
Report Title	A. Confidential Late Report - Dilapidated buildings - Project Update
Report by	Planning and Community Development
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Attachments	No attachments
File	FILE 12/1719

RECOMMENDATION

- 1 That the Committee recommend to Council that Council:**
 - a. Immediately approach social housing providers to voluntarily seek Orders on all burned out dwellings within their control. If such Orders are not sought, that Council pursue all reasonable means to require demolitions by those agencies.**
 - b. Undertake, using staff resources, a more detailed inspection of all burned out dwellings utilising Council's asbestos tester as well as undertake a preliminary review regarding potential structural issues.**
 - c. Where asbestos is indicated to be present, and where it appears that it may be fire-damaged, engage a local consultant to undertake air quality testing.**
 - d. If air quality testing reveals levels above ambient levels, immediately move to either clean-up or demolition Orders (if necessary commissioning a structural review) and press owners to hire temporary fencing and undertake PVA glue application using a recognised contractor.**
 - e. Should fencing and PVA spraying not be committed to within 14 days of Council identifying a public risk, that Council undertake these works itself, and bill the owner.**
 - f. Monitor the rate at which private owners undertake demolition with a monthly update report to be brought back to Council including budget estimates of likely Council liabilities if owners do not undertake the work.**
 - g. Based on revised estimates of work required to be done by Council, undertake demolition as per Option 2 while identifying any project cost savings that might be available.**
 - h. Seek costs from owners, in accordance with Council's normal policies and practices.**
- 2 That the Council consider this recommendation at its meeting of 28 November 2019 as a matter of urgency.**

REPORT

ALIGNMENT WITH MOREE PLAINS 2027 – YOUR SHIRE. THE PLAN. OUR FUTURE

- An Inclusive, Caring Community**
C1.1 Public safety is maximised through support for initiatives that reduce the incidence of crime and promote safety
- Sustainable Spaces and Places**
S4.4 Facilitate and regulate development
- A Vibrant Regional Economy**
Not applicable
- A Leading Organisation**
L1.2 Deliver the desired services throughout the Shire to meet community needs in an effective, efficient and financially viable way, having regard to compliance and risk obligations

CONFIDENTIALITY STATEMENT

Should Council like to review the confidential aspects of this report and the submission from Public Works Advisory in detail, then this should be dealt with in 'Closed Council', as it relates to a section 10A (2) of the NSW *Local Government Act 1993*. Council will then need to resolve to move into 'Closed Council' with the explanation as follows:

That Report, Confidential Late Report - Dilapidated buildings - Project Update, be dealt with in Closed Council as it relates to Section 10A(2) of the NSW Local Government Act 1993 being:

(c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,

BACKGROUND AND KEY ISSUES

Background

As part of the 2019-2020 budget, Council resolved to fund an in-house process for removal of dilapidated dwellings, in particular those affected by fire. This issue has also been the subject of Councillor Questions on Notice. This report is provided both in response to those questions and to address changes in the project.

Council staff have been working to implement the in-house model, however a number of issues have arisen which require the matter to come back to Council for further consideration. Included in these matters is the question of public health and safety associated with burned out dwellings.

At this stage Council staff have completed an audit of dilapidated dwellings in Moree. The reason for the audit was to determine the extent of dilapidated dwellings and the likely presence of asbestos. Results of the audit were that thirty-eight (38) dwellings in total were identified within the Moree township. Out of the 38 dilapidated buildings, thirty (30) are privately owned and eight (8) State Government or other social housing provider owned. As Council is the appropriate regulatory authority for private owned land only, this leaves 30 premises that Council has authority to manage. The 8 state owned dwellings are being followed up with the relevant agency to ensure their timely removal.

Method of dilapidated building management

Council can only manage dilapidated buildings under the powers that Council has under the *Environmental Planning and Assessment Act 1979 (the Act)*. More specifically, Council uses Demolition Works Orders under the Act. This is an enforcement tool to get owners to address the risks that these buildings pose to public and neighbouring properties.

