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| Ref Number | Date Issued | Officer/Dept | Rec'd by Secretariat | Reported to the Executive |
|--|-------------|----------------------------|----------------------|---------------------------|
| REG 101/06 | 10/11/06 | Mike Tichford/Regeneration | 14/11/06 | |
| Prior to processing this form it must be referenced by the Secretariat | | | | |

The Deputy Leader _____ Portfolio Holder

Date

Dear Councillor Ashbrook

REQUEST FOR AGREEMENT TO URGENT ACTION UNDER EXECUTIVE PROCEDURE RULES

I enclose two copies of the standard urgent action form and should be grateful for your agreement to action required urgently in the circumstances set out below. Please contact me if you require further information.

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| Portfolio: Tourism |
| Date of next Executive meeting: 21 November 2006 |
| Action proposed: |
| <ol style="list-style-type: none"> 1. Fund the safe removal of asbestos from the Askham Hall steam engine which belongs to Copeland's museum collection and is currently on storage/display at Haig Colliery Mining Museum. 2. Approve appointment of West Coast Thermals as the preferred and cheapest contractor. |
| Financial/Resource Implications: |
| <p>The removal of asbestos from a steam engine is a very specialised job. Two quotes have been obtained as follows –</p> <ul style="list-style-type: none"> • West Coast Thermals - £3,374 (excl. VAT) • Rhodar Ltd - £10,531 (excl. VAT) <p>Funds for this work are not available in The Beacon budget so it is intended to use Regeneration budget under spend carried forward from 2005/06. <i>Fully utilised & contingencies are required.</i></p> |
| Background information: |
| <p>Askham Hall Steam Engine was built in 1917 worked at various Whitehaven pits until 1971. It is an important part of the local heritage and has been part of the Copeland museum collection since 1975 when it was donated by the National Coal Board.</p> <p>Following the donation, the engine spent time on loan to Lakeside & Haverthwaite Railway.</p> <p>The engine was then placed on loan to Haig Colliery Mining Museum in 2002 with the hope that Haig Pit Restoration Group would undertake restoration work on the engine when time allowed. Time was never found to do this.</p> <p>In April 2006, during a site inspection at Haig, CBC Environmental Health Officer, Nick Crossland, raised concerns that the engine boiler had asbestos lining. He queried how Copeland BC as owner of the</p> |

engine were managing possible asbestos contamination in line with Asbestos legislation.

Free surveys with quotes were requested, firstly from West Coast Thermals and then from Rhodar Ltd. No other contractor for this work could be found.

Resulting survey (West Coast Thermals) states that

- The insulation to boiler contains asbestos, it is untreated and in poor condition. It is recommended that the asbestos insulation be removed.
- Pipework gaskets have been found to contain asbestos. Gaskets to be sealed to prevent deterioration of their condition and warning labels attached.
- There is asbestos insulation debris on top of the firebox which needs to be environmentally cleaned.

Options for simply encasing the engine, and sealing the asbestos within, were discounted by both companies in preference of removing the hazard completely.

Reason(s) for urgency:

Health & Safety risk to the public and Haig Colliery Mining Museum staff.

Haig are unhappy at having asbestos on site given their recent history.

Risk of poor publicity via media directed at Copeland Borough Council.

Comments of Chief Finance Officer:

No other funding available - contingencies will be required. Balance available £32,627

Signature: *S. C. Smith*

Comments of Chief Legal Officer:

Agreed

Signature: *M. J. C.*

Comments of other officers consulted:

Signature(s):

Comments of Overview and Scrutiny Chairman:

Agreed.

Signature: *Peter C. Kennedy*

Please indicate your views in the box below and return one copy to me as soon practicable.

Yours sincerely

N. Richmond

(Business Unit Manager/General Manager/Strategic Director)

I agree*~~disagree~~* with the action proposed

Comments: H.S.E requirement.

Signed: M.J. Ashbrook Date: 10 Nov 2006

Cllr (insert name) M.J. ASHBROOK

*Please delete as appropriate

Note 1.

A copy of the completed form should be kept on the project file and the original taken to Secretariat

Date taken to Secretariat: Initials

Note 2.

This form and action taken must be reported to the next meeting of the Executive.

