

THIS PAPER RELATES TO
ITEM 18
ON THE AGENDA

CLACKMANNANSHIRE COUNCIL

Report to Council of 12 March 2009

Subject: Remediation of Contaminated Land

Prepared by: Peter J Broadfoot, Head of Administration and Legal Services

1.0 Purpose

- 1.1. The purpose of this report is to provide the Council with an update on progress in arranging the remediation of contaminated land at the former Alva Gasworks, as approved at the Council meeting on 14 June 2008. It also considers the position regarding an additional area of land to the rear of 5 Woodburn Way, Alva, in order that the Council can reach an informed decision on what to do in respect of that area of land.

2.0 Recommendations

- 2.1. It is recommended that the Council notes the progress in arranging for the remediation of contaminated land at the former Alva Gasworks.
- 2.2. It is recommended that the Council decides whether or not to carry out the remediation of the additional area of land at the rear of 5 Woodburn Way, having regard to the particular circumstances relating to that area of land as set out in this report..
- 2.3. If the Council does agree to carry out the remediation of the additional area of land, it must consider and decide upon the options contained in this report, namely:-
- (a) agree to one of the proposals put forward by the owners as set out in paragraph 3.8 of the report, specifying which proposal is to be accepted, or
 - (b) require the owners to grant to the Council a Standard Security over their property sufficient to cover the full cost of remediation of the additional area of land, or
 - (c) it will bear the full cost.

- 2.4 It is recommended that, if any formal Agreement or Standard Security is required from the owners, it be delegated to the Head of Administration and Legal Services to agree the terms of such an Agreement or Standard Security.

3.0 Considerations

- 3.1. On 14 June 2008 the Council considered a report that indicated contaminated land had been identified in the gardens of residential properties that had been constructed on or near the site of the former Alva Gasworks. The Council agreed that it would arrange for the contaminated land in the gardens acquired from the original housebuilder to be remediated at the Council's cost. In doing so, the Council was guided by the following considerations:-
- (a) instead of using the statutory enforcement provisions to deal with contaminated land by serving notice on the owners to carry out the necessary remedial work, the Council would embark on a voluntary scheme,
 - (b) the original owner and developer of the houses on the site, who would ordinarily have been held responsible, had ceased to exist, as the Company had been wound up,
 - (c) the current owners of the houses could not possibly have known that the land was contaminated when they bought the houses,
 - (d) the likely costs of carrying out the remediation were significant and it was therefore unlikely or undesirable that the current owners could or should have to bear that cost,
 - (e) government guidance to local authorities in dealing with such situations indicated that it was appropriate for Councils to contribute to the costs of remediation.

Update

- 3.2 Since June 2008, considerable progress has been made in arranging for the remediation of the land. Following a procurement exercise, a consultant was appointed to manage the remediation process. Ironside Farrar were appointed in November 2008 at a cost of £25,500. They, in turn, sought tenders from contractors who would carry out the remediation works. In February 2009 I & H Brown were selected. Their cost for carrying out all of the remediation works is £369,568. This includes a sum of £74,000 for remediating the additional land at 5 Woodburn Way. It is clear, therefore, that a proportionately large sum is attributable to the additional area of land. In addition, Enviro were appointed as consultants in August 2008 to investigate the groundwater situation at a cost of £20,000.

- 3.3 The remediation work is due to begin on 7 March 2009 and is anticipated to take twelve weeks to complete. Arrangements have been made for the owners to be moved to temporary accommodation, as necessary, during this period. The costs of this are to be met by the Council and amount to £15,600.

Additional Area of Land

- 3.4 A question that still has to be decided is how the Council will deal with the additional area of land at 5 Woodburn Way that did not form part of the original garden acquired by the current owner along with the house. In reaching a decision, the Council needs to be sure that it is being consistent. The Council's External Auditors have been asked for guidance on how they would view making discretionary spend in these circumstances. Their clear view is that the Council must have regard to the principles it used in agreeing to pay for the original gardens. It is also their view that the Council must make a reasoned judgement on whether or not taxpayers' money should be used for such a purpose, especially if to do so would provide betterment for the owners. By this, they mean that the owners would gain additional benefit by an increase in the value of their land as a result of the Council spending money on it.

- 3.5 In order to apply the principles in paragraph 3.1 consistently, it is necessary to consider if the circumstances relating to the additional land are the same as those applying to the original gardens. The additional land is different in more than one respect, namely:-

- (a) it was not purchased from the house developer along with the house;
- (b) it was purchased direct from Transco;
- (c) a prudent purchaser could and should have obtained sufficient information about the land to alert them to the existence of contamination;
- (d) it was developed by the current house owners and not the house developer;
- (e) it is not an original adjunct to the house, and
- (f) there is no express planning consent for the use of the land as a garden.

If the statutory regime were to be applied to the site, the current owners would be regarded as liable and could be required to remediate the land at their own cost. Although the government guidance indicates that, in such cases, local authorities should treat such owners less favourably than those who bought direct from the house developer, it does not prevent Councils from contributing to the cost. Indeed, if the statutory regime were applied, the owners could apply to have their payment reduced on grounds of hardship. Given the significant cost that has now been identified in relation to the additional land, this would be a likely prospect.

Options

- 3.6 The Council could decide that it would not include the remediation of the additional land in the voluntary scheme, taking the view that, if the land was not used for any human activity, it would not need to be remediated. It would also be possible for less expensive measures to be taken by the owners to resolve the matter. These would include closing off the additional area or covering it in suitable hard standing, rather than having it cultivated. There is also the fact that they do not have express planning consent for use of the land as garden ground. If they applied for the necessary planning consent, conditions would be imposed on it to require them to carry out remediation. There is, however, uncertainty that any of this would happen, which would leave the position unchanged or, at least, that a solution would not be forthcoming quickly, unless planning enforcement action were taken.
- 3.7 If, however, the Council decided it would include the additional land in the voluntary scheme, it has further options to consider. The first of those is whether or not it would simply meet the full cost as it has done in respect of the original gardens. For the reasons set out in paragraph 3.5, it is difficult to argue that exactly the same considerations apply to this area of land. Considering that the cost of remediating this land is £74,000, the Council may well consider that this is too great a sum to pay from taxpayers' money for work on a private owner's land. Conversely, the Council may take the view that, because the amount is so high, it is not likely or desirable that the owners could or should pay the full sum.
- 3.8 Being aware that the Council has to account for how it spends taxpayers' money, the owners of 5 Woodburn Way have put forward proposals for consideration by the Council. The first is that they would grant to the Council a Standard Security over their property in the sum of £10,000. This would mean that, in the event of the additional land being sold by them, the Council would be paid that sum. Failing that being acceptable, they would undertake some of the reinstatement work, including landscaping in relation to the additional land, such that the Council's cost would be reduced by £5,000. This would be combined with them entering into a binding agreement with the Council to pay the sum of £5,000 in equal instalments over a ten year period. They have indicated that these proposals are the most they feel able to offer.
- If either of these proposals were accepted by the Council, the owners would be required to enter into either a written Agreement or a Standard Security, as appropriate. The terms of these would require to be approved by the Head of Administration and Legal Services.
- 3.9 A further option is that the Council could seek a Standard Security from the owners over their property such that, in the event of the additional area of land being sold either along with the house and garden, or separately, the owners would pay to the Council the full cost of remediation of the additional area of land. This would require to be agreed with the owners and, if they did not agree, then the additional area of land would not be remediated.

Conclusion

- 3.10 The options set out in paragraphs 3.6 to 3.9 would all be lawful, given that the Council has agreed that it will deal with the contamination of the land on a voluntary basis. If it agrees to pay the full sum for remediating the additional land, it needs to be satisfied that it is applying the principles in paragraph 3.1 consistently but, as set out in the report, there are differences. Whilst paying the full sum would not be illegal, given the advice by the Council's External Auditors, it is likely that it would be open to scrutiny by the Accounts Commission who may not regard it as appropriate spend or achieving best value. If one of the owner's proposals were accepted, this would show that the Council had applied the principles in paragraph 3.1 to the additional land as well as to the original gardens. Whilst, given the amounts proposed by the owners, there may still be a concern about betterment, the Council would still be able to show that it did not simply agree to pay the full cost. Applying the principles in this way would help to safeguard against any challenge that taxpayers' money had been expended without due and proper consideration.

4.0 Sustainability Implications

- 4.1. This report deals with the remediation of contaminated land and the result of any remediation carried out will assist in improving the environment.

5.0 Resource Implications

5.1. *Financial Details*

- 5.2. The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. ☒

5.3. *Staffing*

- 5.4. Work resulting from this report will be carried out within existing resources.

6.0 Exempt Reports Only - Reasons for Exemption

- 6.1. The report details personal and financial information relating to individuals and indicates the proposed amount of expenditure on a contract for services.

7.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

(1) Our Priorities 2008 - 2011 (Please tick ☒)

- The area has a positive image and attracts people and businesses ☐
- Our communities are more cohesive and inclusive ☐
- People are better skilled, trained and ready for learning and employment ☐
- Our communities are safer ☒
- Vulnerable people and families are supported ☐
- Substance misuse and its effects are reduced ☐
- Health is improving and health inequalities are reducing ☐
- The environment is protected and enhanced for all ☒
- The Council is effective, efficient and recognised for excellence ☐

(2) Council Policies (Please detail)

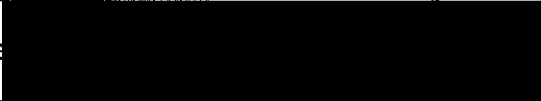

8.0 Equalities Impact

8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?

Yes ☐ No ☒

9.0 Legality

9.1 In adopting the recommendations contained in this report, the Council is acting within its legal powers Yes ☒

APPROVAL/SIGNATURE	DATE
Head of Service 	4/3/9
Chief Executive/ Director*: 	

*Delete as appropriate



REPORT TO [NAME OF MEETING]

To: Head of Administration and Legal Services, Greenfield, Alloa FK10 2AD

Report author: Peter J Broadfoot

Service: Chief Executive's

Report title: Contaminated Land

Date of meeting: 12 March 2009

It is recommended that the attached report be:

1. Given unrestricted circulation ☐
2. Taken in private by virtue of paragraph __ of schedule 7A of the Local Government (Scotland) Act 1973 ☒

List any appendices attached to this report (if there are no appendices, please state 'none')

1. None
- 2.
- 3.
- 4.

List the background papers used in compiling this report . If you have completed a sustainability checklist please add this to your list (if there are no background papers please state 'none')

1. Sustainability Checklist
- 2.
- 3.

Nb. All documents listed must be kept available by the author for public inspection for four years from the date of the meeting at which the report is considered