Procedure for enforcement

1. Council completes a detailed investigation of a building;
2. If the building is deemed to pose a risk to public or is prejudicial to neighbouring properties, Council will issue a 'Notice of Intention to Issue a Demolition Order'. This is an opportunity for an owner of a property to provide a submission against an Order;
3. If there is no submission or if there is a submission without merit, Council will issue a Demolition Order. This will enforce the owner to complete works to remove the dilapidated building;
4. If the Demolition Order is not complied with, Council is legally required to meet the requirements of the Order. This is where the cost to Council is incurred. This includes engaging consultants to complete environmental assessments, structural engineering reports and then engaging demolition removalists.
5. Council will issue the owner a Compliance Cost Notice which will seek to have the owner pay all or part of costs incurred by Council in adhering to the Order.
6. Council may decide to commence proceedings in the NSW Land and Environment Court to recover costs incurred in discharging its obligations under the Order.

Summary

Council is required to follow the abovementioned 'procedure of enforcement' as outlined under the *Environmental Planning and Assessment Act 1979*.

Where Council has potential to reduce costs is by managing dilapidated buildings through a larger project and have potential to offset costs by utilising internal staff in the process. This is the model that was brought to Council and endorsed. As staff have moved to implement the model, there are a number of issues that have emerged. Accordingly, and because of the potential budget implications, the matter is being brought back to Council for review.

Dwellings prior to demolition

A further issue is the management of dwellings prior to demolition. A preliminary survey was conducted by Council staff which identified asbestos as a potential hazard in all but one of the current burned out dwellings. This was an unexpected result, and has significantly changed the project parameters, as full asbestos removal training would now be required for all Council workers who would be involved in the demolitions. This training is in addition to training in SafeWork NSW's codes of practice for demolition which operate in conjunction with Australian Standard 2601 – Demolition of Structures. The Standard provides an easy to follow guide as to how demolitions can be done safely. Manual demolition is discouraged, with mechanical demolition preferred. This requires the use of typical plant such as excavators.

Asbestos is a public health issue. In general, asbestos in dwellings is of the bonded type, which is relatively low risk, however the heat of a fire may result in a more friable form of asbestos being present due to the breakdown of the bonded product. The next step in addressing the public health issue is to undertake a more detailed assessment of each of the dwellings to provide better information about their current structural condition and also the level and type of asbestos contamination. Earlier this month Council acquired a field testing device which can provide a much better level of information about potential asbestos than any manual inspection. Training in use has also occurred. While not as accurate as full laboratory appraisal, it nevertheless can provide virtual certainty about the presence or absence of asbestos, and also about the type of asbestos.

Power of entry

In order to enter land to undertake these inspections, Council needs to follow due process. There are several options under legislation which are summarised below:

Power of Entry under the Local Government Act 1993

Under section 191 of the *Local Government Act 1993 (LGA)*, a council employee (or any other authorised person) may enter any premises for the purpose of enabling a council to exercise its functions. "Premises" has a wide definition under the LGA and includes a building of any description.

For the purposes of inspections and investigations, a council employee, or other person authorised by a council, may:

- inspect the premises, including things found on them and any food or vehicles; and
- open any ground or remove flooring, or require the opening, cutting into or pulling down of a work where it is relevant to a suspected breach of the LGA or regulations; and
- take measurements, make surveys and take levels, and for those purposes, dig trenches, break up the soil and set up any posts, stakes or marks; and
- require any person at those premises to answer questions or otherwise furnish information in relation to the matter which is the subject of the inspection or investigation; and
- examine and test any meter; and
- measure a supply of water; and
- take samples or photographs in connection with any inspection.

Before entering premises, Council must give the owner or occupier of the premises written notice of the intention to enter. The notice must specify the day on which entry is sought and must be given before that day.

Notice is not required to be given where entry to the premises is made with the consent of the owner or occupier of the premises, if entry to the premises is required because of the reasonable likelihood of a serious risk to health or safety. It is under this last provision that Council staff can enter the land.

If consent is not obtained and none of the exceptions apply, Council should get a warrant.

