

CLIFF SLIPPAGE AT WILLIAM PITT, BRANSTY – LOCATION 1**EXECUTIVE MEMBER:** Cllr N Williams**LEAD OFFICER:** Mrs S Borwick**REPORT AUTHOR:** Mr C A Lloyd

Summary: This report advises Members of proposals to complete the urgent remedial works required to stabilise the cliff at Lonsdale House, and seeks authority to undertake the works and utilise funding.

Recommendation:	Executive is asked to approve the action proposed, at an estimated cost of £240,000, in the event that the full estimated costs are required. All subject to legal opinion as noted in 2.1.2.
------------------------	---

Impact on delivering the Corporate Plan: None

Impact on other statutory objectives (e.g. crime & disorder, LA21): Action by the Council part is to address a legal liability.

Financial and human resource implications: External consultants have been appointed to design a solution, obtain prices and supervise the works. An urgent Action has been completed for this Executive (£25,000), however up to a further £240,000 is likely to be required, Members are asked to approve funding from the retained receipt of £1.4m arising from the VAT sharing agreement from the Housing Stock Transfer, subject to the Budget report to Council being approved on 27th February.

Project & Risk Management: This is an unexpected occurrence requiring urgent remedial action. Current procedures used, including the Construction Design Management Regulations for safety aspects, and Urgent Action under Contract Standing Orders.

Key Decision Status

- **Financial:** None (over £75, but unforeseen and urgent)
 - **Ward:** None

Other Ward Implications: None

1. INTRODUCTION

- 1.1 This Report refers to action that needs to be undertaken on an urgent/emergency basis, due to the costs and risks for the Council it is presented to executive for formal consideration.
- 1.2 In November 2006 a letter was received from the resident at 2 Lonsdale House, advising of rocks falling from the cliff behind the house which were coming to rest against the rear wall.

- 1.3 A site inspection was undertaken to verify the residents claim and loose rocks were found to be present with indications that the report was correct.
- 1.4 An urgent action was completed on 13 December to enable investigatory work to be started at a cost of £24,000. This work was to erect a protective scaffold to the rear of the properties, to excavate a shallow trench adjacent to the cliff (to absorb impact of falling rocks and reduce the likelihood of them impacting towards the houses, and to enable a rope survey of the cliff, with some light scaling of loose small material, also allowing close examination of the rocks to determine their stability.
- 1.5 This work has now been completed and the consultant is providing a report detailing the further works required. In view of the urgency Executive is asked to consider this report based on verbal discussion of the forthcoming Consultant Report, which may be complete by the committee date.
- 1.6 During the current investigations it has also become apparent that there are further risks to the fields or grazing areas are also at risk from Rock falls, so consideration has also been given to remedial works to these areas.

2. DETAILS

2.1 Option 1 – is to do nothing;

- 2.1.1 This is considered to be unacceptable, following consultation with the Legal Services Manager the following establishes the council position:

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 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';

2.1.2 Because of the escalating cost of this work and in order to demonstrate that the Council has fully considered all risks and implications a legal opinion has been sought with a barrister to establish that a correct interpretation of case law has been made and that the current decision is appropriate.

2.2 Option 2 - Implement consultant proposals, as follows(See also Appendix A):

2.2.1 The ***Cliff to rear of Lonsdale House:*** this work falls into three areas

2.2.2 lower sections of the cliff are relatively intact and light scaling of these areas would be undertaken to remove any loose material.

2.2.3 The upper section of the cliff has been affected by weathering and this should be covered with protective netting to contain any loose rocks.

2.2.4 Within the upper section of the cliff there are a small number of large rocks, areas of loose material where it will be necessary to rock anchor or undertake controlled removal.

2.2.5 The trench at the bottom of the cliff will be extended along the full length of this area; it will be widened and trimmed.

2.2.6 These activities are designed to stabilise the cliff and largely reduce the risk of damage from falling rocks. The cost is estimated at £150,000 including fees.

2.3 *Cliff to the North of Lonsdale House:*

2.3.1 This is less problematic than the area behind the houses but will require the protective netting and there is one area of unstable rock at the top of the cliff where a section is coming away from the main structure. The design is not finalised here but provision for a further £50,000 should be made for this area.

2.4 *Cliff to the South of Lonsdale House:*

2.4.1 The cliff here is overtopped with fill which has become unstable. On health and safety grounds it is unsafe to scale and there is concern about the stability of using machinery above the area to drag back the material. The design is not finalised here but provision for a further £40,000 should be made for this area.

2.5 Summary

2.5.1 The total estimated costs therefore amount to £240,000.

2.6 Option 3 – relocate residents demolish properties maintain land.

2.6.1 This is considered to be unacceptable, for the reasons provided in Appendix B (Part 2)

3. PROCUREMENT

- 3.1 The previous cliff remedial works have been undertaken by Richie, a specialist contractor that won the work in competition. Due to the urgency of this work it is proposed that the Consultants negotiate with this contractor to undertake these further works.

4. CONCLUSIONS

- 4.1** That option 2 offers the only practical solution to address the problems with the cliff, albeit at a cost of approx. £240,000.

List of Appendices

None

Relevant documents:

Project file, Atkins reports, Atkins tender documents correspondence including with Cumbria Steelstock and solicitors. Photographs, consultant report.

List of Consultees:

Corporate Team
Health and Safety officer
Councillor N Williams