

Item 3

The City's Response to Contaminated Mulch

File No: X103307.002

Summary

On 10 January 2024 Transport for NSW issued a media release confirming that there had been asbestos contaminated mulch identified within the newly opened Rozelle Parklands. Following which, City staff contacted suppliers and contractors about the mulch used in the City's parks and street gardens and sought confirmation that it came from compliant sources. Following the publication of Greenlife Resource Recovery Facility as the alleged source of the contaminated mulch further enquiries were made with suppliers and contractors. Councillors were advised on 19 January 2024 with information held by City staff at the time, being that mulch used by our staff and contractors was not sourced from the supplier of interest.

On 8 February 2024, the NSW Environment Protection Authority (EPA) contacted City staff and indicated that they were intending to test five of the City's parks after discovering a link to Greenlife Resource Recovery Facility deep in the supply chain of one of our contractors. The City subsequently undertook proactive testing of those parks, with the agreement of the EPA. The first results were provided to the City late in the afternoon of 12 February 2024, confirming that asbestos had been found in three of the five parks tested.

Since that time it has become clear that a significant amount of asbestos contaminated mulch has been distributed to a large number of public and private locations across the state. The EPA has established a large taskforce to both assist in identifying and testing potentially impacted locations and to undertake a criminal investigation as to the source of the contaminated material.

The City is testing mulch at potentially impacted sites identified through the EPA's investigation. The City of Sydney continues to work with the EPA's investigation into supply chains to identify and test sites where we have been advised there is a risk of contaminated mulch having been used. At this time the City has completed the identification of sites that may have contaminated mulch. These sites are listed on our website.

The City is prioritising its efforts to where a risk has been identified. The City is guided by the continuing work of the EPA in determining this risk and should they advise the City that testing of further sites is required Council will be advised.

The purpose of this report is to provide an overview of the steps taken in response to the issue when it was initially identified, an update as to the current operational status in relation to the City's response to this issue and some information as to matters such as dealings with regulators and other external stakeholders, potential financial implications and other matters.

Recommendation

It is resolved that Council note the information contained in the subject report.

Attachments

Nil.

Background

1. On 10 January 2024 Transport for NSW issued a media release confirming that there had been asbestos contaminated mulch identified within the newly opened Rozelle Parklands. Following this, City staff contacted suppliers and contractors about the mulch used in the City's parks and street gardens and sought confirmation that it came from compliant sources
2. Following the publication of Greenlife Resource Recovery Facility as the alleged source of the contaminated mulch further enquiries were made by City staff with suppliers and contractors. Councillors were advised on 19 January 2024 with information held by City staff at the time, being that mulch used by our staff and contractors was not sourced from the supplier of interest.
3. On 8 February 2024, the NSW Environment Protection Authority (EPA) contacted City staff and indicated that they were intending to test five of the City's parks after discovering a link to Greenlife Resource Recovery Facility deep in the supply chain of one of our contractors. The City subsequently undertook proactive testing of those parks, with the agreement of the EPA. The first results were provided to the City late in the afternoon of 12 February 2024, confirming that asbestos had been found in three of the five parks tested (Victoria Park, Belmore Park and Harmony Park).
4. The City's Crisis Management Team first met in relation to this matter on 13 February 2024. The management of the response to the positive tests was governed through that group until 19 February 2024 when the City's Asbestos Incident Management Team was convened to manage the ongoing operational impacts.
5. Since the initial identification in Rozelle in January 2024 it has become clear that a significant amount of asbestos contaminated mulch has been distributed to a large number of public and private locations across the state. The EPA has established a large taskforce to both assist in identifying and testing potentially impacted locations and to undertake a criminal investigation as to the source of the contaminated material. The City has continued to respond to requests and suggestions from the EPA throughout this process.
6. All positive test results have been reported in a timely manner to the required regulators. The EPA is the regulator with primary responsibility for this issue and they have formed an Asbestos Management Taskforce in response to this issue. The City has consulted with NSW government agencies as appropriate.

Testing – Parks

7. The City has almost 350 parks, comprising iconic parks such as Hyde Park, landmark parks such as Prince Alfred Park, as well as numerous neighbourhood parks of various sizes and pocket parks.
8. Subsequent investigation of the supply chain progressively identified a further 38 potentially affected parks. These parks were taped off, signage erected and testing commenced. The City has commissioned and coordinated the testing.
9. At the time of writing, the City, in accordance with the EPA advice and investigation, has tested 43 parks. Of these the results are as follows:
 - (a) positive – friable – two parks;
 - (b) positive - friable and bonded – two parks;

- (c) positive – bonded only – 16 parks;
- (d) negative – no asbestos found – 16 parks; and
- (e) reports yet to be received – seven parks.

Testing – Street Garden Bed Sites

10. The City has 1,819 garden bed sites across the area. The total number of garden beds in these sites is 5,750.
11. The City has identified 135 street garden bed sites (containing a total of 425 garden beds) that may have received contaminated mulch. Testing of five priority sites located near child care centres and schools has been completed and no asbestos has been found within the mulch. We are awaiting the results of two further priority one sites. A methodology and plan is being developed to address the remaining street garden bed sites.

Process for dealing with positive tests

12. The City has implemented the following process, in consultation with the EPA and accredited consultants for dealing with any locations where the presence of asbestos has been confirmed by an accredited consultant:
 - (a) Report confirming presence of asbestos received;
 - (b) Report is assessed and site plan developed for fencing as appropriate based on nature of test results;
 - (c) Contractor directed to install required fencing for locations with friable asbestos, and mesh fencing for locations with bonded asbestos;
 - (d) Communications issued to the Lord Mayor and Councillors;
 - (e) Report made to EPA contact officers for inclusion in press statements and public information; and
 - (f) Communications issued to particularly impacted stakeholders (e.g. Event holders), website updated, social media post issue and other communications as appropriate in the circumstances.

Process for remediation

13. The remediation is being carried out in accordance with Work, Health and Safety Regulations and the Safe Work NSW How to Safely Remove Asbestos Code of Practice. The process is as follows:
 - (a) A Licensed Asbestos Removalist prepares the Asbestos Removal Control Plan. City staff review and provide feedback and then it is approved by an independent Licensed Asbestos Assessor;
 - (b) Prior to commencing removal additional sampling will be undertaken to determine the waste classification which will inform where the mulch can be disposed;
 - (c) Remediation commences with the completion time depending on the amount of mulch that is required to be remediated;

- (d) During the removal of the contaminated mulch the Licensed Asbestos Assessor will provide daily reassurance that there will be airborne monitoring in accordance with the National Occupational Health and Safety Commission published Guidance Note on the Membrane Filter Method for Estimating Airborne Asbestos Fibres;
 - (e) Once the mulch has been removed the Licensed Asbestos Assessor undertakes a visual surface clearance, followed by validation of soil sampling, as per an agreed methodology to meet EPA site use criteria, to help determine that the site is free from asbestos containing materials and that the site can be reoccupied for its intended land use. This is issued as a final validation report; and
 - (f) Once clear, re-mulching can occur and the fencing can be removed.
14. To expedite remediation up to six licensed asbestos removalist teams are being engaged to work concurrently so that remediation of multiple parks can occur and areas be returned to the community as quickly as possible.
15. Remediation of Harmony Park and Bicentennial Park 1 has commenced following the preparation of the Asbestos Removal Control Plan and engagement of appropriate removal contractors. The City has received and is assessing the Asbestos Removal Control Plan for Pirrama Park.
16. City staff are working with the EPA's Asbestos Taskforce on the development of a refined process and guidelines that may result in the streamlining of the remediation process.

Prioritisation of parks for remediation

17. City staff have commenced the process of remediation with the number one criteria being parks that have been identified friable asbestos.
18. A criteria for prioritisation has been developed. It is noted that the first two criteria are objective and will drive the immediate prioritisation.
19. The criteria is as follows:
- (a) Type of asbestos (friable/bonded);
 - (b) Extent of asbestos (how many detections from sampling);
 - (c) Extent of mulch;
 - (d) Events and bookings (weddings, sports field bookings etc);
 - (e) Capital projects;
 - (f) Presence of people sleeping rough;
 - (g) Presence of volunteers;
 - (h) Sensitive uses – adjacent playgrounds, dog off leash areas, schools, child-care, pools, tenants (cafes), tennis courts;
 - (i) Level of park use; and

- (j) Length of time fencing has been in place.