Council can utilise these powers where houses are in a water supply catchment. Council can also issue orders:

- to remove or dispose of waste that is on any residential premises or to refrain from keeping waste on those premises where the waste is causing or is likely to cause a threat to public health or the health of any individual owner or occupier of the premises;
- A council may abate a public nuisance or order a person responsible for a public nuisance to abate it. Abatement means the summary removal or remedying of a nuisance (the physical removal or suppression of a nuisance) by an injured party without having recourse to legal proceedings. Nuisance consists of interference with the enjoyment of public or private rights in a variety of ways.

Power of Entry under the Environmental Planning and Assessment Act, 1979

An investigation officer may enter any premises at any reasonable time, however can only enter premises used for residential purposes with the consent of the occupier, or under the authority of a search warrant, or if it is necessary to do so, to inspect work being carried out under a consent, approval or certificate under the act, or under the authority of a search warrant.

Entry under this Act is associated with a demolition order where a dwelling is structurally unsound, and/or there is a risk to adjoining properties. This is the most common type of order used previously by Council.

Power of Entry under the Protection of the Environment Operations Act, 1997

This Act controls land and air pollution, both of which may potentially be caused by a burned out dwelling. It enables clean-up notices under Chapter 4 of the Act to be issued for land where there is, or there is a risk of pollution being caused. Pollution here means either air or land pollution, where air pollution covers any impurity in the air (which would include any loose fibres) and land pollution which means placing in or on, or otherwise introducing into or onto, the land (whether through an act or omission) any matter, whether solid, liquid or gaseous:

- a) that causes or is likely to cause degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage, that is not trivial, or
- b) that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter,

but does not include placing in or on, or otherwise introducing into or onto, land any substance excluded from this definition by the regulations.

A regulatory authority or public authority may, by its employees, agents or contractors, enter any premises at any reasonable time (except for residential premises) for the purpose of exercising its functions under Chapter 4 of the Act.

An authorised officer may do any or all of the following:

- c) examine and inspect any works, plant, vehicle, aircraft or other article,
- d) take and remove samples,
- e) make such examinations, inquiries and tests as the authorised officer considers necessary,
- f) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,
- g) require records to be produced for inspection,
- h) examine and inspect any records,
- i) copy any records,
- j) seize anything that the authorised officer has reasonable grounds for believing is connected with an offence against this Act or the regulations,
- k) for the purposes of paragraph (h), direct the occupier of the premises where the thing is seized to retain it at those premises or at another place under the control of the occupier,
- l) do any other thing the authorised officer is empowered to do under this Chapter.

This Act has the benefit that Council can take action when a dwelling is not badly affected by fire, or is otherwise abandoned, but it has asbestos present that presents a pollution risk.

A careful use of powers of entry is required, otherwise Officers would be guilty of trespass. Council needs to make use of the most appropriate power depending on whether the dwelling:

- contains asbestos
- is affected by fire
- is structurally unsound, or
- is within a flood control lot.

In most cases the dwelling would be affected by two or more of these items.

The most common approach taken by Council staff has been to issue a demolition order under the *Environmental Planning and Assessment Act*, however Council can also issue a clean-up notice under the *Protection of the Environment Operations Act*. Historically, Council has not used powers under the *Local*

Government Act relating to water catchments, but Council can exercise other powers under that Act with respect to the issuing of orders.

If there is a risk of asbestos fibres escaping from premises, then the approach is to fence the dwelling from public lands (usually the street) and apply liquid PVA glue by spray to glue fibres in place so as to manage a potential pollution incident.

FINANCIAL IMPACT TO COUNCIL

Initial works

Works to reduce public risk include fencing and PVA spraying. Temporary fencing would be cheaper to buy than hire. Hiring temporary fencing for, say, 6 month's average time would be \$725 per dwelling or \$21,750 for all 30 dwellings. PVA glue spraying is estimated at \$300 materials plus \$500 labour per dwelling – a total of \$24,000. Total cost of initial works is estimated at \$45,750.

