



## **DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT**

3<sup>rd</sup> February 2009

<b>DSDS9</b>	<b>DERELICT OR ABANDONED BUILDINGS</b>
<b>FILE: 1</b>	<b>DJW {Folio No. *}</b>

### **SUMMARY:**

Reporting on the number of derelict or abandoned buildings on the major roads within the Kempsey Shire.

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### **DESCRIPTION:**

This report should be read in conjunction with Confidential Report DSDS1.

### **Background**

At its meeting of 16<sup>th</sup> December, 2008, Council resolved:-

1. *That the Director Sustainable Development Services Investigate and advise this Council on the number of derelict or abandoned buildings on the major roads within the Shire.*
2. *That the Director Sustainable Development Services advise what steps have been taken to have these buildings either demolished or refurbished.*
3. *That the Director Sustainable Development Services advise what fines have been imposed on the owners of said buildings*
4. *That a draft policy be prepared as part of this report.*

In 1993 the NSW State Government introduced reforms to the Local Government Act 1993 (LG Act) and at a similar time in the Environmental Planning and Assessment Act 1979 (EP&A Act) relating to the control of derelict buildings.

The purpose of the reforms was to provide a statutory framework to ensure natural justice is afforded to those owners in breach of the Act. An order can not be issued (unless it is an emergency order) without first requesting of the owner to advise why the order should not be issued.

Issuing of orders can be very subjective. To one person a building could be considered untidy but to another it could be considered derelict.

There are no provisions for infringements for derelict and abandoned buildings where repairs are required. However, should the building be associated with a development application where the work is not in

accordance with the approved plans or the applicant has not complied with the conditions of consent then infringements may be issued. Whilst this may apply in the case of newer buildings, this becomes increasingly problematic in respect to older buildings.

Council can only issue orders in circumstances where the building is either a risk to the health and safety of occupants or the public or the state of the building is likely to prejudice the neighbourhood.

Council can issue Infringements after Orders for the following: -

- Not cease using premises for a purpose specified in an order;
- Fail to demolish or remove a building contrary to order;
- Failure to cease activity threatening life / public health / public safety;
- Fail to cease the use of a building contrary to order;
- Fail to cease the use of premises or to evacuate premises;
- Not comply with order to leave/not enter premises;
- Fail to comply with a development consent contrary to order.

### **Procedures for Issuing of Orders**

In accordance with both the EP&A Act and LG Act, Councils are required to observe certain procedures before giving orders. In particular, the following is required to be carried out prior to issuing an order namely:

- Give notice to the persons to whom the order is proposed to be given of its intention to give the order. The terms of the proposed order and the period proposed to be specified as the period within which the order is to be complied with.
- Indicate that the person to whom the order is proposed to be given may make representations to the council as to why the order should not be given or as to the terms of or period for compliance with the order.
- Indicate that the representations are to be made to council on or before a specified date being, in either case, a date that is reasonable in the circumstances of the case.

### **Need for a Derelict Building Policy**

Prior to proceeding to issuing orders relating to derelict buildings, Council must establish that the building is "so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood". Council has expressed its concerns relating to several buildings within the Shire that are considered to be dilapidated and a policy is required to provide direction and procedures to officers issuing orders.

In some circumstances Councillors should be aware that this may cause undue hardship. Draft criteria under each order able to be issued under the LG Act and EP&A Act have been suggested for Council's consideration and included in a draft Orders Policy. [\(Appendix V – Page G302, Part 2 – Page G312, Part 3 – Page G322, Part 4 – Page G332, Part 5 – Page G342, Part 6 – Page G352, Part 7 – Page G362\)](#)

If Council is of the mind to adopt the Orders Policy this will clarify and standardise the criteria where orders are issued for staff and the public.

**Resource Implications**

The procedure set out in Section 121H – 121M to bring a satisfactory conclusion to a breach of the LG Act and EP&A Act can take a minimum of 4 months and more complex matters well over twelve months, as the person affected by the order may exercise their rights pursuant to Section 121ZK of the Act and have the matter determined by the Land and Environment Court.

Also, in the event that a failure by Council to properly consider submissions regarding particulars of work, the persons affected may appeal to the Land and Environment Court under Section 121ZM. The court may revoke the order and award costs against Council. Therefore it is paramount that each case is assessed strictly in accordance with the EP&A Act Section 121A to 121ZS and the Orders Policy.

**RECOMMENDATION IMPLICATIONS:**

- *Environmental*

*Protect the environment with appropriate orders.*

- *Social*

*To make the Council's policies and requirements for Orders readily accessible and understandable to the Public.*

- *Economic (Financial)*

*Establishing a system of community participation which can effectively resolve disputes and conflicts as they arise reducing time and money.*

- *Policy or Statutory*

*To apply the principles of natural justice in the consideration of representation made by affected persons.*

**RECOMMENDATION:**

**That the draft Orders Policy Local Government Act and Environmental Planning & Assessment Act referred to in this report be paced on public exhibition for a period of at least twenty eight (28) days.**

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**R B Pitt**  
**DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES**