

**REPORT TO: ENVIRONMENTAL AND CONSUMER PROTECTION  
17 September 2001**

**REPORT ON: CONTAMINATED LAND STRATEGY**

**REPORT BY: DIRECTOR OF ENVIRONMENTAL AND CONSUMER PROTECTION**

**REPORT NO: 447-2001**

## **1 PURPOSE OF REPORT**

1.1 This is a covering report to inform the Committee of the contents of Dundee City Council's Contaminated Land Strategy and seek committee approval for submission to the Scottish Executive. Copies of the full report are available through Group Secretaries.

## **2 RECOMMENDATIONS**

2.1 It is recommended that the Committee notes Dundee City Council's Contaminated Land Strategy, agrees on the Strategy content and approves its submission to the Scottish Executive.

2.2 It is further recommended that the Committee approve that an appropriate share of the additional financial resources made available from the Scottish Executive be included in the Environmental & Consumer Protection Departments Revenue and Capital Budgets in the relevant years to assist in the implementation of the Contaminated Land Strategy.

## **3 FINANCIAL IMPLICATIONS**

3.1 At this stage, the resource required in Dundee to meet the inspection and remediation tasks allocated and the financial aspects of the new regime cannot be fully quantified.

3.2 The Environmental & Consumer Protection Department's 2001/02 Revenue Budget contains an allowance of £54,000 for the implementation of the regime. Subject to continued funding, it is anticipated that a similar sum will be included in the 2002/03 and 2003/04 Revenue Budgets.

3.3 £143,000 has been included in the Environmental & Consumer Protection Department's 2001/02 Capital Budget. It is anticipated that capital consent available for 2002/03 and 2003/04 will be allocated on a bid basis and the appropriate sum will be included in the relevant year's Capital Budget.

## **4 LOCAL AGENDA 21 IMPLICATIONS**

4.1 The objectives of the Contaminated Land Strategy should serve to enhance the aims of Dundee 21.

4.2 Key themes that will be directly addressed by the contaminated land regime are:-

- Pollution is limited to levels at which natural systems can cope;
- The diversity of nature is valued and protected;
- Health is protected by creating safe, clean, pleasant environments and health services which emphasise prevention of illness as well as care for the sick.

## **5 EQUAL OPPORTUNITIES IMPLICATIONS**

5.1 Acceptance of this report will maintain the Council's equal opportunities policy

## **6 REPORT**

### **6.1 Background**

- 6.1.1 The Contaminated Land Strategy is Dundee City Council's response to a nationwide initiative driven by Central Government. Local Authorities have been identified as the lead regulators for strategy implementation and have been given the responsibility to "*cause its area to be inspected from time to time for the purpose of identifying contaminated land*"
- 6.1.2 The industrial revolution of the 18th century signified a change in the organization of the manufacturing industry which transformed Britain from a rural to an urban economy. What remains of our industrial heritage is often a legacy of land contaminated by a variety of chemicals originating from the industrial processes.
- 6.1.3 Prior to the introduction in Scotland of Part IIA of the Environment Act 1995 (the Contaminated Land Regime) on 14 July 2000, no mechanism was in place to tackle the issue of historical contamination that was causing immediate and serious harm. Part IIA was intended to fill the gap in the legislation that existed when dealing with historical contamination and for the first time contained a definition of "*contaminated land*".

### **6.2 Strategy Development**

- 6.2.1 The Contaminated Land Strategy outlines the purpose of the contaminated land regime and details the duties, roles and responsibilities which the legislation places on the Council. This strategy is the mechanism by which Dundee City Council will fulfil the statutory obligations contained within the legislation.
- 6.2.2 The Executive Summary of the Contaminated Land Strategy is found in Appendix 1 for further information. Copies of the full document are held by Group Secretaries.
- 6.2.3 At present it is difficult to accurately determine the project timescale. The inspection process is forecast to take up to five years. It is felt that a clearer indication as to the extent of the task will be able to given after the start of the inspection programme. The timescale will be re-evaluated on an annual basis. The proposed timescale is shown in Appendix 2.

