

The Highland Council
Community Services Committee – 18 August 2016

Agenda Item	14
Report No	COM 33/16

Contaminated Land - Inspection and Development Control

Report by Director of Community Services

SUMMARY

This report invites members to agree an update to the Contaminated Land Inspection Strategy.

1. Background

- 1.1 The Environmental Protection Act 1990, Part IIA places a statutory duty on the Council to inspect land in its area, in a strategic manner, to determine if it is contaminated and, if so, to ensure the appropriate remediation of the land. The Highland Council is required to carry out this duty in accordance with a published Strategy document, which must set out an approach to the inspection programme
- 1.2 The Committee approved the updated Contaminated Land Inspection Strategy 2009 at the TECS Committee on 13 August 2009.
- 1.3 To undertake the Strategy duties two diverse roles have developed:
1. Proactive identification and investigation of land potentially contaminated through historical use. This is known as **the Part IIA role**;
 2. Working with the Development & Infrastructure Service to ensure that potentially contaminated sites under development are made suitable for use *via* the development control process, by imposing planning conditions requiring appropriate investigation and proportionate remediation. This is known as the **Development Control role**.

2. Highland Council approach

- 2.1 Since implementation in 2001, all known potentially contaminative industrial and commercial land uses have been researched and mapped within the Highland area. The land uses recorded vary from the most potentially contaminative processes such as former gasworks, landfill sites, smelters, and fuel storage facilities to the less intensive uses such as brewing, malting or dock land.
- 2.2 **Under the Part IIA role**, since 2001 resources have permitted the undertaking of over 60 detailed studies of which 52 sites have progressed to intrusive investigation.

Only one site to date, on Joss Street in Invergordon, has been presented to Committee for approval as meeting the requirements for formal identification as 'contaminated land' and this site was subsequently remediated with Scottish Government funding.

- 2.3 **Under the Development Control role** the team are consultees and review all planning applications to identify sites with possible contamination issues. The team ensures that sites are 'suitable for their intended use' through the planning process. This approach is in line with Planning Advice Note 33, with the aim of achieving sustainable development of previously-used (brownfield) land.
- 2.4 The following table highlights the number of consultations with Planning undertaken by the team over the last 3 years.

The number of sites for which previous land use has highlighted the requirement for further action has remained at approximately 5% of total applications.

No. of Planning Applications	2012/2013	2013/2014	2014/2015
submitted for review	3261	3692	3254
required Further action* following detailed review	144	133	157

* Further action may include completion of detailed studies, intrusive site investigations and remediation.

- 2.5 In 2015 the team increased the focus on the development control work for a number of reasons:

1. Significant work had been undertaken on the Part IIA role since 2001 to complete the detailed assessment of high priority sites.
2. The lack of definitive scientific guidance on toxin levels at certain levels was causing difficulties at certain sites. Before land can be legally identified as being contaminated there has to be 'a significant possibility of significant harm to human health'. To date there has been no statutory guidance or toxicology guidance on levels of chemicals in the ground which would give clarity to this definition. On certain sites this can leave the Council in the unsatisfactory position of having to advise people affected by these investigations that we can confirm that there is contamination of the ground but the risk from such cannot be fully quantified. This outcome can add the stress to the owner/occupiers of the site being investigated.

Two sites in Highland are in this position and are being reviewed as new guidance comes forward. Other Councils are in the same position and the Scottish Government are undertaking research to improve the situation.

3. A survey of all Scottish Councils carried out by Environmental Health in early 2015 found that 10 other Councils were focusing on development control as means to investigate sites and were no longer proactively working through their Part IIA prioritisation list. 13 Councils were continuing to address contaminated land through both Part IIA and development control.

4. To ensure effective use of resources.

2.6 It is intended to continue with the focus on the development control role in the future as an effective means of meeting the Council's obligations as regards contaminated land.

2.7 Sites currently under investigation under Part IIA will continue to be supported.

2.8 The team will continue to assist with the delivery of the Council's Vacant and Derelict Land Delivery Plan and provide other internal support on contaminated land issues. The team will continue to assist with wider Environmental Health issues when they arise.

