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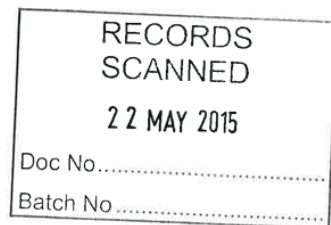
## REMEDIATION ACTION PLAN

883-891 PIMLICO ROAD, WARDELL

Submission to Ballina Shire Council

For:  
Mrs Verna Wall

May 2015



Engineers | Planners | Surveyors | Environmental | Project Management

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8.3 Entry onto Private Property for the Purposes of Clean Up Action.DOC

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### 1 Background

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On 10<sup>th</sup> December 2013 Council officers Rod Willis, Wes Johnson, Steve Rendall and Clarissa Huegill met on site with Verna Wall (property owner), Bruce Woolf (Mrs Wall's legal representative) and Chris Mulder (APP) to discuss the long running issue of building material imported onto the subject property at Lot 2 DP 578543, 883-891 Pimlico Road, Wardell.

At this meeting it was decided Mrs Wall would prepare and submit to Council a Remediation Management Plan (RMP) to be put in place as soon as possible.

To confirm what an RMP acceptable to Council must contain, it was decided that a pre-plan submission be made to Council. This submission was made in the form of the APP report;

*Remediation Management Plan, January 2014.*

That report should have been titled Remediation Action Plan to comply with Council's Contaminated Land Policy. The procedure to be followed is;

- The Remediation Action Plan (RAP) sets out how the Rehabilitation Management Plan (RMP) will be prepared and what it must document
- On approval of the RAP by Ballina SC the RMP will be prepared and submitted to Ballina SC
- On approval of RMP Ballina SC will instruct that the works proceed in compliance with the RMP.

Council considered the proposed action plan unacceptable and on 17<sup>th</sup> February 2015 invited Mrs Wall to address the unacceptable issues.

This report has been amended to address Council's concerns and detail how they have been addressed.

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### 2 Issues of Concern to Council

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The blue text below are the queries raised in Council's letter of 17<sup>th</sup> February 2015.

- 2.1 All land contamination assessment, reporting, remediation and validation must be in accordance with 'SEPP 55 Remediation of Land', 'Contaminated Land Management Act' and Council's policy 'Management of Contaminated Land'

Agreed.

In order to conform with the naming conventions in Council's policy this response to Ballina SC document has been renamed as a Remediation Action Plan (RAP).

- 2.2 A quantity surveyor is to be engaged to determine the quantities of waste to be recycled on site that are not contaminated and are suitable for reuse and the quantities of waste to be transported off site and disposed of at an approved landfill. This report is to be submitted to and approved by Council prior to works commencing on site;

As discussed with Stephen Rendall a quantity surveyor is not the appropriate professional for this purpose. They are not trained to assess and classify waste and contaminated materials, the stockpiles do not have easily measured dimensions for quantity estimation, and the stockpiles are not necessarily homogeneous throughout.

Therefore a land surveyor will be used to measure the stockpile volumes and an environmental engineer for identification, assessment and classification of the materials in each stockpile. Quantities estimated for disposal and reuse will be based on what appears on the surface of the stockpiles and will be reported to Council prior to the works commencing. Due to the stockpiles non-homogeneous composition final quantities may vary but will be documented as part of the works management procedures.

- 2.3 All receipts of waste material disposed to an approved landfill are to be referenced to the quantity surveyor's estimates and are to be submitted to Council within seven days of disposal;

Agreed.

- 2.4 All high erosion liable areas in the drainage works and areas disturbed during the remediation would need to be turfed and maintained until established;

Turf is unlikely to be the most appropriate means of stabilising high erosion liable areas, and would not be appropriate over the bulk of the disturbed areas.

Most if not all of the high erosion liable areas will be armoured (areas will be identified in RMP) and any not armoured will be stabilised in accordance with regulatory standards according to the soil type, slope, runoff/runoff characteristics etc. The treatment over the rest of the disturbed areas will be determined by the same means but will be

different because the slopes will be much flatter.  
The RMP will set out the standards and protocols for determining the stabilisation requirements in accordance with regulatory and industry standards.