### **6.3 Resource Implications of Implementation Phase**

- 6.3.1 The Scottish Executive has recognised the requirement for adequate funding of the contaminated land regime and has committed financial backing in the form of £3.7m in Additional Capital Consent for the 2001 – 2002 financial year to be split between the Scottish local authorities. In addition, the Executive has made the commitment to provide a further £9.5m over the 2002 – 2003 and 2003 – 2004 financial years, but the allocation of this funding has yet to be finalised. It is anticipated that the results of the inspection strategy will provide a basis for bids for this Additional Capital Consent.
- 6.3.2 The Scottish Executive has indicated that the Additional Capital Consent should be spent within the remit of the contaminated land regime and local authorities will be expected to submit details of how the allocation has been spent.
- 6.3.3 It is the intention of the Scottish Executive to establish Performance Indicators to monitor the progress of the implementation of the Contaminated land regime in the future. The basis for the performance indicators has yet to be finalised.
- 6.3.4 Should sites be considered suitable to be designated as "contaminated land", the Committee will be made aware of the financial implications prior to being requested to approve a "contaminated land" designation.

## **7 CONCLUSIONS**

7.1 The Government is committed to the Contaminated Land Regime, which has been designed to address the legacy of land already contaminated from past activities. In line with the Government's Statutory Guidance, this Authority aims to carry out a comprehensive inspection of its area using a targeted approach to ensure that the most pressing and serious problems are located first.

7.2 The Contaminated Land Strategy has to be submitted to the Scottish Executive by 14 October 2001.

7.3

## **8 CONSULTATION**

8.1 Chief Executive  
Director of Support Services  
Director of Finance

## **9 SIGNATURE**

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**Director of Environmental and Consumer Protection**

**Date: 4 September 2001-**

## APPENDIX 1

### EXECUTIVE SUMMARY

This report outlines the purpose of the contaminated land regime and details the duties, roles and responsibilities, which the legislation places on the Council. This strategy is the mechanism by which Dundee City Council will fulfil the statutory obligations contained within the legislation.

The contaminated land regime is a nationwide initiative, driven by central government, which places the onus on each local authority to:-

*“cause its area to be inspected from time to time for the purpose of identifying contaminated land”*

and act as the lead regulators for the contaminated land regime. As a result of this, local authorities nationwide are undertaking similar projects to identify and remediate *“contaminated land”*.

The industrial revolution of the 18th century signified a change in the organization of the manufacturing industry, which transformed Britain from a rural to an urban economy. What remains of our industrial heritage is often a legacy of land contaminated by a variety of chemicals originating from the industrial processes.

Discharges of contaminants to the wider environment as a result of the practices and processes carried out on a site was an issue not widely addressed until the introduction of the Control of Pollution Act (CoPA) in 1974. CoPA implemented environmental controls and legislation designed to prevent releases of contaminants into the wider environment.

Since the introduction of CoPA, there has been further legislation including the Environmental Protection Act, 1990 and the Environment Act, 1995. There has also been subsequent regulations, such as Integrated Pollution Control (IPC) and Waste Management Regulations to further regulate industrial and waste handling operations and to safeguard the future soil and groundwater resources from contamination arising from operational sites.

Prior to the introduction in Scotland of Part IIA of the Environment Act 1995 (the Contaminated Land Regime) on 14 July 2000, no mechanism was in place to tackle the significant issue of historical contamination that was causing immediate and serious harm. Part IIA was intended to fill the gap in the legislation that existed when dealing with historical contamination and for the first time contained a definition of *“contaminated land”*.

*“Contaminated land”* is defined as :-

*“any land which appears to the local authority in whose area it is situated to be in such condition, by reason of substances in, on or under the land that :-*

- (a) significant harm is being caused or there is the significant possibility of such harm occurring ,*  
*or;*
- (b) pollution of controlled waters is being or is likely to be, caused”*

The Council understands the emotive nature of the phrase *“contaminated land”* and feels that it is essential that the meaning of *“contaminated land”* within the context of Part IIA is fully understood.

It is important to understand that not all land where contamination is found meets the strict definition of *“contaminated land”* defined in Part IIA. Rather, **Part IIA is designed to identify and deal only with the most serious cases of contamination that present an immediate or grave threat to human health, controlled waters, ecological receptors or property in their current use.**

Part IIA is not intended to be used to ensure that sites undergoing redevelopment are investigated and, if necessary, remediated. Other regulatory controls within the planning system (e.g. Planning Advice Note 33 – PAN 33) exist to ensure that a developer demonstrates to the satisfaction of the

local authority that a site is safe and suitable for its **proposed end-use**. In other words, it could be said that the purpose of the planning system is to ensure that land being redeveloped never has to be considered as Part IIA land.