Re-mulching

20. At this stage the City proposes to use Horticultural Grade mulch for re-mulching the parks. Horticultural Grade mulch is not made from any recycled products and is currently what is used in Hyde Park. The City is also exploring with its tree management contractors the opportunity to use mulch from their operations. Confirmation is required that it meets the appropriate standards.
21. The City's Urban Forest Manager has advised that due to the recent rainfall and as we are moving into Autumn there is no immediate requirement to re-mulch all areas prior to the removal of the fencing and re-opening areas to the public. We will prioritise significant trees and trees that are likely to be subject to compaction (from people use) where required. It is noted however that without mulch the parks will look different and we may receive feedback accordingly.
22. Where a park is the subject of an existing environmental management plan all trees and garden beds within the park will need to be re-mulched immediately following removal of the existing mulch and prior to the affected areas being returned to community use.

Fair Day

23. On 14 February 2024, Fair Day, scheduled to be held on Sunday 18 February 2024, was cancelled after it became clear that the event could not be held in Victoria Park on that weekend.
24. In the days leading up to this decision, the City and Sydney Mardi Gras worked together to coordinate clean-up of the affected areas while bumping in Fair Day infrastructure in time to hold the event. However, following a more detailed investigation into the safety concerns at Victoria Park, it became clear to the City and Sydney Mardi Gras that an event of the scale of Fair Day would not be able to proceed due to the impact the fencing had on the footprint of the event and the subsequent limitations to ingress and egress.
25. The City worked with Sydney Mardi Gras to consider alternate locations and options to hold Fair Day at another time, but Sydney Mardi Gras' preferred to cancel the event and focus on the successful delivery of the remaining 2024 festival program.
26. The City continues to work collaboratively with Sydney Mardi Gras to deliver a successful 2024 festival program.

Yabun

27. The Yabun festival was held on 26 January 2024 at Victoria Park, prior to the EPA contacting the City raising any matters of concern in relation to the City's supply chain or advising of their intention to test for contaminated mulch.
28. The Chief Executive Officer has subsequently contacted the Yabun Acting CEO to advise them with the current information held regarding Victoria Park, noting that the EPA and NSW Health are the most reliable sources for information regarding these matters.

City owned childcare centres

29. City owned childcare centres were visually inspected and no asbestos was identified as being present. The EPA has not advised of any supply chain risks associated with these facilities.

Work Health and Safety

30. The City and its contractors have undertaken all related activities in accordance with the Work Health and Safety Regulations and the SafeWork NSW How to Safely Remove Asbestos Code of Practice.

Organisational Impact

31. The response to the need to test for and manage asbestos contaminated mulch in a number of locations has required significant additional input from a large number of staff from across the organisation. The initial response was governed through the City's Crisis Management Team framework, following which a dedicated City Asbestos Incident Management Team was convened to monitor and manage the day to day requirements, particularly through the finalisation of the testing process and into the remediation process.
32. The matter is under the investigation by the EPA and a specially constituted taskforce and the City's response will continue to be guided by the requests and recommendations of those authorities.

Risks

33. Risk assessments have been undertaken in relation to this matter and are being regularly reviewed and updated. The City's Audit, Risk and Compliance Committee (ARCC) will be updated at the meeting of 28 March 2024, noting that the Chair of the City's ARCC is also leading the NSW Government taskforce responding to these matters.

Asbestos and health risks

34. The [NSW Health website](#) provides the following information about the health risks of asbestos:

Asbestos is a naturally occurring mineral. It is in our soil and air in small amounts. We are exposed to low levels of asbestos every day and do not get sick.

Living or working with asbestos, or just being around it, is a low risk to health as long as the asbestos is in good condition and not damaged.

