

DERBYSHIRE COUNTY COUNCIL

CABINET

12 July 2016

Report of the Strategic Director Corporate Resources

**POLLUTION LIABILITY RISK IDENTIFICATION - REVIEW OF COUNCIL
CONTROLLED LAND AND PROPERTY ASSETS**

(Council Services)

1. Purpose of the Report

To inform Cabinet of the outcomes of a review and evaluation of pollution liabilities, and the development of a pollution liability record for land owned or maintained by the County Council.

2. Information and Analysis

Background

On 9 July 2013, the Cabinet Member for Council Services approved the development of a project to enable a central record of the County Council's pollution liabilities to be established (Minute No.10/13 refers).

The report presented to Cabinet Member for Council Services in 2013 detailed examples of cases where landowners have been held liable for illnesses/diseases caused by pollution and highlighted the need to determine the extent of contamination and the associated risks, to formulate a risk mitigation strategy and to determine if additional insurance would be required.

Funds from the Corporate Insurance Budget were identified to enable work to be undertaken to:

- Identify, assess and evaluate contaminated land owned by the Council (or in which the Council has an interest).
- Create one central record of this information to inform future management, development and/or disposal of sites.

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The project has been overseen by a cross-departmental Steering Group of senior officers, chaired by the Service Director for Transport and Environment.

Progress of Project

Derbyshire County Council owns or uses land and property located over 1,200 sites. It was decided that because of the large number of properties involved, it was necessary to focus the investigations on particular groups of sites, such as those known to have an industrial history or landfill sites where the potential for risk is higher. The sites of key interest identified were those managed by the Countryside Service and Waste Management, and those currently undergoing reclamation and operational sites, such as depots and workshops. This resulted in a shortlist of approximately 200 sites identified for investigation.

Initial meetings were held with members of staff with knowledge of the sites or who could point to the location of further information or other relevant staff. Information on each of these sites was collected from a variety of sources, including historic maps, property asset data, files held by Countryside Service, Waste Management, Reclamation and Property Services, documents from the Environmental Management System, Environment Agency information, comments from staff, internet searches, books and journals. Workshops were also run to capture the knowledge of relevant officers from across the Council who were involved in the management of, or who had a connection with any of the land/property. Detailed notes were compiled from the information found and key data was recorded on a spreadsheet.

In order to evaluate and categorise the sites (based upon the information collated), it was necessary to assess the risk. Risk is a combination of the probability, or frequency, of the occurrence of a defined hazard and the magnitude of the consequences of the event. To determine the risk presented by the sites, a risk matrix was developed, based on widely-referenced guidance from the Construction Industry Research and Information Association (CIRIA) publication 'Contaminated Land Risk Assessment a Guide to Good Practice (C552)' and Derbyshire County Council's Risk Management Toolkit.

The data and information gathered during the research has been used to evaluate the pollution liability risk of the sites. The results indicate that there are no sites that the County Council currently owns or uses that present an unacceptable pollution liability risk under existing conditions.

In addition to collating information about the sites on a master spreadsheet, reports were prepared for the sites considered as moderately high risk. These include sites where:

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- a) contaminants may be present but, under current use and management, they are not able to cause harm; and
- b) sites where contaminants are present but their effects are moderate (unlikely to have any effect on human health, but possible short-term effects on the natural environment, such as crop damage, discolouration of waterways or poor vegetation cover).

A technical report was also prepared to provide general information about the project and its findings.

Colleagues from Public Health were consulted at the end of the project and have advised they are not aware of any reported health issues related to or linked to the sites identified.

Corporate Property expressed a need for sites to be highlighted if there was likely to be contamination. This information would be crucial when considering land sales, changes in use or granting wayleaves. As the staff involved refer to DMaps, the Council's mapping and information system to access internal, commercial and other datasets, it was felt that the information should be displayed as a dataset on DMaps.

Next Steps

As a result of this project, for the first time, the County Council has a centralised record of all known pollution liabilities in respect of land that the Council owns or maintains. It is important to highlight that the evaluation of the sites is based on information that has been identified and made available during the course of the project. If changes were to occur to the sites, such as changes in management, land use or geological movement, or new information became available, then the risk could change.

Going forward, the information gathered will be managed by the Corporate Landlord Team within Corporate Property Services, as it is the primary user of the data and information, and therefore best placed to manage the record in the future. Corporate Property intends to develop a system for reporting changes, in order to keep the information up-to-date. Information will be retained on DMaps so it remains accessible to those managing Council owned sites, those involved in negotiating leases, licences or disposal of sites, or those staff engaged in regenerating and developing sites in the future.

To provide an ongoing review of this work, it is proposed that the Steering Group meets at least once per year to consider any relevant developments in respect to

the land that the Council owns, has owned, or has interests in, which may have pollution liabilities.

3. Financial Considerations

The ongoing cost of maintaining the record will be met from within existing Property Services resources.

Current Insurance Cover

Whilst previous insurance cover was limited to £5m with a £1m excess, the Council has renewed its insurance arrangements and the limit is now as follows:

- Pollution Legal Liability - Indemnity Limit £50m with a £1m excess - includes paying damages or compensation, including claimant costs recoverable from the insured as a result of personal injury, damage, denial of access or nuisance arising out of or from a pollution condition.
- Premises Environmental Liability - Indemnity Limit £5m in respect of own clean-up costs and £5m in respect of third party liability - the insurer will pay clean-up costs beyond the boundaries of an insured premises arising from a pollution condition which has migrated beyond the boundaries of the insured premises.

4. Legal Considerations

Part 2A of the Environmental Protection Act 1990 sets out the contaminated land regime, the overall objective of which is to ensure that land is cleaned up rather than to punish the polluter. Responsibility for enforcement rests with District and Borough Councils or Unitary Authorities. Liability to remediate pollution is imposed initially on the person who caused or knowingly permitted the pollution (Class A person). If no Class A person can be found, the liability passes to the current owner/occupier irrespective of whether they knew about the pollution (Class B person). In the event that contaminated land was identified which is owned by the County Council, the Council could be required to carry out remediation works even though it had not caused the initial pollution.

5. Environmental Considerations

The Council has undertaken this project to ensure that all known pollution liabilities are understood and documented to enable the land in question to be managed in the best possible way to mitigate against any pollution risks.

6. Social Value Considerations

Good management of sites will have a positive impact on communities and the environment of Derbyshire.

7. Other Considerations

In preparing this report the relevance of the following factors has been considered; prevention of crime and disorder, equality and diversity, human resources, health and transport considerations.

8. Key Decision **NO**

9. Call-in

Is it required that call-in be waived for any decision on this report? **NO**

10. Background Papers

Held on file within the Corporate Property Services. Officer contact details – Sarah Morris, extension 36260.

11. Officer's Recommendation

That Cabinet:

- 11.1 Notes the work undertaken to create a centralised Pollution Liability Register to record all known pollution liabilities in respect of Council owned or maintained land.
- 11.2 Supports the register being made available via DMaps to inform the future management, lease, disposal or development of Council owned or maintained sites in the future.
- 11.3 Notes that the Register will be maintained by the Director of Property and that the Steering Group will meet annually to review any changes and updates.

JUDITH GREENHALGH
Strategic Director Corporate Resources