- 2.5 Following removal of the stockpiles the land area subject to the stockpiles of waste material is to be tested for land contamination. A Contamination Report outlining the soil testing undertaken, the conclusions and, if required, a remediation plan is to be submitted to and approved by Council;

Agreed.

- 2.6 Clause 3.2 – Proposed Works;

- 2.6(a) A formal definition of what is meant by "founding material" would need to be determined;

This is unclear in part because of a typographic error. Founding material referred to the foundation treatment. The statement has been amended to now read.

"The armouring will be by dry stone wall construction. The foundation will be provided by larger blocks placed in an excavated trench of sufficient depth to protect against scouring or piping at the toe of the wall. The trench depth shall not exceed 1m to avoid any contact with acid sulphate soils."

- 2.6(b) The hydraulic equivalence should include the culvert under Pimlico Rd and drainage on the eastern side of Pimlico Rd;

Agreed.

- 2.6(c) Clarification of what is meant by "the drainage line shall and crossing shall be rebuilt to the required hydraulic capacity";

Inside the property, immediately downstream of the Pimlico Rd culvert there is a vehicle track over a pipe laid in the flow path of water flowing from the culvert to the armoured channel. The pipe is smaller than the culvert so the track is overtopped during medium and high flows. The pipe and track must be rebuilt to ensure that flow, both piped and surface, is directed to the armoured channel.

- 2.7 There would need to be an agreement reached as to the total extent of the eroded area within the subject premises that is to be treated.

The RMP will have an initial survey, assessment and reporting to Council stage prior to work commencing. This will identify the areas to be remediated, the erosion areas to be armoured, the area of disturbance and the types and quantities of materials involved (as discussed in Section 2.2). All of these would be reported to Council for approval prior to the remediation works commencing.

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3 Objectives

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**The objectives of the project are to:**

1. Rehabilitate the area containing the waste material as quickly as possible;
2. Maximise beneficial reuse of the material and minimise the volume of material going to landfill;
3. Stabilise the bank that is being eroded by stormwater runoff from Pimlico Road; and,
4. Reduce the velocity of run-off from Pimlico Road drainage onto the flood plain.

These objectives must be achieved to the satisfaction of Council and other stakeholders (if any).

**The objective of this submission is to:**

Document the matters to be addressed and the investigations and approvals required for inclusion in a Rehabilitation Management Plan that will satisfy Council requirements.

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4 Specific Project Requirements

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The matters to be documented for investigation which may require controls to be identified within the RMP include:

4.1 Nature of Material

Prior to any decisions being made in regard to the use or disposal of the material to be relocated it will be necessary to assess and classify the material. The material will be inspected by an Environmental Engineer, and an assessment prepared complying with 'SEPP 55 Remediation of Land', 'Contaminated Land Management Act' and Council's policy 'Management of Contaminated Land', and the Protection of the Environment Operations (Waste) Regulation 2005 – General Exemption Under Part 6, Clause 51 and 51A (Recovered Aggregate Exemption 2010).

The Recovered Aggregate Exemption 2010 will be applied to material that meets its requirements for reuse for the purpose of scour protection and fill.

Material to be disposed of off site will be provided with waste classification certificates as required.

Where possible waste materials will be beneficially recycled.

### 4.2 Survey of Site

A land survey of the site will be undertaken to quantify and identify;

- Volumes of stockpiles for removal
- Erosion prone areas to be armoured
- Extent of area to be rip-rapped

### 4.3 Submission to Council and approval to proceed with works

The results of 3.1 and 3.2 would be submitted to Council for approval to proceed. The submission will;

- Identify, classify and quantify the material to be reused
- Identify, classify and quantify the material to be removed from site
- Identify the areas to be rock armoured
- Identify areas requiring rip-rap
- Identify the limits of work

### 4.4 Proposed Works

The works will involve;

- Erosion and sediment controls shall be installed on site.
- Tested and approved material shall be used to armour the exposed faces of the erosion escarpment. The armouring will be by dry stone wall construction. The foundation will be provided by larger blocks placed in an excavated trench of sufficient depth to protect against scouring or piping at the toe of the wall. The trench depth shall not exceed 1m to avoid any contact with acid sulphate soils. Details to be provided in RMP.
- Using approved material to armour and provide energy dissipation in the channel between the proposed armouring and where it fans onto the flood plain. This will be rip-rap type armouring. Details to be provided in RMP.
- Using approved material to reduce the channel depth and provide energy dissipation in the existing drainage channel upstream of the proposed armouring. This will be rip-rap type armouring. Hydraulic equivalence with the flows coming off and under Pimlico Rd shall be maintained. Details to be provided in RMP.
- All approved waste material shall be beneficially utilised for filling or armouring.
- The piped vehicle crossing shall be rebuilt to the required hydraulic capacity.



