuring that the land is suitable for use.
- 2.6. The Draft Strategy outlines how we will continue to rebuild a greener borough by establishing 12 actions that Hackney intends to deliver over the coming years. The Draft Strategy also provides a framework for investigating land to decide where soil investigations and remediation are needed. Our approach aims to remove sites from further assessment at an early stage through the planning process. This will make it easier to buy and sell

property in the borough and also give owners and occupiers of property greater peace of mind.

3. **Recommendations**

3.1. Cabinet is recommended to:

1. **Approve the draft Contaminated Land Strategy (2022-2030) for adoption and publication.**
2. **Delegate authority to the Strategic Director of Sustainability & Public Realm, in consultation with the relevant cabinet member, to approve any future consultations and / or amendments relating to the Contaminated Land Strategy.**

4. **Reason(s) for decision**

- 4.1. The Council has a statutory obligation under Part 2A to identify and inspect land within its boundaries where it suspects contamination is, or may be, causing unacceptable risks to human health, property or the wider environment.
- 4.2. In order to comply with the regulations, the Council is required to develop, implement and periodically review a risk-based inspection strategy outlining how contamination will be dealt with. Hackney's original strategy was published in 2001, and since then, we have been working to that Strategy. The Draft Strategy takes account of the current status and prevailing circumstances regarding contaminated land within the borough.
- 4.3. No formal statutory consultation on revisions to a Contaminated Land Strategy is required under Part 2A. However, owing to the length of time that had passed since the previous version was adopted, relevant stakeholders and the public were provided with an opportunity to comment on the Draft Strategy. The opportunity was advertised in Hackney Today, which is delivered to every Hackney household. Key stakeholders were also contacted through direct email communication and hard copies were made available in the Town Hall and borough libraries. The opportunity to submit comments was provided during the period 9 May 2022 to 17 June 2022.
- 4.4. No comments on the Draft Strategy were received from the public, nor any of the key stakeholders. Further to the period of consultation, the Draft Strategy has been fully updated and is now submitted to Cabinet for adoption.

5. **Details of alternative options considered and rejected**

- 5.1. An alternative to adopting the Draft Contaminated Land Strategy would be to retain the current version.

- 5.2. This option was rejected because significant progress has been made since the initial strategy was published. Also, funding from central government for implementing Part 2A has ceased, and best practice guidance has been updated. The Draft Strategy has been updated to reflect all of these changes and provide the Council with an up-to-date approach to addressing contaminated land in the borough.

6. **Background**

Policy Context

- 6.1. Under Part 2A, the Council has a statutory duty to have a contaminated land strategy. This needs to set out the Council's approach to identifying land within the borough which meets the definition of 'Contaminated Land' as well as our prioritisation procedures and the process for ensuring that land is remediated.

- 6.2. The definition of contaminated land is set out within Part 2A and is:

'Any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that:

(a) significant harm is being caused or there is a significant possibility of such harm being caused; or

(b) significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused.'

Significant possibility of significant harm is also known as (SPOSH) and further definitions of harm and the pollution of controlled waters are given within the legislation and statutory guidance.

- 6.3. Part 2A was introduced by section 57 of the Environment Act 1995 and came into force in April 2000. The overarching objectives of the Government's policy on contaminated land and the Part 2A regime are:

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

- 6.4. The Regulations and official Statutory Guidance that accompanied the Environment Protection Act 1990, including the Contaminated Land (England) Regulations 2006, have gone through various iterations over the years, with the current legislation and guidance being the Contaminated Land (England) (Amendment) Regulations 2012 and the Contaminated Land Statutory Guidance for England 2012.
- 6.5. The Draft Strategy proposes a risk-based approach to identification and remediation. The first stage is determining whether or not the land is contaminated. For land to be contaminated, pollution (a source) needs to be present as well as someone or something that can be affected by the pollution (receptors) and a viable route that brings the two into contact (a pathway). If any of these elements do not exist or the pathway is blocked, the land is not designated as contaminated land.
- 6.6. The subsequent stages involve determining the action that is required and which person(s) is responsible for taking the action. These stages are sequential for individual sites but may occur simultaneously across the borough for different parcels of land. That is, one site may progress to the remediation stage while other sites are still being risk-assessed.
- 6.7. The Draft Strategy aims to set out the principles for how land identified as being contaminated will be remediated to address the health risks and make the land suitable for use. Sites will need to be assessed on a case-by-case basis in order to determine the management of the risks, so details of remediation are not included. However, the principle is to break the link or pathway between the source of the pollution and the relevant receptor.
- 6.8. Whilst Part 2A addresses historical contamination in Hackney, most contamination across the borough and most of the UK is now dealt with through the planning process. The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how they are expected to be applied.
- 6.9. The Council works with developers and their agents to ensure that contaminated land issues are properly dealt with during works. Over the past decade, systems have been developed by the Land Water Air Team to ensure that potential areas of contaminated land are appropriately investigated, remediated and determined suitable for use during the planning process.
- 6.10. The Draft Strategy sets out a vision as well as its goals and objectives. Exposure to pollutants within the land can have impacts on human health as well as on the natural and built environment. These are referred to as 'receptors'. Therefore, the goals and objectives within the Draft Strategy focus on addressing contamination to protect these receptors.
- 6.11. The goals and objectives aim to take account of the Council's Values and Priorities. This includes 'Reducing Harm' by ensuring that contaminated land is identified and remediated. By tackling historical contamination, land can

be made suitable for future occupants, which means that brownfield land can be utilised. In this way, the Draft Strategy's implementation can help achieve the Council's Priority of offering a lasting solution to the housing crisis.