In order to satisfy this statutory responsibility the Council has embarked on a project to prepare an inspection strategy detailing the legislative framework behind Part IIA, the inspection arrangements and procedures and to provide a justification for and transparency in the Council's decisions in how the City will be inspected for contaminated land. The aim of the strategy is to ensure that all those affected by and involved in inspection have the same clear understanding of the rationale for inspection, how this will be carried out and over what timescale.

The new legislation gives the Council the powers to investigate land suspected to be causing **significant harm or pollution of controlled waters** in order to establish the nature, extent and significance of contamination. Should the Council determine that significant harm or pollution of controlled waters is occurring, it is hoped that remediation will be secured voluntarily through negotiation with appropriate persons. Should voluntary remediation not be achieved, the Council may serve notices to ensure remediation is undertaken to deal with any potential hazards.

Part IIA relies on the "polluter pays principle", i.e. the person responsible for the contamination should be held responsible for the costs associated with the remedial works. Part IIA also recognises that in many cases, the original polluter may no longer be a trading entity and therefore unable to be pursued for the costs of remediation. In such cases, it is possible for the owner or occupier of a piece of land to be held liable for the remedial costs.

The Council has a duty to hold a register containing the information pertaining to land designated as "*contaminated land*". The register is intended as a full and permanent record of the land, detailing:

- Notices identifying the land as "*contaminated land*";
- Remediation notices;
- Appeals against remediation notices; and
- Remediation statements or remediation declarations etc.

The register is intended to prevent sites from becoming blighted as a result of their identification as "*contaminated land*" as all remediation work will be documented alongside any other pertinent information.

The full report is available for viewing at the Environmental & Consumer Protection Department at 8 City Square.

## APPENDIX 2

Phase	Work Programme	Timescale*
Phase 1	Identify current receptors, establish search order and define risk ranking protocols	Oct 2001 – Dec 2001
Phase 2	Search of historical plans to identify potential sources of contamination within residential areas and schools. Identify potential sites and carry out risk ranking procedure.	Jan 2002 – Jul 2002
Phase 3	Initiate investigation works on selected sites identified in Phase 2. Search of historical plans to identify potential sources of contamination within allotments or agricultural areas. Identify potential sites and carry out risk ranking procedure.	Aug 2002 – Oct 2002
<b>Year 1 review of strategy effectiveness</b>		<b>Oct 2002</b>
Phase 4	Search of historical plans to identify potential sources of contamination affecting vulnerable controlled waters. Identify potential sites and carry out risk ranking procedure. Ongoing investigation of selected sites identified in previous inspection phases.	Nov 2002 – Feb 2003
Phase 5	Search of historical plans to identify potential sources of contamination affecting downgraded water resources. Identify potential sites and carry out risk ranking procedure. Ongoing investigation of selected sites identified in previous inspection phases.	Mar 2003 – Jun 2003
Phase 6	Search of historical plans to identify potential sources of contamination within recreational areas or open spaces. Identify potential sites and carry out risk ranking procedure. Ongoing investigation of selected sites identified in previous inspection phases.	Jul 2003 – Oct 2003
<b>Year 2 review of strategy effectiveness</b>		<b>Oct 2003</b>
Phase 7	Review of Phase 2 – Phase 6 sites attracting a risk ranking score. Ongoing investigation of selected sites identified in previous inspection phases.	Nov 2003 – Dec 2003
Phase 8	Search of historical plans to identify potential sources of contamination – Ecological receptors Ongoing investigation of selected sites identified in previous inspection phases.	Jan 2004 – Apr 2004
Phase 9	Search of historical plans to identify potential sources of contamination – Commercial or Industrial Ongoing investigation of selected sites identified in previous inspection phases.	May 2004 – Oct 2004
<b>Year 2 review of strategy effectiveness</b>		<b>Oct 2004</b>
Phase 10	Investigation of selected sites identified in previous inspection phases.	Nov 2004 – Oct 2005
<b>Year 3 review to determine strategy effectiveness</b>		<b>Oct 2005</b>
Phase 11	Re-evaluation of project Aims. Redesign of inspection strategy if necessary. Investigation of selected sites identified in previous inspection phases.	Nov 2005 – Oct 2006
<b>Year 4 review to determine strategy effectiveness</b>		<b>Oct 2006</b>