Inspections

The initial audit was undertaken using existing staff resources, with Mr Dane Graham, who is accredited for dealing with asbestos undertaking those inspections. Mr Graham has, however, recently ceased employment with Council.

Further inspections will require engagement of an appropriately qualified inspector, who will also need to become an authorised officer of the Council. This cost is estimated at \$1200.00 for the conduct of an asbestos review including testing for any airborne fibres. An inspector can be procured locally, which means there would be minimal cost savings associated with multiple inspections.

Structural assessment is needed whenever Council is utilising provisions of the *Environmental Planning and Assessment Act* to demolish dwellings. This is needed so that there is objective evidence of an unsound dwelling that poses a hazard. These cost approximately \$1200.00 each, although bulk procurement would reduce costs as an engineer would be required to travel from a nearby town.

Notices and Orders

The first financial impact is the issuing of the required notices and orders. There is scope within the allotted budget to do this. Because Council would be "locked in" to carrying out the terms of the order, if not complied with by a landholder, there needs to be confidence that resources are in place to carry out the actual demolitions. Because of the volume of orders involved, Council would put this work out to procurement amongst local legal practitioners to ensure it is done in a timely fashion.

Demolitions

Council has two options for demolition which have different financial impacts.

Option 1: Demolition by contractor

Council has undertaken an estimate of possible costs. A second estimate has been requested, however at the time of preparation of this report, this had not been received. Typical costs for a "bulk" demolition process are estimated at \$35,000 per dwelling, noting that Council has budgeted to absorb disposal charges as a community service obligation. This compares with individual dwelling costs of between \$40,000 to \$60,000 inclusive of disposal costs. It is noted that disposal costs vary widely, depending on whether the dwelling is dismantled to its individual components and sorted, or whether it is disposed of as unsorted waste or asbestos

contaminated waste. The total cost of \$1,051,400 compares to the last estimated cost obtained by Council of \$1,400,000 for contractor removal.

Option 2: Demolition by contractor offset by Council staff

Costings for this option have changed from the estimates prepared for the budget for the following reasons:

- Council no longer employs an accredited asbestos assessor and this work must now be procured, at an estimated cost of \$1200.00 per dwelling, or \$36,000.
- Structural assessment of each damaged dwelling is now recommended to limit Council's legal liability for entry on to land under the *Environmental Planning and Assessment Act*, and the issuing of a demolition order. This work must now be procured, at an estimated cost of \$1200.00 per dwelling, or \$36,000.
- Quotes from StateCover, Council's insurer, have indicated very high worker's compensation insurance costs with initial quotes for staff working full-time with asbestos as being as high as \$60,000 per worker per annum.

Costs are summarised as follows:

Standing costs (project):

- Staff costs at \$70,000 per year for three full-time equivalent staff for one year (156 working days required) - \$210,000
- Staff training - Class A removal and Australian Standard 2601 - (assumes dedicated work team rather than utilising all waste staff) - \$3,000 per staff member, total say \$9,000.
- Staff insurance \$180,000
- PPE etc \$15,000
- This translates to an average cost per dwelling of \$13,800

Per dwelling costs:

- Asbestos and Structural audits - \$2,400
- Friable asbestos supervisor - \$10,000
- Plant costs - \$2,000
- This totals \$14,400 per dwelling

Total average cost per dwelling: \$28,200

This compares with the \$35,000 cost per dwelling for bulk removal by contractors, and translates to an overall cost (excluding community service obligation payment which is unchanged) of \$846,000. This may be reduced if Council is able to engage a friable asbestos supervisor (currently costed at \$300,000) on a one-year contract. Typical wages including on-costs would be \$146,250. This would bring the overall price down to \$699,750 or \$23,323 per dwelling.

