

Bath & North East Somerset Council

DECISION MAKER:	Cllr Charles Gerrish, Cabinet Member for Customer Services Cllr Francine Haerberling, Leader of the Council Cllr Malcolm Hanney, Deputy Leader of the Council	
DECISION DATE:	On or after 24 th July 2010	PAPER NUMBER 1
TITLE:	Cost recovery policy for remediation of contaminated land in Bath & NE Somerset	EXECUTIVE FORWARD PLAN REFERENCE: E 2156
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: Environmental Protection Act 1990 Part IIA Cost Recovery Policy		

1 THE ISSUE

1.1 Statutory guidance made under the Environmental Protection Act 1990 recommends that local authorities should adopt cost recovery policies to provide a framework of financial assistance for those persons who are required to remediate land that has been determined as contaminated land by the Council.

2 RECOMMENDATION

The Cabinet members are asked to agree that:

2.1 The policy for the recovery of costs associated with the remediation of contaminated land under Part IIA of the Environmental Protection Act 1990 (as set out in the Appendix to this report) is adopted.

3 FINANCIAL IMPLICATIONS

- 3.1 The Policy does allow for financial assistance to be given to individual property owners, businesses, charitable trusts and registered social landlords. This assistance is only provided in specific circumstances; in the case of residential property owners the application is subject to a means test and then ratified by a Council Officer Panel. Notification of a Panel meeting and any subsequent decision will be reported to statutory officers of the Council. Each case will be considered on its own merits.
- 3.2 It is difficult to predict the likely costs that will be generated by adopting this policy and therefore this creates a liability for the Council. The factors that would influence remediation costs would include the nature and extent of the contaminants, and the existing use of the land. For information, a known example within the South West region requires approximately £500k of funding. To mitigate the liability, all remediation schemes will be submitted for PID approval which will lead to formal project decision making.
- 3.3 Funding for remediation would be sought in the first instance from central government funds. Where funding has to be provided by the Council the default position will be to fund from capital contingency and seek recovery by placing a charge upon the property. Costs of remediation will be recovered either by being repaid in instalments or reclaimed when the property is sold.
- 3.4 In all other cases of hardship (where charges are not created), funding will be required from revenue contingencies as no asset has been created.

4 CORPORATE PRIORITIES

- 4.1 This policy contributes to the corporate priority of building communities where people feel safe and secure. The remediation of contaminated land is vital to maintaining the public health of residents in Bath and North East Somerset.

5 THE REPORT

- 5.1 The aim of the policy is to provide a decision making framework and ensures compliance with the hardship requirements of the Environmental Protection Act 1990 and its associated statutory guidance. The policy will also promote transparency, consistency and fairness when determining how to recover any costs that the Council incurs when exercising its statutory duties with respect to contaminated land.
- 5.2 The principle of the policy is that the Council will always seek to recover in full any reasonable costs incurred when remediating contaminated land as part of its statutory duties. The policy allows for some flexibility should it be determined that undue hardship will result from a requirement to carry out remediation. Recovery can be deferred by making a legal charge on the land in question, securing payment either in instalments or when the land is next sold. In very exceptional circumstances, the Council might wish to consider waiving or reducing costs because of genuine hardship.
- 5.3 The policy will be used to guide the Council's decision making and each application will be considered on its own merits.

6 RISK MANAGEMENT

6.1 The report author and Cabinet member have fully reviewed the risk assessment related to the issue and recommendations, in compliance with the Council's decision making risk management guidance.

7 EQUALITIES

7.1 An equalities impact assessment has been carried and no negative impacts have been established.

8 RATIONALE

8.1 The adoption of this policy is necessary to comply with the hardship provisions laid out in the Environmental Protection Act 1990 and associated statutory guidance. Without such a policy, the Council may not be eligible for any future funding from DEFRA.

9 OTHER OPTIONS CONSIDERED

9.1 None.

10 CONSULTATION

10.1 Consultation has been carried out with: Leader of the Council, Cabinet Members for Service Delivery and Resources, Section 151 Finance Officer, Chief Executive and the Council's Monitoring Officer. External specialist legal advice relating to the contaminated land regime has also been sought.

10.2 Consultation is carried out through circulation of this report.

11 ISSUES TO CONSIDER IN REACHING THE DECISION

11.1 *Customer Focus; Corporate; Other Legal Considerations*

12 ADVICE SOUGHT

12.1 The Council's Monitoring Officer (Council Solicitor) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report prior to it being cleared for publication.

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Background papers	Defra Circular 01/2006 "Environmental Protection Act 1990: Part 2A" (http://www.defra.gov.uk/environment/land/contaminated/pdf/circular01-2006.pdf) The Environmental Protection Act 1990 (http://www.opsi.gov.uk/ACTS/acts1990/ukpga_19900043_en_1)
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