### 8.3 Entry onto Private Property for the Purposes of Clean Up Action.DOC

- Waste material not meeting beneficial reuse requirements shall be removed from site and recycled or if not possible disposed of to landfill. Documentation of disposal to approved site shall be provided.
- All areas disturbed during remediation shall be stabilised to prevent erosion in a manner appropriate to the site specifics as per the Blue Book requirements.
- The RMP will document the amounts of material able to be beneficially re-used on site and/or disposal requirements.

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**5 Management of Works**

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The RMP will include a Construction Environmental Management Plan (CEMP) for the project. Inspection and Test Plans (ITPs) will be developed and to ensure adequate supervision and compliance with the objectives for the works.

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**6 Timeframes**

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<b>Activity</b>	<b>Timing</b>
<b>Submission of RAP Proposal to Council staff</b>	21/05/2015
<b>RAP Proposal submitted to Council meeting</b>	
Council accepts, or amends and accepts the RAP	
<b>Preparation of RMP</b> On acceptance of proposal by Council preparation of the RMP commences. Within 7 weeks of acceptance the RMP will be submitted to relevant regulatory authorities (if any) for their approvals.	7 weeks
<b>Approval by external authorities (If any)</b> Should they be required approvals will be obtained from other authorities Timing beyond this point is based on an assumed approval time by regulatory authorities other than Council of three weeks*.	*3 weeks
<b>RMP submitted to Council</b> The completed RMP, with regulatory approvals (if any), issued to Council.	ASAP
<b>RMP submitted to Council meeting</b>	
Council issue an order for the works to proceed as detailed in the RMP	
<b>Rehabilitation Complete 6 weeks from order</b>	6 weeks

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7 **Conclusion**

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The adoption of the proposed remediation management plan (RMP) as defined by this remediation action plan (RAP) will ensure that a cost effective and regulatory compliant solution is applied to the remediation of waste material which has been historically disposed of at 883-891 Pimlico Road, Wardell, as per the project objectives.

The objectives of this plan are to:

1. Rehabilitate the area containing the waste material as quickly as possible;
2. Maximise beneficial reuse of the material and minimise the volume of material going to landfill;
3. Stabilise the bank that is being eroded by stormwater runoff from Pimlico Road; and,
4. Reduce the velocity of run-off from the Pimlico Road drainage onto the flood plain.

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### 8.2 Legal Proceedings - Entry onto Private Property to Remove Waste

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**Delivery Program** Development Services

**Objective** To obtain Council's position and endorsement for ongoing actions to have waste removed.

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#### **Background**

Mrs Verna Wall has come to the notice of Council on previous occasions for various environmental issues. This matter relates to the importation of waste building materials from the demolition of the Rous Hotel and depositing those materials at premises known as Lot 2, DP 578543, being Nos 883-891 Pimlico Road, Wardell ("the subject premises").

Council has served formal Notices and Orders on Mrs Wall to remove these materials and when compliance was not forthcoming, Council adopted the following resolution:

#### **Legal Action – Pimlico Road, Pimlico**

*That Council having given due consideration to all the facts outlined in the report, approves the following actions:*

1. *Option 2 (Declaration of Potential Contaminated Land) is implemented as a matter of urgency; AND*
2. *Option 5 (Carrying out of works) is endorsed to enter onto the subject premises and the carrying out of works to give effect to the Orders as served.*

Recommendation one has been implemented and this report deals with the requirements for recommendation two.

#### **Key Issues**

- Ongoing non-compliance with formal Notices as served by Council
- Evidence of commission of similar environmental offences being committed over an extended period of time by the owner / occupant
- Deterrent for ongoing offences being committed by owner / occupant
- General deterrent to the local community and residents of the Ballina Shire
- Ongoing delay in completing works in line with Council resolution.