The total increase in project cost, if Council decides to proceed, is therefore estimated at:

- \$146,250 – Supervisor costs
- \$180,000 – Insurance costs
- \$72,000 – Audits
- \$45,750 – Initial site works
- **\$444,000 – Additional Project Costs**

Cost offsets and potential reductions

Owner payments

It must be remembered that the responsibility for asbestos removal and site clean-ups rests with the owner, not Council. Council only becomes involved in the actual work if the owners do not fulfil their obligations. Costs attributable to owners include:

- Lab testing to confirm or otherwise the presence of asbestos
- Temporary fencing and PVA spraying
- Clearance of site using appropriately licensed contractors.

Owners are also liable for Council's costs if they do not undertake the work specified in the Orders. Council may legally pursue owners for these costs.

Detailed inspections

Detailed inspections, including utilising Council's asbestos testing machine, would give a more precise idea of where there is actually asbestos present. If this reduces the number of asbestos containing dwellings this will result in significant savings. Estimated savings per dwelling are \$6875 per dwelling meaning a typical demolition would be \$16,448 per dwelling as compared to \$23,323. At this stage without such testing the overall saving is difficult to quantify and may range from minimal to a significant proportion of dwellings.

Selective removal

Depending on the amount of asbestos and the overall condition of the dwelling it may be feasible to selectively remove asbestos prior to conventional demolition occurring. This may save in the order of \$3,000 per dwelling.

Conclusions and overall recommendations

Due to changes in project scope, the overall project may now cost up to \$444,000 more than anticipated. Council does, however, have an obligation to protect public health and safety. This means that Council, at the very minimum, needs to test each burned out dwelling for asbestos, and also undertake air quality testing. If levels are above background levels then PVA glue stabilisation and temporary fencing is recommended while the Orders process takes place. Depending on the outcomes that occur from the Order process, Council would have a clear understanding of the likely costs to be incurred if Orders are not complied with.

It is recommended that Council:

1. Immediately approach social housing providers to voluntarily seek Orders on all burned out dwellings within their control. If such Orders are not sought, that Council pursue all reasonable means to require demolitions by those agencies.
2. Undertake, using staff resources, a more detailed inspection of all burned out dwellings utilising Council's asbestos tester as well as undertake a preliminary review regarding potential structural issues.
3. Where asbestos is indicated to be present, and where it appears that it may be fire-damaged, engage a local consultant to undertake air quality testing.
4. If air quality testing reveals levels above ambient levels, immediately move to either clean-up or demolition Orders (if necessary commissioning a structural review) and press owners to hire temporary fencing and undertake PVA glue application using a recognised contractor.
5. Should fencing and PVA spraying not be committed to within 14 days of Council identifying a public risk, that Council undertake these works itself, and bill the owner.
6. Monitor the rate at which private owners undertake demolition with a monthly update report to be brought back to Council including budget estimates of likely Council liabilities if owners do not undertake the work.

7. Based on revised estimates of work required to be done by Council, undertake demolition as per Option 2 while identifying any project cost savings that might be available.
8. Seek costs from owners, in accordance with Council's normal policies and practices.

STATUTORY AND POLICY IMPLICATIONS

Council's actions are guided by Council's adopted Asbestos Code, that addressed Council WHS obligations as well as identifying owner and Council obligations and responsibilities.

Relevant Acts are:

- *NSW Local Government Act, 1993* and associated regulations
- *NSW Protection of the Environment Operations Act, 1997* and associated regulations
- *NSW Environmental Planning and Assessment Act, 1979* and associated regulations.

RISK IMPLICATIONS

Council's Risk Management Officer has expressed significant concerns regarding risks to Council staff if progressing the self-demolition process. This risk is reflected in the worker insurance premiums.

There are also significant risks to Council, both reputational and financial if Council does not act on the burned out dwelling issue.

The following actions are identified to assist to mitigate that risk:

- Obtain appropriate insurance cover, and comply with all requirements of that cover
- Ensure that all engaged staff and contractors have the appropriate qualifications, together with recent and good quality training
- Provide regular update training to all relevant Council staff

ASSET MANAGEMENT IMPLICATIONS

No asset management implications have been identified.

PREVIOUS COUNCIL DECISIONS

Council adopted a project to undertake removal of burned out dwellings as part of its adoption of the 2019-2020 budget.