Date reported to Executive: Initials



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|--|-------------|--------------|----------------------|---------------------------|
| 102/06 CL | 13/11/06 | ellayd | | |
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The Property Portfolio Holder

Date 14 November 2006

Dear Councillor Williams

REQUEST FOR AGREEMENT TO URGENT ACTION UNDER EXECUTIVE PROCEDURE RULES

I enclose two copies of the standard urgent action form and should be grateful for your agreement to action required urgently in the circumstances set out below. Please contact me if you require further information.

Portfolio: Property

Date of next Executive meeting: 21 November 2006

Action proposed: To appoint consultants to investigate and provide a remediation report on a further problem with stones and soil from cliff causing damage to persons and property at 2 Lonsdale House North Shore.

Financial/Resource Implications: The initial work is likely to cost up to a maximum of £5,000, it is likely to include abseiling to determine the condition of the cliff. The cost of remediation or protection will not be known until this work is completed.

Background information: the residents of 2, Lonsdale House advised the Council on or before 2 November that rocks had been falling from the cliff and hitting the rear wall of the property. An inspection was made on 2 November and whilst there was limited evidence of this claim the rear of the property is relatively close to the cliff and there is perceived to be a high risk of this occurring.

Consultation has Whilst Rylands -v- Fletcher will not apply due to the slippage being natural the main action of private nuisance will apply.

The main case on this is Leakey & c v National Trust for Places of Historic Interest or Natural Beauty 1980, a Court of Appeal decision. In this case a natural mound of soil, etc slipped onto two houses at the base of the mound/hill. It was held that:

"Under English law there was both in principle and on authority a general duty imposed on occupiers in relation to hazards occurring on their land whether the hazards were natural or man-made. A person on whose land a hazard naturally occurred, whether in the soil itself or in something on or growing on the land, and which encroached or threatened to encroach onto another's land thereby causing or threatening to cause damage was under a duty if he knew or ought to have known of the risk of encroachment to do what is reasonable in all the circumstances to prevent or minimise the risk of known or foreseeable damage or injury to the other person or his property and was liable in nuisance if he did not. Where substantial

circumstances to prevent or minimise the risk of known or foreseeable damage or injury to the other person or his property and was liable in nuisance if he did not. Where substantial expenditure was required to prevent or minimise the risk of damage, the occupier's financial resources assessed on a broad basis were a relevant factor in deciding what was reasonably required of him to discharge the duty and the neighbour's ability similarly assessed on a broad basis to protect himself from damage might also be a relevant factor to be taken into account depending on the circumstances. Because the duty was part of English law and because the defendant knew that the instability of their land was a hazard which threatened the plaintiff's property the duty applied to them".

Leakey case considered in various other cases and affirmed as good law. Referred to in Marcic v Thames Water Utilities Ltd 2003, a House of Lords case. Distinguished in that case due to the nuisance coming from a lack of sewers. Leakey referred to and not criticised. Accepted as law.

In conclusion:

1. We are liable;
2. You can take into account how much the works will cost;
3. The owners of the houses should cooperate 'neighbour's ability to protect himself from damage';
4. Putting the two together you might be able to get away with a fence to catch the stones provided it is safe, even if this means entry onto the adjacent houses'. Risk that a court could say that we have bags of money and say the Court's comments in Leakey were applying to a private poor householder and not a company or public authority.

Reason(s) for urgency:

Risk of damage to persons and property for which the Council is legally liable

Comments of Head of Business and Finance:

Funding to be made from contingencies. Current balance.
£37,627

Signature: S. C. [Signature]

Comments of Head of Legal and Democratic Services:

Agreed on basis there is liability

M. [Signature]

Signature:

Comments of other officers consulted:

Signature(s):

Comments of Overview and Scrutiny Chairman:

on information as to liability. Have the homeowners insured their insurers.

Signature: J. G. [Signature]

Please indicate your views in the box below and return one copy to me as soon practicable.

Yours sincerely *S. C. Donich.*

(Business Unit Manager/Chief Executive/Director)

I agree*/disagree* with the action proposed

Comments: *echo comments by others.*

Signed: *N. Williams*

Date: *24-11-06*

Clr (insert name)

N. WILLIAMS

*Please delete as appropriate

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