#### **Information**

Staff have been attempting to carry out the resolution to enter onto the subject premises in line with the Council resolution to remove the waste materials and deposit them in a lawful waste transfer facility.

Council has attempted, on two separate occasions, to enter onto the property to undertake clean up works and the works have not proceeded due to either weather conditions or the health of Mrs Wall. In January 2014, Council again attempted for the third time to gain access to the property to undertake the clean up works.

## 8.3 Entry onto Private Property for the Purposes of Clean Up Action.DOC

### 8.2 Legal Proceedings - Entry onto Private Property to Remove Waste

Prior to the works commencing, Council received correspondence from Mrs Wall's new legal representative, who is based in Sydney, to stop the clean up works. This correspondence also included a proposal for the use of some of the material within the subject premises for erosion stabilisation works and that the remaining material was to be removed by contractors employed by Mrs Wall.

Council sought legal advice on these matters and, while Council could still proceed to carry out the works, our legal advice recommended that Council enter into negotiations with Mrs Wall's legal representatives to minimise the clean up costs to Council, which are currently in the vicinity of \$16,500, before any clean up works have been undertaken.

These negotiations have resulted in a written proposal being received from Ardill Payne for the use of some materials within the subject property as erosion protection works and that any unused materials would be lawfully disposed of at an approved waste facility. A copy of this proposal is attached.

#### **Sustainability Considerations**

- **Environment**

The non compliances identified have had an impact on the environment, given the proximity of the activities at the subject premises to cane drains and the Richmond River. Waste dumping within the Ballina Shire, if left unchecked will have a major impact on the local environment.

- **Social**

Not Applicable

- **Economic**

Not applicable

#### **Legal / Resource / Financial Implications**

Legal proceedings generally are costly and to minimise costs and to achieve an outcome to give effect to the Orders as served, Council has a number of options as outlined within this report.

#### **Consultation**

This matter has been referred to Council's solicitor, who is providing ongoing advice in relation to this matter.

#### **Options**

Council has a number of options as to what form of action, if any, is contemplated for removal of the unauthorised waste within the subject premises.

These options are more fully outlined in the *Ballina Shire Council Enforcement Policy*.

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### 8.2 Legal Proceedings - Entry onto Private Property to Remove Waste

Council also has to give due consideration to the requirement for a general deterrent to other residents, both within the immediate vicinity and within the Ballina Shire as a whole, that unauthorised works and the depositing of waste building materials on land within the Ballina Shire is not acceptable.

Further the visible nature of the waste materials that have been dumped adjacent to a roadway impacts on adjoining neighbours, to the extent that complaints have been received from those neighbours.

Having given due consideration to the considerations for legal action as outlined in Part 3 of the Enforcement Policy and the need for a general deterrent as opposed to the impact on the private activities of a resident and ratepayer, the clean up action is justifiable against Verna Kathleen Wall as the current occupant of the subject premises.

Council currently has two options available in relation to this unauthorised land use as identified within the Enforcement Policy. These options are:

1. Agree to pursue the proposal as submitted by Ardill Payne for the use of some of the waste materials within the subject premises and the disposal of all surplus to an approved waste facility;
2. Reject the proposal and resolve to continue with efforts to enter onto the subject premises to undertake the clean up works.

#### Option One

Currently, there is a legal impediment to this option. Council has issued a formal Order under the provisions of section 121B, *Environmental Planning and Assessment Act 1979* (NSW) requiring that the material is to be removed from the subject premises. Any action taken to utilise material within the site for erosion protection works would be in contravention to the Order as served and would leave any person carrying out those works to possible legal action.

It is open to Council however to either:

- (a) Amend the Order as served permitting these works to be undertaken; or
- (b) Revoke the Order as served and serve a substitute Order requiring works be undertaken in line with an approved Plan and with restricted time frames to ensure that the works are undertaken within a specified time frame.

