1. PURPOSE OF THE REPORT

To inform Members of the contaminated land remediation work required at 18 residential properties (17 in Coedpoeth and 1 at Brymbo).

To seek approval to commence remediation works this financial year, to be continued over up to 4 more consecutive years, should external financial support not be forthcoming. If external financial support is secured this would enable works to be carried out over 2 financial years.

2. EXECUTIVE SUMMARY

2.1 The Council has a statutory duty to identify contaminated land within the Borough. Residential land, public open space, footpaths and woodland, both on and in close proximity to former lead smelters at Coedpoeth and Brymbo has been assessed because of the potential risk from elevated contaminants in the soil. The detailed assessment found that 18 residential properties had elevated lead levels which could potentially present unacceptable risks to the health of the occupiers.

2.2 The 18 properties have been determined as contaminated land under the relevant legislation. Owners have received a Contaminated Land Notice and have agreed with the Council to voluntary remediation. One property is owned by the Council and, therefore, a Notice is not required. The Council will arrange the remediation work and recover a contribution towards the costs from each property owner for their property if necessary.
2.3 The Council’s Contaminated Land Cost Recovery and Hardship Policy will govern the amount of the residents’ contribution to ensure the cost recovery does not cause hardship. As the Council has a statutory duty to both identify and remediate contaminated land, doing nothing is not an option, so remediation work needs to take place.

2.4 Following the provision of financial support for a similar scheme to Stirling Council by the HM Treasury and the Scottish Parliament, Officers have been in negotiations with the Welsh Government requesting similar financial support. WG have been liaising with HM Treasury on the Councils behalf. To date negotiations are ongoing and we are awaiting a decision on this funding request. Welsh Government Officers continue to provide technical advice and support.

2.5 A decision to commence works in this financial year in the absence of a positive response from WG and HM Treasury is now required so that remediation works can commence and residents can be informed of the timetable for the remediation to take place.

2.6 The total cost of the remediation work exceeds the Council’s available funding for this financial year and, therefore, should no external financial support be forthcoming, the works will need to be phased, potentially over a period of 5 years so that future allocated funding for contaminated land matters can be utilised. Whether the works take place over 2, 3, 4 or 5 years is currently unclear and will be dependent on the final quote for the remedial works and the final savings that could be made on the final designs.

2.7 If the total amount of external funding requested is provided, residents may not have to pay any contribution. If the request for financial support is unsuccessful, residents may have to make a contribution in accordance with the Cost Recovery and Hardship Policy.

3. RECOMMENDATIONS

3.1 To approve the commencement of remediation works in Spring 2015.

3.2 To invoke Standing Order 43(1)(d) to allow the procurement process to commence immediately following the Executive Board meeting to enable urgent works to start in the Spring.

REASON FOR RECOMMENDATIONS

(i) To fulfil the Council’s statutory duty for the remediation of contaminated land for the 18 properties and not incur any further delay in commencing the works.

(ii) To enable the procurement process to be commenced to ensure work can be undertaken in the current financial year.

4. BACKGROUND INFORMATION

4.1 The Council has a statutory duty to inspect land within the Borough in order to identify any contaminated land and to take action to manage any risks associated with
contamination. This duty is contained in Part 2A of the Environmental Protection Act 1990. The Wrexham County Borough Council Contaminated Land Strategy (2nd Edition, May 2013) details the procedures for assessing and managing risks associated with contaminated land. This Strategy was reviewed and subsequently approved by Executive Board in 2013 (HHPP/54/13). A Members’ Information Report (PAW/02/13) in April 2013 gave a ten year review (2001-2011) of contaminated land work following the implementation of the Contaminated Land (Wales) Regulations 2001 and the Council’s first Contaminated Land Strategy in 2002.

4.2 As there are a substantial number of sites where contamination due to historic use might pose unacceptable risks, these are prioritised for investigation and assessment.

4.3 A preliminary risk assessment in 2012 assessed the whole area of lead mining in the Borough to identify and prioritise areas of concern, since activities were widespread and varied. This assessment recommended that the locations of the former lead smelters are assessed first as priority areas due to the presence of residential properties.

4.4 In 2013, a Consultant was engaged to assess the residential garden areas as well as public open spaces or areas where public have access, on and in the vicinity of historic lead smelter sites at Coedpoeth and Brymbo. The Consultant’s report concludes that public open space/accessible areas do not present cause for concern but there were 18 residential properties where the garden soils had elevated levels of lead which present unacceptable risks to occupiers and, therefore, require remediation. The Statutory Guidance defines 4 possible categories of risk, the 18 properties determined as contaminated land are categorised as category 2 properties, meaning there is a significant possibility of significant harm to human health. Other properties that were assessed do not require remediation.