Equality impact assessment

- 6.12. Hackney Council must comply with the Public Sector Equality Duty set out in Section 149 of the Equality Act (2010), which requires us to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations by reference to people with protected characteristics. An Equality Impact Assessment has been carried out to assess the impacts from the adoption of the Draft Strategy. No equality issues were identified during this process.
- 6.13. The Draft Strategy relates to the physical condition of the land. Therefore, decisions are based on contamination levels in the ground, irrespective of those who occupy, own or share some responsibility for the contamination.
- 6.14. There are no equality issues surrounding groups more likely to be liable for costs. The approach set out in the legislation is based on the Polluter Pays Principle. While the aim is to ensure those responsible for contamination are held liable for the costs of any required clean-up, this may not always be possible when dealing with historical pollution. The Draft Strategy sets out the procedures that will be followed in these circumstances, and no equalities impacts have been identified.

Sustainability and Climate change

- 6.15. The Draft Strategy aims to establish a framework for improving environmental conditions across the borough. By doing this, and through continually developing existing procedures, such as early identification and removal of contaminated land through the Planning system, Hackney will become a cleaner and more sustainable area.
- 6.16. In identifying and remediating contaminated land, potentially harmful chemicals will be removed, and the area will become much safer. This will, in turn, benefit the environment, local wildlife and public health. Further, by redeveloping brownfield land, the Council can provide a sustainable alternative to development on the green belt, thus contributing to environmental protection.

Consultations

- 6.17. There is no statutory requirement to undertake a consultation on a contaminated land strategy or any subsequent revisions to it.
- 6.18. However, to ensure openness and transparency, the Council made the Draft Strategy public to allow people to submit comments on the proposals. The public were invited to submit comments on the document between 9 May and 6 June 2022. Key stakeholders were given until 17 June 2022 to respond in order to allow sufficient time for more detailed feedback.
- 6.19. To promote the Draft Strategy, the Council published an article in Hackney Today on 9 May 2022, and public comment was made available on a Citizen Space page. Physical copies of the Draft Strategy were also made available in Hackney's public libraries and the Town Hall. Along with the public consultation, key stakeholders such as the Environment Agency were invited to comment and were emailed directly.
- 6.20. No comments or feedback was received from either the public or key stakeholders on the Draft Strategy.
- 6.21. Although no feedback was received from the public or key stakeholders, minor revisions were made to section 6.0 'Determination of Land as Contaminated Land, Remediation and Liability'. This was to help clarify the Council's position on remediation and liability but was not in response to any comments received.

Risk assessment

- 6.22. The Draft Strategy aims to set out clearly to residents, landowners and developers that the Council's approach to dealing with contamination will address the risks that are posed by land contamination and that this will be done in a fair and cost-effective manner.
- 6.23. Therefore, the Draft Strategy proposes that the Council will make decisions that are appropriate to the level of risk posed. This will depend on having access to sufficient information to determine risk. Therefore, a phased approach will be used with the required level of information getting progressively more detailed. In this way, sites that do not require further or intrusive investigation are identified early, thereby avoiding unnecessary costs. In contrast, those sites which pose more risk are progressed and appropriate action taken.
- 6.24. The risk-based approach to the identification and the Risk Assessments outlined in the Draft Strategy considers the most recent statutory guidance. The critical issue is that effective action is taken where appropriate and that this is commensurate with the risks posed to health and the environment.

7. **Comments of the Group Director of Finance and Corporate Resources.**

- 7.1. The Environmental Protection Act 1990 Part 2A requires local authorities to take a strategic approach to carrying out its duty for contaminated land. This approach is set out in the Contaminated Land Inspection Strategy 2022-2030.
- 7.2. Land contamination, if not dealt with adequately, can pose a serious threat to the health of the environment and the people who inhabit it. This strategy describes how Hackney Council will identify and deal with contaminated land. The Council has a duty to develop a strategy to deal with contaminated land.
- 7.3. There are no direct financial implications arising from the Contaminated Land Strategy that will be implemented within existing resources. The Council, in its approach to land contamination will seek to minimise unnecessary costs on the taxpayer, businesses and individuals, where it is reasonable and practicable to do so.
- 7.4. Risks associated with the failure to manage contaminated land include risks to the population of Hackney, those working in the Borough, and risks to the environment. There is also a reputational risk to the Council if it fails to act in a reasonable manner. Failure to make a reasoned judgement on contaminated land could result in legal action or insurance claims, particularly in the case of land owned by the Council, or risk assessment decisions made by Council officers.

8. **Comments of the Director of Legal, Democratic and Electoral Services**

- 8.1. The Council is required to develop, implement and periodically review a risk based inspection strategy outlining how contaminated land will be dealt with, in line with relevant Statute, Regulation and Government guidance.
- 8.2. The Mayor's scheme of delegation reserves to the Mayor and Cabinet approval of all corporate policies and strategies. Further the decision is Significant in terms of its effects on communities living or working in an area comprising two or more wards, and therefore falls within a remit of a Key Decision in line with the Council's Constitution.
- 8.3. Cabinet is therefore able to approve the recommendation set out in 3.1 of this report.
- 8.4. In order for the Strategic Director of Sustainability & Public Realm, in consultation with the relevant cabinet member, to approve any future consultations and / or amendments relating to the Contaminated Land Strategy, the recommendation in 3.2 is required to be approved by Cabinet.

Appendices

Appendix 1 - [Draft London Borough of Hackney Contaminated Land Strategy](#)

Background documents

1. [Environmental Protection Act 1990: Part 2A](#)
2. [Contaminated Land Statutory Guidance 2012](#)
3. [The Contaminated Land Regulations \(England\) 2012](#)

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