3. Strategy document

3.1 The format of the Strategy document meets the statutory guidance provided to Local Authorities and details the nature of our area, our overall aims, procedures, general liaison and joint working arrangements, inspection procedures, information management and our review arrangements.

3.2 The 2009 strategy requires to be amended to reflect the focus on development control role and it is recommended it is amended from the current strategy as in **Appendix 1** to the strategy provided in **Appendix 2**.

4. Resources

4.1 Staff - The Contaminated Land team previously consisted of a Principal Contaminated Land Officer (HC11), 5 Scientific Officers (HC9) and 1 Information technician (HC6).

Through vacancy management and the approved Environmental Health Workforce Plan, the specific Principal Contaminated Land Officer post has been deleted and the management duties undertaken as part of the role of one of the new Senior EHO posts.

In the last few years, the full time equivalents of scientific officers has reduced from 5FTE to 3.91FTE through flexible work applications with savings being taken for required Service saving targets.

In February 2016, the approved budget saving (CS/30) reduced the scientific officer resource to 1.91 FTE, the minimum level required to effectively undertake the development control role without risk of significant delay to developers. The 1 Information technician (HC6) post has been retained.

If future demands increase on the team, assistance will be provided from existing EHO officers with appropriate training.

4.2 Capital funding - The inspection of land under Part IIA was originally funded by Scottish Government through a ring fenced annual grant of £326,000. The current annual allocation in the approved Capital Programme is £100,000. The funding is intended for remediation of sites identified under Part IIA role but is also used for Part IIA site investigation and risk assessment work. This funding will continue until the outstanding site reviews are concluded.

5. Implications

5.1 Legal – As stated above, the Environmental Protection Act 1990, Part IIA places a statutory duty on the Council to inspect land in its area, in a strategic manner, to determine if it is contaminated and, if so, to ensure the appropriate remediation of the land. The approach provided in the report will allow the Council to continue to address contaminated land through a focus on Development Control. The approach to the PartIIA role will be reviewed in the future as legislation or statutory guidance changes.

5.2 Resources – detailed above

5.3 There are no other known Risks, Equalities, Climate Change/Carbon Clever, Gaelic or Rural implications arising from this report.

RECOMMENDATION

Members are invited to amend the Contaminated Land Inspection Strategy to focus on the development control role as an effective means of meeting the Council's obligations as regards contaminated land, as detailed in Appendix 2.

Designation: Director of Community Services

Date: 26 July 2016

Author: Alan Yates, Environmental Health Manager

Background Papers:

1. Planning Advice Note PAN 33 DEVELOPMENT OF CONTAMINATED LAND (2000)
2. Environmental Protection Act 1990: Part IIA Contaminated Land - Statutory Guidance: Edition 2
3. The Highland Council's Contaminated Land Inspection Strategy – Reviewed and updated - Council Report No [TEC-65-09](#).

Appendix 1

Current Strategy

The Strategy

- This is the reviewed and updated Contaminated Land Inspection Strategy, originally adopted by The Highland Council in October 2001, for meeting our responsibilities for dealing with the contaminated land statutory regime.
- This Strategy sets out how Highland Council deals with potentially contaminated land under Part IIA of the Environmental Protection Act 1990, the Contaminated Land (Scotland) Regulations 2000 and 2005, and associated guidance documents, both statutory and non-statutory.
- In the context of sustainable development The Scottish Government has three objectives with respect to contaminated land, which underlie the suitable for use approach:
 1. to identify and remove unacceptable risks to human health and the environment;
 2. to seek to bring damaged land back into beneficial use; and
 3. to seek to ensure that the cost burdens faced by individuals, companies and society as a whole are proportionate, manageable and economically sustainable.
- To achieve the Scottish Government's three objectives above, The Highland Council will ensure risks are assessed, in order to:
 1. demonstrate that land is suitable for its current use;
 2. ensure land is made suitable for any new use, as planning permission is given for that new use, and;
 3. oversee any remediation requirements necessary to prevent unacceptable risks to human health or the environment in relation to the current use or future use of the land for which planning permission is sought.
- Risk assessments carried out by, and for, The Highland Council in accordance with our duties under the contaminated land statutory regime will be site-specific.
- There are many potentially contaminated sites within The Highland Council's area, and sites are therefore prioritised for inspection.
- High priority is given to sites where there may be a risk to human health.
- The Council's scheme for identifying, prioritising and inspecting areas of land involves:
 1. Gathering information
 2. Identifying potential sources of contamination
 3. Screening of potential sources against "receptors"
 4. Assessing possible "pollutant linkages"
 5. Allocating inspection priority
 6. Inspecting land
 7. Deciding if land is contaminated
 8. Where land is designated as being contaminated, ensuring that it is cleaned up to a standard suitable for its current use
- A close working relationship will be maintained between the Council's Contaminated Land Team and Planning & Development Service regarding development of potentially contaminated land.
- The Contaminated Land Team will work with all Council Services with potential contaminated land liabilities and interests through a Corporate Contaminated Land Working Group.