If asbestos is damaged and you breathe in the fibres it may be a risk to health. Breathing in a small amount of fibres is unlikely to make you sick. Most people who develop asbestos-related diseases have worked in jobs where they frequently breathed in large amounts of asbestos fibres for a long time.

There are two forms of asbestos:

- (a) *non-friable (bonded): asbestos that is mixed with cement or other bonding materials. Asbestos in this form, and in good condition, is likely to be a low risk to your health.*

- (b) *friable: asbestos that can be crumbled, pulverised or turned into a powder in your hand. These asbestos fibres can be a health risk if they go into the air and you breathe them in. The more fibres you breathe in, the higher the risk.*

Social / Cultural / Community

35. The City is aware that the community is impacted by this issue in a number of ways, including through the unfortunate need to cancel and/or relocate events and bookings in our parks and public places. Staff are working closely with all those who have upcoming bookings in impacted parks to facilitate the appropriate response whether that be deferral, relocation or some other mitigation strategies.

Environmental

36. The City uses mulch as an essential material for the maintenance and care of its parks, trees and gardens. It retains soil moisture, provides nutrients and suppresses weed growth to support the health of our natural urban environment. The City is working closely with the EPA and SafeWork NSW to ensure the cleanup of the contaminated mulch is completed in accordance with their requirements and that the parks and street gardens are returned as a safe environment for use by the community as soon as possible.
37. The City will also be seeking advice from the EPA, as the regulator and licensor of manufacturers who produce essential landscape materials, on how they will ensure materials supplied for community use are fit for purpose to use in urban environments and meet Australian Standards and legislative requirements.

Financial Implications

38. Key costs incurred by the City at this stage are for testing services by appropriately qualified consultants to undertake the required samples and analysis for all sites identified as having a risk of asbestos contamination based on information provided by the EPA and contractors. At this stage the costs incurred are estimated in the order of \$200,000.
39. Additional financial implications are not yet finalised. The EPA is continuing to investigate the source of the contaminated mulch and the allocation of costs of mitigation and remediation is likely to be impacted by the outcome of that investigation. The City is working with its contractor to ensure all required work is undertaken as expeditiously as possible as its first priority. The contractor is currently meeting these costs in accordance with the contract.
40. There may be additional financial implications in relation to further testing, remediation costs, insurance and other matters. Councillors will be updated as part of the quarterly review or in other budget updates. Any implications extending into 2024/25 will be incorporated into the draft budget reported to Council in May 2024.

Relevant Legislation

41. Local Government Act 1993
42. Protection of the Environment (Operations) Act 1993

43. Work Health and Safety Act 2011
44. Council's Asbestos Management Policy

Time Frames

45. All required works are being undertaken as quickly as possible given the limited number of testing facilities, the detailed and complex requirements of the remediation process and limited access to resources such as clean mulch.
46. Testing first commenced on 9 February 2024 and final test results for the 43 parks are anticipated to be received by 8 March 2024 and the final two priority street garden beds sites shortly thereafter. Timeframes for the remaining 128 street garden beds are to be developed.

Public Consultation

47. The City has communicated as broadly and quickly as it can in response to this rapidly evolving situation. Communications have included:
 - (a) A consolidated website page, including frequently asked questions, was developed by 15 February 2024 and is now updated daily with the latest results from testing. The webpage is a single consolidated site for information and is now the most appropriate source of information to address community questions and concerns.
 - (b) A variety of signs have been developed and erected in impacted areas depending on the applicable circumstances. Interim signage was erected as quickly as possible on impacted sites until longer lasting signage could be produced and installed.
 - (c) Social media posts were made regularly in the initial phase and the City's social media presence continues to direct the community to the web page.
 - (d) Media releases were made proactively to advise the community of the initial positive tests and other significant developments. The City issued a statement to the media immediately following the first positive tests, to inform the community of the situation as soon as possible. We have worked closely with the media since, to ensure the community is well informed. Media statements and comments are now focussed on directing the community to the City's website.
 - (e) Google listings for impacted parks contain relevant information.
48. It is most appropriate for questions regarding the broader issue and health concerns to be directed to the EPA and NSW Health respectively to ensure that the community is receiving accurate and consistent information.

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