Should this option be favoured, there would need to be amendments to the attached proposal to bring it into line with Council's requirements, including:

1. All land contamination assessment, reporting, remediation and validation must be in accordance with *SEPP 55 'Remediation of Land, Contaminated Land Management Act and Council's Policy 'Management of Contaminated Land'*;
2. A quantity surveyor is to be engaged to determine the quantities of waste to be recycled on site that are not contaminated and are suitable for reuse and the quantities of waste to be transported off site and disposed of at an approved landfill. This report is to be submitted to and approved by Council prior to works commencing on site;

## 8.3 Entry onto Private Property for the Purposes of Clean Up Action.DOC

### 8.2 Legal Proceedings - Entry onto Private Property to Remove Waste

3. All receipts of waste material disposed to an approved landfill are to be referenced to the quantity surveyor's estimates and are to be submitted to Council within seven days of disposal;
4. All high erosion liable areas in the drainage works and areas disturbed during the remediation would need to be turfed and maintained until established;
5. Following removal of the stockpiles the land area subject to the stockpiles of waste material is to be tested for land contamination. A Contamination Report outlining the soil testing undertaken, the conclusions and, if required, a remediation plan is to be submitted to and approved by Council;
6. *Clause 3.2 – Proposed Works*
  - (a) A formal definition of what is meant by "foundry material" would need to be determined;
  - (b) The hydraulic equivalence should include the culvert under Pimlico Road and drainage on the eastern side of Pimlico Road;
  - (c) Clarification of what is meant in dot point 7 of this clause (at the bottom of page 4) where it is stated that "*The Drainage Line shall and crossing shall be rebuilt to the required hydraulic capacity*"; and
7. There would need to be an agreement reached as to the total extent of the eroded area within the subject premises that is to be treated.

If Council were to prefer this option, Council staff would commence negotiations with Mrs Wall and her solicitor to have this proposal modified to achieve Council's objectives prior to the revoking or amendment of the current Order as served.

#### Option 2:

It is open to Council to reject this submission and to require that this waste material is lawfully disposed of at an approved waste transfer facility in line with Council's Order.

When this matter first came to the attention of Council in 2008, Mrs Wall was previously given the opportunity to complete the works she now seeks to undertake. Council served Mrs Wall with a Notice of Proposed Order and was required to carry out scour protection works and rectification works involving:

- Appropriate material being placed on both sides of the gully for the extent of the area that has been stripped of grass (maximum distance of 20 metres east beyond the current works);
- Removal of the loose bricks on top of the wall at the top end of the gully to prevent them from falling into the gully;
- Reshaping the material placed just inside the fence to form a dish drain over the existing pipe such that it would allow excess flow to spill over the pipe and flow overland to the north; and

## 8.3 Entry onto Private Property for the Purposes of Clean Up Action.DOC

### 8.2 Legal Proceedings - Entry onto Private Property to Remove Waste

- Laying an additional 375mm diameter pipe adjacent to the existing pipe and to clear the outlet of the existing pipe. An attempt has been made to lay an additional pipe but the work is not satisfactory. The pipe has not been laid deep enough and the pipes have not been laid in a satisfactory manner.
- The removal of all excess demolition material from the property and transportation to an approved waste facility. Receipts are to be obtained and produced to Council confirming where the material has been transported to and deposited.

On 18 June 2008, Mrs Wall wrote to Council requesting additional time to comply with the Notice of Proposed Order dated 13 June 2008, citing a need to employ a contractor to carry out the works as required by the Proposed Order. On 26 June 2008, Council agreed to this request for additional time to comply with the terms of the Proposed Order.

On 18 July 2008, Mrs Wall again contacted Council through her (then) employed solicitor seeking further time to comply as she claimed there was a problem with truck access to the property to remove the waste building materials.

It was subsequently ascertained in June 2009, some 11 months later, Mrs Wall had failed to undertake the works as provided for by the Notice of Proposed Order. It was at this time that these present proceedings were commenced to have all waste material removed from the subject premises.

On balance option two is the preferred approach as Council has attempted on many occasions to have Mrs Wall address these concerns without success. Therefore the preference is to continue with Council's existing Order.

#### **RECOMMENDATION**

That based on the contents of this report Council endorses option two to continue with action to require the removal of the waste materials from 883-891 Pimlico Road, Pimlico, in line with Council's existing Order.

#### **Attachment(s)**

1. Letter from Woolf Associates re remediation of Verna Wall's Property 883-891 Pimlico Road, Pimlico. PN: 260 and 9928