



## DILAPIDATED BUILDING POLICY

POLICY TYPE	DOCUMENT CONTROLLER	RESPONSIBLE MANAGER	POLICY ADOPTED	REVIEW DUE
Council	Permit Authority Coordinator	Development Services Manager	23 August 2021	July 2023
<b>PURPOSE</b>	<p>To set a framework for the objective consideration by Council of whether a dilapidated building notice should be issued by the General Manager specifying any building works that are required to be carried out in respect of a “dilapidated” building or buildings.</p> <p>A building that is considered to be “dilapidated” may come to the attention of the General Manager by any means, including external notification, observations of Council officers or by a structured building audit program.</p>			
<b>SCOPE</b>	<p>This policy applies to all buildings in the Devonport Municipal area.</p> <p>Before the General Manager may issue a dilapidated building notice, they must consider whether a building falls within the definition of “dilapidated”.</p> <p>This policy defines the considerations that must be made by the General Manager before they are satisfied that a dilapidated building notice should be served on a building owner requiring that specified building works are to be carried out to a building.</p> <p>This policy sets out the matters about which the General Manager must be satisfied before they issue a dilapidated building notice.</p> <p>This Policy will not apply to buildings listed on the Tasmanian Heritage Register unless the General Manager first obtains the written approval of the Heritage Council of Tasmania to require specified building works to be carried out to such a building.</p> <p>This policy will not apply to buildings subject to the Local Historic Heritage Code of the <i>Tasmanian Planning Scheme – Devonport</i>.</p> <p>A dilapidated building notice under the dilapidated buildings provisions will not be served in instances where the General Manager is of the opinion that a threat to life may arise out of the condition or use of a building or temporary structure. In such cases, an emergency order will be issued under the provisions of Section 245 of the Act.</p>			
<b>DEFINITIONS</b>	<p>For the purposes of this Policy, the following definitions apply:</p> <p><b>Dilapidated building</b> - Under the <i>Building Act 2016</i> (the Act) a dilapidated building is defined as a building “<i>that because of neglect, disrepair, defacement or damage, is of an appearance that is unsightly, particularly in comparison with its surroundings</i>”.</p>			

**POLICY**

**1. Resolution to commence a dilapidated building action**

Before issuing a dilapidated building notice for a building, the General Manager is to provide Council with a report that:

- 1.1 reasonably establishes that the building or buildings in question satisfy the definition of “dilapidated”; and
- 1.2 provides an estimate of the cost to Council to carry out the building works that will be stipulated in the notice in the event that the property owner fails to do the work.

The General Manager is not to issue a dilapidated building notice for the remediation of a dilapidated building or building under the provisions of section 242 of the Act, until Council has resolved that both the action and any likely cost to Council for carrying out the works are acceptable in the circumstances.

**2. Determining whether a building is a dilapidated building**

In determining whether a building is of an appearance that is prejudicial to the visual amenity of its surroundings, the General Manager may consider, but is not limited to, the following indicators:

- broken windows, or major damage to window screens/external window frames;
- significant damage to roofs, roof coverings or guttering;
- significant damage to exterior building surfaces (for example peeling paint);
- broken exterior doors or major damage to exterior door frames;
- partially completed or partially demolished buildings; or
- excessive graffiti.

Section 241 (1) of the Act provides that if the General Manager is of the opinion that a building may be a dilapidated building, then the General Manager may inspect the building and is to prepare a report on the matter. This process may be initiated when the condition of a building is brought to the General Manager’s attention, for example, via a complaint from a member of the community.

There is no obligation for the General Manager to act at the behest of community complaints in relation to dilapidated buildings. Section 241 (2) provides that the dilapidated building report is to state whether or not the building is a dilapidated building, the building work or other work the General Manager considers necessary to the condition of the building and any other relevant matter.

Section 241 (3) provides that the General Manager may seek information from any building services provider, or other person, to assist them in preparing the report. Examples of other people that may have relevant skills and therefore be of assistance in preparing a report are:

- an urban planner who can give advice concerning visual amenity issues;
- a valuer who can give advice on relative property values;
- a heritage expert; and/or
- an Architect, Engineer, Building Surveyor or an accredited Builder who can give advice on the building or structure.