- The Council will maintain close working contact with the Scottish Environment Protection Agency (SEPA) and other relevant organisations regarding the contaminated land regime.
- The Council will work with SEPA regarding future land contamination legislation, including changes resulting from the EU Directives on the water environment, waste, soil and environmental damage.
- The Council uses, and will seek to continue to develop, information management systems to ensure the most effective and efficient use of site information.
- The Council utilises a variety of sources of information in identifying receptors, sources and pathways, and assessing pollutant linkages.
- The Council will continue to utilise a variety of sources of information to identify previously unknown sites.
- The Council will work constructively with suitably qualified and accredited companies regarding site investigation, risk assessment and remediation in order to ensure that The Highland Council carries out our duties in full accordance with the law, statutory and non-statutory guidance, and with the Council's objectives.
- This Strategy, and the procedures used for prioritising sites for inspection, will be reviewed at least annually, and as appropriate in response to changes in legislation and / or guidance, statutory or non-statutory.

Appendix 2

Proposed strategy

1. Aims of the strategy

- a) To ensure compliance with and enforcement of Part IIA of the Environmental Protection Act 1990, inserted by Section 57 of the Environment Act 1995
- b) To protect, in order of priority:
 - 1) Human health
 - 2) The water environment
 - 3) Designated ecosystems
 - 4) Property
- c) To ensure that where redevelopment of land takes place within the Highland Council, the planning process deals effectively with any land contamination so that the land is suitable for its intended use
- d) To encourage, as far as possible, voluntary remediation
- e) Review sites identified in the Council's Local Plan for development to assess potential risks

2. Objectives and outputs

- a) To carry out the Highland Council's inspection duty in a strategic manner considering:
 - 1) Any available evidence that significant harm or pollution of the water environment is being caused;
 - 2) The extent to which any receptor is likely to be found in any of the different parts of the local authority area;
 - 3) The extent to which any receptors are likely to be exposed to a contaminant;
 - 4) The extent to which information on land contamination is already available;
 - 5) The history, scale and nature of industrial or other activities which may have contaminated the land in different parts of its area;
 - 6) The nature and timing of past redevelopment in different parts of the area;
 - 7) The extent to which remedial action has already been taken by the Highland Council or others to deal with land-contamination problems or is likely to be taken as part of an impending redevelopment; and
 - 8) The extent to which other regulatory authorities are likely to be considering the possibility of harm being caused to particular receptors or the likelihood of any pollution of the water environment being caused in particular parts of the area.
 - b) To provide a mechanism for consultation with SEPA and other appropriate bodies.
 - c) To allow for the periodic review of the Highland Council's policy for dealing with contaminated land.
 - d) To identify those development sites which may be potentially contaminated and to ensure:
 - 1) the planning application is not approved until a site investigation with respect to contamination has been undertaken, and any necessary remedial works have been identified and approved; or
 - 2) planning permission is granted subject to conditions relating to the further investigation of the site and the carrying out of necessary remedial works prior to the development commencing.
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