

Planning Services

Emergency Order

11 April 2013

[REDACTED]
33 Macpherson Street
Woodenbong NSW 2476



1. To cease using premises for a purpose specified in the order.
2. To demolish or remove a building.

History

- 22 November 2012 - Inspection of the subject premises by Council Officer Andrew Clark.
- 12 December 2012- Order issued to [REDACTED] under s91 of the *Protection of Environmental Operations Act 1997* to clean up the site.
- 9 April 2013- Inspection of the subject premises by Council Officers Darron Ward and David Bevan with Senior Constable Graham Tye from NSW Police. The premises were currently being occupied.

TAKE NOTICE that Kyogle Council, pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* (as amended) HEREBY ORDERS YOU, [REDACTED] to undertake the following, in accordance with the provisions of Section 121B of the *Environmental Planning & Assessment Act 1979*.

1. To cease using the premises at 33 Macpherson Street, Woodenbong NSW 2476 described as Lot 6 Section 8 of Deposited Plan 759111 Parish of Donaldson for the purposes of a dwelling within three (3) days of the date of this Order.
2. Demolish and remove all matter comprising the building by 6 May 2013. All waste is to be lawfully disposed of at an approved waste disposal facility capable of receiving such waste.
3. Furnish Council with a report detailing compliance with the terms of this order within one (1) month of the issue of this Order.

Reason for giving Order

1. Premises are being used for a purpose that is prohibited.
2. Building is or is likely to become a danger to the public.
3. Building is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood.

RIGHT OF APPEAL AGAINST THIS ORDER

Section 121ZK of the Act provides that the person given notice of an order or any other person affected by the order may appeal to the Land and Environment Court against the order or a specified part of the order. The appeal must be made within 28 days after the service of the order.

ENFORCEMENT AND PENALTIES

- It is an offence not to comply with this order.
- Section 125(1) of the Act provides that a person who fails to comply with an Order or direction given to the person in the terms of an Order is guilty of an offence against the Act.
- Section 126(1) of the Act provides that a person who is guilty of an offence against the Act shall be liable to a maximum penalty of not exceeding 10,000 penalty units (\$1.1 million) and a further daily penalty not exceeding 1,000 penalty units (\$110,000).
- If an Order is not complied with, Council may give effect to the Order and recover the costs of doing so from the person concerned.
- Section 123 of the Act provides that Council may bring proceedings in the Land and Environment Court, seeking an Order to remedy or restrain a breach of the Act.

FURTHER INFORMATION

If you require any further information in regard to any matter contained in this order, please contact Darron Ward of Council's Planning and Environmental Services Department on (02) 66320293.

Dated this 11th day of April, 2013

Lachlan Black
Acting Executive Manager Planning and Environment

Andrew Clark

December 12, 2012


33 Macpherson Street
Woodenbong NSW 2476

**DIRECTION TO TAKE CLEAN-UP ACTION
SECTION 91 PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997**

PREMISES: 33 Macpherson Street, Woodenbong NSW 2476
Lot 6 Section 8 of Deposited Plan 759111.

Background

An inspection of the subject premises by Council's Officer Andrew Clark on the day 22 November 2012, revealed that a pollution incident has occurred or is occurring as a result of the dwelling located at 33 Macpherson Street, Woodenbong being destroyed by fire.

Definitions -

***pollution incident** means an incident or set of circumstances during or as a consequence of which there is, has been or is likely to be a leak, spill or other escape of a substance, as a result of which pollution has occurred, is occurring or is likely to occur. It includes an incident or set of circumstances in which waste has been placed or disposed of on premises unlawfully, but it does not include an incident or set of circumstances involving only the emission of any noise or odour.*

***clean-up action**, in relation to a pollution incident, includes:*

- (a) action to prevent, minimise, remove, disperse, destroy or mitigate any pollution resulting or likely to result from the incident, and*
- (b) ascertaining the nature and extent of the pollution incident and of the actual or likely resulting pollution, and*
- (c) preparing and carrying out a remedial plan of action.*

It also includes (without limitation) action to remove or store waste that has been disposed of on land unlawfully.

Council has issued this direction to take clean-up action as you are the owner of the premises at which the pollution incident has occurred.

Direction to take Clean-Up Action

Kyogle Council directs you, [REDACTED] owner of the premise to take the following clean-up action:

- 1) Immediately – secure any loose materials on-site so they may not be blown / spread to adjoining premises.
- 2) Within 14 days Council must be furnished with a report from a suitably qualified person to ascertain whether there is bonded or friable asbestos present on the premise as a result of the dwelling being destroyed by fire.
- 3) Within 3 months all waste must be removed from the site to a waste facility capable of receiving such waste and the premise revegetated with suitable grasses consistent with the local amenity.

This notice is issued under Section 91 of the *Protection of the Environment Operations Act 1997*. It is an offence against the Act not to comply with this notice, unless you have a reasonable excuse for not complying.

Fees to Be Paid

You are required by law to pay a fee of \$466 for the administrative costs of issuing this notice.

However, Council has waived the administrative costs for the issuing of this Notice due to the unfortunate circumstance you have incurred.

INFORMATION ABOUT THIS NOTICE**Penalty for not Complying with this Clean-up Direction**

- A penalty notice may be issued for failure to comply and imposes a fine of \$750 for individuals and \$1,500 for corporations.
- The maximum penalty that a court may impose on a corporation for not complying is \$250,000, with a further \$120,000 for each day the offence continues. The maximum penalty that a court may impose on an individual for not complying is \$120,000, with a further \$60,000 for each day the offence continues.

What You May do if you are Not the Polluter

- If you comply with this clean-up notice but you are not the person who caused the pollution incident to which the notice relates, you have a right to go to court to recover your costs of complying with the notice from the person who caused the incident.

Other Costs

- The Protection of the Environment Act allows Kyogle Council to recover from you any reasonable costs and expenses it incurs in monitoring action taken under this notice, ensuring the notice is complied with, and associated matters. (If you are going to be required to pay these costs and expenses you will later be sent a separate notice about this.)

Should you have any further enquiries regarding this matter, please do not hesitate to contact Lachlan Black at Council's Administration Centre, 1 Stratheden Street, Kyogle, on telephone (02) 66 320216, between the hours of 8.30am and 4.00pm, Monday to Friday.

Yours faithfully

Lachlan Black
ACTING DIRECTOR PLANNING & ENVIRONMENTAL SERVICES