Section 26 provides that as an authorised person under the *Act*, the General Manager or their delegate(s) may at all reasonable times, access and enter any building for the purpose of exercising any power or performing any function under the *Act*.

### **3. Issuing a dilapidated building notice**

Section 242 provides that if the dilapidated building report states that a building is a dilapidated building, the General Manager may issue a dilapidated building notice to the building owner.

A dilapidated building notice is to require the owner to 'show cause' in writing and within a time nominated in the notice, why they should not be required to carry out the proposed building work or other work to restore the dilapidated building.

The dilapidated building notice is to be accompanied by a copy of the dilapidated building report.

The General Manager and the building owner may be able to negotiate an outcome regarding the building that is satisfactory to both parties, before an order is made.

### **4. Serving a building order relating to a dilapidated building**

Section 249 (1) provides that if the General Manager does not revoke the dilapidated building notice, then Council's Permit Authority is to serve a building order on the owner of the dilapidated building.

The building order is to require the owner to carry out building work or other work to which the Permit Authority specifies is necessary to restore the building so that it ceases to be considered a dilapidated building.

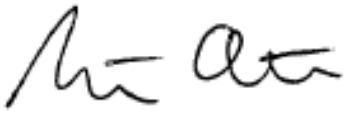
The building order should specify a deadline (after giving a reasonable time) for the owner to complete the work.

Any necessary work should be done in accordance with the *Act*, the Building Regulations 2016 and the National Construction Code. A building order relating to a dilapidated building may be combined with another building order under the *Act*.

Some specific examples of building works that may be included in a building order relating to a dilapidated building include:

- repairing broken windows, roofs or walls;
- boarding up access points (windows) to prevent vandalism entry points; or
- partial or complete demolition if required and appropriate.

	<p>A building order can also include other relevant types of work, for example:</p> <ul style="list-style-type: none"> <li>• fencing of a site;</li> <li>• removing graffiti from walls; or</li> <li>• painting.</li> </ul> <p><b>5. Appeal rights</b></p> <p>Under Section 278 of the <i>Act</i>, the owner may appeal against the issuing of a building order to the Resource Management and Planning Appeal Tribunal.</p> <p><b>6. Failure to comply with a building order</b></p> <p>A building order is a legal order issued under the <i>Act</i> and compliance with the order is mandatory.</p> <p>Under Section 265 of the <i>Act</i>, the Permit Authority is to take all reasonable steps to enforce a building order in the event that a person has failed to comply.</p> <p>If a person fails to comply with a building order, the work may be carried out by Council.</p> <p>Council can then recover the costs of carrying out any building works by selling the building for removal or after demolition, any materials on the site (pursuant to Sections 269 and 270 of the <i>Act</i>) or recovering expenses as a charge on the land and recoverable as if it were rates or charges under the <i>Local Government Act 1993</i>.</p> <p>Council can also issue an order to demolish the building under section 267 of the <i>Act</i>.</p> <p>Failure to comply with a Building order is an offence under the <i>Act</i> and can result in prosecution and significant fines. Council also has power to issue infringement notices for such offences.</p> <p><b>7. Amending or revoking a building order relating to a dilapidated building</b></p> <p>Section 274 of the <i>Act</i> provides that if an owner is served with a building order after being issued with a dilapidated building notice and there is a change of circumstances after the original notice was issued, the owner may request the General Manager to amend or revoke the building order. The General Manager may, if he considers it appropriate, amend or revoke the building order, or revoke or issue an amended dilapidated building notice.</p>
<p><b>LEGISLATION AND RELATED DOCUMENTS</b></p>	<p><i>Building Act 2016</i>  <i>Local Government Act 1993</i>  Building Regulation Advisory Note 01/2014 Director's Guideline 2 of 2018  <i>Land Use Planning and Approvals Act 1993</i>  Devonport City Council Strategic Plan 2009-2030</p>

<b>ATTACHMENTS (IF APPLICABLE)</b>	N/A		
<b>STRATEGIC REFERENCE</b>	2.1.2 – Provide consistent and responsive development assessment and compliance processes		
<b>MINUTE REFERENCE</b>	21/173		
<b>OFFICE USE ONLY</b>	Update Register	Y	Training/Communication Y
	Advise Document Controller	Y	Advise HR / MCO Y
	Management Sign Off:  Date: 23 August 2021		