4.5 Earlier this year, statutory Contaminated Land Determination Notices were served on the owners of 17 of these properties (one is Council owned but will also be remediated). The owners have all agreed to a voluntary scheme of remediation whereby this Authority will engage a contractor to undertake the remediation work on their behalf. This avoids the need for statutory remediation notices to be served should owners not undertake the remedial works themselves, which could lead to possible enforcement consequences such as prosecution. Although the legislation allows the Council to allocate responsibility for remediation to the polluter (called a ‘Class A’ person), this is not possible in this case as the lead mining companies that operated the smelters in the 1800s have long since been dissolved. The responsibility, therefore, rests with the current landowners (known as ‘Class B’ persons).

4.6 It was recognised early on in the investigation of these lead mining areas, that the Council’s ability to recover costs incurred in remediation through a voluntary agreement could be substantial for the individual owners. Furthermore, the Statutory Guidance requires the Council to consider whether the owner could have reasonably been expected to know of the contamination and consider waiving or reducing the cost they should bear than is reasonable to impose having regard to the persons income, capital and outgoings. To avoid any hardship as a result of cost recovery and to define procedures for recovery, a Cost Recovery and Hardship Policy was approved by Executive Board (HHPP/91/13). This Policy means that a hardship test will be applied in respect of the recoverable amount from each owner before the amount of money recovered is sought. The recoverable amount is capped depending on the value of the property.
4.7 As these 18 properties are the first in the Borough to be determined as contaminated land, external expert legal advice was obtained to ensure the procedures followed complied with the Part2A of the Environmental Protection Act 1990 and associated statutory guidance.

4.8 A procurement process to appoint a main contractor for remediating the 18 properties was commenced in February 2014 but did not progress to engaging a contractor due to the commencement of pro-active negotiations with the Welsh Government (and HM Treasury) following the provision of similar support to Stirling Council in Scotland by the Treasury and Scottish Parliament. The local Assembly Member and MP are also supporting the Council in the funding request. If the full amount of funding being requested is provided, it will mean that none of the owners will need to contribute to the remediation costs. A decision is awaited at this time.

4.9 The residents have been patient and understanding during the process. A number of the landowners have their properties for sale and are, therefore, rightly concerned about any adverse effect the determination as contaminated land will have on the future sale. It is, therefore, imperative that the details of the remediation programme and timescales is determined so that residents are aware of which financial year works will be undertaken at their property. In the meantime, all the residents have been given precautionary health advice to minimise any risks arising, but for the longer term the gardens need to be remediated.

4.10 If external funding is not forthcoming and the remediation works were, therefore, carried out over 2-5 year period, then the decision of what order to remediate properties in would be based on level of contamination present (highest first and so on) and practicalities in undertaking the works (eg if 5 properties in a row had the highest concentrations of lead out of the 18, but the middle one did not then the middle one would still be included in that phase of works).

4.11 **Policy Framework** – The proposals are integral to the Council’s Contaminated Land Strategy and regulatory responsibilities in relation to safeguarding public health and links to the Council Plan Strategic Theme Place - PL2 an environmentally responsible place and PL3 communities with sustainable, attractive settlements, neighbourhoods, buildings and spaces.

4.12 **Budget** – The total remediation scheme expenditure is estimated to be in line with the available budget allocated for contaminated land work from 2014-2019. The estimated cost of the works is based on the costs received during the first tender exercise earlier this year, although it is hoped the cost will be reduced as a result of further modifications to the remediation designs for some properties and due to amendments to the specification for works to be included in the tendering exercise.

4.13 Should funding from the Welsh Government and/or HM Treasury be forthcoming, then the remedial works can be undertaken over a shorter time period and without utilising some of the contaminated land budgets for future years.

4.14 **Legal** – The Council has a statutory duty to inspect its area for contaminated land and to take action to ensure there are no unacceptable risks from contaminated land – in accordance with the Council’s 2013 Contaminated Land Strategy. In line with expert external legal opinion steps have been taken to formally designate the 18 properties referred to as contaminated land within the meaning of Part IIA of the Environmental
Protection Act 1990 and the Council now has a duty to secure remediation of that land and in so doing must have regard to the Statutory Guidance issued by Welsh Government, relevant details of which are set out elsewhere in this report.

4.15 **Staffing** - No additional staffing requirements

4.16 **Equality/Human Rights** – There are no equality or human rights issues as the contaminated land investigation and assessment procedure primarily relates to the nature of ground contamination rather than the occupants.

4.17 **Risks** – Other areas of contaminated land work may need to be curtailed to use the allocated contaminated land budgets for this remediation work.

5. **CONSULTATION**

5.1 A communication strategy is in place so residents have been kept informed throughout the process (including two residents meetings). Local Members and Lead Members have also been informed. Welsh Government and HM Treasury have been requested for additional funding and a decision is awaited.

6. **SCRUTINY COMMITTEE COMMENTS**

6.1 None

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